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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 743/2011

of 26 July 2011

establishing a prohibition of fishing for anglerfish in VIIIc, IX and X; EU waters of CECAF 34.1.1 by vessels flying the flag of Portugal

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

*Article 1***Quota exhaustion**

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2011 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

*Article 2***Prohibitions**

(1) Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters ⁽²⁾, lays down quotas for 2011.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2011.

*Article 3***Entry into force**

(3) It is therefore necessary to prohibit fishing activities for that stock,

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

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

Done at Brussels, 26 July 2011.

*For the Commission,
On behalf of the President,*

Lowri EVANS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 24, 27.1.2011, p. 1.

ANNEX

No	22/T&Q
Member State	Portugal
Stock	ANF/8C3411
Species	Anglerfish (<i>Lophiidae</i>)
Zone	VIIIc, IX and X; EU waters of CECAF 34.1.1
Date	10.6.2011

COMMISSION IMPLEMENTING REGULATION (EU) No 744/2011

of 28 July 2011

entering a name in the register of protected designations of origin and protected geographical indications (Karlovarské oplatky (PGI))

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⁽¹⁾, and in particular the third subparagraph of Article 7(5) thereof,

Whereas:

- (1) Pursuant to Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, the Czech Republic's application of 20 October 2004 to register the name 'Karlovarské oplatky' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) Austria and Germany submitted objections to the registration pursuant to Article 7(1) of Regulation (EC) No 510/2006. The objections were deemed admissible under points (a), (b), (c) and (d) of the first subparagraph of Article 7(3) of that Regulation.
- (3) By letters dated 21 January 2008, the Commission asked the Member States concerned to seek agreement among themselves in accordance with their internal procedures.
- (4) Given that no agreement was reached between Austria and the Czech Republic nor between Germany and the Czech Republic within the designated timeframe, the Commission should adopt a decision in accordance with the procedure referred to in Article 15(2) of Regulation (EC) No 510/2006.
- (5) Concerning the alleged failure of compliance with Article 2 in respect of the delimitation of the geographical area and production within it, use of and characteristics of the thermal spring water, and the appearance of a graphic motif on the wafers, the national authorities responsible provided confirmation that these elements were correct and in addition no manifest error was identified. The national authorities further provided evidence to show the name 'Karlovarské oplatky' was used in the sense of Article 2(1)(b) of Regulation (EC) No 510/2006 and was proposed by the identified producer group.
- (6) The terms 'Karlsbader Oblaten' and 'Karlovarské oplatky' were found to be mutual translations of each other in the German and Czech languages respectively. The statements of objection from Germany showed that trade marks including the term 'Karlsbader Oblaten' had been registered prior to the application for registration of the term 'Karlovarské oplatky' as a protected geographical indication. Some evidence was provided to show that in a further instance, a name may have acquired the status of a trade mark established by use. Evidence was further provided to show that consumers in Germany associated the name 'Karlsbader Oblaten' with a certain type of wafer. However no evidence was provided in the statements of objection that consumers strongly associated the wafers with all or any of the trade marks as distinct from the descriptive term 'Karlsbader Oblaten', nor that consumers would be liable to be misled as to the true identity of a product marketed under the name 'Karlovarské oplatky'. Therefore, the Commission cannot conclude that the registration of the name 'Karlovarské oplatky' would be contrary to Article 3(4) of Regulation (EC) No 510/2006.
- (7) As a salient part of the names 'Karlsbader Oblaten' and 'Karlovarské oplatky' is identical, it is reasonable to conclude that the names are partly identical for the purposes of Article 7(3)(c) of Regulation (EC) No 510/2006. Furthermore, as mutual translations of each other, and given the phonetic and visual similarities between the products and their common origins, the application of the protection envisaged by Article 13 of Regulation (EC) No 510/2006, and in particular point (b) of paragraph (1) thereof, could have the result that 'Karlovarské oplatky', if registered, would be found by a competent court to be protected against the use of the name 'Karlsbader Oblaten' on the wafers concerned. The evidence therefore shows that the continued existence of the name 'Karlsbader Oblaten' would be jeopardised by the registration of 'Karlovarské oplatky' within the meaning of point (c) of Article 7(3) of Regulation (EC) No 510/2006.
- (8) The statements of objection were declared admissible on the ground, inter alia, that registration of the proposed name would jeopardise the existence of a partly identical name, namely 'Karlsbader Oblaten', in so far that this name is used for a product and not protected under trade mark legislation. The evidence further shows that the name 'Karlsbader Oblaten' originated from producers in the town formerly known as Karlsbad and that production of the wafer so named has continued for a considerable period of time. Moreover, the evidence shows that the uses of the name 'Karlsbader Oblaten' referred to an authentic and traditional product having a common origin with 'Karlovarské oplatky', but was generally not meant to exploit the reputation of the

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 85, 19.4.2007, p. 6.

latter name. For these reasons, and in the interests of fairness and traditional usage, the maximum transitional period foreseen by Article 13(3) of Regulation (EC) No 510/2006 should be foreseen.

- (9) Concerning trade marks containing the term 'Karlsbader Oblaten' that were protected through registration or acquired by use prior to the application for registration of 'Karlovarské oplatky', the conditions of Article 14(1) of Regulation (EC) No 510/2006 not being met, the said trade marks cannot be invalidated nor can their continued use be hindered by virtue of the registration of 'Karlovarské oplatky' as a protected geographical indication, provided the general requirements under trade mark legislation are otherwise met.
- (10) Concerning generic status, the evidence provided in the statements of objection referred to the alleged general use of the term 'Karlsbader Oblaten' in Germany and Austria, and not to that of 'Karlovarské oplatky'. While the objections have provided evidence to show that a number of uses as general descriptive terms exist including the German mention 'Karlsbader Oblaten', no evidence has been provided that the name 'Karlovarské oplatky' is used to designate a category of products that do not originate in the region of Karlovy Vary. The name 'Karlovarské oplatky' was protected as a geographical indication in 1967 in the Czech Republic. The objection does not take into consideration the situation in the Czech Republic. Therefore, on the basis of information provided the name 'Karlovarské oplatky' cannot be considered to be generic and there is no failure of compliance with Article 3(1) of Regulation (EC) No 510/2006.
- (11) In the light of the above, the name 'Karlovarské oplatky' should be entered in the Register of protected designations of origin and protected geographical indications

subject to a transitional period of 5 years during which time the term 'Karlsbader Oblaten' may continue to be used in circumstances that, without such a transitional period, could be contrary to the protection provided for by Article 13(1) of Regulation (EC) No 510/2006.

- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Protected Geographical Indications and Protected Designations of Origin,

HAS ADOPTED THIS REGULATION:

Article 1

The designation contained in the Annex to this Regulation shall be entered in the register.

Article 2

1. The term 'Karlsbader Oblaten' may be used to designate wafers not complying with the specification for 'Karlovarské oplatky' for a period of 5 years from the date of entry into force of this Regulation.

2. Trade marks containing the term 'Karlsbader Oblaten' that were protected through registration or acquired by use prior to 20 October 2004, shall not be invalidated nor shall their continued use be hindered by virtue of the registration of 'Karlovarské oplatky' as a protected geographical indication, provided the general requirements under trade mark legislation are otherwise met.

Article 3

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, 28 July 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX

Foodstuffs referred to in Annex I to Regulation (EC) No 510/2006:

Class 2.4. Bread, pastry, cakes, confectionery, biscuits and other baker's wares

CZECH REPUBLIC

Karlovarské oplatky (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 745/2011

of 28 July 2011

entering a name in the register of protected designations of origin and protected geographical indications (Karlovarské trojhránky (PGI))

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⁽¹⁾, and in particular the third subparagraph of Article 7(5) thereof,

Whereas:

- (1) Pursuant to Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, the Czech Republic's application of 19 October 2004 to register the name 'Karlovarské trojhránky' was published in the *Official Journal of the European Union* (2).
- (2) Austria and Germany submitted objections to the registration pursuant to Article 7(1) of Regulation (EC) No 510/2006. The objections were deemed admissible under points (a), (b), (c) and (d) of the first subparagraph of Article 7(3) of that Regulation.
- (3) By letters dated 6 May 2008, the Commission asked the Member States concerned to seek agreement among themselves in accordance with their internal procedures.
- (4) Given that no agreement was reached between Austria and the Czech Republic nor between Germany and the Czech Republic within the designated timeframe, the Commission must adopt a decision in accordance with the procedure referred to in Article 15(2) of Regulation (EC) No 510/2006.
- (5) Concerning the alleged failure of compliance with Article 2 of Regulation (EC) No 510/2006 regarding an absence of production in the geographical area and the quality of its reputation, the national authorities responsible confirmed that production took place in the geographical zone. The link was based on the specific quality of the product attributable to the geographical area, namely the thermal spring water used in production, which is sufficient to meet the requirements of point (b) of Article 2(1); whether or not the product also had sufficient reputation to satisfy the requirements of Article 2(1) was immaterial.
- (6) The statements of objection from Germany showed that trade marks including the term 'Karlsbader Oblaten' had been registered prior to the application for registration of the term 'Karlovarské trojhránky' as a protected geographical indication. Evidence was further provided to show that consumers in Germany associated the name 'Karlsbader Oblaten' with a certain type of wafer. However no evidence was provided in the statements of objection that consumers strongly associated the wafers with all or any of the trade marks as distinct from the descriptive term 'Karlsbader Oblaten', nor that consumers would be liable to be misled as to the true identity of a product marketed under the name 'Karlovarské trojhránky'. Therefore, the Commission cannot conclude that the registration of the name 'Karlovarské trojhránky' would be contrary to Article 3(4) of Regulation (EC) No 510/2006.
- (7) As a salient part of the names 'Karlsbader Oblaten' and 'Karlovarské trojhránky' is identical, it is reasonable to conclude that the names are partly identical for the purposes of point (c) of Article 7(3) of Regulation (EC) No 510/2006. Furthermore, given the similarities between the products and their common origins, the application of the protection envisaged by Article 13 of Regulation (EC) No 510/2006, and in particular point (b) of paragraph (1) thereof, could have the result that 'Karlovarské trojhránky', if registered, would be found by a competent court to be protected against the use of 'Karlsbader Oblaten' on the wafers concerned. The evidence therefore shows that the continued existence of the name 'Karlsbader Oblaten' could be jeopardised by the registration of 'Karlovarské trojhránky' within the meaning of point (c) of Article 7(3) of Regulation (EC) No 510/2006.
- (8) The statements of objection were declared admissible on the ground, inter alia, that registration of the proposed name would jeopardise the existence of a partly identical name, namely 'Karlsbader Oblaten', in so far that this name is used on product and not protected under trade mark legislation. The evidence further shows that the name 'Karlsbader Oblaten' originated from producers in the town formerly known as Karlsbad and that production of the wafer so named has continued for a considerable period of time. Moreover, the evidence shows that the uses of the name 'Karlsbader Oblaten' referred to an authentic and traditional product that was not exploiting the reputation of 'Karlovarské trojhránky'. For these reasons the maximum transitional period foreseen by Article 13(3) of Regulation (EC) No 510/2006 should be foreseen.

(1) OJ L 93, 31.3.2006, p. 12.

(2) OJ C 206, 5.9.2007, p. 29.

- (9) Concerning trade marks containing the term 'Karlsbader Oblaten' that were protected through registration or acquired by use prior to the application for registration of 'Karlovarské trojhránky', the conditions of Article 14(1) not being met, the said trade marks cannot be invalidated nor can their continued use be hindered by virtue of the registration of 'Karlovarské trojhránky' as a protected geographical indication, provided the general requirements under trade mark legislation are otherwise met.
- (10) Concerning generic status, the evidence provided in the statements of objection referred to the general use of the term 'Karlsbader Oblaten' and not to that of 'Karlovarské trojhránky'. While the objections have provided evidence to show that a number of uses as general descriptive terms exist including the German mention 'Karlsbader Oblaten', no evidence has been provided that the name 'Karlovarské trojhránky' is used to designate a category of products that do not originate in the region of Karlovy Vary. The objection does not take into consideration the situation in the Czech Republic. Therefore, on the basis of information provided the name 'Karlovarské trojhránky' cannot be considered to be generic and there is no failure of compliance with Article 3(1) of Regulation (EC) No 510/2006.
- (11) In the light of the above, the name 'Karlovarské trojhránky' should be entered in the Register of protected designations of origin and protected geographical indications subject to a transitional period of 5 years during which time the term 'Karlsbader Oblaten' may continue to be used in circumstances that, but for the transitional period, could be contrary to the protection provided for by Article 13(1) of Regulation (EC) No 510/2006.

- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Protected Geographical Indications and Protected Designations of Origin,

HAS ADOPTED THIS REGULATION:

Article 1

The designation contained in the Annex to this Regulation shall be entered in the register.

Article 2

1. The term 'Karlsbader Oblaten' may be used to designate wafers not complying with the specification for 'Karlovarské trojhránky' for a period of 5 years from the date of entry into force of this Regulation.

2. Trade marks containing the term 'Karlsbader Oblaten' that were protected through registration or acquired by use prior to 19 October 2004, shall not be invalidated nor shall their continued use be hindered by virtue of the registration of 'Karlovarské trojhránky' as a protected geographical indication, provided the general requirements under trade mark legislation are otherwise met.

Article 3

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, 28 July 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX

Foodstuffs referred to in Annex I to Regulation (EC) No 510/2006:

Class 2.4. Bread, pastry, cakes, confectionery, biscuits and other baker's wares

CZECH REPUBLIC

Karlovarské trojhránky (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 746/2011**of 28 July 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 Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 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 XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 29 July 2011.

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

Done at Brussels, 28 July 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 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AR	23,8
	ZZ	23,8
0707 00 05	TR	98,9
	ZZ	98,9
0709 90 70	TR	108,5
	ZZ	108,5
0805 50 10	AR	61,9
	CL	79,0
	TR	60,0
	UY	70,8
	ZA	84,4
	ZZ	71,2
0806 10 10	CL	54,3
	EG	147,3
	MA	161,2
	TN	223,5
	TR	175,1
	ZA	83,5
	ZZ	140,8
0808 10 80	AR	94,3
	BR	81,7
	CL	92,7
	CN	79,1
	NZ	110,7
	US	131,3
	ZA	93,2
	ZZ	97,6
0808 20 50	AR	79,6
	CL	109,2
	CN	75,8
	NZ	148,5
	ZA	108,7
	ZZ	104,4
0809 10 00	TR	174,4
	XS	83,4
	ZZ	128,9
0809 20 95	CL	267,8
	TR	286,4
	ZZ	277,1
0809 30	TR	181,0
	ZZ	181,0
0809 40 05	BA	48,0
	EC	64,7
	XS	57,7
	ZA	70,8
	ZZ	60,3

⁽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 747/2011**of 28 July 2011****on the minimum customs duty to be fixed in response to the second partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 634/2011**

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⁾, and in particular Article 187, in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 634/2011 ⁽²⁾ opened a standing invitation to tender for the 2010/2011 marketing year for imports of sugar of CN code 1701 at a reduced customs duty.
- (2) In accordance with Article 6 of Implementing Regulation (EU) No 634/2011, the Commission is to decide, in the light of the tenders received in response to a partial invitation to tender, either to fix a minimum customs duty or not to fix a minimum customs duty per eight digit CN code.
- (3) On the basis of the tenders received for the second partial invitation to tender, a minimum customs duty should be fixed for certain eight digit codes for sugar falling within CN code 1701 and no minimum

customs duty should be fixed for the other eight digit codes for sugar falling within that CN code.

- (4) In order to give a rapid signal to the market and to ensure efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*.
- (5) 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 second partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 634/2011, in respect of which the time limit for the submission of tenders expired on 27 July 2011, a minimum customs duty has been fixed, or has not been fixed, as set out in the Annex to this Regulation for the eight digit codes for sugar falling within CN code 1701.

Article 2

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

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

Done at Brussels, 28 July 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 170, 30.6.2011, p. 21.

ANNEX

Minimum customs duties

(EUR/tonne)

Eight digit CN code	Minimum customs duty
1	2
1701 11 10	151,05
1701 11 90	170,00
1701 12 10	X
1701 12 90	X
1701 91 00	X
1701 99 10	225,00
1701 99 90	X

(—) no minimum customs duty fixed (all offers rejected)

(X) no offers

DECISIONS

COUNCIL DECISION 2011/478/CFSP

of 28 July 2011

extending the mandate of the European Union Special Representative in Kosovo ⁽¹⁾

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Article 1

Having regard to the Treaty on European Union and, in particular Articles 28, 31(2) and 33 thereof,

Decision 2011/270/CFSP is hereby amended as follows:

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

(1) Article 1 is replaced by the following:

*‘Article 1***European Union Special Representative**

Mr Fernando GENTILINI is hereby appointed as the European Union Special Representative (EUSR) in Kosovo from 1 May 2011 until 30 September 2011. The mandate of the EUSR may be terminated earlier, if the Council so decides, on a proposal of the High Representative of the Union for Foreign Affairs and Security Policy (HR).’;

Whereas:

(2) Article 5(1) is replaced by the following:

‘1. The financial reference amount intended to cover the expenditure related to the mandate of the EUSR in the period from 1 May 2011 to 30 September 2011 shall be EUR 690 000.’.

Article 2

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

Done at Brussels, 28 July 2011.

- (1) On 4 February 2008, the Council adopted Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO ⁽²⁾ and Joint Action 2008/123/CFSP ⁽³⁾ appointing Mr Pieter FEITH as the European Union Special Representative (EUSR) in Kosovo.
- (2) On 5 May 2011, the Council adopted Decision 2011/270/CFSP ⁽⁴⁾ appointing Mr Fernando GENTILINI as the EUSR in Kosovo until 31 July 2011.
- (3) The mandate of the EUSR should be extended until 30 September 2011.
- (4) The EUSR will implement his mandate in the context of a situation which may deteriorate and could harm the objectives of the Union’s external action as set out in Article 21 of the Treaty,

For the Council
The President
M. DOWGIELEWICZ

⁽¹⁾ Under United Nations Security Council Resolution 1244 (1999).

⁽²⁾ OJ L 42, 16.2.2008, p. 92.

⁽³⁾ OJ L 42, 16.2.2008, p. 88.

⁽⁴⁾ OJ L 119, 7.5.2011, p. 12.

COMMISSION DECISION

of 27 July 2011

on the safety requirements to be met by European standards for gymnastic equipment pursuant to Directive 2001/95/EC of the European Parliament and of the Council

(Text with EEA relevance)

(2011/479/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety ⁽¹⁾, and in particular Article 4(1)(a) thereof,

Whereas:

- (1) Directive 2001/95/EC provides for European standards to be established by the European standardisation bodies. Such standards should ensure that products satisfy the general safety requirement of that Directive.
- (2) Under Directive 2001/95/EC, a product is to be presumed safe when it conforms to voluntary national standards transposing the European standards, the references of which have been published by the Commission in the *Official Journal of the European Union*.
- (3) Article 4 of Directive 2001/95/EC lays down the procedure for drawing up the European standards. Under that procedure, the Commission is to determine the specific safety requirements which the European standards should satisfy and, subsequently, on the basis of those requirements, to give mandates to the European standardisation bodies to draw up those standards.
- (4) The Commission is to publish the references of the European standards adopted in that way in the *Official Journal of the European Union*. Under the second subparagraph of Article 4(2) of Directive 2001/95/EC, the references to the European standards which have been adopted by the European standardisation bodies before the entry into force of that Directive may be published in the *Official Journal of the European Union* even in the absence of a Commission mandate, if those standards ensure compliance with the general safety requirement laid down in that Directive.
- (5) By its Decision 2005/718/EC ⁽²⁾ the Commission published the references of seven European standards concerning the safety of gymnastic equipment in the *Official Journal of the European Union*
- (6) The seven European standards on the safety of gymnastic equipment concerned by Decision 2005/718/EC are not supported by a Commission mandate adopted in accordance with Article 4(1) of Directive 2001/95/EC.
- (7) One of those standards, EN 913:1996, has been replaced by a new version, EN 913:2008. This new version was adopted after the entry into force of the Directive 2001/95/EC and its reference cannot, as a consequence, be published in the *Official Journal of the European Union* in the absence of a Commission mandate including specific safety requirements.
- (8) In order to assess the conformity of the new version and of any subsequent versions of the European standards for gymnastic equipment with the general safety requirement of Directive 2001/95/EC, it is necessary to re-establish the procedure laid down in Article 4 of that Directive.
- (9) The Commission should therefore determine specific safety requirements for gymnastic equipment with a view to mandating the European standardisation bodies to develop relevant European standards for gymnastic equipment on the basis of those requirements.
- (10) Once the relevant standards are available, and provided that the Commission decides to publish their references in the *Official Journal of the European Union*, according to the procedure laid down in Article 4(2) of Directive 2001/95/EC, gymnastic equipment is to be presumed to conform to the general safety requirements of that Directive, as far as the safety requirements covered by the standards are concerned.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Committee set up under Article 15 of Directive 2001/95/EC,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of this Decision 'gymnastic equipment' means equipment used for training, exercising or competition purposes, involving group and individual exercise. This equipment either stands on the floor or is fixed to the ceiling or a wall or other fixed structure. It is either permanently installed or able to be moved and modified for use.

⁽¹⁾ OJ L 11, 15.1.2002, p. 4.

⁽²⁾ OJ L 271, 15.10.2005, p. 51.

Article 2

The specific safety requirements for the products referred to in Article 1 to be met by European standards pursuant to Article 4 of Directive 2001/95/EC are set out in the Annex to this Decision.

Article 3

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

Done at Brussels, 27 July 2011.

For the Commission

The President

José Manuel BARROSO

ANNEX

SPECIFIC SAFETY REQUIREMENTS FOR GYMNASTIC EQUIPMENT

Part I

Product and product definition

The gymnastic equipment covered by this mandate is equipment used for training, exercising or competition purposes, involving group and individual exercise. This equipment either stands on the floor or is fixed to the ceiling or a wall or other fixed structure. It is either permanently installed or able to be moved and modified for use.

For some specific gymnastic equipment, general requirements are complemented by additional safety requirements.

Part II

A. General safety requirements

The products shall comply with the general safety requirement referred to in Directive 2001/95/EC and be 'safe' within the meaning of Article 2(b) thereof. In particular, the product shall be safe under normal and reasonable foreseeable conditions of use, including storage, safe transport to the storage space, installation and maintenance, dismantling, and throughout the duration of its use. The product shall be safe also for professional users (e.g. trainers, teachers).

During normal and reasonable foreseeable conditions of use of gymnastic equipment, the risk of injury or damage to health and safety shall be minimised. No parts that are accessible to the user during normal or intended use shall cause physical injuries or affect the health of the user.

A common foreseeable use of these products is to train children (e.g. at school, in sports clubs) who in general have a perception of risk lower than that of adults. Where hazards cannot be sufficiently minimised by design or safeguards, the residual risk should be addressed by product-related information directed at supervisors.

Users shall be informed of the risks and dangers likely to occur and how to prevent them.

B. Specific safety requirements

In application of the general safety requirements referred to in Directive 2001/95/EC, the following shall be taken into account, as a minimum:

- (a) Surface finish;
- (b) Gaps and shearing/crushing/pinching points;
- (c) Unintentional dropping;
- (d) Falling from height;
- (e) Stability and strength;
- (f) Adjustment devices;
- (g) Shock absorption of top padding;
- (h) Marking. More specifically, all gymnastic equipment shall bear the following information:
 - (1) number of the relevant European standard;
 - (2) name, trademark or other means of identification of the manufacturer, retailer or importer;
 - (3) year of production;
 - (4) maximum number of users at a time for which the equipment is intended;
 - (5) instructions for use;
- (i) Entrapment and strangulation;
- (j) Collision;
- (k) Durability;
- (l) Electric shocks;

In addition, the following risks shall be taken into account:

- (a) risks resulting from insufficient load bearing capacity of the equipment, taking into account the strength, stiffness and elasticity of the materials used;
- (b) risks resulting from loss of stability of the equipment, taking into account the support of the equipment and the floor, as well as possible loads on the equipment;
- (c) risks resulting from the use of electrical energy and from operating circuits;
- (d) risks resulting from applied mechanical, or water energy;
- (e) risks resulting from the use of the equipment, including falls, cuts, entrapment, suffocation, collisions and overloading of the body;
- (f) risks resulting from the accessibility of the equipment, including accessibility in case of defects and emergency situations;
- (g) risks resulting from possible interactions of the equipment and occasional bystanders (e.g. public audience);
- (h) risks resulting from insufficient maintenance;
- (i) risks resulting from assembly, disassembly and handling of the equipment;
- (j) risks resulting from exposure to chemical substances.

In application of the general safety requirements referred to in Directive 2001/95/EC, the following tests shall be taken into account, as a minimum:

- (a) Determination of entrapment;
- (b) Mechanical loading for determination of stability and strength;
- (c) Determination of shock absorption of padding;
- (d) Test report.

C. Examples of gymnastic equipment

In application of the general safety requirements referred to in Directive 2001/95/EC, the following list, which is not exhaustive, gives examples of the different kinds of gymnastic equipment:

- (a) Parallel bars and combination asymmetric/parallel bars;
 - (b) Asymmetric bars;
 - (c) Vaulting boxes;
 - (d) Horses and bucks;
 - (e) Horizontal bars;
 - (f) Wall bars, lattice ladders and climbing frames;
 - (g) Balancing beams;
 - (h) Hanging rings;
 - (i) Trampolines;
 - (j) Vaulting tables.
-

COMMISSION IMPLEMENTING DECISION

of 28 July 2011

concerning the list of statistical data on the structure and rates of excise duty applied on manufactured tobacco to be provided by the Member States pursuant to Council Directives 92/79/EEC and 92/80/EEC

*(notified under document C(2011) 5291)**(2011/480/EU)*

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes ⁽¹⁾, and in particular Article 4(3) thereof,

Having regard to Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes ⁽²⁾, and in particular Article 4(3) thereof,

Whereas:

- (1) Directives 92/79/EEC and 92/80/EEC require every 4 years the Commission to submit to the Council a report concerning the rates and the structure of excise duty of manufactured tobacco, taking into account the proper functioning of the internal market, the real value of the rates of excise duty and the wider objectives of the Treaty.
- (2) That report is to be based in particular on the information provided by the Member States relating to all releases for consumption of manufactured tobacco made in each preceding calendar year.
- (3) In order to ensure early and sufficient information needed for the report referred to in Article 4(1) of Directives 92/79/EEC and 92/80/EEC and to enable a more dynamic follow-up of developments, Member States should provide to the Commission the statistical

data on a yearly basis. This data can rely on the data Member States collect for the calculation of the weighted average retail selling price.

- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee on Excise Duty,

HAS ADOPTED THIS DECISION:

Article 1

The Member States shall, for the purposes of Article 4(3) of Directives 92/79/EEC and 92/80/EEC respectively, provide to the Commission the annual statistical data set out in the Annex to this Decision.

The statistical data shall include all releases for consumption of manufactured tobacco made in the preceding calendar year.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 July 2011.

For the Commission

Algirdas ŠEMETA

Member of the Commission

⁽¹⁾ OJ L 316, 31.10.1992, p. 8.

⁽²⁾ OJ L 316, 31.10.1992, p. 10.

ANNEX

Statistical data on the structure and rates of excise duty applied on manufactured tobacco to be provided by the Member States

A. CIGARETTES

Year/period	Weighted average retail selling price (WAP ⁽¹⁾)		Specific excise duty per 1 000 cigarettes		Ad valorem excise duty as a percentage of the TIRSP ⁽²⁾	Overall excise duty (specific duty and/or ad valorem duty excluding VAT) as a percentage of the WAP
	NatCurr	EUR	NatCurr	EUR	%	%

⁽¹⁾ Weighted Average retail selling price.⁽²⁾ Tax inclusive retail selling price.**Quantities released for consumption and total excise duties collected per 1 000 cigarettes per price category**

Price category	Total quantity (in 1 000 pieces) <i>Reference to the preceding calendar year</i>	Total amount of excise duty collected (in 1 000 EUR) <i>Reference to the preceding calendar year</i>
Price category 1		
Price category 2		
Price category 3		
<i>Add all other price categories accordingly</i>		

B. FINE-CUT TOBACCO

Year/period	Weighted average retail selling price (WAP)		Specific excise duty per kilogram		Ad valorem excise duty as a percentage of the TIRSP	Overall excise duty (specific duty and/or ad valorem duty excluding VAT) as a percentage of the WAP, or per kilogram in EUR
	NatCurr	EUR	NatCurr	EUR	%	% or EUR

Quantities in tonnes of fine-cut tobacco released for consumption and total amounts of excise duty collected per price category

Price category	Total quantity (in tonnes) (1)(2) <i>Reference to the preceding calendar year</i>	Total excise duty collected in 1 000 EUR <i>Reference to the preceding calendar year</i>
Price category 1		
Price category 2		

Price category	Total quantity (in tonnes) (1)(2) <i>Reference to the preceding calendar year</i>	Total excise duty collected in 1 000 EUR <i>Reference to the preceding calendar year</i>
Price category 3		
Add all other price categories accordingly		

Notes:

1. Member States which apply a purely specific tax rate on fine-cut tobacco shall only fill in the total quantity, in tonnes, in column two and the total excise duty, in 1 000 EUR, in column three.
2. Member States which can not separate the sums between fine-cut tobacco and other smoking tobacco due to the application of the same excise duty rate for both products shall fill in the relevant total amounts and mention that the sum contains data for both products (i.e. by linking to a footnote).

C. CIGARS AND CIGARILLOS

	Specific excise duty per 1 000 pieces or per kilogram		Ad valorem excise duty as percentage of the TIRSP	Quantities released for consumption per 1 000 pieces or per kilogram	Total amount of excise duty collected in 1 000 EUR
Year/period	NatCurr	EUR	%		1 000 EUR
Cigar and cigarillos					

D. OTHER SMOKING TOBACCO

	Specific excise duty per kilogram		Ad valorem excise duty as percentage of the TIRSP	Quantities released for consumption in tonnes	Total amount of excise duty collected in 1 000 EUR
Year/period	NatCurr	EUR	%		1 000 EUR

COMMISSION IMPLEMENTING DECISION

of 28 July 2011

exempting exploration for oil and gas and exploitation of oil in Denmark, excluding Greenland and the Faroe Islands, from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

(notified under document C(2011) 5312)

(Only the Danish text is authentic)

(Text with EEA relevance)

(2011/481/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽¹⁾, and in particular Article 30(4) and (6),

Having regard to the request submitted by the Kingdom of Denmark by e-mail of 26 May 2011,

Whereas:

I. FACTS

- (1) On 26 May 2011, the Commission received a Danish request pursuant to Article 30(4) of Directive 2004/17/EC, transmitted to the Commission by e-mail.
- (2) The request submitted by the Kingdom of Denmark concerns the exploration for oil and gas and exploitation of oil in Denmark, excluding Greenland and the Faroe Islands. In line with previous Commission Merger Decisions ⁽²⁾, two distinct activities have been described in the request, namely:

(a) exploration for oil and natural gas; and

(b) production of oil.

In accordance with the above-mentioned Commission Decisions, 'production' will for the purposes of this Decision be taken to include also 'development', i.e. the setting up of adequate infrastructure for future

production (oil platforms, pipelines, terminals, etc.). Furthermore, established Commission practice also found that 'the development, production and sales of crude oil' constitutes 'one relevant product market' ⁽³⁾. Thus, for the purposes of this Decision, 'production' will be taken as including both 'development' as well as (first) sale oil.

- (3) 29 companies are participating as licensees or operators in Danish oil and/or gas concessions, with three operators being responsible for the current production of oil and gas. These are Mærsk Olie og Gas A/S ('Mærsk', operates 15 fields), DONG E&P A/S ('Dong', operates 3 fields) and Hess Denmark ApS ('Hess', operates 1 field) ⁽⁴⁾. Furthermore, Wintershall Nordzee B.V. and Altinex Oil Denmark A/S (NORECO), have as operators made discoveries in undeveloped fields with no present production. For reasons of risk-sharing, the normal management of exploration and exploitation activities is by means of joint venture agreements, in which one part is appointed as 'operator' and where the other parties to the joint venture obtain a pro-rata share to any oil and gas produced by the consortium. The non-operating participants have full control over where, when and to whom they sell and they are therefore at the same time partners and competitors of the operators.

- (4) The request is introduced, and thus endorsed, by Konkurrence- og Forbrugerstyrelsen (the Danish Competition and Consumer Authority).

II. LEGAL FRAMEWORK

- (5) Article 30 of Directive 2004/17/EC provides that contracts intended to enable the performance of one of the activities to which Directive 2004/17/EC applies shall not be subject to that Directive if, in the Member State in which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted. Direct exposure to competition is assessed on the basis

⁽¹⁾ OJ L 134, 30.4.2004, p. 1.

⁽²⁾ See in particular Commission Decision 2004/284/EC of 29 September 1999 declaring a concentration compatible with the common market and the EEA Agreement (Case No IV/M.1383 — Exxon/Mobil) and subsequent decisions, inter alia, Commission Decision of 3 May 2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4545 — STATOIL/HYDRO) according to Council Regulation (EEC) No 139/2004.

⁽³⁾ See i.a. Commission Decision of 29 September 1999 declaring a concentration to be compatible with the common market and the EEA Agreement (Case IV/M.1532 — BP Amoco/Arco), point 14 (OJ L 18, 19.1.2001, p. 1).

⁽⁴⁾ The fields mentioned are the producing ones.

of objective criteria, taking account of the specific characteristics of the sector concerned. Access is deemed to be unrestricted if the Member State has implemented and applied the relevant EU legislation opening a given sector or a part of it.

- (6) Since Denmark has implemented and applied Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons⁽⁵⁾, access to the market should be deemed not to be restricted in accordance with the first subparagraph of Article 30(3) of Directive 2004/17/EC. Direct exposure to competition in a particular market should be evaluated on the basis of various criteria, none of which are necessarily decisive.
- (7) For the purposes of assessing whether the relevant operators are subject to direct competition in the markets concerned by this decision, the market share of the main players and the degree of concentration of those markets shall be taken into account. As the conditions vary for the different activities that are concerned by this Decision, a separate assessment shall be undertaken for each activity/market.
- (8) This Decision is without prejudice to the application of the rules on competition.

III. ASSESSMENT

- (9) Each of the two activities that are the subject of this request (exploration for oil and natural gas and production of oil) have been considered to constitute separate product markets in the previous Commission Decisions referred to in recital 2 above. They should therefore be examined separately.

Exploration for oil and natural gas

- (10) According to established Commission practice⁽⁶⁾, exploration for oil and natural gas constitutes one relevant product market, since it is not possible from the outset to determine whether the exploration will result in finding oil or natural gas. It has furthermore been established through the same, long-standing Commission practice that the geographical scope of that market is worldwide. Given that there is no indication that the definition would be different in this case, it will be maintained for the purposes of the present decision.
- (11) The market shares of operators active in exploration can be measured by reference to three variables: the capital expenditure, proven reserves and expected production. The use of capital expenditure to measure the market

shares of operators on the exploration market has been found to be unsuitable, i.a. because of the large differences between the required levels of investments that are necessary in different geographic areas. Thus, larger investments are needed to explore for oil and gas in the North Sea than is the case for exploration in, e.g., the Middle East.

- (12) Two other parameters have typically been applied to assess the market shares of economic operators within this sector, namely, their share of proven reserves and of the expected production⁽⁷⁾.
- (13) As of 31 December 2009, the global, proven oil and gas reserves amounted to a total of 385,58 billion standard cubic metres oil equivalent (in the following Sm³ o.e.) worldwide, according to the available information⁽⁸⁾. As of 31 December 2009, the combined, proven oil and gas reserves in Denmark amounted to slightly more than 0,19 billion Sm³ o.e.⁽⁹⁾, or slightly more than 0,05 %. The share thereof of the individual contracting entities operating in Denmark is obviously even smaller. According to the available information, there is a direct correlation between proven reserves of oil and gas and expected future production. Nothing in the available information therefore indicates that the market share of the individual contracting entities operating in Denmark would be substantially different if measured in terms of expected production rather than in terms of its share of proven reserves. Given the links between proven reserves and actual production these facts can be taken as an indication also of the state of competition on the market concerned here.
- (14) The exploration market is not highly concentrated. Apart from state owned companies, the market is characterised by the presence of three international vertically integrated private players named the super majors (BP, ExxonMobil and Shell) as well as a certain number of so-called 'majors'. These elements are an indication of direct exposure to competition.

Production of oil

- (15) According to established Commission practice⁽¹⁰⁾, development and production of (crude) oil is a separate product market whose geographic scope is worldwide. Given that there is no indication that the definition would be different in this case, it will be maintained for the purposes of the present decision. According to the available information⁽¹¹⁾, the total, daily production of oil worldwide amounted to 79,948 million barrels in

⁽⁵⁾ OJ L 164, 30.6.1994, p. 3 and OJ L 79, 29.3.1996, p. 30.

⁽⁶⁾ See in particular the above-mentioned Exxon/Mobil Decision and, more recently, Commission Decision of 19 November 2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4934 — KAZMUNAIGAZ/ROMPETROL) according to Council Regulation (EEC) No 139/2004.

⁽⁷⁾ See in particular the above-mentioned Exxon/Mobil Decision (paragraphs 25 and 27).

⁽⁸⁾ See point 5.2.1 of the application and the sources quoted there, in particular the BP Statistical Review of World Energy, June 2010, annexed to it; in the following referred to as 'BP Statistics'.

⁽⁹⁾ That is, 0,06 trillion m³ gas, equal to 0,0594 billion Sm³ o.e., and 0,9 thousand million barrels oil equal 0,135 billion Sm³, giving a total of 0,1944 billion Sm³.

⁽¹⁰⁾ See footnote 6.

⁽¹¹⁾ See page 8 of BP Statistics.

2009. That same year, a total of 0,265 million barrels per day were produced in Denmark, giving it a market share of 0,33 %. Looking at the 2009 share of the individual contracting entities operating in Denmark, the situation is as follows: with a worldwide production of 381 thousand ⁽¹²⁾ barrels per day, Mærsk has a share of 0,5 % of oil production worldwide; Dong's worldwide, daily production of 23 thousand barrels of oil gives it a market share amounting to 0,029 % of the global oil production; finally, Hess' total production of 11 575 barrels per day gives it a share of 0,014 % of oil production worldwide.

- (16) For the purposes of this analysis, it is important to have regard to the degree of concentration in the relevant market as a whole. In this view, the Commission notes that the market for crude oil production is characterised by the presence of big state owned companies and three international vertically integrated private players (the so-called super majors: BP, ExxonMobil and Shell whose respective parts of oil production in 2009 amounted to 3,2 %, 3,0 % and 2 %) as well as a certain number of so-called 'majors' ⁽¹³⁾. These factors suggest that the market comprises a number of players between whom effective competition can be presumed.

IV. CONCLUSIONS

- (17) In view of the factors examined in recitals 5 to 16, the condition of direct exposure to competition laid down in Article 30(1) of Directive 2004/17/EC should be considered to be met in the Denmark, excluding Greenland and the Faroe Islands, in respect of the following services:

(a) exploration for oil and natural gas; and

(b) production of oil.

- (18) Since the condition of unrestricted access to the market is deemed to be met, Directive 2004/17/EC should not apply when contracting entities award contracts intended to enable the services listed in points (a) to (b) of recital 17 to be carried out in Denmark, excluding Greenland and the Faroe Islands, nor when design contests are organised for the pursuit of such an activity in that geographic area.

- (19) Generally exploration fields can produce both oil and gas, in different proportions. The production of gas is not subject to this exemption request, and the provisions of Directive 2004/17/EC continue to apply to this sector. In situations where a field produces both oil and gas, it is

recalled that procurement contracts covering several activities shall be treated in accordance with Article 9 of Directive 2004/17/EC. This means that, when a contracting entity is engaged in 'mixed' procurement, to support the performance of both activities (i.e. activities exempted from the application of Directive 2004/17/EC and activities not exempted), regard shall be had to the activities for which the contract is principally intended. In the event of such mixed procurement, where the purpose is principally to support the production of gas, the provision of Directive 2004/17/EC shall apply. If it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the rules referred to in paragraphs 2 and 3 of Article 9 of Directive 2004/17/EC.

- (20) This Decision is based on the legal and factual situation as of May 2011 to July 2011 as it appears from the information submitted by the Danish authorities. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are no longer met.

- (21) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee for Public Contracts,

HAS ADOPTED THIS DECISION:

Article 1

Directive 2004/17/EC shall not apply to contracts awarded by contracting entities and intended to enable the following services to be carried out in Denmark, excluding Greenland and the Faroe Islands:

(a) exploration for oil and natural gas; and

(b) production of oil.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 28 July 2011.

For the Commission

Michel BARNIER

Member of the Commission

⁽¹²⁾ Of which 90 thousand barrels are produced daily in Denmark.

⁽¹³⁾ E.g. Total, Chevron, Eni and Conoco, whose market shares are smaller than those of the super majors.

COMMISSION DECISION

of 28 July 2011

on the publication of references of standard EN 15947 regarding the essential safety requirements set out in Directive 2007/23/EC of the European Parliament and of the Council on pyrotechnic articles

(notified under document C(2011) 5310)

(Text with EEA relevance)

(2011/482/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles⁽¹⁾, and in particular Article 8 thereof,

Having regard to the opinion of the Standing Committee set up by Article 5 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations⁽²⁾,

Whereas:

- (1) On 20 September 2010, the Swedish authorities have raised a formal objection in respect of parts 3, 4 and 5 of standard EN 15947, in particular relating to the requirements for batteries and combinations.
- (2) Standard EN 15947 considers batteries and combinations to be in conformity with the essential safety requirements of Directive 2007/23/EC if they are embedded into soft ground or fixed to a post in order to stay upright during functioning.
- (3) According to the Swedish authorities, standard EN 15947 does not satisfy the essential safety requirements set out in point 3 of Annex I to Directive 2007/23/EC. Batteries and combinations are commonly used on hard ground, such as frozen ground and pavement, asphalt surfaces or concrete. Standard EN 15947 does not provide for a test for those batteries and combinations on hard surface. Therefore, there is a risk that those batteries and combinations will not stay upright during functioning on hard ground. Standard EN 15947 does not satisfy the essential safety requirement on the instructions for use set out in point 3(h) of Annex I to Directive 2007/23/EC. Due to the nature of fireworks, they are often used in late evening or at night when, because of poor visibility, instructions are difficult to read.

(4) Concerns raised by Sweden were addressed in the framework of European Committee for Standardisation (CEN), with several Member States insisting that, in the light of their climatic conditions and national regulations for the use of fireworks, batteries and combinations that are to be embedded in the ground or to be fixed to a post should be included in standard EN 15947. As a result, batteries and combinations that are to be embedded in the ground or have to be fixed to a post were included in that standard as they satisfy essential safety requirements set out in Directive 2007/23/EC when accompanied by the instructions for use.

(5) The Commission considers that in Member States where fireworks are used primarily in public spaces, certain batteries and combinations, despite labelling requiring them to be fixed to a post or embedded in soft ground, are in practice often only placed on hard ground or hard surfaces. In other Member States, where fireworks are primarily being used on private property, the requirement to embed batteries and combinations into soft ground or to fix them to a post actually increases safety. Therefore, in order to protect users and bystanders from injuries, it is necessary to revise the relevant parts of standard EN 15947 in order to introduce different types of batteries and combinations and take account of the distinctions between them. A distinction should be made between batteries and combinations that are intended and suitable to be placed on a hard flat surface and have to be tested in that manner, and those batteries and combinations that must be embedded in soft ground or attached to a post and tested in that manner. Batteries and combinations which are neither intended and suitable to be placed on a hard flat surface, nor embedded in soft ground or attached to a post should be included in a third, additional type.

(6) As a result of the need to revise parts 3, 4 and 5 of standard EN 15947 with regard to batteries and combinations, reference to those parts should be published in the *Official Journal of the European Union* with an additional notice.

(7) On 27 September 2010, the French authorities have raised a formal objection in respect of parts 3, 4 and 5 of standard EN 15947, relating to the absence of a drop test and to failure to set different safety distances for operators and for the public.

⁽¹⁾ OJ L 154, 14.6.2007, p. 1.

⁽²⁾ OJ L 204, 21.7.1998, p. 37.

- (8) Following discussion in the framework of CEN it was decided not to include the drop test in the standard as proposed by France. Mechanical conditioning according to the descriptions in standard EN 15947 had already been part of the previous standard series EN 14035 and has been very well established in the past. This test method covers the requirements regarding sensitivity to normal, foreseeable handling and transportation set out in Directive 2007/23/EC.
- (9) The Commission considers that the mechanical conditioning test already contained in EN 15947 sufficiently covers the requirements regarding sensitivity to normal, foreseeable handling and transportation set out in Directive 2007/23/EC.
- (10) France also expressed concern that the safety distances set in part 3 of the standard EN 15947 do not protect the public in every case, but only protect the firer. For example, if products are fired in the vicinity of tall buildings, there is a risk of damaging the exterior of these buildings or injure persons on balconies or terraces. France has therefore proposed to determine the safety distances of each pyrotechnic article by taking into account its maximum vertical range.
- (11) CEN discussions regarding safety distances clearly revealed that it was necessary to have the same safety distance for each article within a certain category. A deviation from this principle entailed significant risks, as the user without specialist knowledge would have to adjust the safety distance prior to use.
- (12) The Commission considers that too many differing safety distances for pyrotechnic articles of the same category, especially different ones for users without specialist knowledge and their public, will confuse users. Therefore it is not necessary to revise parts 3, 4 and 5 of the standard EN 15947 in this regard, as it already satisfies the essential safety requirements set out in Directive 2007/23/EC,

HAS ADOPTED THIS DECISION:

Article 1

The references of parts 3, 4 and 5 of standard EN 15947 shall be published in the *Official Journal of the European Union*.

Article 2

1. The publication in the *Official Journal of the European Union* of references of parts 3, 4 and 5 of standard EN 15947 shall be accompanied by the following additional notice:

'Until that standard is reviewed and republished, Member States shall consider batteries and combinations which comply with standard EN 15947 to be in conformity with the essential safety requirements set out in Annex I to Directive 2007/23/EC of the European Parliament and of the Council only if, before being placed on the market, they have been clearly labelled as indicated below.

For batteries and combinations to be placed on flat ground:

"Place battery on flat ground" or "Place combination on flat ground".

For batteries and combinations to be embedded into soft ground or material:

"Insert battery upright in soft ground or other non-flammable material, e.g. sand" or "Insert combination upright in soft ground or other non-flammable material, e.g. sand".

For batteries and combinations to be fixed to a post:

"Fix battery firmly and upright to a solid post", "Ensure top of battery clears post" or "Fix combination firmly and upright to a solid post", "Ensure top of combination clears post". The method and means for fixing the battery or combination to a post shall be described in sufficient detail and in terminology which can be easily understood by non-professional users in accompanying instructions for use.

For other batteries and combinations: [specify other safety precautions if not intended and suitable to be placed on flat ground, or to be embedded into soft ground or material or attached to a post].

2. The publication of the reference number of a national standard transposing standard EN 15947 shall be accompanied by the notice referred to in paragraph 1.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 28 July 2011.

For the Commission

Antonio TAJANI

Vice-President

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