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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 28 February 2011

on the signing, on behalf of the Union, and provisional application of the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union

(2011/209/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Commission has negotiated on behalf of the Union a Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union (hereinafter the 'Memorandum') in civil aviation research and development and Annex 1 thereto on SESAR-NEXTGEN cooperation for global interoperability, in accordance with the Council Decision of 9 October 2009 authorising the Commission to open negotiations.
- (2) The Memorandum and Annex 1 were initialled on 18 June 2010.
- (3) The Memorandum and Annex 1 should be signed and applied provisionally, pending the completion of the procedures for the conclusion of the Memorandum.
- (4) It is necessary to lay down procedural arrangements for the participation of the Union in the Joint Committee established by the Memorandum, the resolution of disagreements and the termination of Annexes and Appendices to the Memorandum,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union

and its Annex 1 is hereby approved on behalf of the Union, subject to the conclusion of the Memorandum.

The texts of the Memorandum and Annex 1 are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Memorandum and its Annex 1 on behalf of the Union.

Article 3

Pending its entry into force, the Memorandum shall be applied on a provisional basis by the Union from the date of its signature.

Article 4

1. The Union shall be represented in the Joint Committee established under Article III of the Memorandum by the Commission, assisted by representatives of the Member States.

2. The Commission, after consultation with the Special Committee appointed by the Council, shall determine the position to be taken by the Union in the Joint Committee, including with respect to:

- (a) the adoption of additional Annexes to the Memorandum and Appendices thereto;
- (b) the adoption of amendments to Annexes to the Memorandum and Appendices thereto.

Article 5

The Commission may take any appropriate action under Articles IIB, IV, V, VII and VIII of the Memorandum.

Article 6

The Commission shall represent the Union in consultations under Article XI of the Memorandum.

Article 7

The Commission shall regularly inform the Council of the implementation of the Memorandum.

Done at Brussels, 28 February 2011.

For the Council

The President

FELLEGI T.

MEMORANDUM OF COOPERATION**NAT-I-9406 between the United States of America and the European Union**

WHEREAS the United States of America and the European Union have as a common purpose the promotion and development of cooperation in civil aviation research and development; and

WHEREAS such cooperation will encourage the development and safety of civil aeronautics in the United States of America and the European Union;

NOW THEREFORE, the United States of America and the European Union (collectively, the 'Parties,' and individually, a 'Party') agree to undertake joint programs in accordance with the following terms and conditions:

*Article I***Objective**

A. This Memorandum of Cooperation, including its Annexes and Appendices (the 'Memorandum'), establishes the terms and conditions for mutual cooperation in the promotion and development of civil aviation research and development. For this purpose the Parties may, subject to the availability of appropriated funds and other necessary resources, provide personnel, resources, and related services to cooperate to the extent called for in the Annexes and Appendices to this Memorandum.

B. The objectives of this Memorandum may be achieved by cooperation in any of the following areas:

1. the exchange of information regarding programs and projects, research results, or publications;
2. the execution of joint analyses;
3. the coordination of research and development programs and projects, and their execution based on shared effort;
4. the exchange of scientific and technical staff;
5. the exchange of specific equipment, software, and systems for research activities and compatibility studies;
6. the joint organisation of symposia or conferences; and
7. reciprocal consultations with the aim of establishing concerted action in appropriate international bodies.

C. Subject to applicable laws, regulations and policies, as may be amended or modified, the Parties shall foster, to the fullest extent practicable, the involvement of participants in cooperative activities under this Memorandum in view of providing comparable opportunities for participation in

their research and development activities. The Parties shall involve participants in the cooperative activities, which shall be conducted on a reciprocal basis in accordance with the following principles:

1. mutual benefit;
2. comparable opportunities to engage in cooperative activities;
3. equitable and fair treatment;
4. timely exchange of information which may affect cooperative activities; and
5. transparency.

D. Such cooperative activities shall take place pursuant to specific Annexes and Appendices defined in Article II.

*Article II***Implementation**

A. This Memorandum shall be implemented through specific Annexes and Appendices to this Memorandum. These Annexes and Appendices shall describe, as appropriate, the nature and the duration of cooperation for a specific area or purpose, treatment of intellectual property, liability, funding, allocation of costs, and other relevant matters. Unless explicitly stated otherwise, in case of an incompatibility between a provision in an Annex or Appendix and a provision in this Memorandum, the provision in the Memorandum shall have precedence.

B. Representatives from the United States of America and the European Union shall meet periodically to:

1. discuss proposals for new cooperative activities; and
2. review the status of ongoing activities that have been undertaken pursuant to an Annex or Appendix to this Memorandum.

C. The coordination and facilitation of cooperative activities under this Memorandum shall be accomplished on behalf of the Government of the United States of America by the Federal Aviation Administration and on behalf of the European Union by the European Commission.

D. The designated offices for the coordination and management of this Memorandum, and where all requests for services under this Memorandum should be made, are:

1. for the United States of America:

Federal Aviation Administration
Office of International Aviation
Wilbur Wright Bldg., 6th Floor, East
600 Independence Ave., S.W.
Washington, D.C. 20591
USA

Tel. +1 2023858900
Fax +1 2022675032

2. for the European Union:

European Commission
Directorate-General for Mobility and Transport
Directorate for Air Transport
1040 Brussels
BELGIUM

Tel. +32 22968430
Fax: +32 22968353

E. Technical program liaisons for specific activities shall be established as indicated in the Annexes and Appendices to this Memorandum.

Article III

Executive Management

A. The Parties hereby establish a Joint Committee, which shall be responsible for ensuring the effective functioning of this Memorandum and shall meet at regular intervals to evaluate the effectiveness of its implementation.

B. The Joint Committee shall be composed of representatives of:

1. the United States of America, which shall be the Federal Aviation Administration (FAA, co-chair); and
2. the European Union, which shall be the European Commission (co-chair) assisted by representatives of the European Union's Member States.

C. The Joint Committee may invite the participation of subject-specific experts on an ad hoc basis. The Joint Committee may establish technical working groups and oversee their work and the work of committees and groups established in the specific Annexes and Appendices. The Joint Committee shall develop and adopt internal governing procedures.

D. All decisions of the Joint Committee shall be taken by consensus of the two Parties, which comprise the Joint Committee. These decisions shall be in writing and signed by the Parties' representatives on the Joint Committee.

E. The Joint Committee may consider any matter related to the functioning of this Memorandum and its Annexes and Appendices. In particular it shall be responsible for:

1. providing a forum for discussion, within the scope of this Memorandum and its Annexes and Appendices, of:
 - a. issues that may arise and changes that may affect the implementation of this Memorandum and its Annexes and Appendices;
 - b. common approaches to the introduction of new technologies and procedures, research and evaluation programs, and other areas of mutual interest; and
 - c. draft regulations and legislation by either Party that could affect the interests of the other Party, within the scope of this Memorandum and its Annexes and Appendices;
2. as appropriate, adopting additional Annexes to this Memorandum and Appendices thereto;
3. as appropriate adopting amendments to Annexes to this Memorandum and Appendices thereto; and
4. making proposals, as appropriate, to the Parties to otherwise amend this Memorandum.

Article IV

Exchange of personnel

The Parties may exchange technical personnel as required to pursue the activities described in an Annex or Appendix to this Memorandum. All such exchanges shall be in accordance with the terms and conditions set forth in this Memorandum, its Annexes and Appendices. Technical personnel exchanged by the Parties shall perform work as specified in the Annex or Appendix. Such technical personnel may be from United States or European Union agencies or contractors, as mutually agreed.

*Article V***Equipment loan arrangements**

Equipment may be loaned by one Party (the 'Lending Party') to the other Party (the 'Borrowing Party') under an Annex or Appendix to this Memorandum. The following general provisions shall apply to all loans of equipment unless otherwise specified in an Annex or Appendix:

- A. the Lending Party shall identify the value of the equipment that is to be loaned;
- B. the Borrowing Party shall assume custody and possession of the equipment at the Lending Party's facility as designated by the Parties in the Annex or Appendix. The equipment shall remain in the custody and possession of the Borrowing Party until it has been returned to the Lending Party in accordance with paragraph H below;
- C. the Borrowing Party shall, at its own expense, transport any equipment to the facility designated by the Parties in the Annex or Appendix;
- D. the Parties shall cooperate in securing any export licenses and other documents required for the shipment of the equipment;
- E. the Borrowing Party shall be responsible for installing the equipment at the facility designated by the Parties in the Annex or Appendix. The Lending Party shall, if necessary, provide assistance to the Borrowing Party for installing the equipment that is lent on the basis of terms agreed on by the Parties;
- F. during the period of the loan, the Borrowing Party shall operate and maintain equipment in proper condition, ensure the continued operability of the equipment, and permit inspection by the Lending Party at any reasonable time;
- G. the Lending Party shall assist the Borrowing Party in locating sources of supplies for common items and parts peculiar which are not readily available to the Borrowing Party;
- H. upon the expiration or termination of the pertinent Annex or Appendix or this Memorandum, or when the use of the equipment is complete, the Borrowing Party shall return the equipment to the Lending Party at the Borrowing Party's expense;
- I. in the event of loss or damage of any equipment loaned under this Memorandum and for which the Borrowing Party assumed custody and possession, the Borrowing Party, at the Lending Party's discretion, shall repair or compensate the Lending Party for the value (as identified by the Lending Party in paragraph A above) of the lost or damaged equipment;
- J. any equipment exchanged under this Memorandum shall be solely for research, developmental and validation purposes

and shall not be used in any way whatsoever for active civil aviation or other operational use;

- K. any transfers of technology, equipment or other items pursuant to this Memorandum shall be subject to the applicable laws and policies of the Parties.

*Article VI***Funding**

- A. Unless otherwise specified in an Annex or Appendix to this Memorandum, each Party shall bear the costs of the activities it performs pursuant to this Memorandum.
- B. Memorandum number NAT-I-9406 has been assigned by the United States to identify this cooperative program and shall be referenced in all correspondence related to this Memorandum.

*Article VII***Release of information**

- A. Except as required by applicable law or by prior written agreement between the Parties, neither Party shall release any information or material pertinent to the tasks or related to the agreed programs under this Memorandum and its Annexes and Appendices to third parties other than (i) contractors or subcontractors engaged in the tasks or programs insofar as they are necessary for the execution of those tasks and programs; or (ii) other governmental authorities of the Parties.
- B. If one of the Parties becomes aware that, under its laws or regulations, it will be, or may reasonably be expected to become, unable to meet the non-disclosure provisions of this Article, it shall immediately and prior to disclosure inform the other Party. The Parties shall thereafter consult to identify an appropriate course of action.

*Article VIII***Intellectual property rights**

- A. A Party providing intellectual property (which for purposes of this Memorandum includes analyses, reports, databases, software, know-how, technical and commercially sensitive information, data, and records, and associated documentation and materials, regardless of form or the media on which it may be recorded) to the other Party in accordance with the terms of an Annex or Appendix to this Memorandum shall retain such proprietary rights in the intellectual property as it had at the time of the exchange. The Party providing a document or other intellectual property pursuant to an Annex or Appendix to this Memorandum shall clearly mark the document or other intellectual property as confidential, proprietary, or a trade secret, as appropriate.

B. Except as may be specified in an Annex or Appendix to this Memorandum, the Party receiving intellectual property from the other Party under this Memorandum:

1. shall not acquire any proprietary rights in the intellectual property by reason of its receipt from the other Party; and
2. shall not disclose the intellectual property to a third party, other than contractors or subcontractors engaged in a program related to an Annex or Appendix to this Memorandum, without the prior written consent of the other Party. In the case of a disclosure to a contractor or subcontractor engaged in the program, the Party making the disclosure shall:

- a. limit the use of the intellectual property by the contractor or subcontractor to the purposes specified in the applicable Annex or Appendix; and
- b. prohibit the further disclosure of the intellectual property to third parties by the contractor or subcontractor except where the other Party consents in advance and in writing to the further disclosure.

C. Except as may be specified in an Annex or Appendix to this Memorandum, the proprietary rights in any intellectual property jointly developed by the Parties pursuant to this Memorandum and its Annexes or Appendices shall be shared by the Parties.

1. Each Party shall be entitled to a non-exclusive, irrevocable right in all countries to reproduce, prepare derivative works, publicly distribute, and translate such intellectual property, provided that such reproduction, preparation, distribution and translation does not affect the protection of the intellectual property rights of the other Party. Each Party or its implementing authorities shall have the right to review a translation prior to public distribution.

2. All publicly distributed copies of scientific and technical journal articles, non-proprietary scientific reports and books directly arising from cooperation under this Memorandum and its Annexes or Appendices shall indicate the names of the authors of the work unless an author explicitly declines to be named.

D. If a Party disagrees with the designation of a document or other intellectual property provided by the other Party pursuant to an Annex or Appendix to this Memorandum as confidential, proprietary, or a trade secret, then the Party disagreeing with the designation shall request consultations with the other Party to address the issue. The Consultations may be held in conjunction with a meeting of the Joint Committee or a meeting of such other committees as may be established under an Annex or Appendix to this Memorandum.

Article IX

Immunity and liability

- A. The Parties shall address immunity and liability issues associated with activities under this Memorandum in the relevant Annex or Appendix as appropriate.
- B. The Parties agree that all activities undertaken pursuant to this Memorandum and its Annexes or Appendices shall be performed with due professional care and that every reasonable effort shall be made to minimise potential risks to third parties and to fulfil all safety and oversight requirements.

Article X

Amendments

- A. The Parties may amend this Memorandum, its Annexes or Appendices. The Parties shall document the details of any such amendment in a written agreement signed by both Parties.
- B. Amendments of the Annexes or the Appendices to this Memorandum, adopted by the Joint Committee, shall enter into force upon a decision of the Joint Committee pursuant to Article III.D of this Memorandum, signed by the co-chairs of the Joint Committee on behalf of the Parties.

Article XI

Resolution of disagreements

The Parties shall resolve any disagreement regarding the interpretation or application of this Memorandum or its Annexes or Appendices in consultations between the Parties. The Parties shall not refer any such disagreement to an international tribunal or third party for settlement.

Article XII

Entry into force and termination

- A. Pending its entry into force, this Memorandum shall be applied provisionally from the date of signature.
- B. This Memorandum shall enter into force when the Parties have notified each other in writing that their respective internal procedures for its entry into force have been completed, and shall remain in force until terminated.
- C. Any individual Annex or Appendix adopted by the Joint Committee after the entry into force of this Memorandum shall enter into force upon a decision of the Joint Committee pursuant to Article III.D of this Memorandum, signed by the co-chairs of the Joint Committee on behalf of the Parties.

- D. Either Party may terminate this Memorandum or its Annexes or Appendices at any time by providing sixty (60) days' notice in writing to the other Party. Termination of this Memorandum shall not affect the rights and obligations of the Parties under Articles V, VII, VIII and IX. Each Party shall have one hundred twenty (120) days to close out its activities following termination of this Memorandum or its Annexes or Appendices. Termination of this Memorandum also shall terminate all Annexes and Appendices concluded by the Parties pursuant to this Memorandum.

Article XIII

Authority

The United States and the European Union agree to the provisions of this Memorandum as indicated by the signatures of their duly authorised representatives.

Done at Budapest on the third day of March in the year two thousand and eleven.

For the United States of America



For the European Union



—

ANNEX I

TO MEMORANDUM OF COOPERATION NAT-I-9406 BETWEEN THE UNITED STATES OF AMERICA AND THE EUROPEAN UNION SESAR-NEXTGEN COOPERATION FOR GLOBAL INTEROPERABILITY

WHEREAS SESAR and NextGen are respectively the European Union's and the United States of America's programmes for developing new generations of air traffic management systems;

WHEREAS the SESAR Joint Undertaking was established by Council Regulation (EC) No 219/2007 of 27 February 2007 for the purpose of managing the SESAR Development phase;

NOW THEREFORE, the United States of America and the European Union (collectively the 'Parties', and individually a 'Party') have agreed as follows:

*Article I***Purpose**

The purpose of this Annex is to implement the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union (the Memorandum) by setting forth the terms and conditions under which the Parties shall establish cooperation to ensure global interoperability between their respective Air Traffic Management (ATM) modernisation programmes, NextGen and SESAR, taking into account the interests of civil and military airspace users.

*Article II***Definitions**

For the purpose of this Annex, the term 'validation' means to confirm, throughout the development lifecycle, that the proposed solution, including concept, system, and procedures, complies with stakeholders' needs.

*Article III***Principles**

Within the framework of the NextGen and SESAR programmes and in accordance with the principles set out in Article I.C of the Memorandum, the Parties shall:

- A. as appropriate, allow participation by each other's governmental and industrial entities in their relevant consultative bodies and industrial initiatives, in accordance with applicable laws and regulations, and the governing rules of such bodies and initiatives;
- B. endeavour to provide opportunities to each other's industry stakeholders to contribute to work programs and access information on, and results of, equivalent research and development programs and projects; and
- C. through the High Level Committee established under Article V of this Annex, mutually identify, in attachments to this Annex (Attachments), the domains that allow specific opportunities for participation in each Party's consultative bodies, initiatives, and research programs and projects, in particular those domains that provide for a contribution to high level system definition, such as interoperability, architecture definition, and technical baseline.

The High Level Committee shall monitor the implementation of this Article and shall update the Attachments as necessary.

*Article IV***Scope of work**

- A. The scope of the work is to contribute to ATM research, development, and validation for global interoperability. The work may include, but is not limited to, the activities set out in paragraphs 1 to 5 of the present Article.

1. Transversal Activities

Transversal activities cover those tasks that are not specific to any one operational or technical development, but have interdependencies across the SESAR and NextGen Programs. These activities are of particular importance to the cooperation, as any diverging approach potentially has wide-reaching material implications for harmonisation and interoperability. In this area, the Parties intend to address:

- a. operations concept and roadmap;
- b. separation provision;
- c. road-mapping including standardisation and regulation with a view to facilitate implementation synchronisation;

- d. business case and investment planning;
- e. environment;
- f. the coordination of technical efforts in support of global and ICAO standardisation activities in the field of ATM modernisation;
- g. the synchronisation and consistency of avionics roadmaps, in order to ensure best economic efficiency for airspace users; and
- h. coordinated delivery of technical and operational changes that achieve/maintain seamless operations from an airspace user's perspective.

2. Information Management

The key focus on Information Management is to ensure timely distribution of accurate and relevant ATM-related information across the stakeholder community in a manner that is seamless (interoperable), secure and supportive of collaborative decision making. In this area, the Parties intend to address:

- a. system Wide Information Management (SWIM) interoperability;
- b. aeronautical Information Management (AIM) interoperability; and
- c. meteorological information exchange.

3. Trajectory Management

Trajectory Management encompasses air/air and air/ground exchange of four-dimensional (4D) trajectories requiring a consistent approach to terminology, definition and exchange of flight information at all times and in all flight phases. In this area, the Parties intend to address:

- a. common trajectory definition and exchange;
- b. flight planning and dynamic flight plan updates;
- c. traffic management (including trajectory integration and prediction);
- d. Unmanned Aircraft Systems (UAS) integration into ATM; and
- e. the convergence of the SESAR and NextGen concepts of operations, the service definitions and their applications including the 4D trajectory definition and exchange format operations.

4. Communications, Navigation, Surveillance (CNS) & Airborne Interoperability

CNS and airborne interoperability includes planning airborne equipage and the development of mutually interoperable air/air and air/ground applications and systems. In this area, the Parties intend to address:

- a. airborne interoperability, including:
 - i. Airborne Collision Avoidance System (ACAS);
 - ii. avionics roadmap; and
 - iii. Airborne Separation Assistance Systems (ASAS) for air/air and air/ground separation assistance;
- b. communications, including:
 - i. data-link services and technology; and
 - ii. flexible communication architecture;
- c. navigation, including:
 - i. Performance Based Navigation; and
 - ii. Global Navigation Satellite System (GNSS) applications for en route and approach, including approach with vertical guidance;
- d. surveillance, including:
 - i. Automatic Dependent Surveillance (ADS) services and technology; and
 - ii. Ground surveillance.

5. Collaborative Projects

Collaborative Projects include ad hoc projects for which the Parties agree that focused coordination and collaboration is needed. In this area, the Parties intend to address:

- a. Atlantic Interoperability Initiative to Reduce Emissions (AIRE); and
 - b. improvements of monitoring and position tracking of aircraft over oceanic and remote regions.
- B. The Parties shall, as necessary, produce on a reciprocal basis, either individually or jointly for exchange between them, reports describing concepts of use, models, prototypes, evaluations, validation exercises, and comparative studies related to the technical and operational aspects of ATM. Evaluations and validations may use a range of tools such as simulations and live trials.

Article V

Management

Subject to the availability of funds, the Parties shall establish and manage projects and activities and ensure that the work in progress remains pragmatic, timely and result-oriented. To this end, the following management levels shall be established:

- A. a High Level Committee, which shall be composed of an equal number of participants from the European Commission, which may be assisted by the SESAR Joint Undertaking, and from the Federal Aviation Administration (FAA);
 1. the High Level Committee shall be co-chaired by one representative each from the European Commission and the FAA. The High Level Committee shall meet at least once a year to:
 - a. oversee SESAR-NextGen cooperation;
 - b. assess the achieved results;
 - c. decide on the launch of new projects and activities upon a proposal from the Coordination Committee defined below;
 - d. decide on proposals for new Appendices or amendments to existing Appendices to this Annex, which it shall submit to the Joint Committee for approval in accordance with Article III.D of the Memorandum;
 - e. give instructions to the Coordination Committee defined below; and
 - f. monitor the implementation of Article III of this Annex and, as necessary, consult on industry participation mechanisms or refer questions to the Joint Committee established under the Memorandum;
 2. the High Level Committee shall establish its working procedures and all decisions shall be taken by consensus between the co-chairs;
 3. the High Level Committee shall report to the Joint Committee established pursuant to Article III of the Memorandum;
- B. a Coordination Committee, which shall be composed of an appropriate and limited number of participants from the SESAR Joint Undertaking and from the FAA Air Traffic Organization, which may both be assisted by experts;
 1. the Coordination Committee shall be co-chaired by one representative each from the SESAR Joint Undertaking and the FAA Air Traffic Organization. The Coordination Committee shall meet at least twice a year to:
 - a. monitor the progress of ongoing joint projects and activities as defined in the Appendices;
 - b. ensure the efficient execution of the Appendices through the Working Groups defined below;
 - c. ensure the efficient implementation of Article III of this Annex;
 - d. prepare reports to the High Level Committee; or
 - e. consider proposals for submission to the High Level Committee, including for new Appendices or amendments to existing Appendices to this Annex;
 2. the Coordination Committee shall establish its working procedures and all decisions shall be taken by consensus between the co-chairs;

- C. Working Groups dedicated to specific projects or activities described in the Appendices. Each Working Group shall be composed of an appropriate and limited number of participants. The Working Groups shall meet as necessary, shall comply with instructions given by the Coordination Committee and shall report to it on a regular basis.

Article VI

Immunity and liability

The Parties shall address immunity and liability issues associated with activities under this Annex in the relevant Appendix, as appropriate.

Article VII

Implementation

- A. All work provided under this Annex shall be described in Appendices, which, upon their entry into force, shall become part of this Annex.
- B. Each Appendix shall be numbered sequentially and contain a description of the work to be performed by the Parties or the entities they designate to carry out the work, including the location and planned duration of the work; the personnel and other resources required to accomplish the work; the estimated costs; and any other pertinent information concerning the work.

Article VIII

Financial provisions

Funding of work to be performed under this Annex shall be provided in accordance with Article VI of the Memorandum.

Article IX

Points of contact

- A. The designated offices for the coordination and management of this Annex are:

1. for the United States of America:

Africa, Europe & Middle East Office, AEU-10
Federal Aviation Administration
Wilbur Wright Bldg., 6th Floor, East
600 Independence Avenue, S.W.
Washington, D.C. 20591
USA

Tel. +1 2023858905
Fax +1 2022675032

2. for the European Union:

Single European Sky and ATC Modernisation Unit
Directorate-General for Mobility and Transport
Directorate for Air Transport
European Commission
Rue de Mot 24
1040 Brussels
BELGIUM

Tel. +32 22968430
Fax +32 22968353

- B. technical program liaison for specific activities shall be established as indicated in the Appendices to this Annex.

Article X

Entry into force and termination

- A. Pending its entry into force, this Annex shall be applied provisionally from the date of signature.
- B. This Annex shall enter into force when the Parties have notified each other in writing that their respective internal procedures for its entry into force have been completed, and shall remain in force until terminated in accordance with Article XII of the Memorandum. Termination of this Annex shall terminate all Appendices concluded by the Parties pursuant to this Annex.

*Article XI***Authority**

The United States of America and the European Union agree to the provisions of this Annex as indicated by the signatures of their duly authorised representatives.

Done at Budapest on the third day of March in the year two thousand and eleven.

For the United States of America



For the European Union



REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 325/2011

of 4 April 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) ⁽¹⁾,

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 5 April 2011.

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

Done at Brussels, 4 April 2011.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	61,9
	JO	68,6
	MA	51,0
	TN	102,0
	TR	84,7
	ZZ	73,6
0707 00 05	EG	158,2
	TR	144,9
	ZZ	151,6
0709 90 70	MA	37,5
	TR	115,1
	ZA	28,9
	ZZ	60,5
0805 10 20	EG	61,7
	IL	75,9
	MA	54,3
	TN	48,7
	TR	74,2
	US	49,1
	ZZ	60,7
0805 50 10	TR	56,6
	ZZ	56,6
0808 10 80	AR	85,6
	BR	80,5
	CA	87,6
	CL	95,0
	CN	119,0
	MK	50,2
	US	131,1
	UY	70,6
	ZA	83,7
	ZZ	89,3
0808 20 50	AR	84,8
	CL	110,4
	CN	85,8
	ZA	92,1
	ZZ	93,3

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) No 326/2011**of 4 April 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) ⁽¹⁾,

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 ⁽²⁾, 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 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EU) No 319/2011 ⁽⁴⁾.

- (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 5 April 2011.

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

Done at Brussels, 4 April 2011.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 259, 1.10.2010, p. 3.

⁽⁴⁾ OJ L 86, 1.4.2011, p. 67.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 5 April 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 ⁽¹⁾	51,50	0,00
1701 11 90 ⁽¹⁾	51,50	0,00
1701 12 10 ⁽¹⁾	51,50	0,00
1701 12 90 ⁽¹⁾	51,50	0,00
1701 91 00 ⁽²⁾	49,96	2,48
1701 99 10 ⁽²⁾	49,96	0,00
1701 99 90 ⁽²⁾	49,96	0,00
1702 90 95 ⁽³⁾	0,50	0,22

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

DECISIONS

COUNCIL DECISION 2011/210/CFSP

of 1 April 2011

on a European Union military operation in support of humanitarian assistance operations in response to the crisis situation in Libya (EUFOR Libya)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28 and Article 43(2) thereof,

Having regard to the proposal by the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) In its Resolution on Peace and Security in Africa, adopted on 26 February 2011 (UNSCR 1970 (2011)), the United Nations Security Council (Security Council) expressed grave concern at the situation in Libya and condemned the violence and the use of force against civilians. Furthermore, the Security Council called upon all Member States of the United Nations to make available humanitarian and related assistance in Libya.
- (2) In its Resolution on the situation in Libya, adopted on 17 March 2011 (UNSCR 1973 (2011)), the Security Council recalled UNSCR 1970 (2011) and expressed its determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel. It also welcomed the response of neighbouring States, in particular Tunisia and Egypt, to address the needs of refugees and foreign workers and called on the international community to support those efforts.
- (3) Furthermore, the Security Council authorised Member States having notified the Secretary-General of the United Nations, acting nationally or through regional organisations or arrangements and in cooperation with him and with the Member States of the League of Arab States, to take all necessary measures to protect civilians and civilian populated areas under threat of attack in Libya, while excluding a foreign occupation force of any form on any part of Libyan territory.

- (4) In its conclusions of 21 March 2011, the Council expressed its concern at the situation in Libya and condemned the gross and systematic violation of human rights, violence and brutal repression perpetrated by the regime against the Libyan people. It expressed its satisfaction at the adoption of UNSCR 1973 (2011) and underlined the Union's determination to contribute to its implementation and to act collectively and resolutely, with all international partners, particularly the League of Arab States and other regional stakeholders, to that effect. It confirmed that the Union's main aim is the protection of the civilian population and support for the Libyan people to realise their aspirations for a democratic society.

The Council also expressed the Union's readiness to provide Common Security and Defence Policy support to humanitarian assistance in response to a request from the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and under the coordination role of the United Nations.

- (5) On 24 March 2011 the Council approved a Crisis Management Concept in response to the crisis in Libya. Further planning should focus on the support to humanitarian assistance. In particular, the operation will not impact on the neutrality or impartiality of the humanitarian actors. Any decision to launch the operation must be preceded by a request from OCHA and must be taken in the light of a current risk and threat assessment.
- (6) Close coordination and consultation is taking place with the Governments of Egypt and Tunisia in order to ensure their authorisation for a possible Union military presence in their respective countries.
- (7) The Political and Security Committee (PSC) should exercise, under the responsibility of the Council and of the High Representative of the Union for Foreign Affairs and Security Policy (the High Representative), political control over the Union military operation, provide it with strategic direction, and take the relevant decisions in accordance with the third paragraph of Article 38 of the Treaty on European Union (TEU).

- (8) It is necessary to negotiate and conclude international agreements relating to the participation of third States in Union operations and relating to the status of Union forces and personnel.
- (9) The operational expenditure arising from this Decision, which has military or defence implications, should be borne by the Member States pursuant to Article 41(2) TEU and in accordance with Council Decision 2008/975/CFSP of 18 December 2008 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications ('ATHENA')⁽¹⁾.
- (10) Article 28(1) TEU empowers the Council to adopt decisions laying down the means to be made available to the Union. The financial reference amount, for an initial 4-month period, for the common costs of the European Union military operation constitutes the best current estimate and is without prejudice to the final figures to be included in a budget to be approved in accordance with the rules laid down in ATHENA.
- (11) In accordance with Article 5 of the Protocol on the position of Denmark annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU), Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. Denmark does not, therefore, participate in the financing of this operation,

HAS ADOPTED THIS DECISION:

Article 1

Mission

1. With a view to underpinning the mandates of United Nations Security Council Resolutions 1970 and 1973 (2011), the Union shall, if requested by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), conduct in the framework of the Common Security and Defence Policy a military operation, hereinafter called 'EUFOR Libya', in order to support humanitarian assistance in the region. The operation shall fully respect the Guidelines on the use of Military and Civil Defence Assets to support United Nations humanitarian activities in complex emergencies and the Guidance on the use of Foreign Military Assets to Support Humanitarian Operations in the Context of the Current Crisis in North Africa.

2. In support of this political objective, EUFOR Libya, if requested by OCHA, shall, in full respect of the Guidelines and the Guidance referred to in paragraph 1:

- contribute to the safe movement and evacuation of displaced persons,
- support, with specific capabilities, the humanitarian agencies in their activities.

⁽¹⁾ OJ L 345, 23.12.2008, p. 96.

Article 2

Appointment of the EU Operation Commander

Rear Admiral Claudio GAUDIOSI is hereby appointed European Union Operation Commander of EUFOR Libya.

Article 3

Designation of the EU Operational Headquarters

The Operational Headquarters of EUFOR Libya shall be located in Rome.

Article 4

Planning and launch of the operation

The Decision to launch the European Union military operation shall be adopted by the Council, in the light of a current risk and threat assessment, following approval of the Operation Plan and the Rules of Engagement.

Article 5

Political control and strategic direction

1. Under the responsibility of the Council and the High Representative, the PSC shall exercise the political control and strategic direction of EUFOR Libya. The Council hereby authorises the PSC to take the relevant decisions in accordance with the third paragraph of Article 38 TEU. This authorisation shall include the powers to amend the planning documents, including the Operation Plan, the Chain of Command and the Rules of Engagement. It shall also include the powers to take decisions on the appointment of the European Union Operation Commander and the European Union Force Commander. The powers of decision with respect to the objectives and termination of EUFOR Libya shall remain vested in the Council.

2. The PSC shall report to the Council at regular intervals.

3. The PSC shall, at regular intervals, receive reports from the Chairman of the European Union Military Committee (EUMC) regarding the conduct of EUFOR Libya. The PSC may invite the European Union Operation Commander or the Force Commander to its meetings, as appropriate.

Article 6

Military direction

1. The EUMC shall monitor the proper execution of EUFOR Libya conducted under the responsibility of the European Union Operation Commander.

2. The EUMC shall, at regular intervals, receive reports from the European Union Operation Commander. It may invite him or the Force Commander to its meetings, as appropriate.

3. The Chairman of the EUMC shall act as the primary point of contact with the European Union Operation Commander.

Article 7

Implementation and consistency of the Union's response

1. The High Representative shall ensure the implementation of this Decision and its consistency with the Union's external action as a whole, including the Union's humanitarian aid activities.

2. The European Union Operation Commander shall assist the High Representative in the implementation of this Decision.

Article 8

Cooperation with other actors

1. Planning and conduct of the operation shall be carried out in close cooperation and complementarity with the OCHA, which is coordinating the overall humanitarian response, the North Atlantic Treaty Organisation, and other actors.

2. EUFOR Libya shall cooperate closely with the designated United Nations coordinator(s), as well as with the designated coordinator(s) of the League of Arab States and with its Member States.

3. Consultations shall take place with the African Union as appropriate.

Article 9

Participation by third States

1. Without prejudice to the Union's decision-making autonomy or to the single institutional framework, and in accordance with the relevant guidelines of the European Council, third States, in particular the Member States of the League of Arab States, may be invited to participate in the operation.

2. The Council hereby authorises the PSC to invite third States to offer contributions and to take the relevant decisions on acceptance of the proposed contributions, upon the recommendation of the European Union Operation Commander and the EUMC.

3. Detailed arrangements for the participation of third States shall be the subject of agreements concluded pursuant to Article 37 TEU and in accordance with the procedure laid down in Article 218 TFEU. Where the Union and a third State have concluded an agreement establishing a framework for the latter's participation in crisis management operations of the Union, the provisions of such an agreement shall apply in the context of this operation.

4. Third States making significant military contributions to EUFOR Libya shall have the same rights and obligations in terms of day-to-day management of the operation as Member States taking part in the operation.

5. The Council hereby authorises the PSC to take relevant decisions on the setting-up of a Committee of Contributors, should third States provide significant military contributions.

Article 10

Status of Union-led forces and personnel

The status of Union-led forces and their personnel, including the privileges, immunities and further guarantees necessary for the fulfilment and smooth functioning of their mission, may be the subject of agreements concluded pursuant to Article 37 TEU and in accordance with the procedure laid down in Article 218(3) TFEU.

Article 11

Financial arrangements

1. The common costs of EUFOR Libya shall be administered in accordance with Decision 2008/975/CFSP.

2. The financial reference amount for the common costs of EUFOR Libya shall be EUR 7 900 000. The percentage of the reference amount referred to in Article 25(1) of Decision 2008/975/CFSP shall be 30 %.

Article 12

Release of information to third parties

1. The High Representative is hereby authorised to release to the African Union, Egypt, the League of Arab States, Tunisia, and the United Nations, as well as to other third parties associated with this Decision, classified Union information and documents generated for the purposes of EUFOR Libya up to the level of classification appropriate for each of them and in accordance with the Council's security regulations ⁽¹⁾.

2. The High Representative is hereby authorised to release to the African Union, Egypt, the League of Arab States, Tunisia and the United Nations, as well as to other third parties associated with this Decision, unclassified Union documents relating to Council deliberations on EUFOR Libya which are covered by the obligation of professional secrecy pursuant to Article 6(1) of the Rules of Procedure of the Council ⁽²⁾.

Article 13

Entry into force and termination

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

2. EUFOR Libya shall, unless the Council decides otherwise, terminate no later than 4 months after reaching Initial Operating Capability.

⁽¹⁾ Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations (OJ L 101, 11.4.2001, p. 1).

⁽²⁾ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

3. This Decision shall be repealed as from the later of the date of closure of the European Union Operational Headquarters or the Force Headquarters, in accordance with the plans approved for the termination of EUFOR Libya, and without prejudice to the relevant procedures regarding the audit and presentation of the accounts thereof as laid down in Decision 2008/975/CFSP.

Done at Brussels, 1 April 2011.

For the Council
The President
MARTONYI J.

COMMISSION DECISION

of 31 March 2011

in application of Article 7 of Council Directive 89/686/EEC as regards a prohibition measure adopted by the UK authorities in respect of guided type fall arrester, of the type HACA Leitern 0529.7102

*(notified under document C(2011) 2010)***(Text with EEA relevance)**

(2011/211/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment ⁽¹⁾, and in particular Article 7 thereof,

Whereas:

- (1) Article 7(1) of Directive 89/686/EEC on the approximation of the laws of the Member States relating to personal protective equipment (PPE) provides that where a Member State ascertains that personal protective equipment bearing the CE marking and used in accordance with its intended purpose could compromise the safety of persons, domestic animals or property, it shall take all necessary measures to remove such personal protective equipment from the market and to prohibit the placing on the market or free movement thereof.
- (2) Pursuant to Article 7(2) of Directive 89/686/EEC, the Commission is required, after consulting the parties concerned, to declare whether it finds such a measure justified or not. If the measure is found justified, the Commission shall inform the Member States so that they can take all appropriate measures with respect to the equipment concerned, in accordance with their obligations under Article 2(1) of Directive 89/686/EEC.
- (3) On 31 January 2008, the UK authorities notified to the European Commission a measure prohibiting the placing on the market of a guided type fall arrester, of the type HACA Leitern 0529.7102, manufactured by HACA Leitern – Lorenz Hasenbach GmbH u. Co. KG, Diesselstrasse 12, 65520 Bad Camberg, Germany (HACA). According to the documents submitted to the Commission this protective equipment was subject to the conformity assessment procedure set out in Article 11A of the Directive, attested by the following

documents issued by EXAM BBG Prüf- und Zertifizier GmbH (since become DEKRA EXAM GmbH) — notified body No 0158):

— No ZQ/B 212/06,

— No ZQ/B 212/07.

- (4) The UK authorities indicated that their measure was based on the fact that the guided type fall arrester concerned failed to comply with the basic health and safety requirements (BHSR) referred to in Article 3 of Directive 89/686/EEC and, in particular, with BHSR 3.1.2.2 and BHSR 1 and 1.1.1 in Annex II to Directive 89/686/EEC. The UK authorities submitted a test report by TUV NEL Ltd to substantiate their findings.
- (5) According to the UK authorities, in particular in the foreseeable situation where a person fell backwards before falling down (the ‘fall-back’ situation), the protective equipment did not provide adequate protection against all risks encountered as required by BHSR 1 ⁽²⁾. As a result, the guided type fall arrester did not comply with BHSR 1.1.1 ⁽³⁾, which requires a user to be able to perform a risk-related activity normally whilst enjoying appropriate protection to the highest possible level. Further the UK authorities explained that the protective equipment did not comply with BHSR 3.1.2.2 ⁽⁴⁾ because tests showed that, under foreseeable conditions of use, the vertical drop of the user was not minimised to prevent collision with obstacles and the braking force exceeded the threshold value at which physical injury might occur.

The UK authorities further indicated that they intended to launch a formal objection pursuant to Article 6 of the Directive against standard EN 353-1 — Personal protective equipment against falls from a height — Part 1: Guided type fall arresters including a rigid anchor line, which refers to standard EN 364 — Personal protective equipment against falls from a height — test methods.

- (6) On 1 August 2008, the Commission wrote to the manufacturer and, on 26 September 2008, to the notified body that had intervened in the production control

⁽¹⁾ OJ L 399, 30.12.1989, p. 18.

⁽²⁾ BHSR 1 — General requirements applicable to all PPE.

⁽³⁾ BHSR 1.1.1 — Ergonomics.

⁽⁴⁾ BHSR 3.1.2.2 — Prevention of falls from a height.

phase according to Article 11A of Directive 89/686/EEC, inviting them to communicate their observations regarding the measure taken by the UK authorities.

- (7) In their reply dated 28 October 2008, HACA contested the findings of the tests carried out for the UK authorities by TUV NEL. In particular, they emphasised that their equipment was safe to use and prevented falls from a height, including 'fall-back', if used with the correct types of belt. HACA further pointed out that the test carried out by TUV NEL did not comply with the requirements of standard EN 364 which did not foresee the use of an anthropomorphic dummy.
- (8) In their reply dated 15 October 2008, DEKRA EXAM confirmed that they had issued the relevant Article 11A documents. DEKRA EXAM emphasised that tests had been carried out according to standard EN 353-1 and that the samples tested had fulfilled all the requirements of that standard. They explained that the test standard EN 364 allowed the use of a steel weight or a sand bag for the dynamic performance test. During testing, they had used a sand bag for measuring the braking force which was always below the allowed value. They observed that TUV NEL had used a steel weight which — in their opinion — would give higher braking forces than a sand bag.

As regards the 'fall-back' tests using an anthropomorphic dummy, DEKRA EXAM recalled that such a test was not foreseen by EN 353-1. They agreed that the 'fall-back' situation was indeed a foreseeable condition of use of such guided type fall arresters. However, this situation was not addressed in standard EN 353-1. Depending on the kind of fall arrester used and the model of full body harness worn by the user, accidents could occur. It was therefore necessary to pay attention to the right combination of fall arrester and full body harness, which should be specified by the manufacturer in the information given to the user.

- (9) Due to the complexity of the file, the Commission obtained the assistance of an independent expert. The Commission met the UK authorities. The UK authorities explained the exact test methods it relied upon and showed a video of the tests.

TUV NEL had carried out two series of tests for the UK authorities. During the second series of tests, a representative of the manufacturer had been present. Each series included a dynamic performance test using a steel weight and 'fall-back' tests using an anthropomorphic dummy. The HACA fall arrester had failed all of these tests.

The UK considered that the use of a steel weight for the dynamic performance test gave more reliable results than a sand bag and could explain the difference between the results obtained by TUV NEL and those obtained by DEKRA EXAM.

Concerning the 'fall-back' test, the UK had carried out tests using an anthropomorphic dummy in order to simulate as closely as possible the foreseeable 'fall-back' situation. The results of these tests had shown that the HACA fall arrester did not adequately prevent a fall in that situation. These results also revealed a deficiency in the relevant harmonised standard EN 353-1 since the standard did not take account of the 'fall-back' situation. This was the main grounds for the formal objection lodged by the UK against the standard.

- (10) The report of the independent expert ⁽¹⁾ concluded that 'fall-back', either from a standing or sitting position, is a foreseeable situation which is not taken into account in standard EN 353-1.
- (11) Following the positive opinion of the Standing Committee set up by Article 5 of Directive 98/34/EC of the European Parliament and of the Council ⁽²⁾ on 19 March 2010, the Commission decided to withdraw the reference of standard EN 353-1 from the *Official Journal of the European Union*.
- (12) In light of the documentation available, the comments of the parties concerned and the report of the independent expert, the Commission considers that the guided type fall arrester of the type HACA Leitern 0529.7102 fails to comply with BHSRs 1, 1.1.1 and 3.1.2.2 of Annex II to Directive 89/686/EEC, since it does not adequately prevent falls in a 'fall-back' situation, and that this non-conformity gives rise to a serious risk for users,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by the UK authorities prohibiting the placing on the market of a guided type fall arrester, of the type HACA Leitern 0529.7102, manufactured by HACA Leitern – Lorenz Hasenbach GmbH, is justified.

⁽¹⁾ Reference No P804674.

⁽²⁾ OJ L 204, 21.7.1998, p. 37.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 31 March 2011.

For the Commission

Antonio TAJANI

Vice-President

COMMISSION DECISION

of 4 April 2011

amending Decision 2009/996/EU on a Community financial contribution for 2009 to cover expenditure incurred by Germany, Spain, Italy, Malta, the Netherlands, Portugal and Slovenia for the purpose of combating organisms harmful to plants or plant products

(notified under document C(2011) 2126)

(Only the Dutch, German, Italian, Maltese, Portuguese, Slovenian and Spanish texts are authentic)

(2011/212/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽¹⁾, and in particular Article 23(5) thereof,

Whereas:

- (1) Pursuant to Directive 2000/29/EC, a financial contribution from the Union may be granted to Member States to cover expenditure relating directly to the necessary measures which have been taken or are planned to be taken for the purpose of combating harmful organisms introduced from third countries or from other areas in the Union, in order to eradicate or, if that is not possible, to contain them.
- (2) Pursuant to the second subparagraph of Article 23(5) of Directive 2000/29/EC, subject to certain conditions, the financial contribution from the Union on plant health control shall cover up to 50 % of expenditure relating directly to the necessary measures referred to in Article 23(2) of that Directive and, in case of compensation for loss of earnings referred to in the second subparagraph of Article 23(3) of that Directive up to 25 %.
- (3) For 2009, the Union allocated a total financial contribution of EUR 14 049 023 to cover expenditure incurred by Germany, Spain, Italy, Malta, the Netherlands, Portugal and Slovenia, as provided for in Commission Decision 2009/996/EU of 17 December 2009 on a Community financial contribution for 2009 to cover expenditure incurred by Germany, Spain, Italy, Malta, the Netherlands, Portugal and Slovenia for the purpose of combating organisms harmful to plants and plant products ⁽²⁾.
- (4) As set out in Section III of the Annex to Decision 2009/996/EU, Spain and Italy received financial contribution from the Union for the replacement of destroyed trees. Spain received a contribution of

EUR 289 144 for the replacement in 2009 of coniferous trees affected by the harmful organism *Bursaphelenchus xylophilus*. Italy received a contribution of EUR 14 525 for the replacement in 2008 of various tree species in Lombardia affected by the harmful organisms *Anoplophora chinensis* in the area of Gussago and *Anoplophora glabripennis* in the area of Corbetta.

- (5) This expenditure by Spain and Italy related directly to the prohibition of the future use of the particular trees which are host to the harmful organisms concerned, within the meaning of Article 23(2)(c) of Directive 2000/29/EC. This expenditure does not concern compensation for loss of earnings as referred to in the second indent of the first subparagraph and the second subparagraph of Article 23(3) of that Directive.
- (6) In accordance with the second subparagraph of Article 23(5), of Directive 2000/29/EC, the financial contribution from the Union should therefore cover up to 50 % of the expenditure concerned, and should not be restricted to up to 25 % as was erroneously set out in Decision 2009/996/EU. Consequently, the maximum Union financial contribution to the relevant programmes submitted by Spain and Italy should be raised by EUR 289 145 and EUR 14 525 respectively, and the total Union contribution for 2009 should be increased to EUR 14 352 693.
- (7) Therefore Decision 2009/996/EU should be amended accordingly.
- (8) The measures provided in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2009/996/EU is amended as follows:

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

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.

⁽²⁾ OJ L 339, 22.12.2009, p. 49.

¹. The total amount of the financial contribution referred to in Article 1 is EUR 14 352 693.;

(2) in Section I of the Annex, the third, fourth and fifth row are replaced by the following:

'Spain	<i>Bursaphelenchus xylophilus</i>	Coniferous trees	2008 and 2009	1 and 2	3 386 573	1 693 286
Italy, Lombardia (Gussago area)	<i>Anoplophora chinensis</i>	Various tree species	2008 and part of 2009 (until 30 April)	1 and 2	302 683	151 341
Italy, Lombardia (Corbetta area)	<i>Anoplophora glabripennis</i>	Various tree species	2007 and 2008	1 and 2	302 683	103 221'

(3) Section III of the Annex is deleted;

(4) at the end of the Annex, the indication 'Total Community contribution (EUR): 14 049 023' is replaced by 'Total Union contribution (EUR): 14 352 693'.

Article 2

This Decision is addressed to the Federal Republic of Germany, the Kingdom of Spain, the Italian Republic, the Republic of Malta, the Kingdom of the Netherlands, the Portuguese Republic and the Republic of Slovenia.

Done at Brussels, 4 April 2011.

For the Commission

John DALLI

Member of the Commission

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