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Price: EUR 4

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<sup>(1)</sup> Text with EEA relevance

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<sup>(1)</sup> Text with EEA relevance

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION REGULATION (EU) No 212/2011

of 3 March 2011

**concerning the authorisation of *Pediococcus acidilactici* CNCM MA 18/5M as a feed additive for laying hens (holder of authorisation Lallemand SAS)**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Regulation (EC) No 911/2009 <sup>(4)</sup> and for weaned piglets by Commission Regulation (EU) No 1120/2010 <sup>(5)</sup>.

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition <sup>(1)</sup>, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for the authorisation of *Pediococcus acidilactici* CNCM MA 18/5M. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) The application concerns the authorisation of a new use of *Pediococcus acidilactici* CNCM MA 18/5M as a feed additive for laying hens, to be classified in the additive category 'zootechnical additives'.
- (4) The use of *Pediococcus acidilactici* CNCM MA 18/5M was authorised without a time limit for chickens for fattening by Commission Regulation (EC) No 1200/2005 <sup>(2)</sup>, without a time limit for pigs for fattening by Commission Regulation (EC) No 2036/2005 <sup>(3)</sup> and for 10 years for salmonids and shrimps by Commission

- (5) New data were submitted in support of the application for the authorisation of *Pediococcus acidilactici* CNCM MA 18/5M for laying hens. The European Food Safety Authority ('the Authority') concluded in its opinion of 5 October 2010 <sup>(6)</sup> that *Pediococcus acidilactici* CNCM MA 18/5M, under the proposed conditions of use, does not have an adverse effect on animal health, human health or the environment, and that its use significantly increased the laying intensity of the target species. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Community Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (6) The assessment of *Pediococcus acidilactici* CNCM MA 18/5M shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this preparation should be authorised as specified in the Annex to this Regulation.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

## Article 1

The preparation specified in the Annex, belonging to the additive category 'zootechnical additives' and to the functional group 'gut flora stabilisers', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.<sup>(2)</sup> OJ L 195, 27.7.2005, p. 6.<sup>(3)</sup> OJ L 328, 15.12.2005, p. 13.<sup>(4)</sup> OJ L 257, 30.9.2009, p. 10.<sup>(5)</sup> OJ L 317, 3.12.2010, p. 12.<sup>(6)</sup> EFSA Journal 2010; 8(10):1865.

*Article 2*

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

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

Done at Brussels, 3 March 2011.

*For the Commission*  
*The President*  
José Manuel BARROSO

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## ANNEX

| Identification number of the additive                                       | Name of the holder of authorisation | Additive                                      | Composition, chemical formula, description, analytical method                                                                                                                                                                                                                                                                                                                                                                                                     | Species or category of animal | Maximum age | Minimum content                                                 | Maximum content | Other provisions                                                                                                                                                                                                                      | End of period of authorisation |
|-----------------------------------------------------------------------------|-------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-------------|-----------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
|                                                                             |                                     |                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                               |             | CFU/kg of complete feedingstuff with a moisture content of 12 % |                 |                                                                                                                                                                                                                                       |                                |
| Category of zootechnical additives. Functional group: gut flora stabilisers |                                     |                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                               |             |                                                                 |                 |                                                                                                                                                                                                                                       |                                |
| 4d1712                                                                      | Lallemand SAS                       | <i>Pediococcus acidilactici</i> CNCM MA 18/5M | <i>Additive composition</i><br><br>Preparation of <i>Pediococcus acidilactici</i> CNCM MA 18/5M containing a minimum of 1 × 10 <sup>10</sup> CFU/g<br><br><i>Characterisation of active substance</i><br><br>Viable cells of <i>Pediococcus acidilactici</i> CNCM MA 18/5 M<br><br><i>Analytical methods</i> <sup>(1)</sup><br><br>Enumeration: spread plate method using MSR agar (EN 15786:2009)<br><br>Identification: Pulsed Field Gel Electrophoresis (PFGE) | Laying hens                   | —           | 1 × 10 <sup>9</sup>                                             | —               | 1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting.<br><br>2. For safety: breathing protection, glasses and gloves shall be used during handling. | 24 March 2021                  |

<sup>(1)</sup> Details of the analytical methods are available at the following address of the Community Reference Laboratory: [www.irmm.jrc.be/crl-feed-additives](http://www.irmm.jrc.be/crl-feed-additives)

**COMMISSION REGULATION (EU) No 213/2011****of 3 March 2011****amending Annexes II and V to Directive 2005/36/EC of the European Parliament and of the Council  
on the recognition of professional qualifications****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications<sup>(1)</sup>, and in particular the second paragraph of Article 11 and the second paragraph of Article 26,

Whereas:

- (1) Austria has requested the insertion in Annex II to Directive 2005/36/EC of 10 training programmes related to healthcare. These training programmes are regulated by the Healthcare and Nursing Special Task Ordinance (GuK-SV BGBl II No 452/2005) and the Healthcare and Nursing Teaching and Management Duties Ordinance (GuK-LFV BGBl II No 453/2005).
- (2) As these Austrian training programmes are of an equivalent level of training to that provided for under Article 11(c)(i) of Directive 2005/36/EC and provide a comparable professional standard and prepare the trainee for a comparable level of responsibilities and functions, their inclusion on the basis of Article 11(c)(ii) in Annex II to Directive 2005/36/EC is justified.
- (3) Portugal has submitted a reasoned request to include in point 5.1.3 of Annex V to Directive 2005/36/EC specialist medical training in medical oncology.
- (4) Medical oncology aims at offering a systemic treatment of cancer. The treatment of cancer patients has undergone major changes over the last decade due to scientific progress. Specialist medical training in medical oncology is not listed in point 5.1.3 of Annex V to Directive 2005/36/EC. However, medical oncology has developed into a separate and distinct specialist medical

training in more than two fifths of the Member States, which justifies its inclusion into point 5.1.3 of Annex V to Directive 2005/36/EC.

- (5) In order to ensure a sufficiently high level of specialist medical training, the minimum period of training required for the medical specialty of medical oncology to be automatically recognised should be five years.
- (6) France has submitted a reasoned request to include in point 5.1.3 of Annex V to Directive 2005/36/EC specialist medical training in medical genetics.
- (7) Medical genetics is a specialty that responds to the rapid development of knowledge in the field of genetics and its implication in numerous specialised fields, such as oncology, foetal medicine, paediatrics, chronic diseases. Medical genetics plays a growing role in screening and in the prevention of numerous pathologies. Specialist medical training in medical genetics is not listed in point 5.1.3 of Annex V to Directive 2005/36/EC. However, it has developed into a separate and distinct specialist medical training in more than two fifths of the Member States, which justifies its inclusion into point 5.1.3 of Annex V to Directive 2005/36/EC.
- (8) In order to ensure a sufficiently high level of specialist medical training, the minimum period of training required for the medical specialty of medical genetics to be automatically recognised should be four years.
- (9) Directive 2005/36/EC should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Recognition of Professional Qualifications,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annexes II and V to Directive 2005/36/EC are amended as set out in the Annex to this Regulation.

<sup>(1)</sup> OJ L 255, 30.9.2005, p. 22.

*Article 2*

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

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

Done at Brussels, 3 March 2011.

*For the Commission*

*The President*

José Manuel BARROSO

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## ANNEX

Annexes II and V to Directive 2005/36/EC are amended as follows:

1. in point 1 of Annex II, under 'in Austria', the following is added:

- special training in the care of children and young people (Sonderausbildung in der Kinder- und Jugendlichenpflege),
- special training in psychiatric healthcare and nursing (Sonderausbildung in der psychiatrischen Gesundheits- und Krankenpflege),
- special training in intensive care (Sonderausbildung in der Intensivpflege),
- special training in intensive care of children (Sonderausbildung in der Kinderintensivpflege),
- special training in anaesthesia-related nursing (Sonderausbildung in der Anästhesiepflege),
- special training in renal replacement therapy related nursing (Sonderausbildung in der Pflege bei Nierenersatztherapie),
- special training in operating department nursing (Sonderausbildung in der Pflege im Operationsbereich),
- special training in hospital hygiene (Sonderausbildung in der Krankenhaushygiene),
- special training for teaching tasks in healthcare and nursing (Sonderausbildung für Lehraufgaben in der Gesundheits- und Krankenpflege),
- special training for management tasks in healthcare and nursing. (Sonderausbildung für Führungsaufgaben in der Gesundheits- und Krankenpflege),

which represents education and training courses of a total duration of at least 13 years and six months to 14 years, including at least 10 years' general education, a further three years' basic training in the upper-grade public service for healthcare and nursing, and six to 12 months' special training in a specialised, teaching or management task.;

2. the following table is added to point 5.1.3 of Annex V:

| 'Country                | Medical oncology<br>Minimum period of training:<br>5 years | Medical genetics<br>Minimum period of training:<br>4 years |
|-------------------------|------------------------------------------------------------|------------------------------------------------------------|
|                         | Title                                                      | Title                                                      |
| Belgique/België/Belgien | Oncologie médicale/ Medische oncologie                     |                                                            |
| България                | Медицинска онкология                                       | Медицинска генетика                                        |
| Česká republika         | Klinická onkologie                                         | Lékařská genetika                                          |
| Danmark                 |                                                            | Klinisk genetik                                            |
| Deutschland             |                                                            | Humangenetik                                               |
| Eesti                   |                                                            | Meditsiinigeneetika                                        |
| Ελλάς                   | Παθολογική Ογκολογία                                       |                                                            |
| España                  |                                                            |                                                            |
| France                  | Oncologie                                                  | Génétique médicale                                         |
| Ireland                 | Medical oncology                                           | Clinical genetics                                          |
| Italia                  | Oncologia medica                                           | Genetica medica                                            |
| Κύπρος                  | Ακτινοθεραπευτική Ογκολογία                                |                                                            |
| Latvija                 | Onkoloģija ķīmijterapija                                   | Medicīnas ģenētika                                         |

| Country        | Medical oncology<br>Minimum period of training:<br>5 years | Medical genetics<br>Minimum period of training:<br>4 years |
|----------------|------------------------------------------------------------|------------------------------------------------------------|
|                | Title                                                      | Title                                                      |
| Lietuva        | Chemoterapinė onkologija                                   | Genetika                                                   |
| Luxembourg     | Oncologie médicale                                         | Médecine génétique                                         |
| Magyarország   | Klinikai onkológia                                         | Klinikai genetika                                          |
| Malta          |                                                            |                                                            |
| Nederland      |                                                            | Klinische genetica                                         |
| Österreich     |                                                            | Medizinische Genetik                                       |
| Polska         | Onkologia kliniczna                                        | Genetyka kliniczna                                         |
| Portugal       | Oncologia médica                                           | Genética médica                                            |
| România        | Oncologie medicala                                         | Genetica medicala                                          |
| Slovenija      | Internistična onkologija                                   | Klinična genetika                                          |
| Slovensko      | Klinická onkológia                                         | Lekárska genetika                                          |
| Suomi/Finland  |                                                            | Perinnöllisyyslääketiede/<br>Medicinsk genetik             |
| Sverige        |                                                            |                                                            |
| United Kingdom | Medical oncology                                           | Clinical genetics'                                         |

**COMMISSION REGULATION (EU) No 214/2011****of 3 March 2011****amending Annexes I and V to Regulation (EC) No 689/2008 of the European Parliament and of the Council concerning the export and import of dangerous chemicals**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals <sup>(1)</sup>, and in particular Article 22(4) thereof,

Whereas:

- (1) Regulation (EC) No 689/2008 implements the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade, signed on 11 September 1998 and approved, on behalf of the Community, by Council Decision 2003/106/EC <sup>(2)</sup>.
- (2) Annex I to Regulation (EC) No 689/2008 should be amended to take into account regulatory action in respect of certain chemicals taken pursuant to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(3)</sup>, Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market <sup>(4)</sup> and Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC <sup>(5)</sup>.
- (3) Annex V to Regulation (EC) No 689/2008 should be amended to take into account decisions taken in respect of certain chemicals under the Stockholm Convention on persistent organic pollutants (the

Stockholm Convention), signed on 22 May 2001 and approved, on behalf of the Community, by Council Decision 2006/507/EC <sup>(6)</sup> and subsequent regulatory action in respect of those chemicals taken pursuant to Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC <sup>(7)</sup>. Annex V should also be amended to reflect regulatory action taken to ban the export of certain chemicals other than persistent organic pollutants.

- (4) The substances diphenylamine, triazoxide and triflumuron have not been included as active substances in Annex I to Directive 91/414/EEC, with the effect that those active substances are banned for pesticide use and thus should be added to the lists of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EC) No 689/2008. Since new applications were submitted that will require new decisions on inclusion in Annex I to Directive 91/414/EEC, the addition to the list of chemicals contained in Part 2 of Annex I to Regulation (EC) No 689/2008 should not be applied until the new decisions on the status of those chemicals are adopted.
- (5) The substances bifenthrin and metam have not been included as active substances in Annex I to Directive 91/414/EEC; as far as Directive 98/8/EC is concerned those substances have been identified and notified for evaluation. As a result bifenthrin and metam are severely restricted for pesticide use since the use of both substances is almost completely prohibited despite the fact that they may continue to be authorised by Member States until a decision under Directive 98/8/EC is taken. It is therefore appropriate to add bifenthrin and metam to the list of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EC) No 689/2008. Since new applications were submitted that will require new decisions on inclusion in Annex I to Directive 91/414/EEC, the addition to the list of chemicals contained in Part 2 of Annex I to Regulation (EC) No 689/2008 should not be applied until the new decisions on the status of those chemicals are adopted.
- (6) The substance carbosulfan has not been included as an active substance in Annex I to Directive 91/414/EEC, with the effect that carbosulfan is banned for pesticide use and thus should be added to the lists of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EC) No 689/2008. The addition of carbosulfan to Part 2 of

<sup>(1)</sup> OJ L 204, 31.7.2008, p. 1.

<sup>(2)</sup> OJ L 63, 6.3.2003, p. 27.

<sup>(3)</sup> OJ L 230, 19.8.1991, p. 1.

<sup>(4)</sup> OJ L 123, 24.4.1998, p. 1.

<sup>(5)</sup> OJ L 396, 30.12.2006, p. 1.

<sup>(6)</sup> OJ L 209, 31.7.2006, p. 1.

<sup>(7)</sup> OJ L 158, 30.4.2004, p. 7.

Annex I was suspended due to a new application for inclusion in Annex I to Directive 91/414/EEC submitted pursuant to Article 13 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I<sup>(1)</sup>. This new application has been withdrawn by the applicant with the effect that the reason for suspending the addition to Part 2 of Annex I disappeared. Therefore, the substance carbosulfan should be added to the list of chemicals contained in Part 2 of Annex I to Regulation (EC) No 689/2008.

- (7) The substance trifluralin has not been included as an active substance in Annex I to Directive 91/414/EEC, with the effect that trifluralin is banned for pesticide use and thus should be added to the lists of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EC) No 689/2008. The addition of trifluralin to Part 2 of Annex I was suspended due to a new application for inclusion in Annex I to Directive 91/414/EEC submitted pursuant to Article 13 of Regulation (EC) No 33/2008. This new application resulted again in the decision not to include the substance trifluralin as an active substance in Annex I to Directive 91/414/EEC with the effect that trifluralin remains banned for pesticide use and that the reason for suspending the addition to Part 2 of Annex I disappeared. Therefore, the substance trifluralin should be added to the list of chemicals contained in Part 2 of Annex I to Regulation (EC) No 689/2008.
- (8) The substance chlorthal-dimethyl has not been included as an active substance in Annex I to Directive 91/414/EEC with the effect that chlorthal-dimethyl is banned for pesticide use and thus should be added to the lists of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EC) No 689/2008.
- (9) The chemicals chlordecone, hexabromobiphenyl, hexachlorocyclohexanes, lindane and pentabromodiphenyl ether will be added to the list of chemicals that are banned for export included in Part 1 of Annex V to Regulation (EC) No 689/2008. Therefore, it is no longer necessary to keep those chemicals in Parts 1 and 2 of Annex I to that Regulation and consequently the entries should be deleted.
- (10) The chemicals hexabromobiphenyl, hexachlorocyclohexane (HCH) and lindane are already listed in Part 3 of Annex I to Regulation (EC) No 689/2008. Their addition to Part 1 of Annex V to that Regulation should therefore be reflected in Part 3 of Annex I.

- (11) Commission Regulation (EU) No 757/2010 of 24 August 2010 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annexes I and III<sup>(2)</sup> implements decisions taken under the Stockholm Convention to list chlordecone, pentachlorobenzene, hexabromobiphenyl, hexachlorocyclohexanes, lindane, tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether and heptabromodiphenyl ether in Part 1 of Annex A to the Stockholm Convention by adding those chemicals to Part A of Annex I to Regulation (EC) No 850/2004. Consequently, those chemicals should be added to Part 1 of Annex V to Regulation (EC) No 689/2008.
- (12) Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury<sup>(3)</sup> bans the export of metallic mercury and certain mercury compounds and mixtures from the European Union to third countries. Consequently, those chemicals should be added to the list of chemicals contained in Part 2 of Annex V to Regulation (EC) No 689/2008. Moreover, the entry for mercury compounds in Part 1 of Annex I should be modified to reflect the export ban of certain mercury compounds and the current status of mercury compounds under Directive 98/8/EC.
- (13) Annexes I and V to Regulation (EC) No 689/2008 should therefore be amended accordingly.
- (14) In order to allow enough time for Member States and industry to take the measures necessary for the implementation of this Regulation, its application should be deferred.
- (15) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 689/2008 is amended as follows:

1. Annex I is amended in accordance with Annex I to this Regulation.
2. Annex V is amended in accordance with Annex II to this Regulation.

<sup>(1)</sup> OJ L 15, 18.1.2008, p. 5.

<sup>(2)</sup> OJ L 223, 25.8.2010, p. 29.

<sup>(3)</sup> OJ L 304, 14.11.2008, p. 75.

*Article 2*

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

It shall apply from 1 May 2011.

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

Done at Brussels, 3 March 2011.

*For the Commission*  
*The President*  
José Manuel BARROSO

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## ANNEX I

Annex I to Regulation (EC) No 689/2008 is amended as follows:

(1) Part 1 is amended as follows:

(a) the following entries are added:

| Chemical             | CAS No               | Einecs No              | CN code    | Subcategory (*) | Use limitation (**) | Countries for which no notification is required |
|----------------------|----------------------|------------------------|------------|-----------------|---------------------|-------------------------------------------------|
| Bifenthrin           | 82657-04-3           |                        | 2916 20 00 | p(1)            | b                   |                                                 |
| Chlorthal-dimethyl + | 1861-32-1            | 217-464-7              | 2917 39 95 | p(1)            | b                   |                                                 |
| Diphenylamine        | 122-39-4             | 204-539-4              | 2921 44 00 | p(1)            | b                   |                                                 |
| Metam                | 144-54-7<br>137-42-8 | 205-632-2<br>205-239-0 | 2930 20 00 | p(1)            | b                   |                                                 |
| Triazoxide           | 72459-58-6           | 276-668-4              | 2933 29 90 | p(1)            | b                   |                                                 |
| Triflumuron          | 64628-44-0           | 264-980-3              | 2924 29 98 | p(1)            | b'                  |                                                 |

(b) the entry for mercury compounds is replaced by the following:

| Chemical                                                                                                                                                                     | CAS No                               | Einecs No                             | CN code    | Subcategory (*) | Use limitation (**) | Countries for which no notification is required                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|---------------------------------------|------------|-----------------|---------------------|--------------------------------------------------------------------------------|
| 'Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds except mercury compounds listed in Annex V # | 62-38-4,<br>26545-49-3<br>and others | 200-532-5,<br>247-783-7<br>and others | 2852 00 00 | p(1)-p(2)       | b-b                 | Please refer to PIC circular at <a href="http://www.pic.int/">www.pic.int/</a> |

(c) the entry for polybrominated biphenyls is replaced by the following:

| Chemical                                                    | CAS No                                  | Einecs No                             | CN code    | Subcategory (*) | Use limitation (**) | Countries for which no notification is required                                |
|-------------------------------------------------------------|-----------------------------------------|---------------------------------------|------------|-----------------|---------------------|--------------------------------------------------------------------------------|
| 'Polybrominated biphenyls (PBB) except hexabromo-biphenyl # | 13654-09-6,<br>27858-07-7<br>and others | 237-137-2,<br>248-696-7<br>and others | 2903 69 90 | i(1)            | sr                  | Please refer to PIC circular at <a href="http://www.pic.int/">www.pic.int/</a> |

(d) the following entry is deleted:

| Chemical     | CAS No   | Einecs No | CN code    | Subcategory (*) | Use limitation (**) | Countries for which no notification is required |
|--------------|----------|-----------|------------|-----------------|---------------------|-------------------------------------------------|
| 'Chlordecone | 143-50-0 | 205-601-3 | 2914 70 00 | p(2)            | sr'                 |                                                 |

(e) the following entry is deleted:

| Chemical                    | CAS No     | Einecs No | CN code    | Subcategory (*) | Use limitation (**) | Countries for which no notification is required |
|-----------------------------|------------|-----------|------------|-----------------|---------------------|-------------------------------------------------|
| 'Pentabromodiphenyl ether + | 32534-81-9 | 251-084-2 | 2909 30 31 | i(1)            | sr'                 |                                                 |

(f) the following entry is deleted:

| Chemical                                      | CAS No   | Einecs No | CN code    | Subcategory (*) | Use limitation (**) | Countries for which no notification is required                                |
|-----------------------------------------------|----------|-----------|------------|-----------------|---------------------|--------------------------------------------------------------------------------|
| 'HCH/Hexachloro-cyclohexane (mixed isomers) # | 608-73-1 | 210-168-9 | 2903 51 00 | p(1)-p(2)       | b-sr                | Please refer to PIC circular at <a href="http://www.pic.int/">www.pic.int/</a> |

(g) the following entry is deleted:

| Chemical           | CAS No  | Einecs No | CN code    | Subcategory (*) | Use limitation (**) | Countries for which no notification is required                                |
|--------------------|---------|-----------|------------|-----------------|---------------------|--------------------------------------------------------------------------------|
| 'Lindane (γ-HCH) # | 58-89-9 | 200-401-2 | 2903 51 00 | p(1)-p(2)       | b-sr                | Please refer to PIC circular at <a href="http://www.pic.int/">www.pic.int/</a> |

(2) Part 2 is amended as follows:

(a) the following entries are added:

| Chemical           | CAS RN     | Einecs No | CN code    | Category (*) | Use limitation (**) |
|--------------------|------------|-----------|------------|--------------|---------------------|
| 'Carbosulfan       | 55285-14-8 | 259-565-9 | 2932 99 00 | p            | b                   |
| Chlorthal-dimethyl | 1861-32-1  | 217-464-7 | 2917 39 95 | p            | b                   |
| Trifluralin        | 1582-09-8  | 216-428-8 | 2921 43 00 | p            | b'                  |

(b) the following entry is deleted:

| Chemical                   | CAS RN     | Einecs No | CN code    | Category (*) | Use limitation (**) |
|----------------------------|------------|-----------|------------|--------------|---------------------|
| 'Pentabromo-diphenyl ether | 32534-81-9 | 251-084-2 | 2909 30 31 | i            | sr'                 |

(3) Part 3 is amended as follows:

(a) the entry for HCH (mixed isomers) is replaced by the following:

| Chemical                 | Relevant CAS number(s) | HS code Pure substance | HS code Mixtures, preparations containing substance | Category   |
|--------------------------|------------------------|------------------------|-----------------------------------------------------|------------|
| 'HCH (mixed isomers) (*) | 608-73-1               | 2903.51                | 3808.50                                             | Pesticide' |

(b) the entry for lindane is replaced by the following:

| Chemical     | Relevant CAS number(s) | HS code<br>Pure substance | HS code<br>Mixtures, preparations<br>containing substance | Category   |
|--------------|------------------------|---------------------------|-----------------------------------------------------------|------------|
| 'Lindane (*) | 58-89-9                | 2903.51                   | 3808.50                                                   | Pesticide' |

(c) the entry for polybrominated biphenyls (PBB) is replaced by the following:

| Chemical                        | Relevant CAS number(s) | HS code<br>Pure substance | HS code<br>Mixtures, preparations<br>containing substance | Category    |
|---------------------------------|------------------------|---------------------------|-----------------------------------------------------------|-------------|
| 'Polybrominated biphenyls (PBB) |                        |                           |                                                           |             |
| — (hexa-) (*)                   | 36355-01-8             | —                         | 3824.82                                                   | Industrial' |
| — (octa-)                       | 27858-07-7             |                           |                                                           |             |
| — (deca-)                       | 13654-09-6             |                           |                                                           |             |

## ANNEX II

Annex V to Regulation (EC) No 689/2008 is amended as follows:

(1) in Part 1 the following entries are added:

| Description of chemicals/article(s) subject to export ban | Additional details, where relevant (e.g. name of chemical, EC No, CAS No, etc.) |                                                                                                                              |
|-----------------------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
|                                                           | 'Chlordecone                                                                    | EC No 205-601-3<br>CAS No 143-50-0<br>CN code 2914 70 00                                                                     |
|                                                           | Pentachlorobenzene                                                              | EC No 210-172-5<br>CAS No 608-93-5<br>CN code 2903 69 90                                                                     |
|                                                           | Hexabromobiphenyl                                                               | EC No 252-994-2<br>CAS No 36355-01-8<br>CN code 2903 69 90                                                                   |
|                                                           | Hexachlorocyclohexanes, including lindane                                       | EC No 200-401-2, 206-270-8,<br>206-271-3, 210-168-9<br>CAS No 58-89-9, 319-84-6,<br>319-85-7, 608-73-1<br>CN code 2903 51 00 |
|                                                           | Tetrabromodiphenyl ether<br>C <sub>12</sub> H <sub>6</sub> Br <sub>4</sub> O    | EC No 254-787-2 and others<br>CAS No 40088-47-9 and others<br>CN code 2909 30 38                                             |
|                                                           | Pentabromodiphenyl ether<br>C <sub>12</sub> H <sub>5</sub> Br <sub>5</sub> O    | EC No 251-084-2 and others<br>CAS No 32534-81-9 and others<br>CN code 2909 30 31                                             |
|                                                           | Hexabromodiphenyl ether<br>C <sub>12</sub> H <sub>4</sub> Br <sub>6</sub> O     | EC No 253-058-6<br>CAS No 36483-60-0 and others<br>CN code 2909 30 38                                                        |
|                                                           | Heptabromodiphenyl ether<br>C <sub>12</sub> H <sub>3</sub> Br <sub>7</sub> O    | EC No 273-031-2<br>CAS No 68928-80-3 and others<br>CN code 2909 30 38'                                                       |

(2) in Part 2 the following entries are added:

| Description of chemicals/article(s) subject to export ban                                                                                                             | Additional details, where relevant (e.g. name of chemical, EC No, CAS No, etc.)                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 'Metallic mercury and mixtures of metallic mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 % weight by weight | CAS No 7439-97-6<br>CN code 2805 40                                                                                                                        |
| Mercury compounds except compounds exported for research and development, medical or analysis purposes                                                                | Cinnabar ore, mercury (I) chloride (Hg <sub>2</sub> Cl <sub>2</sub> , CAS No 10112-91-1), mercury (II) oxide (HgO, CAS No 21908-53-2); CN code 2852 00 00' |

**COMMISSION REGULATION (EU) No 215/2011****of 1 March 2011****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Pecorino Sardo (PDO)]**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs<sup>(1)</sup>, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) By virtue of the first subparagraph of Article 9(1) of Regulation (EC) No 510/2006 and having regard to Article 17(2) thereof, the Commission has examined Italy's application for the approval of amendments to the specification for the protected designation of origin 'Pecorino Sardo' registered under Commission Regulation (EC) No 1107/96<sup>(2)</sup>, as amended by Commission Regulation (EC) No 1263/96<sup>(3)</sup>.

- (2) Since the amendments in question are not minor within the meaning of Article 9 of Regulation (EC) No 510/2006, the Commission published the amendment application in the *Official Journal of the European Union*<sup>(4)</sup>, as required by the first subparagraph of Article 6(2) of that Regulation. As no statement of objection within the meaning of Article 7 of Regulation (EC) No 510/2006 has been notified to the Commission, the amendments should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*

The amendments to the specification published in the *Official Journal of the European Union* regarding the name contained in the Annex to this Regulation are hereby approved.

*Article 2*

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

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

Done at Brussels, 1 March 2011.

*For the Commission,  
On behalf of the President,  
Dacian CIOLOŞ  
Member of the Commission*

<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(2)</sup> OJ L 148, 21.6.1996, p. 1.

<sup>(3)</sup> OJ L 163, 2.7.1996, p. 19.

<sup>(4)</sup> OJ C 162, 22.6.2010, p. 7.

## ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

**Class 1.3. Cheeses**

ITALY

Pecorino Sardo (PDO)

---

**COMMISSION REGULATION (EU) No 216/2011****of 1 March 2011****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Chianti Classico (PDO)]**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>(1)</sup>, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) By virtue of the first subparagraph of Article 9(1), and having regard to Article 17(2) of Regulation (EC) No 510/2006, the Commission has examined Italy's application for the approval of amendments to the specification for the protected designation of origin 'Chianti Classico' registered under Commission Regulation (EC) No 2400/96 <sup>(2)</sup>, as amended by Regulation (EC) No 2446/2000 <sup>(3)</sup>.

- (2) Since the amendments in question are not minor within the meaning of Article 9 of Regulation (EC) No 510/2006, the Commission published the amendment application in the *Official Journal of the European Union* <sup>(4)</sup>, as required by the first subparagraph of Article 6(2) of that Regulation. As no statement of objection within the meaning of Article 7 of Regulation (EC) No 510/2006 has been notified to the Commission, the amendments should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*

The amendments to the specification published in the *Official Journal of the European Union* regarding the name contained in the Annex to this Regulation are hereby approved.

*Article 2*

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

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

Done at Brussels, 1 March 2011.

For the Commission,  
On behalf of the President,  
Dacian CIOLOŞ  
Member of the Commission

<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(2)</sup> OJ L 327, 18.12.1996, p. 11.

<sup>(3)</sup> OJ L 281, 07.11.2000, p. 12.

<sup>(4)</sup> OJ C 163, 23.6.2010, p. 16.

## ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

**Class 1.5. Oils and fats (butter, margarine, oil, etc.)**

ITALY

Chianti Classico (PDO)

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**COMMISSION REGULATION (EU) No 217/2011****of 1 March 2011****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Robiola di Roccaverano (PDO)]**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>(1)</sup>, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) By virtue of the first subparagraph of Article 9(1) of Regulation (EC) No 510/2006 and having regard to Article 17(2) thereof, the Commission has examined Italy's application for the approval of amendments to the specification for the protected designation of origin 'Robiola di Roccaverano' registered under Commission Regulation (EC) No 1107/96 <sup>(2)</sup>, as amended by Regulation (EC) No 1263/96 <sup>(3)</sup>.

- (2) Since the amendments in question are not minor within the meaning of Article 9 of Regulation (EC) No 510/2006, the Commission published the amendment application in the *Official Journal of the European Union* <sup>(4)</sup>, as required by the first subparagraph of Article 6(2) of that Regulation. As no statement of objection within the meaning of Article 7 of Regulation (EC) No 510/2006 has been notified to the Commission, the amendments should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*

The amendments to the specification published in the *Official Journal of the European Union* regarding the name contained in the Annex to this Regulation are hereby approved.

*Article 2*

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

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

Done at Brussels, 1 March 2011.

For the Commission,  
On behalf of the President,  
Dacian CIOLOŞ  
Member of the Commission

<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(2)</sup> OJ L 148, 21.6.1996, p. 1.

<sup>(3)</sup> OJ L 163, 2.7.1996, p. 19.

<sup>(4)</sup> OJ C 168, 26.6.2010, p. 10.

## ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

**Class 1.3. Cheeses**

ITALY

Robiola di Roccaverano (PDO)

---

**COMMISSION IMPLEMENTING REGULATION (EU) No 218/2011****of 3 March 2011****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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 <sup>(2)</sup>, 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 4 March 2011.

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

Done at Brussels, 3 March 2011.

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

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<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> 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 <sup>(1)</sup> | Standard import value |
|------------|-----------------------------------|-----------------------|
| 0702 00 00 | IL                                | 122,2                 |
|            | MA                                | 45,8                  |
|            | TN                                | 92,7                  |
|            | TR                                | 101,1                 |
|            | ZZ                                | 90,5                  |
| 0707 00 05 | TR                                | 164,7                 |
|            | ZZ                                | 164,7                 |
| 0709 90 70 | MA                                | 31,6                  |
|            | TR                                | 132,7                 |
|            | ZZ                                | 82,2                  |
| 0805 10 20 | EG                                | 55,0                  |
|            | IL                                | 76,8                  |
|            | MA                                | 62,9                  |
|            | TN                                | 42,9                  |
|            | TR                                | 65,9                  |
|            | ZA                                | 37,9                  |
|            | ZZ                                | 56,9                  |
| 0805 50 10 | MA                                | 45,9                  |
|            | TR                                | 53,6                  |
|            | ZZ                                | 49,8                  |
| 0808 10 80 | BR                                | 55,2                  |
|            | CA                                | 126,3                 |
|            | CL                                | 90,0                  |
|            | CN                                | 109,4                 |
|            | MK                                | 54,8                  |
|            | US                                | 112,1                 |
|            | ZZ                                | 91,3                  |
| 0808 20 50 | AR                                | 93,2                  |
|            | CL                                | 84,9                  |
|            | CN                                | 65,8                  |
|            | US                                | 92,6                  |
|            | ZA                                | 103,2                 |
|            | ZZ                                | 87,9                  |

<sup>(1)</sup> 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 IMPLEMENTING REGULATION (EU) No 219/2011****of 3 March 2011****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EU) No 867/2010 for the 2010/11 marketing year**

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector <sup>(2)</sup>, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2010/11 marketing year are fixed by Commission Regulation (EU) No 867/2010 <sup>(3)</sup>. These prices and duties have been last amended by Commission Regulation (EU) No 199/2011 <sup>(4)</sup>.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EU) No 867/2010 for the 2010/11, marketing year, are hereby amended as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 4 March 2011.

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

Done at Brussels, 3 March 2011.

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

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 178, 1.7.2006, p. 24.

<sup>(3)</sup> OJ L 259, 1.10.2010, p. 3.

<sup>(4)</sup> OJ L 56, 1.3.2011, p. 12.

## ANNEX

**Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 4 March 2011**

(EUR)

| CN code                   | Representative price per 100 kg net of the product concerned | Additional duty per 100 kg net of the product concerned |
|---------------------------|--------------------------------------------------------------|---------------------------------------------------------|
| 1701 11 10 <sup>(1)</sup> | 59,32                                                        | 0,00                                                    |
| 1701 11 90 <sup>(1)</sup> | 59,32                                                        | 0,00                                                    |
| 1701 12 10 <sup>(1)</sup> | 59,32                                                        | 0,00                                                    |
| 1701 12 90 <sup>(1)</sup> | 59,32                                                        | 0,00                                                    |
| 1701 91 00 <sup>(2)</sup> | 55,08                                                        | 0,95                                                    |
| 1701 99 10 <sup>(2)</sup> | 55,08                                                        | 0,00                                                    |
| 1701 99 90 <sup>(2)</sup> | 55,08                                                        | 0,00                                                    |
| 1702 90 95 <sup>(3)</sup> | 0,55                                                         | 0,19                                                    |

<sup>(1)</sup> For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.<sup>(2)</sup> For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.<sup>(3)</sup> Per 1 % sucrose content.

**COMMISSION IMPLEMENTING REGULATION (EU) No 220/2011****of 3 March 2011****fixing the minimum selling price for skimmed milk powder for the 17th individual invitation to tender within the tendering procedure opened by Regulation (EU) No 447/2010**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Commission Regulation (EU) No 447/2010 <sup>(2)</sup> has opened the sales of skimmed milk powder by a tendering procedure, in accordance with the conditions provided for in Commission Regulation (EU) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention <sup>(3)</sup>.
- (2) In the light of the tenders received in response to individual invitations to tender, the Commission should fix a minimum selling price or should decide not to fix a

minimum selling price, in accordance with Article 46(1) of Regulation (EU) No 1272/2009.

- (3) In the light of the tenders received for the 17th individual invitation to tender, a minimum selling price should be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 17th individual invitation to tender for selling of skimmed milk powder within the tendering procedure opened by Regulation (EU) No 447/2010, in respect of which the time limit for the submission of tenders expired on 1 March 2011, the minimum selling price for skimmed milk powder shall be EUR 252,10/100 kg.

*Article 2*

This Regulation shall enter into force on 4 March 2011.

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

Done at Brussels, 3 March 2011.

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

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 126, 22.5.2010, p. 19.

<sup>(3)</sup> OJ L 349, 29.12.2009, p. 1.

# DIRECTIVES

## COMMISSION DIRECTIVE 2011/22/EU

of 3 March 2011

**amending Council Directive 91/414/EEC to include bispyribac as active substance**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular Article 6(1) thereof,

Whereas:

(1) In accordance with Article 6(2) of Directive 91/414/EEC Italy received on 26 February 2002 an application from Bayer CropScience for the inclusion of the active substance bispyribac (also called bispyribac sodium, according to the form in which the active substance is contained in the representative formulation on which the dossier is based) in Annex I to Directive 91/414/EEC. Commission Decision 2003/305/EC <sup>(2)</sup> confirmed that the dossier was 'complete' in the sense that it could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to Directive 91/414/EEC.

(2) For that active substance, the effects on human health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicant. The designated rapporteur Member State submitted a draft assessment report on 1 August 2003.

(3) The draft assessment report was peer reviewed by the Member States and the European Food Safety Authority (EFSA) in the format of the EFSA conclusion on the peer review of the pesticide risk assessment of the active substance bispyribac on 12 July 2010 <sup>(3)</sup>. This report was reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and

Animal Health and was finalised on 28 January 2011 in the format of the Commission review report for bispyribac.

(4) It has appeared from the various examinations made that plant protection products containing bispyribac may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) and Article 5(3) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to include bispyribac in Annex I to that Directive, in order to ensure that in all Member States the authorisations of plant protection products containing this active substance may be granted in accordance with the provisions of that Directive.

(5) Without prejudice to that conclusion, it is appropriate to obtain confirmatory information on certain specific points. Article 6(1) of Directive 91/414/EEC provides that the inclusion of a substance in Annex I may be subject to conditions. Therefore, it is appropriate to require that the applicant submit further information to confirm the risk assessment on the potential for groundwater contamination by metabolites M03 <sup>(4)</sup>, M04 <sup>(5)</sup> and M10 <sup>(6)</sup>.

(6) Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of 6 months after inclusion to review existing provisional authorisations of plant protection products containing bispyribac to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should transform existing provisional authorisations into full authorisations, amend them or withdraw them in accordance with the provisions of Directive 91/414/EEC. By derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1.

<sup>(2)</sup> OJ L 112, 6.5.2003, p. 10.

<sup>(3)</sup> EFSA Journal (2010) 8(1):1692, Conclusion on the peer review of the pesticide risk assessment of the active substance bispyribac (unless otherwise stated all data evaluated refer to the variant bispyribac-sodium). doi:10.2903/j.efsa.2010.1692. Available online: [www.efsa.europa.eu](http://www.efsa.europa.eu)

<sup>(4)</sup> 2-hydroxy-4,6-dimethoxypyrimidine

<sup>(5)</sup> 2,4-dihydroxy-6-methoxypyrimidine

<sup>(6)</sup> sodium 2-hydroxy-6-(4-hydroxy-6-methoxypyrimidin-2-yl)oxybenzoate

- (7) It is therefore appropriate to amend Directive 91/414/EEC accordingly.
- (8) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.

*Article 2*

Member States shall adopt and publish by 31 January 2012 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 February 2012.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 3*

1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing bispyribac as active substance by 31 January 2012. By that date, they shall in particular verify that the conditions in Annex I to that Directive relating to bispyribac are met, with the exception of those identified in part B of the entry concerning the active substance, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13(2) of that Directive.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing bispyribac as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 31 July 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning bispyribac. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

Following that determination Member States shall:

- (a) in the case of a product containing bispyribac as the only active substance, where necessary, amend or withdraw the authorisation by 31 January 2013 at the latest; or
- (b) in the case of a product containing bispyribac as one of several active substances, where necessary, amend or withdraw the authorisation by 31 January 2013 or by the date fixed for such an amendment or withdrawal in the respective Directive or Directives which added the relevant substance or substances to Annex I to Directive 91/414/EEC, whichever is the latest.

*Article 4*

This Directive shall enter into force on 1 August 2011.

*Article 5*

This Directive is addressed to the Member States.

Done at Brussels, 3 March 2011.

*For the Commission*

*The President*

José Manuel BARROSO

## ANNEX

In Annex I to Directive 91/414/EEC, the following entry is added at the end of the table:

| No   | Common Name, Identification Numbers              | IUPAC Name                                           | Purity (*)                                    | Entry into force | Expiration of inclusion | Specific provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------|--------------------------------------------------|------------------------------------------------------|-----------------------------------------------|------------------|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| '329 | Bispyribac<br>CAS N° 125401-75-4<br>CIPAC N° 748 | 2,6-bis(4,6-dimethoxy-pyrimidin-2-yloxy)benzoic acid | ≥ 930 g/kg (referred to as bispyribac-sodium) | 1 August 2011    | 31 July 2021            | <p>PART A</p> <p>Only uses as herbicide in rice may be authorised.</p> <p>PART B</p> <p>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on bispyribac, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 January 2011, shall be taken into account.</p> <p>In this overall assessment, Member States must pay particular attention to the protection of groundwater, when the active substance is applied in regions with vulnerable soil and/or climatic conditions.</p> <p>Conditions of authorisation shall include risk mitigation measures where appropriate.</p> <p>The Member States concerned shall request the submission of further information as regards the possible groundwater contamination by metabolites M03 (2-hydroxy-4,6-dimethoxypyrimidine), M04 (2,4-dihydroxy-6-methoxypyrimidine) and M10 (sodium 2-hydroxy-6-(4-hydroxy-6-methoxypyrimidin-2-yl)oxybenzoate).</p> <p>They shall ensure that the applicant provides such information to the Commission by 31 July 2013.'</p> |

(\*) Further details on identity and specification of active substances are provided in the review report.

**COMMISSION DIRECTIVE 2011/23/EU****of 3 March 2011****amending Council Directive 91/414/EEC to include triflumuron as active substance****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular Article 6(1) thereof,

Whereas:

- (1) Commission Regulations (EC) No 451/2000 <sup>(2)</sup> and (EC) No 1490/2002 <sup>(3)</sup> lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included triflumuron. By Commission Decision 2009/241/EC <sup>(4)</sup> it was decided not to include triflumuron in Annex I to Directive 91/414/EEC.
- (2) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter 'the applicant') submitted a new application requesting the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I <sup>(5)</sup>.
- (3) The application was submitted to Italy, which had been designated rapporteur Member State by Regulation (EC) No 1490/2002. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as those that were the subject of Decision 2009/241/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.
- (4) Italy evaluated the new information and data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 5 March 2010.
- (5) The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the additional report was peer reviewed by the Member States and the Authority. The Authority then presented its conclusion on triflumuron to the Commission on 9 December 2010 <sup>(6)</sup>. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 28 January 2011 in the format of the Commission review report for triflumuron.
- (6) The additional report by the rapporteur Member State and the new conclusion by the Authority concentrate on the concerns that lead to the non-inclusion. Those concerns were in particular that, based on the available information, it had not been demonstrated that the consumer exposure was acceptable due to lack of data in terms of nature and level of the relevant residues. In fact, it was not possible to perform an acute risk assessment for the metabolite M07 <sup>(7)</sup>, because data was not sufficient to allocate an acute reference dose for this metabolite. Moreover, data was missing to determine an appropriate residue definition and to estimate the level of residues in processed fruit commodities.
- (7) The new information submitted by the applicant enabled a consumer exposure assessment. The information currently available indicates that the consumer exposure is acceptable.
- (8) Consequently, the additional data and information provided by the applicant permit to eliminate the specific concerns that led to the non-inclusion. No other open scientific questions have arisen.

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1.

<sup>(2)</sup> OJ L 55, 29.2.2000, p. 25.

<sup>(3)</sup> OJ L 224, 21.8.2002, p. 23.

<sup>(4)</sup> OJ L 71, 17.3.2009, p. 59.

<sup>(5)</sup> OJ L 15, 18.1.2008, p. 5.

<sup>(6)</sup> European Food Safety Authority: Conclusion on the peer review of the pesticide risk assessment of the active substance triflumuron; EFSA Journal 2011; 9(1):1941. [81 pp.]. doi:10.2903/j.efsa.2010.1941. Available online: [www.efsa.europa.eu/efsajournal.htm](http://www.efsa.europa.eu/efsajournal.htm).

<sup>(7)</sup> 4-trifluoro-methoxyaniline

- (9) It has appeared from the various examinations made that plant protection products containing triflumuron may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to include triflumuron in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing this active substance may be granted in accordance with the provisions of that Directive.
- (10) Without prejudice to that conclusion, it is appropriate to obtain confirmatory information on certain specific points. Article 6(1) of Directive 91/414/EEC provides that the inclusion of a substance in Annex I may be subject to conditions. Therefore, it is appropriate to require that the applicant submit confirmatory information as regards the long-term risk to birds, the risk to aquatic invertebrates and the risk to bee brood development.
- (11) It is therefore appropriate to amend Directive 91/414/EEC accordingly.
- (12) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.

*Article 2*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 September 2011 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 3*

This Directive shall enter into force on 1 April 2011.

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 3 March 2011.

*For the Commission*

*The President*

José Manuel BARROSO

The following entry shall be added at the end of the table in Annex I to Directive 91/414/EEC:

| No   | Common Name,<br>Identification Numbers             | IUPAC Name                                           | Purity <sup>(1)</sup>                                                                                                                                                                                                         | Entry into force | Expiration of inclusion | Specific provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------|----------------------------------------------------|------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| '328 | Triflumuron<br>CAS No: 64628-44-0<br>CIPAC No: 548 | 1-(2-chlorobenzoyl)-3-[4-trifluoromethoxyphenyl]urea | <p>≥ 955 g/kg</p> <p>Impurities:</p> <ul style="list-style-type: none"> <li>— <i>N,N'</i>-bis-[4-(trifluoromethoxy)phenyl]urea: not more than 1 g/kg,</li> <li>— 4-trifluoro-methoxyaniline: not more than 5 g/kg.</li> </ul> | 1 April 2011     | 31 March 2021           | <p>PART A</p> <p>Only uses as insecticide may be authorised.</p> <p>PART B</p> <p>For the implementation of the uniform principles of Annex VI the conclusions of the review report on triflumuron, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 January 2011, shall be taken into account.</p> <p>In this overall assessment, Member States shall pay particular attention to:</p> <ul style="list-style-type: none"> <li>— the protection of the aquatic environment,</li> <li>— the protection of honeybees. Conditions of authorisation shall include risk mitigation measures, where appropriate.</li> </ul> <p>Conditions of authorisation shall include risk mitigation measures, where appropriate.</p> <p>The Member States concerned shall ensure that the applicant submits to the Commission confirmatory information as regards the long-term risk to birds, the risk to aquatic invertebrates and the risk to bee brood development.</p> <p>The Member States concerned shall ensure that the applicant submits such information to the Commission by 31 March 2013.'</p> |

<sup>(1)</sup> Further details on identity and specification of active substance are provided in the review report.

**COMMISSION DIRECTIVE 2011/25/EU****of 3 March 2011****amending Council Directive 91/414/EEC to include bupirimate as active substance and amending Commission Decision 2008/934/EC****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular Article 6(1) thereof,

Whereas:

- (1) Commission Regulations (EC) No 451/2000 <sup>(2)</sup> and (EC) No 1490/2002 <sup>(3)</sup> lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included bupirimate.
- (2) In accordance with Article 11e of Regulation (EC) No 1490/2002 the notifier withdrew its support of the inclusion of that active substance in Annex I to Directive 91/414/EEC within two months from receipt of the draft assessment report. Consequently, Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances <sup>(4)</sup> was adopted on the non-inclusion of bupirimate.
- (3) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter 'the applicant') submitted a new application requesting the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the

application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I <sup>(5)</sup>.

- (4) The application was submitted to the Netherlands, which had been designated rapporteur Member State by Regulation (EC) No 1490/2002. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as were the subject of Decision 2008/934/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.
- (5) The Netherlands evaluated the additional data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 26 November 2009. The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the Authority presented its conclusion on bupirimate to the Commission on 20 September 2010 <sup>(6)</sup>. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 28 January 2011 in the format of the Commission review report for bupirimate.
- (6) It has appeared from the various examinations made that plant protection products containing bupirimate may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular with regard to the uses which have been examined and detailed in the Commission review report. It is therefore appropriate to include bupirimate in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing this active substance can be granted in accordance with the provisions of that Directive.

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1.

<sup>(2)</sup> OJ L 55, 29.2.2000, p. 25.

<sup>(3)</sup> OJ L 224, 21.8.2002, p. 23.

<sup>(4)</sup> OJ L 333, 11.12.2008, p. 11.

<sup>(5)</sup> OJ L 15, 18.1.2008, p. 5.

<sup>(6)</sup> European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance bupirimate. *EFSA Journal* 2010; 8(10):1786. [82pp.]. doi:10.2903/j.efsa.2010.1786. Available online: [www.efsa.europa.eu](http://www.efsa.europa.eu)

- (7) Without prejudice to that conclusion, it is appropriate to obtain further information on certain specific points. Article 6(1) of Directive 91/414/EC provides that inclusion of a substance in Annex I may be subject to conditions. Therefore, it is appropriate to require that the applicant submit further information to confirm the soil degradation, the kinetic parameters, the adsorption and the desorption parameter for the major soil metabolite de-ethyl-bupirimate (DE-B).
- (8) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements which will result from the inclusion.
- (9) Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of six months after inclusion to review existing authorisations of plant protection products containing bupirimate to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should vary, replace or withdraw, as appropriate, existing authorisations, in accordance with the provisions of Directive 91/414/EEC. By derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.
- (10) The experience gained from previous inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market<sup>(1)</sup> has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the directives which have been adopted until now amending Annex I.
- (11) It is therefore appropriate to amend Directive 91/414/EEC accordingly.
- (12) Decision 2008/934/EC provides for the non-inclusion of bupirimate and the withdrawal of authorisations for plant protection products containing that substance by 31 December 2011. It is necessary to delete the line concerning bupirimate in the Annex to that Decision.
- (13) It is therefore appropriate to amend Decision 2008/934/EC accordingly.
- (14) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.

#### *Article 2*

The line concerning bupirimate in the Annex to Decision 2008/934/EC is deleted.

#### *Article 3*

Member States shall adopt and publish by 30 November 2011 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 December 2011.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

#### *Article 4*

1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing bupirimate as an active substance by 30 November 2011.

By that date they shall in particular verify that the conditions in Annex I to that Directive relating to bupirimate are met, with the exception of those identified in part B of the entry concerning that active substance, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13 of that Directive.

<sup>(1)</sup> OJ L 366, 15.12.1992, p. 10.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing bupirimate as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 31 May 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning bupirimate. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

Following that determination Member States shall:

- (a) in the case of a product containing bupirimate as the only active substance, where necessary, amend or withdraw the authorisation by 31 May 2015 at the latest; or
- (b) in the case of a product containing bupirimate as one of several active substances, where necessary, amend or

withdraw the authorisation by 31 May 2015 or by the date fixed for such an amendment or withdrawal in the respective Directive or Directives which added the relevant substance or substances to Annex I to Directive 91/414/EEC, whichever is the latest.

#### *Article 5*

This Directive shall enter into force on 1 June 2011.

#### *Article 6*

This Directive is addressed to the Member States.

Done at Brussels, 3 March 2011.

*For the Commission*

*The President*

José Manuel BARROSO

## ANNEX

The following entry shall be added at the end of the table in Annex I to Directive 91/414/EEC:

| No   | Common name,<br>identification numbers            | IUPAC name                                                     | Purity (1)                                                                  | Entry into force | Expiration of<br>inclusion | Specific provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------|---------------------------------------------------|----------------------------------------------------------------|-----------------------------------------------------------------------------|------------------|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| '337 | Bupirimate<br>CAS No: 41483-43-6<br>CIPAC No: 261 | 5-butyl-2-ethylamino-6-methylpyrimidine-4-yl dimethylsulfamate | ≥ 945 g/kg<br>Impurities:<br>Ethirimol: max. 2 g/kg<br>Toluene: max. 3 g/kg | 1 June 2011      | 31 May 2021                | <p>PART A</p> <p>Only uses as fungicide may be authorised.</p> <p>PART B</p> <p>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on bupirimate, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 January 2011 shall be taken into account.</p> <p>In this overall assessment Member States shall pay particular attention to:</p> <ul style="list-style-type: none"> <li>— the protection of aquatic organisms. Conditions of authorisation shall include risk mitigation measures, where appropriate,</li> <li>— the protection of the groundwater, when the active substance is applied in regions with vulnerable soil and/or climatic conditions. Conditions of authorisation shall include risk mitigations, where appropriate,</li> <li>— the in-field risk to non-target arthropods.</li> </ul> <p>The Member States concerned shall request the submission of confirmatory information as regards:</p> <ol style="list-style-type: none"> <li>(1) the specification of the technical material, as commercially manufactured, by appropriate analytical data; including information on the relevance of the impurities;</li> <li>(2) the equivalence between the specifications of the technical material; as commercially manufactured, and those of the test material used in the toxicity dossiers;</li> <li>(3) the kinetic parameters, the soil degradation and the adsorption and desorption parameter for the major soil metabolite DE-B (de-ethyl-bupirimate).</li> </ol> |

| No | Common name,<br>identification numbers | IUPAC name | Purity <sup>(1)</sup> | Entry into force | Expiration of<br>inclusion | Specific provisions                                                                                                                                                                                                                      |
|----|----------------------------------------|------------|-----------------------|------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                        |            |                       |                  |                            | The Member States concerned shall ensure that the applicant submits such confirmatory data and information to the Commission set out in points (1) and (2) by 30 November 2011 and the information set out in point (3) by 31 May 2013.' |

(1) Further details on identity and specification of active substance are provided in the review report.

**COMMISSION DIRECTIVE 2011/26/EU****of 3 March 2011****amending Council Directive 91/414/EEC to include diethofencarb as active substance and amending Decision 2008/934/EC****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular Article 6(1) thereof,

Whereas:

- (1) Commission Regulations (EC) No 451/2000 <sup>(2)</sup> and (EC) No 1490/2002 <sup>(3)</sup> lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included diethofencarb.
- (2) In accordance with Article 11e of Regulation (EC) No 1490/2002 the notifier withdrew its support of the inclusion of that active substance in Annex I to Directive 91/414/EEC within 2 months from receipt of the draft assessment report. Consequently, Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances <sup>(4)</sup> was adopted on the non-inclusion of diethofencarb.
- (3) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter 'the applicant') submitted a new application requesting the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I <sup>(5)</sup>.
- (4) The application was submitted to France, which had been designated rapporteur Member State by Regulation (EC) No 1490/2002. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as were the subject of Decision 2008/934/EC. That application

also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.

- (5) France evaluated the additional data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 21 December 2009. The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the Authority presented its conclusion on diethofencarb to the Commission on 7 September 2010 <sup>(6)</sup>. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 28 January 2011 in the format of the Commission review report for diethofencarb.
- (6) It has appeared from the various examinations made that plant protection products containing diethofencarb may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular with regard to the uses which have been examined and detailed in the Commission review report. It is therefore appropriate to include diethofencarb in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing this active substance can be granted in accordance with the provisions of that Directive.
- (7) Without prejudice to that conclusion, it is appropriate to obtain further information on certain specific points. Article 6(1) of Directive 91/414/EC provides that inclusion of a substance in Annex I may be subject to conditions. Therefore, it is appropriate to require that the applicant submit further information confirming the potential uptake of the metabolite 6-NO<sub>2</sub>-DFC in succeeding crops and the risk assessment for non-target arthropod species.
- (8) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements which will result from the inclusion.

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1.

<sup>(2)</sup> OJ L 55, 29.2.2000, p. 25.

<sup>(3)</sup> OJ L 224, 21.8.2002, p. 23.

<sup>(4)</sup> OJ L 333, 11.12.2008, p. 11.

<sup>(5)</sup> OJ L 15, 18.1.2008, p. 5.

<sup>(6)</sup> European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance diethofencarb. EFSA Journal 2010;8(9):1721. [55 pp.] doi:10.2903/j.efsa.2010.1721. Available online: [www.efsa.europa.eu/efsajournal.htm](http://www.efsa.europa.eu/efsajournal.htm).

- (9) Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of 6 months after inclusion to review existing authorisations of plant protection products containing diethofencarb to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should vary, replace or withdraw, as appropriate, existing authorisations, in accordance with the provisions of Directive 91/414/EEC. By derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.
- (10) The experience gained from previous inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market<sup>(1)</sup> has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the Directives which have been adopted until now amending Annex I.
- (11) It is therefore appropriate to amend Directive 91/414/EEC accordingly.
- (12) Decision 2008/934/EC provides for the non-inclusion of diethofencarb and the withdrawal of authorisations for plant protection products containing that substance by 31 December 2011. It is necessary to delete the line concerning diethofencarb in the Annex to that Decision.
- (13) It is therefore appropriate to amend Decision 2008/934/EC accordingly.
- (14) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.

<sup>(1)</sup> OJ L 366, 15.12.1992, p. 10.

#### Article 2

The line concerning diethofencarb in the Annex to Decision 2008/934/EC is deleted.

#### Article 3

Member States shall adopt and publish by 30 November 2011 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 December 2011.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

#### Article 4

1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing diethofencarb as an active substance by 30 November 2011.

By that date they shall in particular verify that the conditions in Annex I to that Directive relating to diethofencarb are met, with the exception of those identified in part B of the entry concerning that active substance, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13 of that Directive.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing diethofencarb as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 31 May 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning diethofencarb. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

Following that determination Member States shall:

- (a) in the case of a product containing diethofencarb as the only active substance, where necessary, amend or withdraw the authorisation by 31 May 2015 at the latest; or
- (b) in the case of a product containing diethofencarb as one of several active substances, where necessary, amend or withdraw the authorisation by 31 May 2015 or by the date fixed for such an amendment or withdrawal in the respective Directive or Directives which added the relevant substance or substances to Annex I to Directive 91/414/EEC, whichever is the latest.

*Article 5*

This Directive shall enter into force on 1 June 2011.

*Article 6*

This Directive is addressed to the Member States.

Done at Brussels, 3 March 2011.

*For the Commission*

*The President*

José Manuel BARROSO

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## ANNEX

The following entry shall be added at the end of the table in Annex I to Directive 91/414/EEC:

| No   | Common Name,<br>Identification Numbers               | IUPAC Name                               | Purity <sup>(1)</sup>                                      | Entry into force | Expiration of inclusion | Specific provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------|------------------------------------------------------|------------------------------------------|------------------------------------------------------------|------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| '331 | Diethofencarb<br>CAS No: 87130-20-9<br>CIPAC No: 513 | <i>isopropyl 3,4-diethoxycarbanilate</i> | ≥ 970 g/kg<br>Impurities:<br>Toluene: not more than 1 g/kg | 1 June 2011      | 31 May 2021             | <p>PART A</p> <p>Only uses as fungicide may be authorised.</p> <p>PART B</p> <p>For the implementation of the uniform principles of Annex VI the conclusions of the review report on diethofencarb, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 January 2011, shall be taken into account.</p> <p>In this overall assessment Member States shall pay particular attention to the risk to aquatic organisms and non-target arthropods and shall ensure that conditions of use include the application of adequate risk mitigation measures.</p> <p>The Member States concerned shall request the submission of confirmatory information as regards:</p> <p>(a) the potential uptake of the metabolite 6-NO<sub>2</sub>-DFC in succeeding crops;</p> <p>(b) the risk assessment for non-target arthropod species.</p> <p>The Member States concerned shall ensure that the applicant submits such information to the Commission by 31 May 2013.'</p> |

<sup>(1)</sup> Further details on identity and specification of active substance are provided in the review report.

# DECISIONS

## COUNCIL DECISION

of 28 February 2011

**amending Decision 2010/248/EU adjusting the allowances provided for in Decision 2003/479/EC and Decision 2007/829/EC concerning the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council**

(2011/138/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on European Union, and in particular Article 41(1) thereof,

### Article 1

Decision 2010/248/EU is hereby amended as follows:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 240(2) thereof,

(1) Article 1(1) is replaced by the following:

Whereas:

‘1. In Article 15(1) of Decision 2003/479/EC and in Article 15(1) of Decision 2007/829/EC, the amounts EUR 30,75 and EUR 122,97 shall be replaced by EUR 31,89 and EUR 127,52 respectively.’;

(1) Article 15(7) of Council Decision 2003/479/EC <sup>(1)</sup> and Article 15(6) of Council Decision 2007/829/EC <sup>(2)</sup> provide that the daily and monthly allowances of national experts and military staff on secondment to the General Secretariat of the Council are to be adjusted each year without retroactive effect on the basis of the adaptation of the basic salaries of Union officials in Brussels and Luxembourg.

(2) Article 1(2) is replaced by the following:

‘2. In Article 15(2) of Decision 2003/479/EC and in Article 15(2) of Decision 2007/829/EC, the table shall be replaced by the following:

| “Distance between place of origin and place of secondment (in km)” | Amount in EUR |
|--------------------------------------------------------------------|---------------|
| 0 - 150                                                            | 0,00          |
| > 150                                                              | 81,96         |
| > 300                                                              | 145,72        |
| > 500                                                              | 236,81        |
| > 800                                                              | 382,54        |
| > 1 300                                                            | 601,13        |
| > 2 000                                                            | 719,55”’;     |

(2) Council Decision 2010/248/EU <sup>(3)</sup> applied the rates set in Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto <sup>(4)</sup>, with effect from 1 May 2010.

(3) By judgment dated 24 November 2010 in Case C-40/10, the Court of Justice annulled Article 2 and Articles 4 to 18 of Regulation (EU, Euratom) No 1296/2009 which set the rate of the 2009 annual adaptation at + 1,85 %. The Council, by means of Regulation (EU, Euratom) No 1190/2010 <sup>(5)</sup>, amended Regulation (EU, Euratom) No 1296/2009, setting the rate of the 2009 annual adaptation at + 3,7 %.

(4) Decision 2010/248/EU should be amended accordingly,

(3) Article 1(3) is replaced by the following:

‘3. In Article 15(4) of Decision 2003/479/EC the amount EUR 30,75 shall be replaced by EUR 31,89.’.

<sup>(1)</sup> OJ L 160, 28.6.2003, p. 72.

<sup>(2)</sup> OJ L 327, 13.12.2007, p. 10.

<sup>(3)</sup> OJ L 110, 1.5.2010, p. 31.

<sup>(4)</sup> OJ L 348, 29.12.2009, p. 10.

<sup>(5)</sup> OJ L 333, 17.12.2010, p. 1.

*Article 2*

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

It shall apply from 1 May 2010.

Done at Brussels, 28 February 2011.

*For the Council*

*The President*

FELLEGI T.

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**COUNCIL DECISION****of 28 February 2011****adjusting the allowances provided for in Decision 2007/829/EC concerning the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council**

(2011/139/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 41(1) thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 240(2) thereof,

Having regard to Council Decision 2007/829/EC <sup>(1)</sup>, and in particular Article 15(6) thereof,

Whereas:

- (1) Article 15(6) of Decision 2007/829/EC provides that the daily and monthly allowances of national experts and military staff on secondment to the General Secretariat of the Council are to be adjusted each year without retroactive effect on the basis of the adaptation of the basic salaries of Union officials in Brussels and Luxembourg.
- (2) The Council, by means of Regulation (EU) No 1239/2010 of 20 December 2010 adjusting with effect from 1 July 2010 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto <sup>(2)</sup>, adopted an adjustment of 0,1 % to the remuneration and pensions of Union officials,

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2007/829/EC is hereby amended as follows:

1. in Article 15(1), the amounts EUR 31,89 and EUR 127,52 respectively shall be replaced by the following:

‘EUR 31,92 and EUR 127,65’;

2. the table in Article 15(2) shall be replaced by the following:

| Distance between place of origin and place of secondment (in km) | Amount in EUR |
|------------------------------------------------------------------|---------------|
| 0 - 150                                                          | 0,00          |
| > 150                                                            | 82,05         |
| > 300                                                            | 145,86        |
| > 500                                                            | 237,05        |
| > 800                                                            | 382,92        |
| > 1 300                                                          | 601,73        |
| > 2 000                                                          | 720,27’.      |

*Article 2*

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

Done at Brussels, 28 February 2011.

*For the Council*

*The President*

FELLEGI T.

<sup>(1)</sup> OJ L 327, 13.12.2007, p. 10.

<sup>(2)</sup> OJ L 338, 22.12.2010, p. 1.

## COMMISSION DECISION

of 20 July 2010

**on State Aid C 27/09 (ex N 34/B/09) Budgetary grant for France Télévisions which the French Republic plans to implement in favour of France Télévisions**

(notified under document C(2010) 4918)

(Only the French text is authentic)

(Text with EEA relevance)

(2011/140/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above <sup>(1)</sup> and having regard to their comments,

Whereas:

**I. PROCEDURE**

- (1) By letter dated 23 January 2009, the French Republic notified the Commission of its intention to provide a budgetary grant of EUR 450 million, already committed in a finance law, in favour of France Télévisions for 2009. On 13 March 2009, the Commission requested additional information, which France provided on 25 May 2009. In this letter, the French Republic extended the object of the notification, expressing its intention to introduce a permanent, multi-annual public financing mechanism in favour of France Télévisions, part of which will be an annual grant.
- (2) In its letter of 1 September 2009, the Commission considered that the budgetary grant voted for 2009 was compatible with the internal market pursuant to Article 106(2) of the Treaty on the Functioning of the European Union (below: 'TFEU') and informed France of its decision to initiate the procedure laid down in Article 108(2) of the TFEU concerning the new public financing mechanism in favour of France Télévisions for the following years.
- (3) The French Republic presented its comments on 7 October 2009.

<sup>(1)</sup> OJ C 237, 2.10.2009, p. 9.

- (4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* <sup>(2)</sup>. The Commission invited interested parties to submit their comments on the aid measure in question.
- (5) The Commission received comments on this subject from interested parties. It communicated them to the French Republic, giving it the opportunity to comment on them, and received its comments by letter of 15 January 2010.
- (6) On 23 April, 19 May and 22 June 2010, the French Republic provided the Commission with particulars and additional information.

**II. DETAILED DESCRIPTION OF THE FINANCING MECHANISM**

- (7) The multiannual financing mechanism which is the subject of this Decision comes within the context of the financing of the public service missions of France Télévisions which the Commission examined in its Decisions dated 10 December 2003 <sup>(3)</sup>, 20 April 2005 <sup>(4)</sup>, 16 July 2008 <sup>(5)</sup> and 1 September 2009 <sup>(6)</sup>. It nevertheless constitutes a separate measure from those covered by the 2003, 2005 and 2008 decisions. More specifically, the budgetary grants described in more detail below will replenish the public resources allocated to France Télévisions under the television licence fee (*contribution à l'audiovisuel public*), previously known as the *redevance*, which was the subject of the Commission Decision of 20 April 2005 and which, as existing aid, is not modified by the new provisions. These two public resources are intended to cover the cost of the public service mission of France Télévisions, reduced by the net commercial revenues remaining.

**II.1. Principal legal bases**

- (8) The principal terms of the new public financing mechanism are contained in Law No 2009-258 of 5 March 2009 on audiovisual communication and the new public television service (*loi n° 2009-258 du 5 mars 2009 relative à la communication audiovisuelle et au nouveau*

<sup>(2)</sup> See footnote 1.

<sup>(3)</sup> Commission Decision 2004/838/EC (OJ L 361, 8.12.2004, p. 21).

<sup>(4)</sup> Commission Decision C(2005) 1166 final (OJ C 235, 30.9.2005).

<sup>(5)</sup> Commission Decision C(2008) 3506 final (OJ C 242, 23.9.2008).

<sup>(6)</sup> Commission Decision 2009/C 237/06 (OJ C 237, 2.10.2009, p. 9).

*service public de la télévision*). The notified aid is part of a wider reform of the structures and tasks of general economic interest of public broadcasting provided for under the Law. The Law in this way amends the legislative provisions governing the public service missions of France Télévisions and, more specifically, Law No 86-1067 of 30 September 1986 on Freedom of Communication (*loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication*). These missions are specified in further detail in the terms of reference and the agreement relating to objectives and means of France Télévisions, which were approved by legislative texts adopted in implementation of the Law on Freedom of Communication. Law No 2009-258 of 5 March 2009 also contains financial provisions amending the Tax Code, on the one hand, and recognising the principle of a budgetary grant committed in a finance law in favour of France Télévisions, on the other.

## II.2. The activities and financing of the beneficiary: France Télévisions

- (9) France Télévisions is a public limited-liability company, established under Article 44-I of Law No 86-1067 of 30 September 1986 on Freedom of Communication. This Law, as amended, establishes a single undertaking, France Télévisions, grouping together the formerly separate legal entities of different broadcasting channels. It is subject to the economic and financial supervision of the French State. Its registered capital is divided into registered shares which can be held only by the State. Its board of directors consists of the chairman and 14 members, whose term of office is 5 years, i.e. two Members of Parliament designated by the Cultural Affairs Committees of the National Assembly and the Senate respectively, five representatives of the State, five prominent persons appointed by the Conseil Supérieur de l'Audiovisuel and two staff representatives.
- (10) France Télévisions is the leading French broadcasting group. It employs about 11 000 people and comprises the channels France 2, France 3, France 4, France 5 and France Ô broadcasting in mainland France, and RFO, a company grouping together public television and radio channels broadcasting in the overseas departments and territories. The Group also includes a state-owned advertising company, although a divestment is being considered, and companies focusing on diversification activities. Some channels of France Télévisions are widely broadcasted in several Member States, and especially in Belgium and Luxembourg.
- (11) The turnover of France Télévisions in 2007, the last year before the reform of public broadcasting was announced, stood at EUR 2 927 million, 64,2 % of which came from television licence fees, 28,1 % from advertising revenue (advertising and sponsoring) and 7,7 % from other revenue. Between 2003 and 2007, the share of the various components of turnover remained relatively stable, with the revenue from advertising and sponsoring fluctuating within a range of 30 % to 28 %. The Group

as a whole achieved a slightly positive net result each year between 2003 and 2007, totalling EUR 99 million for the period.

- (12) This trend was reversed following the announcement of the public broadcasting reform in January 2008, which included in particular the future loss of revenues from advertising messages. The France Télévisions Group made a loss in 2008, posting a negative net result of EUR [50-100] (\*) million (of which EUR [50-100] million for the public service component), attributable in particular to a significant slump in advertising revenues, which an extraordinary capital injection of EUR 150 million, authorised by the Commission in its Decision of 16 July 2008, was unable to offset in full. For 2009, once the reform of public broadcasting has come into effect, the budgetary grant finally paid of EUR 415 million, authorised by the Commission in its Decision of 1 September 2009, was almost sufficient to compensate for the fall in advertising revenues and the France Télévisions Group posted a slightly positive net result (EUR [10-20] million). However, the public service component remained slightly in deficit to the amount of EUR [0-5] million, the positive result being attributable to the commercial companies of the group.
- (13) The activities and management of France Télévisions in recent years from 2004-2008 and its position as regards the reform of public broadcasting were the subject of a relatively critical report by the French Court of Auditors *France Télévisions et la nouvelle télévision publique*. The report, to which certain interested third parties refer in their comments, was adopted under consultation and made public on 14 October 2009, i.e. after the decision initiating the procedure. The report notes the existence of untapped margins for growth in the management and results of France Télévisions up to that point and contains recommendations for future improvement in the new context of the reform.

## II.3. The public service missions of France Télévisions

### II.3.1. Definition of the public service missions in the Law

- (14) Article 43-11 of Law No 86-1067 of 30 September 1986, amended, describes the public service mission of France Télévisions, establishing that the public channels 'carry out public service missions in the public interest. They shall offer the public, taken as a whole, a group of programmes and services which are characterised by their diversity and their pluralism, their requirement of quality and innovation, respect for the rights of the person and of constitutionally defined democratic principles. They shall present a diversified offer of programmes in

(\*) Square brackets [...] denote confidential data or business secrets replaced by a range.

analogue and digital modes in the areas of information, culture, knowledge, entertainment and sport. They shall favour democratic debate, exchanges between different parts of the population, as well as integration into society and citizenship. They shall implement actions in favour of social cohesion, cultural diversity and combating discrimination and shall offer programming reflecting the diversity of French society. They shall promote the French language and, where appropriate, regional languages, and highlight the diversity of the cultural and linguistic heritage of France. They shall contribute to the development and broadcasting of intellectual and artistic creation and of civic, economic, social, scientific and technical knowledge, as well as to audio-visual education and media. They shall promote the learning of foreign languages. They shall participate in education in the environment and sustainable development. Using adapted devices, they shall promote access to their broadcasted programmes by persons who are deaf and hard of hearing. They shall guarantee the integrity, independence and pluralism of information, as well as the pluralist expression of currents of thought and opinion, respecting the principle of equal treatment and the recommendations of the Conseil supérieur de l'audiovisuel (French Broadcasting Authority). The institutions of the public audiovisual communication sector, with respect to the performance of their missions, shall contribute to the external audiovisual action, the influence of the French-speaking world and the broadcasting of the French language and culture throughout the world. They shall endeavour to develop new services that may enrich or complete their programme offer, as well as the new technologies of production and broadcasting of audiovisual communication programmes and services. A report on the application of the provisions of this Article shall be filed each year in Parliament.'

#### II.3.2. *Incorporation of the public service obligations in the activities of France Télévisions*

- (15) As regards the practical incorporation of these missions, Section I of Article 44 of Law No 86-1067 of 30 September 1986 provides that France Télévisions is responsible for designing and programming television programmes and audiovisual communication services corresponding to the public service missions defined in Article 43-11 and in terms of reference provided for in Article 48 of the same Law.
- (16) Decree No 2009-796 of 23 June 2009 establishes the henceforth single terms of reference of France Télévisions. The terms of reference provide a framework for the activity of the channels of France Télévisions, with binding programming commitments to broadcast, often during prime time, daily cultural programmes, music programmes and especially classical music with a variety of European or regional orchestras, theatrical performances or popular science programmes (Articles 4 to 7 of the terms of reference). France Télévisions is also required to integrate the European dimension into all its programmes, in particular by broadcasting reports on the lifestyles or cultural practices of other Member States, and to broadcast programmes of a religious nature devoted to the main religions practised in France (Articles 14 and 15 of the terms of reference). The obligation to attract a wide, balanced audience, including all sectors of the public, is also laid down (Article 18).
- (17) Furthermore, under Article 53 of Law No 86-1067 on Freedom of Communication, multiannual agreements in respect of objectives and means are concluded between the State and France Télévisions for a period of between three and 5 years. The agreements in respect of objectives and means determine, with due respect for the public service missions of France Télévisions:
- the priorities of its development,
  - the undertakings made concerning diversity and innovation in creation,
  - the minimum investments by France Télévisions in the production of European and original French language cinematographic and audiovisual works, as a percentage of its revenues and in absolute value,
  - the commitments ensuring participation and citizenship of disabled people, adaptation for people who are deaf or hard of hearing of all television programmes,
  - the commitments ensuring the broadcasting of television programmes which, by using adapted devices, are accessible to people who are blind or partially sighted,
  - the estimated cost of its activities for each of the years in question and the quantitative and qualitative indicators of performance and results applied,
  - the amount of public resources to be allocated to it, identifying as a priority those devoted to the development of the programme budgets,
  - the amount of the income expected from own revenues, distinguishing those from advertising and sponsoring,
  - the economic prospects for pay services,
  - where appropriate, the prospects for return to financial equilibrium.

(18) At present, the public service obligations of France Télévisions are subject to the agreement in respect of objectives and means for 2007-2010 'France Télévisions, the first package of free channels of the digital age' of 24 April 2007, signed by the competent Ministers and the Chairman of France Télévisions. Under the heading of objective I.2 'To promote the identifying values of the public service', the agreement sets out detailed objectives in concrete measures, together with qualitative or quantitative indicators to be achieved in fields such as:

- to promote access by a wider public to cultural programmes, with a view to democratisation of culture, by broadcasting at least one cultural programme during prime time,
- to reflect pluralism in information and citizens' debate,
- to offer a wide range of sports disciplines, with emphasis on the sports with the least coverage by the private channels,
- to reflect the diversity and enhance the perception of the components of French society,
- to promote the defence of the French and European cultural identity, the understanding of the functioning of the Union and its contributions, and the learning of foreign languages.

(19) The agreement also provides for a multiannual financial component, which includes an adjustment clause providing that the State and the Group agree to consult to adjust the demand for public funding in accordance with the trend in advertising revenues, on the understanding that surpluses not allocated to reducing this demand for public funding will be allocated as a priority to expenditure on audiovisual creation.

(20) Following the reform, the current agreement in respect of objectives and means was the subject of a rider for the period 2009-2012. This rider, the financial component of which is described in more detail below, strengthens still further the identifying values of the public service performed by France Télévisions and sets new quantitative indicators to be attained per year in some of the areas indicated in recital 18.

#### II.3.3. *Introduction of new innovative audiovisual services*

(21) The new terms of reference of France Télévisions provide for the introduction of a series of innovative services designed to enhance the editorial supply, such as on-line communication services, audiovisual media services on demand or additional content which enriches its programmes. Likewise, the rider to the agreement in

respect of objectives and means also considers the introduction of innovative services, and especially free or pay video on demand, personal mobile television, Internet broadcasting, mobile applications, and regional or thematic WebTV.

#### II.3.4. *External control of the public service obligations, including the launch of new services*

(22) Under Article 53 of Law No 86-1067 of 30 September 1986, the board of directors of France Télévisions approves the draft agreement in respect of objectives and means of this company and discusses its annual performance, with the result of the deliberations being made public. Before signature, the agreements in respect of objectives and means and any riders to these agreements are forwarded to the Cultural Affairs and Finance Committees of the National Assembly and the Senate and to the Conseil Supérieur de l'Audiovisuel. The committees may submit opinions within a period of 6 weeks.

(23) Furthermore, an annual report on the performance of the agreement in respect of objectives and means of France Télévisions is presented by its Chairman before the Cultural Affairs and Finance Committees of the National Assembly and the Senate. When the report on the performance of the agreement in respect of objectives and means of the company is presented before the competent Committees of the National Assembly and the Senate, the Chairman of France Télévisions also reports on the activity and the work of the Programme Advisory Committee set up within it and composed of television viewers, which is responsible for issuing opinions and recommendations on the programmes.

(24) Likewise, the preliminary draft terms of reference of France Télévisions, established by Decree, was the subject of public consultation from 10 to 24 November 2008 to which some 15 entities made contributions, which gave rise to modifications to the initial text, followed by the opinion of the Conseil Supérieur de l'Audiovisuel. As regards the external control of its performance, Article 48 of the Law of 30 September 1986 provides for the presentation of an annual report by the Conseil Supérieur de l'Audiovisuel to the Cultural Affairs Committees of the National Assembly and the Senate. The report is also forwarded to the Minister for Culture and Communication.

(25) These parliamentary committees, like the Conseil Supérieur de l'Audiovisuel, may hear third parties. In fact, interested parties are regularly heard by these bodies and make their views known on questions relating to public broadcasting.

#### II.4. Financial compensation for the gradual reduction then discontinuance of advertising messages

- (26) In order to increase the freedom of programming of public broadcasting and to reduce its dependence on commercial constraints, Article 53, Section VI of Law No 86-1067 of 30 September 1986, amended, on Freedom of Communication provides for the reduction then the discontinuance of advertising messages: 'The programmes broadcasted between 20:00 and 06:00 of the national television services referred to in Section I of Article 44, with the exception of their regional and local programmes, shall not include any advertising messages other than those for goods or services presented under their generic name. This provision shall also apply to programmes broadcasted by these services between 6:00 and 20:00 from the discontinuance of broadcasting by terrestrial radio link in analogue mode of the television services referred to in the same Section I throughout mainland France. It shall not apply to public interest campaigns.'
- (27) The discontinuance of broadcasting of television services by terrestrial radio link in analogue mode is scheduled for 30 November 2011 at the latest. Apart from the exception for the generic advertising of goods or services, provision is made for derogations for the broadcasting of advertising messages for the overseas departments and territories and New Caledonia, in the absence of the availability of private television broadcasted by terrestrial radio link without the need for a decoder.
- (28) As provided for in Article 53 of Law No 86-1067, amended, on Freedom of Communication, the reduction, followed by the discontinuance of advertising messages resulting from the entry into force of the Law gives rise to financial compensation by the State allocated to France Télévisions under conditions defined by each finance law. To this end, the French State has created a new programme, entitled '*Contribution au financement de l'audiovisuel public*' (television licence fee), under the heading 'Media' of the general budget of the State. Purely for information, the French authorities consider that the share of public grant supplementing the proceeds from the television licence fee would amount to approximately EUR 460 million in 2010, EUR 500 million in 2011 and EUR 650 million in 2012.
- (29) The French Republic declares that, for each year, the public financing from the budgetary grant will be determined according to the costs of performing the public service mission of France Télévisions and cumulated with the proceeds from the television licence fee, reduced by the commercial revenues remaining. In this respect, the French authorities forwarded the estimated public service costs and revenues of France Télévisions, drawn up on the basis of the 2009-2012 business plan and summarised below:

Table 1

#### Estimated revenues and costs of the public service of France Télévisions 2010-2012

|                                                          | (EUR million) |               |               |
|----------------------------------------------------------|---------------|---------------|---------------|
|                                                          | 2010          | 2011          | 2012          |
|                                                          | Budget        | Estimates     | Estimates     |
| A/Public resources                                       | [2 500-3 000] | [2 500-3 000] | [2 500-3 000] |
| B/Other revenue (advertising, sponsoring, etc.)          | [300-600]     | [300-600]     | [300-600]     |
| C/Gross public service cost                              | [3 500-3 000] | [3 500-3 000] | [3 500-3 000] |
| D/Net public service cost (C + B)                        | [3 000-2 500] | [3 000-2 500] | [3 000-2 500] |
| Shortfall between net PS cost — public resources (D + A) | [- 50 - 50]   | [- 50 - 50]   | [- 50 - 50]   |

Source: Comments by France of 15 January 2010.

- (30) The table above shows an estimated deficit corresponding to the uncovered net cost for the public service accounts of France Télévision in 2010 and 2011. This deficit should be absorbed in part in 2012, with a slight surplus forecasted of EUR [30-50] million, i.e. [0-5] % of the net public service costs. This estimated surplus for 2012, if it were to materialise in fact, which presupposes that the trend in revenues and costs follows the forecasted trend precisely, remains below the cumulated deficit forecasted for 2010 and 2011. Under the current agreement in respect of objectives and means, surpluses not allocated to reducing the public funding requirement will have to be allocated as a priority to the expenditure on audiovisual creation. Since this creation is generally destined for programming, any surplus should not therefore finance commercial activities.

(31) It should be noted that the 2009-2012 business plan shown in Chapter V of the rider to the current agreement in respect of objectives and means is substituted for the financial section of the agreement concluded in April 2007, in view of the new framework introduced by the reform and its financial consequences. The business plan provides for a reduction in the overall gross cost of providing the public service for the period 2010-2012, with a reduction in operating costs compared with the initial agreement, a reduction in broadcasting costs and the exploitation of synergies resulting from the joint venture, despite the introduction of new cost components accompanying the reform.

(32) As regards revenues, the public resources earmarked, although rising, do not totally balance the accounts for the period 2010-2012 and, as indicated in Table 1, remain below the gross public service costs, which means that the financial equilibrium in the projections depends on the commercial revenues remaining each year. The business plan therefore points out that it is in the interests of the undertaking and the State to achieve equilibrium more rapidly than forecasted and states the need for precise, regular monitoring in the light of positive or negative fluctuations.

## II.5. Capping of the public resources

(33) Article 44 of Law No 86-1067, amended, on Freedom of Communication also specifies that 'The public resources allocated to public broadcasters in compensation for the public service obligations entrusted to them shall not exceed the cost of discharging these obligations'. This provision results from France's commitments to enshrine in law the principle of non-overcompensation for the public service obligations in the context of the procedure which led to the Commission's compatibility decision of 20 April 2005 on the use of the resources from the television licence fee <sup>(7)</sup>.

(34) In implementation of the above-mentioned commitment, Article 2 of Decree No 2007-958 of 15 May 2007 on the financial relations between the State and public sector bodies in the audiovisual communication sector (*décret n° 2007-958 du 15 mai 2007 relatif aux relations financières entre l'État et les organismes du secteur public de la communication audiovisuelle*) takes up the wording of Article 53 of the Law of 30 September 1986, taking account 'of the direct or indirect revenue derived from the public service mission' and specifies that the cost of performance of the public service obligations is to be established by means of separate accounts. Article 3 of the Decree provides for the obligation for France Télévisions and its subsidiaries to respect market conditions in all their commercial activities and for an external body to draw up an

annual report on the performance of this obligation, forwarded to the competent Minister, the National Assembly and the Senate.

(35) The Commission has received and examined reports on the implementation of Articles 2 and 3 of the Decree relating to the financial years 2007 and 2008 (the reports drawn up under Article 3 of the Decree were certified, for 2007, by the auditors PriceWaterhouse-Coopers and KPMG and, for 2008, by Cabinet Rise) and the draft report provided for under Article 2 for 2009.

## II.6. New taxes planned under the reform of public broadcasting

(36) Law No 2009-258 of 5 March 2009 also amended the Tax Code to introduce new taxes on advertising and electronic communications.

### II.6.1. Tax on advertising messages

(37) Title II of Part 1 of Book I of the General Tax Code henceforth contains a Chapter VI<sup>1</sup>f which introduces a tax payable by all television service editors established in France. The tax is based on the total amounts, exclusive of value added tax, paid by the advertisers for the broadcasting of their advertising messages to the taxable persons concerned or to the advertising managers, minus the amounts paid under the tax provided for in Article 302a KC of the General Tax Code, which is payable by television editors and distributors broadcasting audiovisual works eligible for support from the National Centre for Cinematography. These amounts are subject to a standard deduction of 4 %. The tax is calculated by applying a rate of 3 % to the fraction of the total annual payments, exclusive of value added tax, relating to each television service, in excess of EUR 11 million.

(38) However, for the television services other than those broadcasted by terrestrial radio link in analogue mode, this rate is set at 1,5 % in 2009, 2 % in 2010 and 2,5 % in 2011. As a transitional measure, for all taxable persons, until the year of the discontinuance in mainland France of analogue terrestrial broadcasting, the tax is capped at 50 % of the increase in its assessment basis calculated for the calendar year for which the tax is payable in relation to 2008. In any event, the amount of the tax may be no less than 1,5 % of the assessment basis. Nevertheless, for television service editors with a daily audience outside mainland France exceeding 90 % of their total audience, the total sums paid for the broadcasting of advertising messages destined for the European or world market, multiplied by the percentage of the audience obtained outside mainland France of the annual total audience, is deducted from the amount to be taken for the calculation of the tax.

<sup>(7)</sup> See Decision C(2005) 1166 final, points 65 to 72.

## II.6.2. Tax on electronic communications

- (39) Title II of Part 1 of Book I of the General Tax Code henceforth contains a Chapter VIIg, which introduces a tax payable by all operators of electronic communications which provide a service in France and which have been the subject of a prior declaration to the electronic communications regulatory authority. The tax is based on the amount, exclusive of value added tax, of the subscriptions and other amounts paid by users for electronic communications services provided by electronic communications operators, with the deduction of the amount of the depreciation charges entered in the accounts during the financial year for which the accounts have been closed, in respect of the year during which the tax has become due, where these charges relate to materials and equipment acquired by the operators, from the entry into force of the Law, to meet the requirements of the infrastructures and electronic communications networks established within national territory, with a depreciation period of at least 10 years. The tax is calculated by applying a rate of 0,9 % to the fraction of the assessment basis exceeding EUR 5 million.

## III. REASONS HAVING TRIGGERED THE INITIATION OF THE PROCEDURE

- (40) In its decision to initiate the formal investigation procedure, the Commission considered that the compensation planned from 2010 could constitute state aid within the meaning of Article 107(1) of the TFEU, the compatibility of which with the internal market under Article 106(2) of the TFEU should be examined in accordance with the principles and rules of application provided for in respect of public broadcasting services.
- (41) As regards the existence of a public service activity with missions clearly defined by an official act and subject to appropriate control mechanisms, the Commission did not raise any doubts and concluded, as in its Decisions of December 2003, April 2005, July 2008 and September 2009, that the public service missions of France Télévisions are clearly defined in official acts emanating from or subscribed to by the French State, in accordance with the terms and conditions which provide for independent control of France Télévisions.
- (42) On the other hand, as regards the examination of the proportionality of the planned financial compensation in relation to the net cost of the public service activity, taking account moreover of the effects of the aid, the Commission expressed doubts on two issues, i.e.:

— on the one hand, concerning a risk of overcompensation for the net public service costs for 2012 and, probably, for 2010 and 2011, although, for these years, the Commission did not possess such detailed information as that provided by the French authorities for 2009, and

— on the other hand, concerning the possible existence of hypothecation of the revenues from the taxes on advertising and electronic communications to the aid to be paid to France Télévisions and, if such a link could be established, concerning the negative effects of such revenues and their compatibility with the Treaty, in particular in the context of taking stock of the competition aspects of the reform of the financing of France Télévisions, which was lacking.

- (43) Furthermore, the Commission drew the attention of the French authorities to the adoption on 2 July 2009 of its Communication on the application of State aid rules to public service broadcasting<sup>(8)</sup> (below: the 'Broadcasting Communication'), which is applicable to aid notified from the time of its publication, and invited the French authorities to take account of this revised communication in their comments.

## IV. COMMENTS BY INTERESTED PARTIES

- (44) In its comments of 2 November 2009, the Société des auteurs et compositeurs dramatiques (SACD) drew the Commission's attention to the importance of the binding obligations of France Télévisions to support heritage audiovisual creation. This importance was increased at the end of 2008 by an interprofessional agreement, which would be integrated into a future agreement in respect of objectives. In 2010, France Télévisions will therefore have to devote to heritage audiovisual creation a 19 % share of the turnover included in the assessment basis for 2009, a share which is to be raised to 20 %, i.e. EUR 420 million in 2012. The equivalent share of TF1, on the other hand, is capped at 12,5 % and those of M6 and the digital terrestrial television channels respectively will not exceed 11 %. The commitment in favour of cinema will also be increased by over 1,2 % as an annual average rate until 2012. The discontinuance of advertising would go hand in hand with an increase in the cost of the programme schedule as regards non-imported own production works, which show commitment to an innovative, quality public service.
- (45) The Fédération Française des Télécommunications et des Communications Électroniques (FFTCE), in its comments of 30 October 2009, in which it is joined by Iliad, a non-member of the FFTCE, considers that the discontinuance of commercial advertising does not contribute, as such, to the public service mission of France Télévisions. Since advertising is not an integral part of this mission, any grant aiming solely to compensate for lost earnings without regard for the reality of the mission would inherently be state aid, contrary to Articles 106(2) and 107 of the TFEU. This compensation must cover costs specific to the public service, which must be

<sup>(8)</sup> OJ C 257, 27.10.2009, p. 1.

reflected in separate accounts. However, the amount of the grant seems to have been fixed for the coming years on the basis of the estimate of the loss of commercial revenues which, on a market which has deteriorated, seriously distorts competition with the private broadcasters. Whereas the total turnover from advertising of France Télévisions in an eroded market would undoubtedly not have reached EUR 500 million, the French authorities have committed to pay EUR 450 million in 2009 as a consideration solely for the ban on advertising after 20:00. In the future, the grant revenue would also be well above the advertising revenues which would have been obtained without the reform.

(46) As regards the mission of service in the general economic interest, the FFTCE notes that the obligations incumbent upon France Télévisions, as a member of the European Broadcasting Union (EBU), already exist via the latter's statutes and would be applicable without the obligations laid down in French law. The constraints, which for that matter are vague, imposed by law, would not be substantially different from those deriving from the EBU statutes, to which TF1 and Canal + are also subject as members, so a compensatory grant under the law must be termed as state aid.

(47) The FFTCE considers, finally, that the new turnover tax imposed on the operators of electronic communications, introduced by the reform of public broadcasting, is allocated to the financing of France Télévisions. Apart from the earmarking affirmed in the declarations by the authorities, variations in its assessment basis and in its rate cause variations in the amount of the grant. The introduction of such a tax is in violation of Article 12 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services<sup>(9)</sup> since Member States may not impose any turnover tax on operators other than those provided for there.

(48) In its comments of 2 November 2009, the Association des chaînes privées considers that the poor management of France Télévisions, many examples of which have been pointed out by the Court of Auditors, aggravates the inflationary effect found on the market for programme production and the purchase of rights. In the absence of cost accounting, the failure to control costs creates uncertainties as regards the determination of the cost of the public service missions to be financed, with a serious risk of overcompensation. Since various signs point to the new broadcasting tax being allocated to France Télévisions, its destination for the state budget is intended only to enable it to escape Commission control. The competitors of France Télévisions are hereby forced to finance the aid, creating a distortion aggravated by the inadequate differentiation between the programmes of the various old channels.

(49) In its comments of 2 November 2009, the European Broadcasting Union (EBU) stresses the necessarily forward-looking nature of any multiannual estimate of the costs and revenues of the public broadcaster submitted by France. These estimates must ensure the long-term financial visibility which the operator must have to guarantee continuity of service in complete independence. It is *ex post* mechanisms which must ensure the correction of any forecasting errors. The Commission decision must be based on the *ex ante* calculation parameters and on these mechanisms, without imposing constraints on the actual amount of compensation in the future by validating only the cost and revenue estimates. Failing this, the Commission would be establishing and monitoring the annual amounts of an aid scheme, rather than the scheme itself. The EBU also expresses its concern that the Commission seeks to know the estimated amount obtained from synergies and efficiency gains for the years to come, since the efficiency with which a service of general economic interest is performed lies outside the control of the Commission pursuant to Article 106(2) of the TFEU.

(50) In its comments of 2 November 2009, the Association of Commercial Television in Europe (ACT) declares itself in favour of France's decision to undertake a substantial reduction in the commercial advertising of its public broadcaster. The ACT notes that two conditions laid down by the *Altmark*<sup>(10)</sup> case-law are not satisfied in this case, which means that the planned budgetary contribution constitutes aid. However, the ACT considers that if the system of financing the aid by means of a tax levied on the advertising revenues of competitors is considered as being in conformity with Union law, the benefits from the withdrawal from the market would be greatly reduced, while such a system could, in certain respects, introduce more distortions than the traditional dual public and commercial financing systems.

(51) The ACT considers that the public service obligations of France Télévisions have not undergone any fundamental change since 1994 and remained similar to the obligations of other private broadcasters. Likewise the estimates of compensation for the loss of advertising revenues up to 2012 are vague and do not take account of the reduction in investment costs relating to this or the possible reduction in the costs of programming, which is less subject to the constraints of the advertisers, or the anticipated gains from synergies. The mechanism for the adjustment of the public and commercial revenues to the costs provided for in the agreement relating to objectives and means should be verified, in particular in view of the variability of the commercial revenues, failing which the Commission

<sup>(9)</sup> OJ L 108, 24.4.2002, p. 21.

<sup>(10)</sup> European Court of Justice judgment in Case C-280/00 *Altmark Trans* [2003] ECR I-7747, paragraphs 88 to 93.

would not have reliable information to determine the actual costs of the service provided and the existence of any overcompensation. This verification would be undertaken in the absence of any cost accounting by the enterprise, as pointed out by the Court of Auditors.

- (52) Finally, the ACT considers that the aid is in fact financed by the new taxes introduced by the reform and that the tax on advertising revenues of broadcasters introduces a model of public service financing by competitors in France which has been abandoned elsewhere. The aid mechanism protects the resources of France Télévisions whereas it would be increasingly obvious that the advertisers will not transfer their demand in full to the competing channels. Furthermore, such a mechanism would reinforce the entry barriers to the French market.
- (53) In its comments of 2 November 2009, France Télévisions considers that the mechanism notified confers no economic advantage on it in relation to its competitors since, although it is protected from the loss of commercial revenue, on the other hand a constraint has been imposed on it by the State which is not imposed on any private operator in the market: the discontinuance of advertising. When the discontinuance of advertising messages becomes effective, any distortion of competition in this market will disappear, whereas its pressure on competitors for sponsoring, in view of its limited presence, would also be zero. As regards the purchase of 'premium' broadcasting rights, whereas TF1 apparently achieved 96 of the 100 best audiences and 18 of the 20 best audiences in 2008, France Télévisions had no exclusivity contract with the major American companies. Furthermore, it is obliged to invest in audio-visual creation with quality requirements which are incompatible with the audience targets of the commercial channels. It considers it only has a marginal presence regarding the sale of programmes.
- (54) France Télévisions also considers that, as the amount to be allocated to it depends on the cost of its missions established in advance, precisely and objectively each year, with an *ex post* correction in the event of any divergence from real costs, the notified mechanism satisfies the second condition laid down by the *Altmark* case-law. The fourth condition laid down by this case-law would also be satisfied, since synergies which it was impossible to exploit in the past will be exploited with the recasting of the legal organisation and the statutes, since this fourth condition does not require the service to be performed at the least cost possible, but that the costs correspond to those which a typical, well-run undertaking would have incurred.
- (55) According to France Télévisions, as regards the conditions for the compatibility of the notified mechanism with the internal market, since this mechanism is required to last for many years, it will

not be possible for the net public service costs to be known with sufficient certainty for the Commission to be able to carry out *ex ante* checks for the absence of overcompensation. Whereas the indicative estimates provided for 2010 to 2012 are not incompatible with the possibility to make a reasonable profit or to constitute a reserve limited to 10 % of the annual public service expenditure, the laws and regulations establishing *ex post* control will in any case enable the proportionality of the financing to be ensured. On the other hand, since the variation in its scheduling costs depends on its editorial choices, France Télévisions considers that it is bound only to respect the public service obligations imposed by the law, with the French Republic free to define their content. Furthermore, these obligations are also expressed by an audience requirement, which the discontinuance of advertising messages would not reduce. On the contrary, a larger number of programmes will have to be acquired.

- (56) In its comments of 2 November 2009, Métropole Télévisions (M6) considers that the envisaged financing mechanism constitutes state aid within the meaning of Article 107 of the TFEU, especially since the second and fourth conditions laid down by the *Altmark* case-law are not met: compensation based on an estimate of loss of commercial revenues which by nature — and in fact — fluctuate could not be considered as based on objective and transparent parameters for the calculation of the public service costs. In addition, the basis of the calculation is not the costs of a typical, well-run undertaking of the sector, but that of the costs of France Télévisions, which a large number of indications point to being managed inefficiently, which increases the public service costs to be borne by the community.
- (57) As regards the compatibility of the measure with the internal market, M6 considers that the planned financing mechanism is illegal as it generates structural overcompensation for the public service costs. Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings<sup>(1)</sup> requires France to assign the costs and revenues of the service of general interest on the basis of consistently applied cost accounting principles. However, as the Court of Auditors emphasises, France Télévisions does not possess such accounting tools. No objective element could therefore serve to calculate the amount of compensation. Overcompensation would be inevitable since the grant is calculated on the basis of commercial revenues which do not come under the public service mission and are not to be taken into account in its costs. The randomness of the lost revenue forecasts and the absence of cost accounting would also make overcompensation inevitable.

<sup>(1)</sup> OJ L 318, 17.11.2006, p. 17.

(58) The integration of the new taxes in the financing mechanism aggravates the negative effects of the aid on the markets for the acquisition of broadcasting rights — where the poor management of France Télévisions, protected by public aid, increases the costs of its competitors — and on advertising activities, which France Télévisions will divert to sponsoring, whereas M6 will be unable to fill the gap left by France Télévisions in view of its different audience profile. Under these conditions, only *ex post* financing could be justified. The mechanism would therefore be structurally illegal in the absence of the introduction of independent *ex post* control mechanisms effectively guaranteeing the absence of overcompensation on the basis of real figures, the implementation of which would be ineffective in France, according to M6.

(59) In its comments of 2 November 2009, Télévision Française 1 (TF1) relocates the reform of the financing of France Télévisions in a context of structural changes affecting the advertising market, in which the Internet is experiencing strong growth. Television apparently accounted for only about 11 % of the EUR 33 billion of communication expenditure by advertisers in 2008. Between January and September 2009, the advertising turnover of digital terrestrial television channels experienced 60 % growth, compared to an 8 % fall for the three old private channels broadcasting by terrestrial radio link. For 2008, the taxes paid by TF1 accounted for 60 % of its result. On the other hand, multiannual contracts for the acquisition of rights, price inflation and the inelasticity of costs, including those of scheduling attributable to the regulatory obligations whereby the production and broadcasting of French and European works must represent 30 % of the total, reduce its room for manoeuvre, according to TF1. In parallel, its liability to a new broadcasting tax would reinforce the distortions of competition in the market.

(60) The potential transfer of advertisers' demand to TF1 is the declared object of the tax on advertising revenue of broadcasters. Not only did the expected transfer of EUR 350 million of turnover to the three channels broadcasting by radio link fail to occur in 2009, but the latter recorded an amount EUR 450 million below the forecasts. Furthermore, the scale of this transfer would be limited in any case by laws and regulations which, transposing Union law, limit the time devoted to advertising to a maximum of 12 minutes per hour of broadcasting, provided that a daily average of 6 minutes per hour is not exceeded.

(61) TF1 considers that the tax constitutes state aid in two capacities: firstly, France Télévisions will in fact no longer be required to pay after 30 November 2011 (date on which it will be obliged to discontinue the advertising messages for which the payments constitute the assessment basis) and, secondly, France Télévisions will

be the beneficiary of the resources raised by this tax, since it emerges from many governmental and parliamentary statements during the debates on the draft law that this is allocated to financing the aid. Irrespective of its intrinsic legality, the tax regime which finances it should therefore be taken into consideration to assess the aid.

(62) TF1 considers that it is subject to obligations comparable to those imposed on France Télévisions, the programmes of which do not apparently differ greatly from its own. Even though TF1 welcomes the recasting of the agreement relating to objectives and means and the terms of reference following the reform of public broadcasting, it considers, on the basis of the opinion of the Court of Auditors, that the public broadcasting service supply is insufficiently individualised. It is therefore underlined that, in the former terms of reference, the quantitative broadcasting obligations represented 10 % of the programme schedules.

(63) The cost control and quality of the management of France Télévisions are just as inadequate, which means that the public service is not provided at the least cost to the community and generates a risk of overcompensation. The Commission should therefore check, in this respect, the growth in profits from commercial activities, the synergies which should result after 2009 from the creation of a single enterprise France Télévisions and the reduced pressure on the costs of the programme schedule resulting from lesser dependence on advertisers.

## V. COMMENTS OF THE FRENCH REPUBLIC

(64) In its comments forwarded on 7 October 2009 and subsequently clarified, as regards the application of Article 106(2) of the TFEU, the French Republic refers in particular to the doubts expressed by the Commission concerning, on the one hand, the proportionality of the public financing and the risk of overcompensation and, on the other hand, the taking into consideration of the new taxes introduced by the reform of public broadcasting for the purposes of assessing the compatibility of the notified measure with the internal market.

### V.1. Proportionality of the financing and *ex post* control of the risk of overcompensation

(65) The French Republic specifies that the notified measure is not compensation for the loss of advertising revenues of the France Télévisions group, although the estimates provided for information take account of this, but financing intended to cover the costs of performance of the public service mission. The financing requirements will in fact have to evolve in accordance with the changes in the costs of the programme schedule, fluctuations in commercial revenues or broadcasting media.

- (66) The French Republic emphasises that the *ex ante* confirmation of the absence of risk of overcompensation must be undertaken by verifying the existence of legislative and regulatory control mechanisms, in accordance with the case-law and practical application by the Commission, and not in relation to the indicative estimates of grant and costs given for the future. The indicative amounts are provided for illustration, in the light of the business plan approved by the supervisory authorities and France Télévisions. The method used to calculate the grant is not based on the estimate of the fall in advertising revenues of France Télévisions. The calculation will be based on a general formula, such as: the combined total for each year of the television licence fee and the budget allocation will be proportional to the cost of the public service mission of France Télévisions, minus its commercial revenues, with due regard for the commitments of the French Republic and the *ex post* control mechanisms established by laws and regulations.
- (67) In addition, as regards the new innovative audiovisual services mentioned in the Broadcasting Communication, the French Republic stresses that a certain number are already provided for in the new terms of reference of France Télévisions and the amended agreement relating to objectives and means, which have been and will be the subject of the prior, regular controls and consultations described above. For the future, France considers that the launch of any significant new service must be dealt with under the agreement relating to objectives and means, with the same controls applying.
- (68) Furthermore, since the Broadcasting Communication took effect after the initiation of the present procedure, the French Republic undertakes to complete its *ex post* financial control mechanism to comply with the rules newly specified in this Communication with regard to financial control mechanisms. In this way, it is planned to amend Article 2 of Decree No 2007-958 of 15 May 2007. The purpose of this amendment is:
- to ensure that the report on the separate accounts — a requirement allowing the absence of overcompensation to be verified — like the report provided for in Article 3, is audited by an external body, the choice of which is subject to the approval of the Minister for Communication, forwarded to this Minister and to the National Assembly and the Senate, and drawn up at the expense of France Télévisions,
  - to complete the appropriate functional mechanism to ensure the actual recovery of any overcompensation or cross-subsidisation found in these separate accounts and not compatible with Article 53 of
- Law No 86-1067 of 30 September 1986 on Freedom of Communication or with the Commission Broadcasting Communication.
- (69) Likewise, in order to complete the information supplied to the Commission during the first few years of the reform initiated by Law No 2009-258 of 5 March 2009, the French authorities undertake to communicate to the Commission, for the years 2010 to 2013:
- the reports drawn up under Articles 2 and 3 of the above-mentioned Decree, after amendment, within a maximum period of 6 months of the General Meetings approving the accounts, including the data concerning the trend in advertising market shares since 2007,
  - the public elements for monitoring the performance of the public service missions by France Télévisions which consist of the report on the channels drawn up annually by the Conseil Supérieur de l'Audiovisuel (provided for in Article 18 of Law No 86-1067 of 30 September 1986) and the report on the hearings by the parliamentary committees (Cultural Affairs and Finance Committees of the National Assembly and the Senate) by the Chairman of France Télévisions on the annual performance of the agreement relating to objectives and means (as provided for in Article 53 of the above-mentioned Law).
- V.2. Taking into consideration of the new taxes introduced by the reform of public broadcasting**
- (70) The French Republic considers that it has not taken account of the new taxes on advertising and electronic communications in its notification. Although introduced by the same legislative instrument as establishes the reform, these taxes would not come within the scope of the notified measure.
- (71) The French Republic specifies that the public statements prior to the Law being passed referred to in the decision initiating the procedure, subsequently contradicted by the provisions of this Law, are not sufficient to establish as a binding link the earmarking of the taxes to finance the aid under Union law. Under French law, these taxes are levied in favour of the general budget of the State, contributing to financing all public expenditure and complying with the principles of universality and unity, which come under the constitutionality of public finances. Under Article 36 of the Organic Law of 1 August 2001 on Finance Laws (*loi organique du 1<sup>er</sup> août 2001 relative aux lois de finances*), the allocation in whole or in part of a resource established in favour of the State to a legal person may result only from an express provision of a finance law, which, in the present case, does not exist.

- (72) The French Republic also emphasises that there are no plans to introduce earmarking between these taxes and the financing of France Télévisions. It specifies that, if a change to the architecture of the regime were to be considered, the French authorities would send a new notification to the Commission, in accordance with Article 108(3) of the TFEU.

## VI. ASSESSMENT OF THE AID

### VI.1. Presence of aid within the meaning of Article 107(1) of the TFEU

- (73) Article 107(1) of the TFEU provides that 'Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.' These criteria are examined below.

#### VI.1.1. State resources

- (74) The budget allocations which are the subject of the present notification will be committed each year in the finance law establishing the French State budget. These are consequently measures granted by means of state resources.

#### VI.1.2. Selective economic advantage

- (75) The budgetary grant mechanism replenishing the public resources made available to France Télévisions is selective, as France Télévisions will be the sole beneficiary. The annual operational budgetary grant, which is intended in particular to allow the undertaking to continue its activities, will protect it from loss of commercial advertising revenue which partly financed its expenditure and investments hitherto. France Télévisions will in this way be able to achieve an audience share which it could not envisage in the absence of a budget allocation. Consequently, it receives an economic advantage which it could not otherwise have obtained or, if appropriate, since it is a grant, under other market conditions, i.e. those under which its private competitors operate.
- (76) Furthermore, the Commission notes that the French Republic did not make any comments calling into question its assessments in the decision initiating the procedure that the planned allocations would not satisfy the cumulative criteria set out in the *Altmark* case-law and would therefore procure an economic advantage constituting state aid<sup>(12)</sup>. It also notes that, without prejudice to subsequent developments in the

management and results of France Télévisions in the coming years, at present the report of the French Court of Auditors on France Télévisions — which was published in October 2009 after the decision initiating the procedure — confirms its arguments that the fourth condition is not satisfied.

- (77) To sum up, it follows from the above that the budgetary grants for the France Télévisions group alone, by means of the financial resources of the French State, will confer a selective advantage on this undertaking.

#### VI.1.3. Distortion of competition and effect on trade between Member States

- (78) France Télévisions operates in the field of the production and broadcasting of programmes which it exploits commercially, in particular by broadcasting paid advertising for advertisers or sponsored programmes in its programme schedule, by selling its broadcasting rights or by purchasing such rights. These commercial activities are carried out in competition with other channels, such as TF1, M6, Canal +, especially in France, where, as the French authorities emphasise, France Télévisions is the leading audiovisual group. In 2010, the share of France Télévisions is thought to stand at approximately 10 %, which would still make it the third largest supplier in the French market.
- (79) Until the deadline for the discontinuance of commercial advertising at the end of 2011, France Télévisions will continue to play an active role in the French televised commercial advertising market, albeit with slot restrictions, in competition with the other broadcasters. Even after 2011, France Télévisions will be able to offer its services to advertisers to advertise goods under their generic name or for programme sponsorship, in competition with the other broadcasters operating in France. Even if the competitors of France Télévisions will have benefited to the full from the almost total withdrawal of France Télévisions from the advertising market brought about by the reform, France Télévisions will nevertheless retain a presence. In fact, assuming constant volumes and market share for the competitors compared with 2007, on the basis of the estimates of advertising revenue and sponsorships of France Télévisions provided by the French authorities, France Télévisions would still hold 3,3 % of the market in 2012, compared with over 50 % and about 20 % for TF1 and M6 respectively.
- (80) France Télévisions will be able to achieve an audience share which it could not envisage in the absence of the budget allocation in question, which is liable to have an impact on the audience of the other broadcasters and, therefore, on their commercial activities, thereby distorting the conditions of competition. In any case, France Télévisions will remain just as active on the

<sup>(12)</sup> See decision initiating the procedure, points 68 to 75.

markets for buying and selling broadcasting rights, with sustained bargaining power thanks to the above-mentioned support. Maintaining investments in programming which is made possible by the budget allocations therefore influences the extent to which France Télévisions can act as buyer or seller in these markets.

- (81) It follows from the above that the budget allocations by means of resources financed by the French State for the France Télévisions group only distort, or at the very least, threaten to distort competition in the commercial exploitation of broadcasting in France and, to a certain extent, in other Member States where the programmes of France Télévisions are broadcasted.
- (82) The markets for the purchase and sale of audiovisual programmes and broadcasting rights in which France Télévisions operates have an international dimension, even though acquisitions are made with a territorial restriction generally confined to one Member State. Furthermore, the programmes of France Télévisions, the broadcasting of which can be maintained thanks to the state support, are picked up in other Member States, such as Belgium and Luxembourg. Finally, France Télévisions also broadcasts programmes via the Internet, which are accessible both within and outside France.
- (83) Under these conditions, the planned budgetary grants are likely to distort the conditions of competition and to affect trade between Member States.

#### VI.1.4. *Conclusion on the presence of state aid*

- (84) In view of the above, the budgetary grants which France is planning to pay to France Télévisions constitute state aid within the meaning of Article 107(1) of the TFEU, which must be examined for compatibility with the internal market.

### VI.2. **Compatibility in the light of Article 106(2) of the TFEU**

- (85) Article 106(2) of the TFEU provides that 'Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.'
- (86) In its Broadcasting Communication, the Commission sets out the principles it follows in the application of Articles

107 and 106(2) of the TFEU to the funding of public broadcasting bodies by the State. In this respect, the Commission's assessment is based on the following two aspects:

- the existence of a clear, precise definition of the public service mission in an official act, including the supply of significant new services, and subject to effective control mechanisms by an entity which is independent from the broadcaster,
- the proportionate and transparent nature of the public financing of the compensation necessary for this mission, without the compensation exceeding the net costs incurred by the public service mission which is also subject to effective control.

#### VI.2.1. *Clear, precise definition of the public service mission in an official act, subject to effective control*

- (87) As stated above, the Commission has not expressed any doubts in its decision initiating the procedure, for the reasons set out in it, concerning the appropriateness of either the definition and entrustment of the public service mission to France Télévisions by official acts or the external controls carried out in respect of the way in which France Télévisions carries out the obligations assigned to it, as described above. The Commission therefore considered that the relevant provisions of Law No 86-1067 of 30 September 1986, amended, (Articles 43-11, 44, 48 and 53) and the Decrees or official acts implementing it, in particular regarding the terms of reference (Decree No 2009-796 of 23 June 2009) and the agreement relating to objectives and means, were in conformity with the rules for the application of Article 106(2) of the TFEU on the assessment of aid to public broadcasting services set out in the Broadcasting Communication.
- (88) This conclusion was the same as those already drawn by the Commission on this subject in application of the communication applicable at that time, in its Decisions of 2003 and 2005 for France 2 and France 3 and of 2008 and 2009 for France Télévisions.
- (89) It is therefore for the sake of completeness that it is appropriate to examine the comments, which are of a general nature all told, made by certain interested parties claiming similarity between the public television programming and that of the competitors and contradicted in fact by the comments of other parties, and which are not of a nature to change this assessment.

- (90) Law No 86-1067, amended, on Freedom of Communication provides a broad, qualitative but precise definition of the public service obligations of France Télévisions. It is to target a wide public and offer a diversified supply, in accordance with the objective, with respect for pluralism, of catering for the democratic, social, civic and cultural needs of society. The fact that certain competitors are required, on account of their EBU membership, to respect the latter's statutes, as the FFTCE emphasises, does not act as a barrier to the existence of specific public service obligations specified in official acts of the French Republic which, contrary to the obligations arising from EBU membership, are imposed solely on France Télévisions.
- (91) As far as is necessary, moreover, the obligations of France Télévisions are specified again in the terms of reference and the agreement relating to objectives and means and are accompanied by precise, quantified indicators to be achieved in its programme schedule, to which the competing broadcasters are not subject. The public resources are allocated to France Télévisions to achieve the objectives and to perform the public service obligations defined by laws and regulations in the general interest, whereas the private resources are allocated to the competing broadcasters purely for lucrative purposes. Likewise, the existence of restrictions under the regulations or voluntarily assumed by the operators in their broadcasting activities does not in fact imply the existence of an undifferentiated supply for the public and private broadcasters. These public service obligations which derive from the law, contrary to those deriving from membership of the EBU, are moreover subject to regular external controls, notably by Parliament, concerning their fulfilment.
- (92) In addition, the SACD highlights the greater commitment of France Télévisions to original French audiovisual and cinematographic creation compared to the competitors, which are subject to far lesser obligations. It is true that the comments made by the SACD neither support nor illustrate the reasons for which imported non-French works, possibly from other Member States, would be of lower quality than those which France Télévisions will finance. The fact still remains that a binding commitment in favour of original creation, increased in absolute terms and in relation to the competitors, contributes and is directly related to the social and cultural needs of French society which the programming of France Télévisions is required to meet on account of its service of general interest obligations.
- (93) From the point of view of the information supplied by the French Republic, this positive assessment on the definition and control of the public service mission of France Télévisions must be extended to the mechanisms applicable to the launch of significant new audiovisual services, within the meaning of the Broadcasting Communication which entered into effect after the decision initiating the present procedure. These services, which extend the offer of broadcasted programmes to other media or formats, are included in the terms of reference and the agreements relating to objectives and means of France Télévisions, which specify and translate the service of general economic interest missions provided for by the law. These documents have been adopted by decree, as indicated above, so that the new services already provided for and those possibly to come are the subject of the same specific *ex ante* consultation procedures and *ex post* annual performance checks as these missions.
- (94) To sum up, it therefore appears that the definition of the public service mission assigned to France Télévisions and the control mechanisms relating to it are in conformity with the rules and principles established in the Broadcasting Communication, which in turn were inspired by the case-law of the Union courts.
- VI.2.2. *The proportionate and transparent nature of the public financing*
- The determination of the annual amount of the budgetary grant
- (95) The financing mechanism notified by the French Republic, which includes the annual grant to compensate for the reduction followed by the discontinuance of advertising messages, is intended to be permanent and therefore to extend beyond the date provided for by the law for the discontinuance of the advertising messages, which is in fact in November 2011.
- (96) The annual public financing will comprise the allocation of part of the resources from the television licence fee (*contribution à l'audiovisuel public*), formerly known as the *redevance*, and the annual grant provided for by Law No 2009-258 of 5 March 2009. The existing aid confirmed by the Commission in its Decision of 20 April 2005, which is not modified by the planned mechanism, will therefore be complemented by a budgetary grant, the exact amount of which will be fixed each year in the finance law for the current year. In its comments, the French Republic specifies that it is the forecasted net public service costs which will serve to determine the amount of the annual grant *ex ante*, before each financial year.
- (97) Moreover, this is shown by the illustrative estimates provided by the French authorities in response to the doubts expressed by the Commission in the decision initiating the procedure. The Commission notes the

indicative nature which the French authorities attach to the business plan forecasts and agrees that it is useful for the undertaking responsible for a public service mission and having to commit multiannual expenditure for this purpose to have a financial framework provided for by the business plan included in the rider to the agreement relating to objectives and means. This being so, the total indicative public resources shown there remain related to, although lower than, the amounts of the gross costs of supplying this service forecasted for the period from 2010 to 2012.

(98) In view of the relative predictability of the gross costs, which are less volatile than the commercial revenues used to establish the net costs, the indicative figures of the business plan confirm a priori the assertion of the French Republic concerning the decisive nature of the criterion of the net public service costs to set the annual amount of the forthcoming grant. In this way, the obligation of financial compensation by the State, introduced by Law No 2009-258 of 5 March 2009, will constitute the chargeable event for the budgetary grant notified, without conditioning the amount, as against a possible estimate of what the advertising revenues lost through the discontinuance of the advertising messages should be.

(99) Such an approach appears to be objectively justified. In fact, on account of the permanent nature of the grant, establishing its amount in relation to what the advertising revenues would have been if the advertising messages had not been discontinued on account of the Law, for example, by setting the amount at the level of the revenues before the announcement and introduction of the reform, adjusted where appropriate in accordance with the television advertising market trends, would become increasingly arbitrary. If the amount of the grant were calculated in this way in relation to presumed revenues, a greater reduction in the gross public service costs than predicted resulting, for example, from future synergies from the establishment of the single undertaking France Télévisions, could give rise to a risk of overcompensation by means of public resources.

(100) The calculation method for the annual grant in relation to the cost of the public service mission, reduced by net remaining commercial revenues, is moreover consistent with the commitment of the French Republic, henceforth expressed in Article 44 of Law No 86-1067, amended, on Freedom of Communication and in Article 2 of the Decree relating to the financial relations between the French State and public sector bodies in the broadcasting sector, that the public resources allocated to France Télévisions will not exceed the net cost of performing the public service obligations entrusted to the latter. As the French authorities recall, this commitment and the above-mentioned provisions are applicable in full to the

budgetary grant notified and to the annual public financing mechanism, of which it will henceforth form an integral part.

(101) Consequently, the method of calculating the annual subsidy in relation to the net cost of the public service mission — i.e. reduced by the net commercial revenues remaining — appears to be proportionate within the meaning of the Commission Broadcasting Communication.

(102) In this respect, the comments to the contrary by certain interested third parties are not of a nature to invalidate this conclusion:

- the FFTCE comments asserting that the compensation for lost advertising revenues, which are not part of the public service mission, does not come under the financing of this mission could not be retained and neither could those of M6 concerning the fluctuating and therefore imprecise nature of estimates of loss of commercial revenues; the annual amount of the grant will have to be fixed *ex ante* on the basis of the net public service costs of France Télévisions, the estimates of the amount provided by the French Republic for 2010, 2011 and 2012 being purely indicative,

- the M6 comments suggesting that an alleged absence of cost accounting tools at France Télévisions established by the French Court of Auditors would result structurally in overcompensation in that the grant would be based on non-objective cost elements, as well as the TF1 comments on overcompensation of uncontrolled or poorly managed costs, are unfounded; firstly, the Court of Auditors established in October 2009 the absence of control management tools integrating the cost accounting tools of the subsidiaries at France Télévisions group level and not the absence of any cost accounting management tool; cost accounting exists for each company of the France Télévisions group,

- secondly, the examination of the compatibility of the compensation with the internal market, contrary to that relating to the existence of an economic advantage for France Télévisions, is not based on the costs that a typical, well-run undertaking in the sector could incur to perform the service of general interest, but on those which France Télévisions will in fact incur, including therefore the reduction forecasted for the future; as shown above, the total amount of public resources to be paid to France Télévisions will be lower a priori than the costs incurred to provide the public service and will be fixed so as to avoid overcompensation, once the net commercial revenues have been deducted.

- (103) These comments, which are unfounded as far as the annual fixing of the amount of the grant *ex ante* is concerned, also do not take account of the existence of *ex post* control mechanisms. In fact, as is shown below, annual fixing of the amount of the grant for the year *ex ante* in a finance law will be followed by *ex post* control mechanisms and, where appropriate, recovery.

#### Financial control mechanisms

- (104) The Broadcasting Communication provides that Member States must introduce appropriate mechanisms to ensure that there is no overcompensation, by undertaking regular control of the use of public funding. The effectiveness of the control, as specified in the Communication, should result from its being carried out by an external body at regular intervals, together with mechanisms to ensure the recovery of any overcompensation or correct allocation, during the following financial year, of any reserves not exceeding 10 % of the annual public service costs, on the one hand, or any cross-subsidisation, on the other.
- (105) Article 44 of Law No 86-1067 of 30 September 1986 specifies that 'The public resources allocated to public broadcasters in compensation for the public service obligations entrusted to them shall not exceed the cost of discharging these obligations'. This provision results from France's commitments expressly to enshrine in law the principle of non-overcompensation for the public service obligations established under the procedure which led to the Commission's compatibility decision of 20 April 2005 on the use of the resources from the licence fee <sup>(13)</sup>.
- (106) Article 2 of Decree No 2007-958 of 15 May 2007 on the financial relations between the State and public sector bodies in the audiovisual communication sector takes up the wording of Article 53 of the Law of 30 September 1986, taking account 'of the direct or indirect revenue derived from the public service mission' and specifies that the cost of the public service mission is to be established using separate accounts. Article 3 of the Decree provides for the obligation for France Télévisions and its subsidiaries to respect normal market conditions in all their commercial activities and for an external body to draw up an annual report on the discharging of this obligation, forwarded to the competent Minister, the National Assembly and the Senate. This latter provision was also referred to in France's commitments taken up in the Commission Decision of 20 April 2005, cited in recital 7.
- (107) The General Court of the Union considered that both the provisions enshrining the principle of non-overcompensation and the control and verification of the conditions applied by France Télévisions to its commercial activities responded perfectly to the concerns expressed by the

Commission during the procedure which led to the Decision of 20 April 2005 <sup>(14)</sup>. The appropriateness of the *ex post* controls carried out on the respect of these commitments was also confirmed by the General Court <sup>(15)</sup>.

- (108) The Commission has received and examined reports on the implementation of Articles 2 and 3 of the Decree relating to the financial years 2007 and 2008 (the reports drawn up under Article 3 of the Decree were certified, for 2007, by the auditors PriceWaterhouse-Coopers and KPMG and, for 2008, by Cabinet Rise) and the draft report provided for under Article 2 for 2009. The reports available conclude that the public resources allocated to the France Télévisions group did not exceed the net cost of discharging the public service obligations entrusted to it and that France Télévisions respected normal market conditions in all its commercial activities. This therefore precludes any cross-subsidisation between commercial activities and public service activities. The preparation of the reports in question shows moreover that it is possible to draw up accounts of the public service costs and resources of the various channels of France Télévisions on the basis of the existing accounting tools, contrary to the assertions made in particular by M6.
- (109) The arrangements for the *ex post* control of the public resources provided for in Decree No 2007-958 will apply to the budgetary grant notified. Since the introduction of the control, the total public resources allocated to France Télévisions have been insufficient to cover the net cost of discharging the public service obligations, so the question of the allocation of any overcompensation has not arisen. As regards the medium-term forecasts of the costs and revenues contained in the business plan and illustrated in Table 1 above, a slight surplus seems to be forecasted in 2012 which, if it materialises and is not needed to absorb the deficits forecasted for the years 2010 and 2011, should normally be earmarked as a priority for the expenditure on audiovisual creation.
- (110) In any case, to bring the existing mechanism into line with the specifications newly introduced in 2009 by the Broadcasting Communication, the French Republic undertakes to amend Article 2 of Decree No 2007-958 of 15 May 2007:

— to ensure that the annual report on the separate accounts, like the report provided for in Article 3, is audited by an external body, the choice of which is subject to the approval of the Minister for

<sup>(13)</sup> See Decision C(2005) 1166 final, points 65 to 72.

<sup>(14)</sup> Judgment in Case T-354/05, *TF1 v Commission* [2009] ECR II-00471, paragraphs 205 to 209.

<sup>(15)</sup> See in this respect the judgment of 1 July 2010 in Joined Cases T-568/08 and T-573/08 *M6 and TF1 v Commission*, and in particular paragraphs 115 et seq., not yet reported.

Communication, forwarded to this Minister and to the National Assembly and the Senate, and drawn up at the expense of France Télévisions,

opens up a gap which could be filled by new entrants or operators with small-scale presence on the advertising market at present, increasing the dynamism of competition in the future.

— to complete the specific functional mechanism to ensure the actual recovery of any overcompensation or cross-subsidisation arising from these separate accounts and not compatible with Article 53 of Law No 86-1067 of 30 September 1986 on Freedom of Communication or with the Broadcasting Communication.

(111) Under these conditions, it appears that the French Republic will have appropriate mechanisms in place to undertake regular, effective controls of the use of public funding to ensure that there is no overcompensation or cross-subsidisation, as provided for in the Broadcasting Communication.

(112) In view of the above, it appears that the potential restrictions of competition attributable to the presence of France Télévisions in commercial markets where it will still operate after the reform has been implemented in full will be limited all told. This presence will probably be very small-scale and the reform will have the foreseeable effect of transferring the demand for television advertising, even if only partially, to the competitors of France Télévisions.

(113) In fact, as pointed out in a letter made public by seven private television or radio broadcasters, continuing the reform to the end with the discontinuance of the advertising messages of France Télévisions would be liable to: 'give the private media the ability to bounce back which they need', whereas maintaining advertising messages: 'would generate harmful consequences for all French media and would substantially change the economic prospects of the operators...' <sup>(16)</sup>.

(114) In other words, the partial withdrawal of France Télévisions and the refocusing of the structure of its revenues – commercial or public from compensation – on the broadcasting of programmes corresponding to its general interest mission without direct financial quid pro quo for the viewing public, reduce the potential restrictions of competition on the competitive markets in which France Télévisions operates. This withdrawal

(115) It results from this that, in the light of the information supplied and the commitments entered into by the French Republic, the public funding will be intended to enable France Télévisions to cover the net costs incurred to perform the obligations incumbent upon it and this funding will have to be confined to these costs and will remain subject to *ex post* controls which meet the criteria of the Broadcasting Communication applicable. In addition, since France Télévisions will reduce its presence in the competitive markets, the envisaged aid is not liable to affect the development of trade to an extent contrary to the interest of the Union, thereby fulfilling the conditions for the application of Article 106(2) of the TFEU.

(116) Furthermore, the French Republic undertakes to provide the Commission with an annual report until 2013, on which date the reform of public broadcasting will have been completed, which will allow monitoring of the aspects of the implementation of the reform which are the most relevant in terms of the state aid rules, i.e. the annual compensation and the *ex post* control mechanisms, the conditions applied by France Télévisions to its commercial activities and the change in its position on this market, as well as the annual implementation of the agreement relating to objectives and means.

(117) In view of the scale of the reform, the innovations it introduces concerning the financing of the service mission of France Télévisions, its consequences on the trend in costs and revenues of France Télévisions and the uncertain economic environment of the markets affecting the commercial revenues of France Télévisions and its competitors, this commitment is of a nature to enable the Commission to verify the implementation of the reform and to monitor it very closely, as well as the implementation of the commitments assumed by the French Republic under this procedure.

The new taxes provided for by the reform of public broadcasting

(118) In its decision initiating the procedure, the Commission had expressed doubts concerning the existence of possible earmarking between the revenues from the new taxes on advertising and electronic communications and the annual grant to be paid from 2010 to France Télévisions. Such a link, if it could be established, would mean that these taxes would have to be considered as constituting an integral part of the aid and subject to the

<sup>(16)</sup> Letter from the Chairmen of TF1, M6, Canal +, Next Radio TV, NRJ, RTL and Locales TV to the President of the Republic, dated 21 June 2010, available from 24 June 2010 at: <http://www.latribune.fr/technos-medias/publicite/20100623trib000523461/france-telvisions-les-medias-prives-insistent-pour-mettre-fin-a-la-publicite.html>

test of compatibility of the latter with the internal market. Although the existence of such a link could be precluded for 2009, in view in particular of the date of entry into force and implementation of Law No 2009-258 of 5 March 2009 on public broadcasting, a doubt remained for the future, given the declarations made by the highest French authorities.

(119) It follows from the case-law of the Court of Justice, confirmed by the judgment of 22 December 2008 in the case referred for a preliminary ruling *Régie Networks* (C-333/07) (paragraph 99) that 'For a tax to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid under the relevant national rules, in the sense that the revenue from the charge is necessarily allocated for the financing of the aid and has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of that aid with the common market.'<sup>(17)</sup> The two conditions for application established by the Court, i.e. the relevant national rules and the direct impact on the amount of the aid, are examined below.

(120) In French law, under Article 36 of the Organic Law of 1 August 2001 on Finance Laws, the allocation in whole or in part of a resource established in favour of the French State to another legal person may result only from a provision of a finance law. The finance law should therefore provide explicitly that the proceeds from the taxes on advertising and electronic communications introduced by Law No 2009-258 of 5 March 2009 will be earmarked in whole or in part for the financing of France Télévisions. No such provision has been adopted to date. For the future, the French Republic commits to notifying the Commission of any plans to change the architecture of the regime, in accordance with Article 108(3) of the TFEU. Under these conditions, hypothecation of the new taxes to the notified aid under national law cannot be established, within the meaning of the case-law of the Court.

(121) In addition, it appears that the decisive criterion to determine the annual amount of budgetary grant, cumulated with the amount provided for from the television licence fee, will be the amount of the net costs of the public service obligations entrusted to France Télévisions and not that of the revenue obtained from the new taxes. The estimated public service costs are and will be the subject of *ex ante* estimates in the agreement relating to objectives and means under Article 53 of Law No 86-1067 of 30 September 1986,

amended, on Freedom of Communication, the annual grant provided for a draft finance law will be calibrated according to the estimated net costs and the balance between estimates and results will have to be established and, if necessary, corrected *ex post* in the report provided for on the implementation of Article 2 of Decree No 2007-958 of 15 May 2007 on the financial relations between the State and public sector bodies in the audio-visual communication sector. Since the costs are incurred independently of the resources levied as taxes, the proceeds from the taxes cannot have a direct impact on the amount of aid. It appears moreover that the rates of the taxes initially provided for by the French Government have been reduced in the final law passed by Parliament, without this being translated into a concomitant, proportional reduction in the grant to be paid for France Télévisions.

(122) In the light of the above, the taxes on advertising and electronic communications introduced by Law No 2009-258 of 5 March 2009 do not constitute an integral part of the aid and consequently do not have to be integrated into the examination of the compatibility of the aid with the internal market, contrary to the assertions of certain interested third parties, i.e. the ACT, the FFTCE, the Association des chaînes privées, M6 and TF1.

(123) This conclusion is without prejudice to the compatibility of these taxes and their specific provisions as separate measures with Union law, in particular concerning the tax on electronic communications, in respect of the questions examined in the context of infringement procedure No 2009/5061, in the light of Directive 2002/20/EC or Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services<sup>(18)</sup>.

(124) Furthermore, the Commission notes the declaration by France excluding these taxes from the scope of its notification, which is the subject of the present Decision.

## VII. CONCLUSIONS

(125) In the light of the above, the Commission concludes that the annual budgetary grant in favour of France Télévisions, implemented as indicated above, can be declared compatible with the internal market under Article 106(2) of the TFEU, according to the principles and rules for application laid down for public broadcasting services,

<sup>(17)</sup> [2008] ECR I-10807. See also the judgment in Joined Cases C-393/04 and C 41/05 *Air Liquide Industries Belgium* [2006] ECR I-5293, point 46.

<sup>(18)</sup> OJ L 108, 24.4.2002, p. 33.

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid which the French Republic is considering implementing in favour of France Télévisions in the form of an annual budgetary grant in implementation of Article 53, Section VI of Law No 86-1067 of 30 September 1986, amended, on Freedom of Communication is compatible with the internal market in accordance with Article 106(2) of the Treaty on the Functioning of the European Union.

The implementation of this aid is consequently authorised.

*Article 2*

This Decision is addressed to the French Republic.

Done at Brussels, 20 July 2010.

*For the Commission*  
Joaquín ALMUNIA  
*Vice-President*

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## COMMISSION DECISION

of 1 March 2011

**amending Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance**

*(notified under document C(2011) 1165)***(Text with EEA relevance)**

(2011/141/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) <sup>(1)</sup>, and in particular Articles 6(4), 7(3), 8(7), 9(4), 10(3), 12(6), 13(5) and 15(6) thereof,

Whereas:

(1) On 22 December 2006 <sup>(2)</sup>, the Commission adopted Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance.

(2) Decision 2007/76/EC was amended by Commission Decision 2008/282/EC <sup>(3)</sup> to establish the principles governing the notification of enforcement measures, the information to be supplied in notifications following the notification of an alert and the coordination of market surveillance and enforcement activities.

(3) The requirements laid down by Decision 2007/76/EC in respect of deletions in the database provided for in Article 10(1) of Regulation (EC) No 2006/2004 and in respect of regular notifications need to be reviewed on the basis of the experience gained with the operation of the enforcement cooperation network.

(4) It is also appropriate to clarify rules governing the obligations of the coordinating competent authority, the

participation in coordinated enforcement activities, and the minimum information to be supplied in the framework of such activities.

(5) It is necessary to align Decision 2007/76/EC with opinion 6/2007 <sup>(4)</sup> of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by Article 29 of Directive 95/46/EC of the European Parliament and of the Council <sup>(5)</sup> and the opinion of the European Data Protection Supervisor <sup>(6)</sup>.

(6) Decision 2007/76/EC should therefore be amended accordingly.

(7) The measures provided for in this Decision are in accordance with the opinion of the Committee set up by Article 19(1) of Regulation (EC) No 2006/2004,

HAS ADOPTED THIS DECISION:

*Article 1*

The Annex to Decision 2007/76/EC is amended in accordance with the Annex to this Decision.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 1 March 2011.

*For the Commission*

John DALLI

*Member of the Commission*

<sup>(1)</sup> OJ L 364, 9.12.2004, p. 1.

<sup>(2)</sup> OJ L 32, 6.2.2007, p. 192.

<sup>(3)</sup> OJ L 89, 1.4.2008, p. 26.

<sup>(4)</sup> Opinion 6/2007/EC on data protection issues related to the Consumer Protection Cooperation System (CPCS) 01910/2007/EN, WP 139, adopted on 21 September 2007.

<sup>(5)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(6)</sup> EDPS Opinion Ref. 2010-0692.

## ANNEX

The Annex to Decision 2007/76/EC is amended as follows:

(1) point 2.1.3 is replaced by the following:

‘2.1.3. If no agreement can be reached, the requested authority shall issue a response supplying all the relevant information at its disposal and indicating the investigation and enforcement actions taken or planned (including time limits) no later than 14 days after the date of receipt of a request via its single liaison office. The requested authority shall update the applicant authority on these actions on a regular basis as appropriate but at least every 3 months until:

(a) any relevant information required to establish whether an intra-Community infringement has occurred or to establish whether there is a reasonable suspicion it may occur has been sent to the applicant authority; or

(b) the intra-Community infringement has ceased or the request has proved to be unfounded.’;

(2) in point 2.1.5, the following paragraphs are added:

‘A competent authority shall, as soon as it discovers that a request for mutual assistance pursuant to Articles 6, 7 and 8 of Regulation (EC) No 2006/2004 contains erroneous data that can not be corrected by other means, request the Commission to remove the information from the database as soon as technically possible and, in any case, not later than 7 days after receiving the request for deletion.

All other information relating to requests for mutual assistance pursuant to Article 6 of Regulation (EC) No 2006/2004 shall be removed from the database 5 years after the closure of the case.’;

(3) in point 2.2.2 the following paragraph is added:

‘Founded alerts shall be removed from the database 5 years after they are issued.’;

(4) in Chapter 4, the heading is replaced by the following:

‘4. CHAPTER 4 – ACCESS TO INFORMATION EXCHANGED AND DATA PROTECTION’;

(5) the following points 4.3 and 4.4 are inserted:

‘4.3. *Commission access to data*

The Commission’s access to data shall be limited to what is required under Regulation (EC) No 2006/2004. This includes access to alerts pursuant to Article 7(1), to notifications pursuant to Articles 7(2) and 8(6), and to information relating to the coordination of market surveillance and enforcement activities pursuant to Article 9 and to conditions pursuant to Article 15(5) of Regulation (EC) No 2006/2004.

4.4. *Sensitive data*

The processing by competent authorities of personal data linked to race, ethnicity, political opinions, religion, trade-union membership, health or sex life shall be prohibited, unless the fulfilment of the obligations under Regulation (EC) No 2006/2004 is otherwise impossible and the processing of such data is permitted under Directive 95/46/EC.

The use by competent authorities of personal data linked to offences, suspected offences and security measures shall be limited to the specific purposes of mutual assistance as defined in Regulation (EC) No 2006/2004.’;

(6) Chapter 6 is replaced by the following:

‘6. CHAPTER 6 – COORDINATION OF MARKET SURVEILLANCE AND ENFORCEMENT ACTIVITIES

6.1. When applying Article 9(2) of Regulation (EC) No 2006/2004, the authorities who have agreed to coordinate their enforcement activities may decide on all the necessary steps to ensure adequate coordination and shall carry them out to the best of their abilities.

6.2. A competent authority may refuse to follow an invitation to participate in coordinated enforcement activities, following consultation with the inviting authority if:

- (a) judicial proceedings have already been initiated or a final judgment has already been passed in respect of the same intra-Community infringements and against the same sellers or suppliers before the judicial authorities in the Member State of the requested or applicant authority;
- (b) in its opinion, following appropriate investigation, it is not concerned by the intra-Community infringement.

If a competent authority decides to decline an invitation to participate in coordinated enforcement activities it shall state the reasons of its decision.

This point shall be without prejudice to the application of Articles 6 and 8 of Regulation (EC) No 2006/2004.

6.3. In order to fulfil their obligations pursuant to Article 9(2) of Regulation (EC) No 2006/2004, the competent authorities concerned may decide that one of them shall coordinate the enforcement action. The competent authorities, while taking into account the specific features of each case, shall in principle designate as coordinating authority the authority where the trader has its headquarters or main centre of activities, or where the greater number of consumers affected are located.

6.4. The Commission shall facilitate the coordination of activities pursuant to Article 9(1) and (2) of Regulation (EC) No 2006/2004 if invited.

6.5. The competent authority designated as coordinating authority pursuant to 6.3 shall at least be responsible for the following:

- (a) managing the communication between the authorities participating in the coordinated activities through appropriate means;
- (b) drafting a short summary report at the end of the coordinated activity when appropriate;
- (c) closing the coordinated enforcement activity in the database as soon as technically possible and in any case within 7 days after the last mutual assistance request issued between two competent authorities participating in coordinated enforcement activities is closed by the applicant authority concerned.

The obligations of the coordinating authority shall not affect the information requirements incumbent upon the other participating competent authorities in accordance with Regulation (EC) No 2006/2004 and its implementing rules.

6.6. In addition to the information requirements required for mutual assistance pursuant to Articles 6, 7 and 8 of Regulation (EC) No 2006/2004, when a competent authority decides to invite other authorities to coordinate enforcement activities it shall provide at least the following information:

- (a) the details of the competent authority inviting to coordinate the enforcement activities;
  - (b) the name of the seller or supplier;
  - (c) the name of the product or service;
  - (d) the classification code;
  - (e) the advertising or sales medium involved;
  - (f) the legal basis;
  - (g) a short summary of the infringement;
  - (h) a summary of the aims of the coordinated activities.
-

**COMMISSION DECISION****of 3 March 2011****amending Decision 97/80/EC laying down provisions for the implementation of Council Directive 96/16/EC on statistical surveys of milk and milk products****(Text with EEA relevance)****(2011/142/EU)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 96/16/EC of 19 March 1996 on statistical surveys of milk and milk products <sup>(1)</sup>, and in particular Article 6(1) thereof,

Whereas:

(1) Experience acquired in applying Commission Decision 97/80/EC of 18 December 1996 laying down provisions for the implementation of Council Directive 96/16/EC on statistical surveys of milk and milk products <sup>(2)</sup>, has shown that it is necessary to adopt a more detailed breakdown of the largest dairy enterprises.

(2) Decision 97/80/EC should therefore be amended accordingly.

(3) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee for Agricultural Statistics,

HAS ADOPTED THIS DECISION:

*Article 1*

Annex II to Decision 97/80/EC is amended in accordance with the Annex to this Decision.

*Article 2*

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

Done at Brussels, 3 March 2011.

*For the Commission*

*The President*

José Manuel BARROSO

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<sup>(1)</sup> OJ L 78, 28.3.1996, p. 27.

<sup>(2)</sup> OJ L 24, 25.1.1997, p. 26.

## ANNEX

In Annex II to Decision 97/80/EC, Tables D, E, F, G.1, G.2, G.3, G.4 and G.5 are replaced by the following:

TABLE D

**Enterprises <sup>(1)</sup> by volume of annual milk collection**

| Country .....                                 | Situation on 31 December ..... |                       |
|-----------------------------------------------|--------------------------------|-----------------------|
| Classes by volume (tonnes/year) of collection | Number of enterprises          | Collection in 1 000 t |
| 5 000 and under                               | .....                          | .....                 |
| 5 001 to 20 000                               | .....                          | .....                 |
| 20 001 to 50 000                              | .....                          | .....                 |
| 50 001 to 100 000                             | .....                          | .....                 |
| 100 001 to 300 000                            | .....                          | .....                 |
| 300 001 to 400 000                            | .....                          | .....                 |
| 400 001 to 500 000                            | .....                          | .....                 |
| 500 001 to 750 000                            | .....                          | .....                 |
| 750 001 to 1 000 000                          | .....                          | .....                 |
| Over 1 000 000                                | .....                          | .....                 |
| Total                                         | .....                          | .....                 |

<sup>(1)</sup> Referred to in point 1 of the first paragraph of Article 2 of Directive 96/16/EC

TABLE E

**Collection centres <sup>(1)</sup> by volume of annual milk collection**

| Country .....                                 | Situation on 31 December ..... |                       |
|-----------------------------------------------|--------------------------------|-----------------------|
| Classes by volume (tonnes/year) of collection | Number                         | Collection in 1 000 t |
| 1 000 and under                               | .....                          | .....                 |
| 1 001 to 5 000                                | .....                          | .....                 |
| 5 001 to 20 000                               | .....                          | .....                 |
| 20 001 to 50 000                              | .....                          | .....                 |
| 50 001 to 100 000                             | .....                          | .....                 |
| Over 100 000                                  | .....                          | .....                 |
| Total                                         | .....                          | .....                 |

<sup>(1)</sup> Referred to in point 2 of the first paragraph of Article 2 of Directive 96/16/EC

TABLE F

**Enterprises <sup>(1)</sup> by volume of milk treated**

| Country .....                                   | Situation on 31 December ..... |                   |
|-------------------------------------------------|--------------------------------|-------------------|
| Classes by volume (tonnes/year) of milk treated | Number of enterprises          | Volume in 1 000 t |
| 5 000 and under                                 | .....                          | .....             |
| 5 001 to 20 000                                 | .....                          | .....             |

| Country .....                                   | Situation on 31 December ..... |                      |
|-------------------------------------------------|--------------------------------|----------------------|
| Classes by volume (tonnes/year) of milk treated | Number of enterprises          | Volume<br>in 1 000 t |
| 20 001 to 50 000                                | .....                          | .....                |
| 50 001 to 100 000                               | .....                          | .....                |
| 100 001 to 300 000                              | .....                          | .....                |
| 300 001 to 400 000                              | .....                          | .....                |
| 400 001 to 500 000                              | .....                          | .....                |
| 500 001 to 750 000                              | .....                          | .....                |
| 750 001 to 1 000 000                            | .....                          | .....                |
| Over 1 000 000                                  | .....                          | .....                |
| Total                                           | .....                          | .....                |

(<sup>1</sup>) Referred to in point 1 of the first paragraph of Article 2 of Directive 96/16/EC

TABLE G.1

### Enterprises (<sup>1</sup>) by annual production of certain groups of milk products

|                                               |                                |                                   |
|-----------------------------------------------|--------------------------------|-----------------------------------|
| Country .....                                 | Situation on 31 December ..... |                                   |
| Groups of products: FRESH PRODUCTS (1)        |                                |                                   |
| Classes by volume (tonnes/year) of production | Number of enterprises          | Annual production<br>(in 1 000 t) |
| 1 000 and under                               | .....                          | .....                             |
| 1 001 to 10 000                               | .....                          | .....                             |
| 10 001 to 30 000                              | .....                          | .....                             |
| 30 001 to 50 000                              | .....                          | .....                             |
| 50 001 to 100 000                             | .....                          | .....                             |
| 100 001 to 150 000                            | .....                          | .....                             |
| 150 001 to 200 000                            | .....                          | .....                             |
| 200 001 to 250 000                            | .....                          | .....                             |
| Over 250 000                                  | .....                          | .....                             |
| Total                                         | .....                          | .....                             |

(<sup>1</sup>) Referred to in point 1 of the first paragraph of Article 2 of Directive 96/16/EC

TABLE G.2

### Enterprises (<sup>1</sup>) by annual production of certain groups of milk products

|                                               |                                |                                   |
|-----------------------------------------------|--------------------------------|-----------------------------------|
| Country .....                                 | Situation on 31 December ..... |                                   |
| Groups of products: DRINKING MILK (11)        |                                |                                   |
| Classes by volume (tonnes/year) of production | Number of enterprises          | Annual production<br>(in 1 000 t) |
| 1 000 and under                               | .....                          | .....                             |
| 1 001 to 10 000                               | .....                          | .....                             |
| 10 001 to 30 000                              | .....                          | .....                             |
| 30 001 to 100 000                             | .....                          | .....                             |

|                                               |                                |                                   |
|-----------------------------------------------|--------------------------------|-----------------------------------|
| Country .....                                 | Situation on 31 December ..... |                                   |
| Groups of products: DRINKING MILK (11)        |                                |                                   |
| Classes by volume (tonnes/year) of production | Number of enterprises          | Annual production<br>(in 1 000 t) |
| 100 001 to 150 000                            | .....                          | .....                             |
| 150 001 to 200 000                            | .....                          | .....                             |
| 200 001 to 250 000                            | .....                          | .....                             |
| Over 250 000                                  | .....                          | .....                             |
| Total                                         | .....                          | .....                             |

(<sup>1</sup>) Referred to in point 1 of the first paragraph of Article 2 of Directive 96/16/EC

TABLE G.3

**Enterprises (<sup>1</sup>) by annual production of certain groups of milk products**

|                                                  |                                |                                   |
|--------------------------------------------------|--------------------------------|-----------------------------------|
| Country .....                                    | Situation on 31 December ..... |                                   |
| Groups of products: POWDERED DAIRY PRODUCTS (22) |                                |                                   |
| Classes by volume (tonnes/year) of production    | Number of enterprises          | Annual production<br>(in 1 000 t) |
| 1 000 and under                                  | .....                          | .....                             |
| 1 001 to 5 000                                   | .....                          | .....                             |
| 5 001 to 20 000                                  | .....                          | .....                             |
| 20 001 to 25 000                                 | .....                          | .....                             |
| Over 25 000                                      | .....                          | .....                             |
| Total                                            | .....                          | .....                             |

(<sup>1</sup>) Referred to in point 1 of the first paragraph of Article 2 of Directive 96/16/EC

TABLE G.4

**Enterprises (<sup>1</sup>) by annual production of certain groups of milk products**

|                                               |                                |                                   |
|-----------------------------------------------|--------------------------------|-----------------------------------|
| Country .....                                 | Situation on 31 December ..... |                                   |
| Groups of products: BUTTER (23)               |                                |                                   |
| Classes by volume (tonnes/year) of production | Number of enterprises          | Annual production<br>(in 1 000 t) |
| 100 and under                                 | .....                          | .....                             |
| 101 to 1 000                                  | .....                          | .....                             |
| 1 001 to 5 000                                | .....                          | .....                             |
| 5 001 to 10 000                               | .....                          | .....                             |
| 10 001 to 15 000                              | .....                          | .....                             |
| 15 001 to 20 000                              | .....                          | .....                             |
| 20 001 to 25 000                              | .....                          | .....                             |
| Over 25 000                                   | .....                          | .....                             |
| Total                                         | .....                          | .....                             |

(<sup>1</sup>) Referred to in point 1 of the first paragraph of Article 2 of Directive 96/16/EC

TABLE G.5

**Enterprises <sup>(1)</sup> by annual production of certain groups of milk products**

| Country .....                                 |                       | Situation on 31 December .....    |  |
|-----------------------------------------------|-----------------------|-----------------------------------|--|
| Groups of products: CHEESE (all types) (24)   |                       |                                   |  |
| Classes by volume (tonnes/year) of production | Number of enterprises | Annual production<br>(in 1 000 t) |  |
| 100 and under                                 | .....                 | .....                             |  |
| 101 to 1 000                                  | .....                 | .....                             |  |
| 1 001 to 4 000                                | .....                 | .....                             |  |
| 4 001 to 10 000                               | .....                 | .....                             |  |
| 10 001 to 15 000                              | .....                 | .....                             |  |
| 15 001 to 20 000                              | .....                 | .....                             |  |
| 20 001 to 25 000                              | .....                 | .....                             |  |
| Over 25 000                                   | .....                 | .....                             |  |
| Total                                         | .....                 | .....                             |  |

<sup>(1)</sup> Referred to in point 1 of the first paragraph of Article 2 of Directive 96/16/EC

## COMMISSION DECISION

of 3 March 2011

**concerning the non-inclusion of ethoxyquin in Annex I to Council Directive 91/414/EEC and amending Commission Decision 2008/941/EC**

(notified under document C(2011) 1265)

(Text with EEA relevance)

(2011/143/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

- (1) Commission Regulations (EC) No 1112/2002 <sup>(2)</sup> and (EC) No 2229/2004 <sup>(3)</sup> lay down the detailed rules for the implementation of the fourth stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included ethoxyquin.
- (2) In accordance with Article 24e of Regulation (EC) No 2229/2004 the notifier withdrew its support of the inclusion of that active substance in Annex I to Directive 91/414/EEC within 2 months from receipt of the draft assessment report. Consequently, Commission Decision 2008/941/EC of 8 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances <sup>(4)</sup> on the non-inclusion of ethoxyquin was adopted.
- (3) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter 'the applicant') submitted a new application requesting the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I <sup>(5)</sup>.
- (4) The application was submitted to Germany, which had been designated rapporteur Member State by Regulation (EC) No 2229/2004. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as were the subject of Decision 2008/941/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.
- (5) Germany evaluated the additional data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 16 October 2009. The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the Authority presented its conclusion on ethoxyquin to the Commission on 20 August 2010 <sup>(6)</sup>. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 28 January 2011 in the format of the Commission review report for ethoxyquin.
- (6) During the evaluation of this active substance, a number of concerns have been identified. In particular, it was not possible to perform a reliable consumer, operator and worker exposure assessment, due to the limited toxicological data package, considered insufficient to set the Acceptable Daily Intake (ADI), the Acute Reference Dose (ARfD) and the Acceptable Operator Exposure Level (AOEL). Furthermore, the data submitted were insufficient to set a residue definition for ethoxyquin and its metabolites. In addition, data were missing to conclude on the genotoxic potential and the ecotoxicity of an impurity in the technical specifications, for confidentiality reasons referred to as impurity 7. Finally, the data available were not sufficient to fully assess the risks to the environment and to non-target organisms. Consequently, it was not possible to conclude on the basis of the information available that ethoxyquin met the criteria for inclusion in Annex I to Directive 91/414/EEC.

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1.

<sup>(2)</sup> OJ L 168, 27.6.2002, p. 14.

<sup>(3)</sup> OJ L 379, 24.12.2004, p. 13.

<sup>(4)</sup> OJ L 335, 13.12.2008, p. 91.

<sup>(5)</sup> OJ L 15, 18.1.2008, p. 5.

<sup>(6)</sup> European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance ethoxyquin. *EFSA Journal* 2010;8(9):1710. [38 pp.]. doi:10.2903/j.efsa.2010.1710. Available online: [www.efsa.europa.eu/efsajournal.htm](http://www.efsa.europa.eu/efsajournal.htm)

- (7) The Commission invited the applicant to submit its comments on the results of the peer review. Furthermore, in accordance with Article 21(1) of Regulation (EC) No 33/2008, the Commission invited the applicant to submit comments on the draft review report. The applicant submitted its comments, which have been carefully examined.
- (8) However, despite the arguments put forward by the applicant, the concerns identified could not be eliminated, and assessments made on the basis of the information submitted and evaluated during the Authority expert meetings have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing ethoxyquin satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.
- (9) Ethoxyquin should therefore not be included in Annex I to Directive 91/414/EEC.
- (10) This Decision does not prejudice the submission of a further application for ethoxyquin pursuant to Article 6(2) of Directive 91/414/EEC and Chapter II of Regulation (EC) No 33/2008.
- (11) In the interest of clarity, the entry for ethoxyquin in the Annex to Decision 2008/941/EC should be deleted.
- (12) It is therefore appropriate to amend Decision 2008/941/EC accordingly.
- (13) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

*Article 1*

Ethoxyquin shall not be included as active substance in Annex I to Directive 91/414/EEC.

*Article 2*

Member States shall ensure that:

- (a) authorisations for plant protection products containing ethoxyquin are withdrawn by 3 September 2011;
- (b) no authorisations for plant protection products containing ethoxyquin are granted or renewed from the date of publication of this Decision.

*Article 3*

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 3 September 2012 at the latest.

*Article 4*

In the Annex to Decision 2008/941/EC, the entry for 'ethoxyquin' is deleted.

*Article 5*

This Decision is addressed to the Member States.

Done at Brussels, 3 March 2011.

*For the Commission*

John DALLI

*Member of the Commission*

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2011/140/EU:

- ★ **Commission Decision of 20 July 2010 on State Aid C 27/09 (ex N 34/B/09) Budgetary grant for France Télévisions which the French Republic plans to implement in favour of France Télévisions** (notified under document C(2010) 4918) <sup>(1)</sup> ..... 44

2011/141/EU:

- ★ **Commission Decision of 1 March 2011 amending Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance** (notified under document C(2011) 1165) <sup>(1)</sup> ..... 63

2011/142/EU:

- ★ **Commission Decision of 3 March 2011 amending Decision 97/80/EC laying down provisions for the implementation of Council Directive 96/16/EC on statistical surveys of milk and milk products** <sup>(1)</sup> ..... 66

2011/143/EU:

- ★ **Commission Decision of 3 March 2011 concerning the non-inclusion of ethoxyquin in Annex I to Council Directive 91/414/EEC and amending Commission Decision 2008/941/EC** (notified under document C(2011) 1265) <sup>(1)</sup> ..... 71




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<sup>(1)</sup> Text with EEA relevance

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