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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 904/2010

of 7 October 2010

on administrative cooperation and combating fraud in the field of value added tax

(recast)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax ⁽³⁾ has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) The instruments to combat fraud in the field of value added tax (hereinafter 'VAT') in Regulation (EC) No 1798/2003 should be improved and supplemented subsequent to the Council Conclusions of 7 October 2008; the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a coordinated strategy to improve the fight against VAT fraud in the European Union; and the Report from the Commission to the Council and the European Parliament on the appli-

cation of Council Regulation (EC) No 1798/2003 concerning administrative cooperation in the field of VAT (hereinafter the 'Commission's report'). Editorial and practical clarifications of the provisions of Regulation (EC) No 1798/2003 are also required.

(3) Tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation. They are also liable to bring about distortions of capital movements and of the conditions of competition. They thus affect the operation of the internal market.

(4) Combating VAT evasion calls for close cooperation between the competent authorities in each Member State responsible for the application of the provisions in that field.

(5) The tax harmonisation measures taken to complete the internal market should include the establishment of a common system for cooperation between the Member States, in particular as concerns exchange of information, whereby the Member States' competent authorities are to assist each other and to cooperate with the Commission in order to ensure the proper application of VAT on supplies of goods and services, intra-Community acquisition of goods and importation of goods.

(6) Administrative cooperation should not lead to an undue shift of administrative burdens between Member States.

(7) For the purposes of collecting the tax owed, Member States should cooperate to help ensure that VAT is correctly assessed. They must therefore not only monitor the correct application of tax owed in their own territory, but should also provide assistance to other Member States for ensuring the correct application of tax relating to activity carried out on their own territory but owed in another Member State.

⁽¹⁾ Opinion of 5 May 2010 (not yet published in the Official Journal).

⁽²⁾ Opinion of 17 February 2010 (not yet published in the Official Journal).

⁽³⁾ OJ L 264, 15.10.2003, p. 1.

- (8) Monitoring the correct application of VAT on cross-border transactions taxable in a Member State other than that where the supplier is established depends in many cases on information which is held by the Member State of establishment or which can be much more easily obtained by that Member State. Effective supervision of such transactions is therefore dependent on the Member State of establishment collecting, or being in a position to collect, that information.
- (9) In order to establish the one-stop shop scheme provided for by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁽¹⁾, and to apply the refund procedure for taxable persons not established in the Member State of refund provided for in Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State⁽²⁾, rules on the exchange and storage of information by Member States are required.
- (10) In cross-border situations, it is important to specify the obligations of each Member State so that the tax can be effectively monitored in the Member State in which it is owed.
- (11) Electronic storage and transmission of certain data for VAT control purposes are indispensable for the proper functioning of the VAT system. They allow for rapid information exchange and automated access to information, which strengthen the fight against fraud. That can be achieved by enhancing the databases on VAT-taxable persons and their intra-Community transactions through the inclusion in those databases of a range of information on the taxable persons and their transactions.
- (12) The Member States should implement proper verification procedures to ensure that the information is up-to-date, comparable and of good quality, thereby increasing its reliability. The conditions for the exchange of, and the automated access of Member States to, electronically stored data should be clearly defined.
- (13) In order to fight fraud effectively, it is necessary to provide for information exchange without prior request. To facilitate the exchange of information, the categories for which an automatic exchange needs to be established should be specified.
- (14) As indicated in the Commission's report, feedback is an appropriate means to ensure continual improvement of the quality of the information exchanged. A framework for the provision of feedback should therefore be put in place.
- (15) For the effective monitoring of VAT on cross-border transactions, it is necessary to provide for the possibility of simultaneous controls by Member States and of the presence of officials of one Member State in the territory of another Member State, within the framework of administrative cooperation.
- (16) Online confirmation of the validity of VAT identification numbers is a tool which is increasingly used by operators. The system for confirming the validity of VAT identification numbers should provide automated confirmation of the relevant information to operators.
- (17) Some taxable persons are subject to specific obligations which are different from those in force in the Member State in which they are established, particularly as regards invoicing, when they supply goods or services to customers established on the territory of another Member State. A mechanism should be established to make information on such obligations readily available for those taxable persons.
- (18) Recent practical experience of the application of Regulation (EC) No 1798/2003 in the fight against carousel fraud has shown that in some cases it is essential to establish a much faster mechanism for the exchange of information, covering much more, and better targeted, information in order to combat fraud effectively. In accordance with the Council Conclusions of 7 October 2008, a decentralised network without legal personality, to be called Eurofisc, should be established within the framework of this Regulation for all the Member States, to promote and facilitate multilateral and decentralised cooperation permitting targeted and swift action to combat specific types of fraud.
- (19) The Member State of consumption has primary responsibility for assuring that non-established suppliers comply with their obligations. To this end, the application of the temporary special scheme for electronically supplied services that is provided for in Chapter 6 of Title XII of Directive 2006/112/EC requires the definition of rules concerning the provision of information and transfer of money between the Member State of identification and the Member State of consumption.
- (20) Information obtained by a Member State from third countries may be very useful to other Member States. Likewise information obtained by a Member State from other Member States may be very useful to third countries. The conditions for the exchange of such information should therefore be specified.
- (21) National rules on banking secrecy should not stand in the way of the application of this Regulation.
- (22) This Regulation should not affect other measures adopted at Union level which contribute to combating VAT fraud.
- (23) In the interests of effectiveness and speed and on grounds of cost, it is essential that the information communicated under this Regulation should be provided by electronic means wherever possible.

(1) OJ L 347, 11.12.2006, p. 1.

(2) OJ L 44, 20.2.2008, p. 23.

- (24) In view of the repetitive nature of certain requests and the linguistic diversity within the Union, it is important to enhance the use of standard forms in the exchange of information so that information requests can be more rapidly processed.
- (25) The time limits laid down in this Regulation for the provision of information are to be understood as maximum periods not to be exceeded, the principle being that, in order for cooperation to be effective, information already available to the requested Member State should be provided without further delay.
- (26) For the purposes of this Regulation, it is appropriate to consider limitations of certain rights and obligations laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ in order to safeguard the interests referred to in Article 13(1)(e) of that Directive. Such limitations are necessary and proportionate in view of the potential loss of revenue for Member States and the crucial importance of information covered by this Regulation for the effectiveness of the fight against fraud.
- (27) As the measures necessary to implement this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾, they must be adopted in conformity with the regulatory procedure provided for in Article 5 of that Decision,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

1. This Regulation lays down the conditions under which the competent authorities in the Member States responsible for the application of the laws on VAT are to cooperate with each other and with the Commission to ensure compliance with those laws.

To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange with each other any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-Community transactions, and combat VAT fraud. In particular, it lays down rules and procedures for Member States to collect and exchange such information by electronic means.

2. This Regulation lays down the conditions under which the authorities referred to in paragraph 1 are to assist in the protection of VAT revenue in all the Member States.

3. This Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters.

4. This Regulation also lays down rules and procedures for the exchange by electronic means of VAT information on services supplied electronically in accordance with the special scheme provided for in Chapter 6 of Title XII of Directive 2006/112/EC and also for any subsequent exchange of information and, as far as services covered by that special scheme are concerned, for the transfer of money between Member States' competent authorities.

Article 2

1. For the purposes of this Regulation, the following definitions shall apply:

- (a) 'central liaison office' means the office which has been designated pursuant to Article 4(1) with principal responsibility for contacts with other Member States in the field of administrative cooperation;
- (b) 'liaison department' means any office other than the central liaison office which has been designated as such by the competent authority pursuant to Article 4(2) to exchange directly information on the basis of this Regulation;
- (c) 'competent official' means any official who can directly exchange information on the basis of this Regulation for which he has been authorised pursuant to Article 4(3);
- (d) 'requesting authority' means the central liaison office, a liaison department or any competent official of a Member State who makes a request for assistance on behalf of the competent authority;
- (e) 'requested authority' means the central liaison office, a liaison department or any competent official of Member State who receives a request for assistance on behalf of the competent authority;
- (f) 'intra-Community transactions' means the intra-Community supply of goods or services;
- (g) 'intra-Community supply of goods' means any supply of goods which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;
- (h) 'intra-Community supply of services' means any supply of services which must be declared in the recapitulative statement provided for in Article 262 of Directive 2006/112/EC;
- (i) 'intra-Community acquisition of goods' means the acquisition of the right pursuant to Article 20 of Directive 2006/112/EC to dispose as owner of moveable tangible property;
- (j) 'VAT identification number' means the number provided for in Articles 214, 215 and 216 of Directive 2006/112/EC;
- (k) 'administrative enquiry' means all the controls, checks and other action taken by Member States in the performance of their duties with a view to ensuring proper application of VAT legislation;

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

- (l) 'automatic exchange' means the systematic communication of predefined information to another Member State, without prior request;
- (m) 'spontaneous exchange' means the non-systematic communication, at any moment and without prior request, of information to another Member State;
- (n) 'person' means:
- (i) a natural person;
 - (ii) a legal person;
 - (iii) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person; or
 - (iv) any other legal arrangement of whatever nature and form, which has legal personality or not, and conducts transactions which are subject to VAT;
- (o) 'automated access' means the possibility of access without delay to an electronic system in order to consult certain information contained therein;
- (p) 'by electronic means' means using electronic equipment for the processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;
- (q) 'CCN/CSI network' means the common platform based on the common communication network (hereinafter the 'CCN') and common system interface (hereinafter the 'CSI'), developed by the Union to ensure all transmissions by electronic means between competent authorities in the area of customs and taxation;
- (r) 'simultaneous control' means coordinated checks on the tax situation of a taxable person or related taxable persons, organised by two or more participating Member States with common or complementary interests.

2. From 1 January 2015, the definitions contained in Articles 358, 358a and 369a of Directive 2006/112/EC shall also apply for the purposes of this Regulation.

Article 3

The competent authorities are the authorities in whose name this Regulation is to be applied, whether directly or by delegation.

Each Member State shall inform the Commission by 1 December 2010 of its competent authority for the purposes of this Regulation and shall subsequently inform the Commission without delay about any change thereof.

The Commission shall make available to the Member States a list of all competent authorities and publish this information in the *Official Journal of the European Union*.

Article 4

1. Each Member State shall designate a single central liaison office to which principal responsibility shall be delegated for contacts with other Member States in the field of administrative

cooperation. It shall inform the Commission and the other Member States thereof. The central liaison office may also be designated as responsible for contacts with the Commission.

2. The competent authority of each Member State may designate liaison departments. The central liaison office shall be responsible for keeping the list of those departments up-to-date and making it available to the central liaison offices of the other Member States concerned.

3. The competent authority of each Member State may in addition designate, under the conditions laid down by it, competent officials who can directly exchange information on the basis of this Regulation. When it does so, it may limit the scope of such designation. The central liaison office shall be responsible for keeping the list of those officials up-to-date and making it available to the central liaison offices of the other Member States concerned.

4. The officials exchanging information pursuant to Articles 28, 29 and 30 shall in any case be deemed to be competent officials for this purpose, in accordance with conditions laid down by the competent authorities.

Article 5

Where a liaison department or a competent official sends or receives a request or a reply to a request for assistance, it shall inform the central liaison office of its Member State under the conditions laid down by the latter.

Article 6

Where a liaison department or a competent official receives a request for assistance requiring action outside its territorial or operational area, it shall forward such request without delay to the central liaison office of its Member State and inform the requesting authority thereof. In such a case, the period laid down in Article 10 shall start the day after the request for assistance has been forwarded to the central liaison office.

CHAPTER II

EXCHANGE OF INFORMATION ON REQUEST

SECTION 1

Request for information and for administrative enquiries

Article 7

1. At the request of the requesting authority, the requested authority shall communicate the information referred to in Article 1, including any information relating to a specific case or cases.

2. For the purpose of forwarding the information referred to in paragraph 1, the requested authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information.

3. Until 31 December 2014, the request referred to in paragraph 1 may contain a reasoned request for an administrative enquiry. If the requested authority takes the view that the administrative enquiry is not necessary, it shall immediately inform the requesting authority of the reasons thereof.

4. As from 1 January 2015, the request referred to in paragraph 1 may contain a reasoned request for a specific administrative enquiry. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

Notwithstanding the first subparagraph, an enquiry into the amounts declared by a taxable person in connection with the supplies of goods or services listed in Annex I, which are made by a taxable person established in the Member State of the requested authority and are taxable in the Member State of the requesting authority, may be refused solely:

- (a) on the grounds provided for in Article 54(1), assessed by the requested authority in conformity with a statement of best practices concerning the interaction of this paragraph and Article 54(1), to be adopted in accordance with the procedure provided for in Article 58(2);
- (b) on the grounds provided for in paragraphs 2, 3 and 4 of Article 54; or
- (c) on the grounds that the requested authority had already supplied the requesting authority with information on the same taxable person as a result of an administrative enquiry held less than two years previously.

Where the requested authority refuses an administrative enquiry referred to in the second subparagraph on the grounds set out in points (a) or (b), it shall nevertheless provide to the requesting authority the dates and values of any relevant supplies made by the taxable person in the Member State of the requesting authority over the previous two years.

5. In order to obtain the information sought or to conduct the administrative enquiry requested, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.

Article 8

Requests for information and for administrative enquiries pursuant to Article 7 shall be sent using a standard form adopted in accordance with the procedure provided for in Article 58(2), except in the cases referred to in Article 50 or in exceptional cases where the request includes the reasons for which the requesting authority considers the standard form not to be appropriate.

Article 9

1. At the request of the requesting authority, the requested authority shall communicate to it any pertinent information it obtains or has in its possession as well as the results of administrative enquiries, in the form of reports, statements and any other documents, or certified true copies or extracts thereof.

2. Original documents shall be provided only where this is not contrary to the provisions in force in the Member State in which the requested authority is established.

SECTION 2

Time limit for providing information

Article 10

The requested authority shall provide the information referred to in Articles 7 and 9 as quickly as possible and no later than three months following the date of receipt of the request.

However, where the requested authority is already in possession of that information, the time limit shall be reduced to a maximum period of one month.

Article 11

In certain special categories of cases, time limits which are different from those provided for in Article 10 may be agreed between the requested and the requesting authorities.

Article 12

Where the requested authority is unable to respond to the request by the deadline, it shall inform the requesting authority in writing forthwith of the reasons for its failure to do so, and when it considers it would be likely to be able to respond.

CHAPTER III

EXCHANGE OF INFORMATION WITHOUT PRIOR REQUEST

Article 13

1. The competent authority of each Member State shall, without prior request, forward the information referred to in Article 1 to the competent authority of any other Member State concerned, in the following cases:

- (a) where taxation is deemed to take place in the Member State of destination and the information provided by the Member State of origin is necessary for the effectiveness of the control system of the Member State of destination;
- (b) where a Member State has grounds to believe that a breach of VAT legislation has been committed or is likely to have been committed in the other Member State;
- (c) where there is a risk of tax loss in the other Member State.

2. The exchange of information without prior request shall either be automatic, in accordance with Article 14, or spontaneous, in accordance with Article 15.

3. The information shall be forwarded by means of standard forms adopted in accordance with the procedure provided for in Article 58(2).

Article 14

1. The following shall be determined in accordance with the procedure provided for in Article 58(2):

- (a) the exact categories of information subject to automatic exchange;
- (b) the frequency of the automatic exchange for each category of information; and
- (c) the practical arrangements for the automatic exchange of information.

A Member State may abstain from taking part in the automatic exchange of information with respect to one or more categories where the collection of information for such exchange would require the imposition of new obligations on persons liable for VAT or would impose a disproportionate administrative burden on the Member State.

The results of the automatic exchange of information for each category shall be reviewed once a year by the Committee referred to in Article 58(1), so as to ensure that this type of exchange takes place only where it is the most efficient means for the exchange of information.

2. As from 1 January 2015, the competent authority of each Member State shall, in particular, exchange information automatically in order to enable Member States of consumption to ascertain whether taxable persons not established in their territory declare and correctly pay the VAT due with regard to telecommunication services, broadcasting services and electronically supplied services, regardless of whether those taxable persons make use of the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC. The Member State of establishment shall inform the Member State of consumption of any discrepancies of which it becomes aware.

Article 15

The competent authorities of the Member States shall, by spontaneous exchange, forward to the competent authorities of the other Member States any information referred to in Article 13(1) which has not been forwarded under the automatic exchange referred to in Article 14 of which they are aware and which they consider may be useful to those competent authorities.

CHAPTER IV

FEEDBACK

Article 16

Where a competent authority provides information pursuant to Article 7 or 15, it may request the competent authority which receives the information to give feedback thereon. If such request is made, the competent authority which receives the information shall, without prejudice to the rules on tax secrecy and data protection applicable in its Member State, send feedback as soon as possible, provided that this does not impose a disproportionate administrative burden on it. Practical arrangements shall be determined in accordance with the procedure provided for in Article 58(2).

CHAPTER V

STORAGE AND EXCHANGE OF SPECIFIC INFORMATION

Article 17

1. Each Member State shall store in an electronic system the following information:

- (a) information which it collects pursuant to Chapter 6 of Title XI of Directive 2006/112/EC;
- (b) data on the identity, activity, legal form and address of persons to whom it has issued a VAT identification

number, collected pursuant to Article 213 of Directive 2006/112/EC, as well as the date on which that number was issued;

- (c) data on VAT identification numbers it has issued which have become invalid, and the dates on which those numbers became invalid; and
- (d) information which it collects pursuant to Articles 360, 361, 364 and 365 of Directive 2006/112/EC as well as, from 1 January 2015, information which it collects pursuant to Articles 369c, 369f and 369g of that Directive.

2. The technical details concerning the automated enquiry of the information referred to in points (b), (c) and (d) of paragraph 1 shall be adopted in accordance with the procedure provided for in Article 58(2).

Article 18

To enable the information referred to in Article 17 to be used in the procedures provided for in this Regulation, that information shall be available for at least five years from the end of the first calendar year in which access to the information is to be granted.

Article 19

Member States shall ensure that the information available in the electronic system referred to in Article 17 is kept up-to-date, and is complete and accurate.

Criteria shall be defined, in accordance with the procedure provided for in Article 58(2), to determine which changes are not pertinent, essential or useful and therefore need not be made.

Article 20

1. The information referred to in Article 17 shall be entered into the electronic system without delay.

2. By way of derogation from paragraph 1, the information referred to in Article 17(1)(a) shall be entered into the electronic system no later than one month after the end of the period to which that information relates.

3. By way of derogation from paragraphs 1 and 2, where information is to be corrected in, or added to, the electronic system pursuant to Article 19, the information must be entered no later than one month after the period in which it was collected.

Article 21

1. Every Member State shall grant the competent authority of any other Member State automated access to the information stored pursuant to Article 17.

2. With respect to the information referred to in Article 17(1)(a), at least the following details shall be accessible:

- (a) VAT identification numbers issued by the Member State receiving the information;
- (b) the total value of all intra-Community supplies of goods and the total value of all intra-Community supplies of services to persons holding a VAT identification number referred to in point (a) by all operators identified for the purposes of VAT in the Member State providing the information;

- (c) the VAT identification numbers of the persons who carried out the supplies of goods and services referred to in point (b);
- (d) the total value of the supplies of goods and services referred to in point (b) from each person referred to in point (c) to each person holding a VAT identification number referred to in point (a);
- (e) the total value of the supplies of goods and services referred to in point (b) from each person referred to in point (c) to each person holding a VAT identification number issued by another Member State under the following conditions:
- (i) access is in connection with an investigation into suspected fraud;
 - (ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information; and
 - (iii) access is only granted during general working hours.

The values referred to in points (b), (d) and (e) shall be expressed in the currency of the Member State providing the information and shall relate to the periods for submission of the recapitulative statements specific to each taxable person which are established in accordance with Article 263 of Directive 2006/112/EC.

Article 22

1. In order to provide a reasonable level of assurance to tax administrations with regard to the quality and reliability of the information available through the electronic system referred to in Article 17, Member States shall adopt the measures necessary to ensure that the data provided by taxable persons and non-taxable legal persons for their identification for VAT purposes in accordance with Article 214 of Directive 2006/112/EC, are, in their assessment, complete and accurate.

Member States shall implement procedures for checking these data as determined by the results of their risk assessment. The checks shall be carried out, in principle, prior to identification for VAT purposes or, where only preliminary checks are conducted before such identification, no later than six months from such identification.

2. The Member States shall inform the Committee referred to in Article 58(1) of the measures implemented at national level to ensure the quality and reliability of the information in accordance with paragraph 1.

Article 23

Member States shall ensure that the VAT identification number, referred to in Article 214 of Directive 2006/112/EC, is shown

as invalid in the electronic system referred to in Article 17 of this Regulation at least in the following situations:

- (a) where persons identified for VAT purposes have stated that their economic activity, as defined in Article 9 of Directive 2006/112/EC, has ceased or where the competent tax administration considers that they have ceased such activity. A tax administration may presume in particular that a person has ceased economic activity when, despite being required to do so, that person has failed to submit VAT returns and recapitulative statements for a year after expiry of the deadline for submission of the first return or statement missed. The person shall have the right to prove the existence of an economic activity by other means;
- (b) where persons have declared false data in order to obtain VAT identification or have failed to communicate changes to their data and, had the tax administration known, the latter would have refused identification for VAT purposes or withdrawn the VAT identification number.

Article 24

Where, for the purposes of Articles 17 to 21, the competent authorities of the Member States exchange information by electronic means, they shall take all measures necessary to ensure compliance with Article 55.

Member States shall be responsible for all necessary developments to their systems to permit the exchange of that information using the CCN/CSI network.

CHAPTER VI

REQUEST FOR ADMINISTRATIVE NOTIFICATION

Article 25

The requested authority shall, at the request of the requesting authority and in accordance with the rules governing the notification of similar instruments in the Member State in which the requested authority is established, notify the addressee of all instruments and decisions which emanate from the competent authorities and concern the application of VAT legislation in the territory of the Member State in which the requesting authority is established.

Article 26

Requests for notification, mentioning the subject of the instrument or decision to be notified, shall indicate the name, address and any other relevant information for identifying the addressee.

Article 27

The requested authority shall inform the requesting authority immediately of its response to the request for notification and notify it, in particular, of the date of notification of the decision or instrument to the addressee.

CHAPTER VII

PRESENCE IN ADMINISTRATIVE OFFICES AND PARTICIPATION IN ADMINISTRATIVE ENQUIRIES*Article 28*

1. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 1, be present in the offices of the administrative authorities of the requested Member State, or any other place where those authorities carry out their duties. Where the requested information is contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies thereof.

2. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 1, be present during the administrative enquiries carried out in the territory of the requested Member State. Such administrative enquiries shall be carried out exclusively by the officials of the requested authority. The officials of the requesting authority shall not exercise the powers of inspection conferred on officials of the requested authority. They may, however, have access to the same premises and documents as the latter, through the intermediation of the officials of the requested authority and for the sole purpose of carrying out the administrative enquiry.

3. The officials of the requesting authority present in another Member State in accordance with paragraphs 1 and 2 must at all times be able to produce written authority stating their identity and their official capacity.

CHAPTER VIII

SIMULTANEOUS CONTROLS*Article 29*

Member States may agree to conduct simultaneous controls whenever they consider such controls to be more effective than controls carried out by only one Member State.

Article 30

1. A Member State shall identify independently the taxable persons which it intends to propose for a simultaneous control. The competent authority of that Member State shall notify the competent authority of the other Member States concerned of the cases proposed for a simultaneous control. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the period of time during which such controls should be conducted.

2. The competent authority of the Member State that receives the proposal for a simultaneous control shall confirm its agreement or communicate its reasoned refusal to its counterpart authority, in principle within two weeks of receipt of the proposal, but within a month at the latest.

3. Each competent authority of the Member States concerned shall appoint a representative to be responsible for supervising and coordinating the control operation.

CHAPTER IX

PROVIDING INFORMATION TO TAXABLE PERSONS*Article 31*

1. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services and non-established taxable persons supplying telecommunication services, broadcasting services and electronically supplied services, in particular those referred to in Annex II to Directive 2006/112/EC, are allowed to obtain, for the purposes of such transactions, confirmation by electronic means of the validity of the VAT identification number of any specified person as well as the associated name and address. This information shall correspond to the data referred to in Article 17.

2. Each Member State shall provide confirmation by electronic means of the name and address of the person to whom the VAT identification number has been issued in accordance with its national data protection rules.

3. During the period provided for in Article 357 of Directive 2006/112/EC, paragraph 1 of this Article shall not apply to non-established taxable persons supplying telecommunication services and radio and television broadcasting services.

Article 32

1. The Commission shall, on the basis of the information provided by the Member States, publish on its website the details of the provisions approved by each Member State which transpose Chapter 3 of Title XI of Directive 2006/112/EC.

2. The details and format of the information to be submitted shall be decided in accordance with the procedure provided for in Article 58(2).

CHAPTER X

EUROFISC*Article 33*

1. In order to promote and facilitate multilateral cooperation in the fight against VAT fraud, this Chapter establishes a network for the swift exchange of targeted information between Member States hereinafter called 'Eurofisc'.

2. Within the framework of Eurofisc, Member States shall:

- (a) establish a multilateral early warning mechanism for combating VAT fraud;
- (b) coordinate the swift multilateral exchange of targeted information in the subject areas in which Eurofisc will operate (hereinafter 'Eurofisc working fields');
- (c) coordinate the work of the Eurofisc liaison officials of the participating Member States in acting on warnings received.

Article 34

1. Member States shall participate in the Eurofisc working fields of their choice and may also decide to terminate their participation therein.

2. Member States having chosen to take part in a Eurofisc working field shall actively participate in the multilateral exchange of targeted information between all participating Member States.

3. Information exchanged shall be confidential, as provided for in Article 55.

Article 35

The Commission shall provide Eurofisc with technical and logistical support. The Commission shall not have access to the information referred to in Article 1, which may be exchanged over Eurofisc.

Article 36

1. The competent authorities of each Member State shall designate at least one Eurofisc liaison official. Eurofisc liaison officials shall be competent officials within the meaning of Article 2(1)(c) and shall carry out the activities referred to in Article 33(2). They shall remain answerable only to their national administrations.

2. The liaison officials of the Member States participating in a particular Eurofisc working field (hereinafter 'participating Eurofisc liaison officials') shall designate a coordinator (hereinafter 'Eurofisc working field coordinator'), among the participating Eurofisc liaison officials, for a limited period of time. Eurofisc working field coordinators shall:

- (a) collate the information received from the participating Eurofisc liaison officials and make all information available to the other participating Eurofisc liaison officials. The information shall be exchanged by electronic means;
- (b) ensure that the information received from the participating Eurofisc liaison officials is processed, as agreed by the participants in the working field, and make the result available to the participating Eurofisc liaison officials;
- (c) provide feedback to the participating Eurofisc liaison officials.

Article 37

Eurofisc working field coordinators shall submit an annual report of the activities of all working fields to the Committee referred to in Article 58(1).

CHAPTER XI

PROVISIONS CONCERNING THE SPECIAL SCHEMES IN CHAPTER 6 OF TITLE XII OF DIRECTIVE 2006/112/EC

SECTION 1

Provisions applicable until 31 December 2014*Article 38*

The following provisions shall apply concerning the special scheme provided for in Chapter 6 of Title XII of Directive 2006/112/EC. The definitions contained in Article 358 of that Directive shall also apply for the purpose of this Chapter.

Article 39

1. The information provided by the taxable person not established in the Community to the Member State of identification, when his activities commence pursuant to Article 361 of Directive 2006/112/EC, shall be submitted by electronic means. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

2. The Member State of identification shall transmit this information by electronic means to the competent authorities of the other Member States within 10 days from the end of the month during which the information was received from the non-established taxable person. In the same manner the competent authorities of the other Member States shall be informed of the allocated identification number. The technical details, including a common electronic message, by which this information is to be transmitted, shall be determined in accordance with the procedure provided for in Article 58(2).

3. The Member State of identification shall without delay inform by electronic means the competent authorities of the other Member States if a non-established taxable person is excluded from the identification register.

Article 40

1. The return with the details set out in Article 365 of Directive 2006/112/EC is to be submitted by electronic means. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

2. The Member State of identification shall transmit this information by electronic means to the competent authority of the Member State concerned at the latest 10 days after the end of the month during which the return was received. Member States which have required the tax return to be made in a national currency other than euro, shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The technical details by which this information is to be transmitted shall be determined in accordance with the procedure provided for in Article 58(2).

3. The Member State of identification shall transmit by electronic means to the Member State of consumption the information needed to link each payment with a relevant quarterly tax return.

Article 41

1. The Member State of identification shall ensure that the amount the non-established taxable person has paid is transferred to the bank account denominated in euro which has been designated by the Member State of consumption to which the payment is due. Member States which required the payments in a national currency other than euro shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The transfer shall take place at the latest 10 days after the end of the month during which the payment was received.

2. If the non-established taxable person does not pay the total tax due, the Member State of identification shall ensure that the payment is transferred to the Member States of consumption in proportion to the tax due in each Member State. The Member State of identification shall inform by electronic means the competent authorities of the Member States of consumption thereof.

Article 42

Member States shall notify by electronic means the competent authorities of the other Member States of the relevant bank account numbers for receiving payments according to Article 41.

Member States shall without delay notify by electronic means the competent authorities of the other Member States and the Commission of changes in the standard tax rate.

SECTION 2

Provisions applicable from 1 January 2015

Article 43

The following provisions shall apply concerning the special schemes provided for in Chapter 6 of Title XII of Directive 2006/112/EC.

Article 44

1. The information provided by the taxable person not established in the Community to the Member State of identification when his activities commence pursuant to Article 361 of Directive 2006/112/EC shall be submitted by electronic means. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

2. The Member State of identification shall transmit the information referred to in paragraph 1 by electronic means to the competent authorities of the other Member States within 10 days from the end of the month during which the information was received from the taxable person not established within the Community. Similar details for the identification of the taxable person applying the special scheme pursuant to Article 369b of

Directive 2006/112/EC shall be transmitted within 10 days from the end of the month during which the taxable person stated that his taxable activities under that scheme commenced. In the same manner the competent authorities of the other Member States shall be informed of the allocated identification number.

The technical details, including a common electronic message, by which this information is to be transmitted, shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

3. The Member State of identification shall without delay inform by electronic means the competent authorities of the other Member States if a taxable person not established in the Community or a taxable person not established in the Member State of consumption is excluded from the special scheme.

Article 45

1. The return with the details set out in Articles 365 and 369g of Directive 2006/112/EC is to be submitted by electronic means. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

2. The Member State of identification shall transmit this information by electronic means to the competent authority of the Member State of consumption concerned at the latest 10 days after the end of the month during which the return was received. The information provided for in the second paragraph of Article 369g of Directive 2006/112/EC shall also be transmitted to the competent authority of the Member State of establishment concerned. Member States which have required the tax return to be made in a national currency other than euro, shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The technical details by which this information is to be transmitted shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

3. The Member State of identification shall transmit by electronic means to the Member State of consumption the information needed to link each payment with a relevant quarterly tax return.

Article 46

1. The Member State of identification shall ensure that the amount the non-established taxable person has paid is transferred to the bank account denominated in euro which has been designated by the Member State of consumption to which the payment is due. Member States which required the payments in a national currency other than euro shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The transfer shall take place at the latest 10 days after the end of the month during which the payment was received.

2. If the non-established taxable person does not pay the total tax due, the Member State of identification shall ensure that the payment is transferred to the Member States of consumption in proportion to the tax due in each Member State. The Member State of identification shall inform by electronic means the competent authorities of the Member States of consumption thereof.

3. Concerning the payments to be transferred to the Member State of consumption in accordance with the special scheme provided for in Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC, the Member State of identification shall, of the amounts referred to in paragraphs 1 and 2 of this Article, be entitled to retain:

- (a) from 1 January 2015 until 31 December 2016 — 30 %;
- (b) from 1 January 2017 until 31 December 2018 — 15 %;
- (c) from 1 January 2019 — 0 %.

Article 47

Member States shall notify by electronic means the competent authorities of the other Member States of the relevant bank account numbers for receiving payments in accordance with Article 46.

Member States shall without delay notify by electronic means the competent authorities of the other Member States and the Commission of changes in the tax rate applicable for supplies of telecommunication services, broadcasting services and electronically supplied services.

CHAPTER XII

EXCHANGE AND CONSERVATION OF INFORMATION IN THE CONTEXT OF THE PROCEDURE FOR THE REFUND OF VAT TO TAXABLE PERSONS NOT ESTABLISHED IN THE MEMBER STATE OF REFUND BUT ESTABLISHED IN ANOTHER MEMBER STATE

Article 48

1. Where the competent authority of the Member State of establishment receives an application for refund of VAT pursuant to Article 5 of Directive 2008/9/EC, and Article 18 of that Directive is not applicable, it shall, within 15 calendar days of its receipt and by electronic means, forward the application to the competent authorities of each Member State of refund concerned with confirmation that the applicant as defined in Article 2(5) of Directive 2008/9/EC is a taxable person for the purposes of VAT and that the identification or registration number given by this person is valid for the refund period.

2. The competent authorities of each Member State of refund shall notify by electronic means the competent authorities of the other Member States of any information required by them pursuant to Article 9(2) of Directive 2008/9/EC. The technical details, including a common electronic message by which this

information is to be transmitted, shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

3. The competent authorities of each Member State of refund shall notify by electronic means the competent authorities of the other Member States if they want to make use of the option to require the applicant to provide the description of business activity by harmonised codes as referred to in Article 11 of Directive 2008/9/EC.

The harmonised codes referred to in the first subparagraph shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation on the basis of the NACE classification established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 ⁽¹⁾.

CHAPTER XIII

RELATIONS WITH THE COMMISSION

Article 49

1. The Member States and the Commission shall examine and evaluate how the arrangements for administrative cooperation provided for in this Regulation are working. The Commission shall pool the Member States' experience with the aim of improving the operation of those arrangements.

2. The Member States shall communicate to the Commission any available information relevant to their application of this Regulation.

3. A list of statistical data needed for evaluation of this Regulation shall be determined in accordance with the procedure provided for in Article 58(2). The Member States shall communicate these data to the Commission in so far as they are available and the communication is not likely to involve administrative burdens which would be unjustified.

4. With a view to evaluating the effectiveness of this system of administrative cooperation in combating tax evasion and tax avoidance, Member States may communicate to the Commission any other information referred to in Article 1.

5. The Commission shall forward the information referred to in paragraphs 2, 3 and 4 to the other Member States concerned.

6. Where necessary, in addition to what is required by other provisions in this Regulation, the Commission shall send to the competent authorities of each Member State any information that might enable them to combat fraud in the field of VAT as soon as it obtains such information.

7. The Commission may, at the request of a Member State, provide its expert opinions, technical or logistical assistance, or any other support with a view to attaining the objectives of this Regulation.

⁽¹⁾ OJ L 393, 30.12.2006, p. 1.

CHAPTER XIV

RELATIONS WITH THIRD COUNTRIES*Article 50*

1. When the competent authority of a Member State receives information from a third country, that authority may pass the information on to the competent authorities of Member States which might be interested in it and, in any event, to all those which request it, in so far as permitted by assistance arrangements with that particular third country.

2. Competent authorities may communicate, in accordance with their domestic provisions on the communication of personal data to third countries, information obtained in accordance with this Regulation to a third country, provided that the following conditions are met:

- (a) the competent authority of the Member State from which the information originates has consented to that communication; and
- (b) the third country concerned has given an undertaking to provide the cooperation required to gather evidence of the irregular nature of transactions which appear to contravene VAT legislation.

CHAPTER XV

CONDITIONS GOVERNING THE EXCHANGE OF INFORMATION*Article 51*

1. Information communicated pursuant to this Regulation shall, as far as possible, be provided by electronic means under arrangements to be adopted in accordance with the procedure provided for in Article 58(2).

2. Where the request has not been lodged completely through the electronic system referred to in paragraph 1, the requested authority shall confirm receipt of the request by electronic means without delay and, in any event, no later than five working days after receipt.

Where an authority has received a request or information of which it is not the intended recipient, it shall send a message by electronic means to the sender without delay and, in any event, no later than five working days after receipt.

Article 52

Requests for assistance, including requests for notification, and attached documents may be made in any language agreed between the requested and requesting authority. The said requests shall be accompanied by a translation into the official language or one of the official languages of the Member State in which the requested authority is established only in special cases when the requested authority gives a reason for asking for such a translation.

Article 53

The Commission and the Member States shall ensure that such existing or new communication and information exchange systems which are necessary to provide for the exchanges of information described in this Regulation are operational. A service level agreement ensuring the technical quality and

quantity of the services to be delivered by the Commission and the Member States for the functioning of those communication and information exchange systems shall be decided in accordance with the procedure provided for in Article 58(2). The Commission shall be responsible for whatever development of the CCN/CSI network is necessary to permit the exchange of this information between Member States. Member States shall be responsible for whatever development of their systems is necessary to permit this information to be exchanged using the CCN/CSI network.

Member States shall waive all claims for the reimbursement of expenses incurred in applying this Regulation except, where appropriate, in respect of fees paid to experts.

Article 54

1. The requested authority in one Member State shall provide a requesting authority in another Member State with the information referred to in Article 1 provided that:

- (a) the number and the nature of the requests for information made by the requesting authority within a specific period do not impose a disproportionate administrative burden on that requested authority;
- (b) that requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.

2. This Regulation shall impose no obligation to have enquiries carried out or to provide information on a particular case if the laws or administrative practices of the Member State which would have to supply the information do not authorise the Member State to carry out those enquiries or collect or use that information for that Member State's own purposes.

3. The competent authority of a requested Member State may refuse to provide information where the requesting Member State is unable, for legal reasons, to provide similar information. The Commission shall be informed of the grounds of the refusal by the requested Member State.

4. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

5. Paragraphs 2, 3 and 4 should on no account be interpreted as authorising the requested authority of a Member State to refuse to supply information on a taxable person identified for VAT purposes in the Member State of the requesting authority on the sole grounds that this information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a legal person.

6. The requested authority shall inform the requesting authority of the grounds for refusing a request for assistance.

7. A minimum threshold triggering a request for assistance may be adopted in accordance with the procedure provided for in Article 58(2).

Article 55

1. Information communicated or collected in any form pursuant to this Regulation, including any information to which an official has had access in the circumstances set out in Chapters VII, VIII and X, and in the cases referred to in paragraph 2 of this Article, shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under both the national law of the Member State which received it and the corresponding provisions applicable to Union authorities. Such information shall be used only in the circumstances provided for in this Regulation.

Such information may be used for the purpose of establishing the assessment base or the collection or administrative control of tax for the purpose of establishing the assessment base.

The information may also be used for the assessment of other levies, duties, and taxes covered by Article 2 of Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures ⁽¹⁾.

In addition, it may be used in connection with judicial proceedings that may involve penalties, initiated as a result of infringements of tax law without prejudice to the general rules and legal provisions governing the rights of defendants and witnesses in such proceedings.

2. Persons duly accredited by the Security Accreditation Authority of the Commission may have access to this information only in so far as it is necessary for care, maintenance and development of the CCN/CSI network.

3. By way of derogation from paragraph 1, the competent authority of the Member State providing the information shall permit its use for other purposes in the Member State of the requesting authority, if, under the legislation of the Member State of the requested authority, the information can be used for similar purposes.

4. Where the requesting authority considers that information it has received from the requested authority is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter authority. It shall inform the requested authority thereof in advance. The requested authority may require that the transmission of the information to a third party be subject to its prior agreement.

5. All storage or exchange of information referred to in this Regulation is subject to the provisions implementing Directive 95/46/EC. However, Member States shall, for the purpose of the correct application of this Regulation, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1) and Articles 12 and 21 of Directive 95/46/EC to the extent required in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.

Article 56

Reports, statements and any other documents, or certified true copies or extracts thereof, obtained by the staff of the requested authority and communicated to the requesting authority under the assistance provided for by this Regulation may be invoked

as evidence by the competent bodies of the Member State of the requesting authority on the same basis as similar documents provided by another authority of that country.

Article 57

1. For the purpose of applying this Regulation, Member States shall take all necessary measures to:

- (a) ensure effective internal coordination between the competent authorities;
- (b) establish direct cooperation between the authorities authorised for the purposes of such coordination;
- (c) ensure the smooth operation of the information exchange arrangements provided for in this Regulation.

2. The Commission shall communicate to each Member State, as quickly as possible, any information which it receives and which it is able to provide.

CHAPTER XVI

FINAL PROVISIONS

Article 58

1. The Commission shall be assisted by the Standing Committee on Administrative Cooperation.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 59

1. By 1 November 2013 and thereafter every five years, the Commission shall report to the European Parliament and the Council on the application of this Regulation.

2. Member States shall communicate to the Commission the text of any provisions of national law which they adopt in the field covered by this Regulation.

Article 60

1. This Regulation shall be without prejudice to the fulfilment of any wider obligations in relation to mutual assistance ensuing from other legal acts, including bilateral or multilateral agreements.

2. Where the Member States conclude bilateral arrangements on matters covered by this Regulation, in particular pursuant to Article 11, other than to deal with individual cases, they shall inform the Commission without delay. The Commission shall in turn inform the other Member States.

Article 61

Regulation (EC) No 1798/2003 shall be repealed with effect from 1 January 2012. However, the effects of Article 2(1) of that Regulation shall be maintained until the date of publication by the Commission of the list of competent authorities referred to in Article 3 of this Regulation.

⁽¹⁾ OJ L 150, 10.6.2008, p. 28.

Chapter V, with the exception of Article 27(4), of that Regulation shall remain applicable until 31 December 2012.

References made to the repealed Regulation shall be construed as references to this Regulation.

Article 62

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 Luxembourg, 7 October 2010.

For the Council
The President
S. VANACKERE

It shall apply from 1 January 2012.

However, Articles 33 to 37 shall apply from 1 November 2010;

Chapter V, with the exception of Articles 22 and 23, shall apply from 1 January 2013;

— Articles 38 to 42 shall apply from 1 January 2012 until 31 December 2014; and

— Articles 43 to 47 shall apply from 1 January 2015.

ANNEX I

List of supplies of goods and services to which Article 7(3) and (4) applies:

1. distance selling (Articles 33 and 34 of Directive 2006/112/EC);
2. services connected with immovable property (Article 47 of Directive 2006/112/EC);
3. telecommunication services, radio and television broadcasting services and electronically supplied services (Article 58 of Directive 2006/112/EC);
4. hiring, other than short-term hiring, of a means of transport to a non-taxable person (Article 56 of Directive 2006/112/EC).

ANNEX II

Repealed Regulation and successive amendments

Council Regulation (EC) No 1798/2003	OJ L 264, 15.10.2003, p. 1.
Council Regulation (EC) No 885/2004	OJ L 168, 1.5.2004, p. 1.
Council Regulation (EC) No 1791/2006	OJ L 363, 20.12.2006, p. 1.
Council Regulation (EC) No 143/2008	OJ L 44, 20.2.2008, p. 1.
Council Regulation (EC) No 37/2009	OJ L 14, 20.1.2009, p. 1.

ANNEX III

CORRELATION TABLE

Regulation (EC) No 1798/2003	This Regulation
First and second subparagraphs of Article 1(1)	First and second subparagraphs of Article 1(1)
Third subparagraph of Article 1(1)	—
Fourth subparagraph of Article 1(1)	Article 1(4)
Article 1(2)	Article 1(3)
Article 2(1)(1)	Article 3
Article 2(1)(2)	Article 2(1)(a)
Article 2(1)(3)	Article 2(1)(b)
Article 2(1)(4)	Article 2(1)(c)
Article 2(1)(5)	Article 2(1)(d)
Article 2(1)(6)	Article 2(1)(e)
Article 2(1)(7)	Article 2(1)(f)
Article 2(1)(8)	Article 2(1)(g)
Article 2(1)(9)	Article 2(1)(h)
Article 2(1)(10)	Article 2(1)(i)
Article 2(1)(11)	Article 2(1)(j)
Article 2(1)(12)	Article 2(1)(k)
Article 2(1)(13)	Article 2(1)(l)
Article 2(1)(14)	—
Article 2(1)(15)	Article 2(1)(m)
Article 2(1)(16)	Article 2(1)(n)
Article 2(1)(17)	—
Article 2(1)(18)	Article 2(1)(p)
Article 2(1)(19)	Article 2(1)(q)
Article 2(2)	Article 2(2)
Article 3(1)	—
Article 3(2)	Article 4(1)
Article 3(3)	Article 4(2)
Article 3(4)	Article 4(3)
Article 3(5)	Article 4(4)
Article 3(6)	Article 5
Article 3(7)	Article 6

Regulation (EC) No 1798/2003	This Regulation
Article 4	—
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)
Article 5(3)	Up to 31 December 2014: Article 7(3) From 1 January 2015: Article 7(4)
Article 5(4)	Article 7(5)
Article 6	Article 8
Article 7	Article 9
Article 8	Article 10
Article 9	Article 11
Article 10	Article 12
Article 11	Article 28
Article 12	Article 29
Article 13	Article 30
Article 14	Article 25
Article 15	Article 26
Article 16	Article 27
Article 17 first subparagraph	Article 13(1)
Article 17 second subparagraph	Article 14(2)
Article 18	First subparagraph of Article 14(1)
Article 19	—
Article 20	—
Article 21	Second subparagraph of Article 14(1)
First subparagraph of Article 22(1)	Article 17(1)(a)
Second subparagraph of Article 22(1)	Article 18
Article 22(2)	Article 19
First paragraph of Article 23	Article 21(2)(a) and (b)
Second paragraph of Article 23	Second subparagraph of Article 21(2)
First paragraph of Article 24, point (1)	Article 21(2)(c)
First paragraph of Article 24, point (2)	Article 21(2)(d)
Second paragraph of Article 24	Second subparagraph of Article 21(2)
Article 25(1)	Article 20(1)
Article 25(2)	Article 20(2)
Article 25(3)	—

Regulation (EC) No 1798/2003	This Regulation
Article 26	Article 24 first subparagraph
Article 27(1)	Article 17(1)(b)
Article 27(2)	Article 17(1)(b) and Article 21(1)
Article 27(3)	Article 17(1)(b) and Article 21(1)
Article 27(4)	Article 31
Article 27(5)	Article 24
Article 28	Up to 31 December 2014: Article 38 From 1 January 2015: Article 43
Article 29	Up to 31 December 2014: Article 39 From 1 January 2015: Article 44
Article 30	Up to 31 December 2014: Article 40 From 1 January 2015: Article 45
Article 31	Article 17(1)(d)
Article 32	Up to 31 December 2014: Article 41 From 1 January 2015: Article 46
Article 33	Up to 31 December 2014: Article 42 From 1 January 2015: Article 47
Article 34	—
Article 34a	Article 48
Article 35	Article 49
Article 36	Article 50
Article 37	Article 51(1)
Article 38	Article 52
Article 39	Article 53
Article 40	Article 54
Article 41	Article 55
Article 42	Article 56
Article 43	Article 57
Article 44	Article 58
Article 45	Article 59
Article 46	Article 60
Article 47	Article 61
Article 48	Article 62

COMMISSION REGULATION (EU) No 905/2010**of 11 October 2010****amending Regulation (EC) No 1580/2007 as regards the trigger levels for additional duties on cucumbers, artichokes, clementines, mandarins and oranges**

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 143(b), in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾ provides for surveillance of imports of the products listed in Annex XVII thereto. That surveillance is to be carried out in accordance with the rules laid down in Article 308d of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾.
- (2) For the purposes of Article 5(4) of the Agreement on Agriculture ⁽⁴⁾ concluded during the Uruguay Round of

multilateral trade negotiations and in the light of the latest data available for 2007, 2008 and 2009, the trigger levels for additional duties on cucumbers, artichokes, clementines, mandarins and oranges should be adjusted.

- (3) Regulation (EC) No 1580/2007 should therefore be amended accordingly.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Annex XVII to Regulation (EC) No 1580/2007 is replaced by the text set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 November 2010.

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

Done at Brussels, 11 October 2010.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.⁽²⁾ OJ L 350, 31.12.2007, p. 1.⁽³⁾ OJ L 253, 11.10.1993, p. 1.⁽⁴⁾ OJ L 336, 23.12.1994, p. 22.

ANNEX

‘ANNEX XVII

ADDITIONAL IMPORT DUTIES: TITLE IV, CHAPTER II, SECTION 2

Without prejudice to the rules governing the interpretation of the Combined Nomenclature, the description of the products is deemed to be indicative only. The scope of the additional duties for the purposes of this Annex is determined by the scope of the CN codes as they stand at the time of the adoption of this Regulation.

Order number	CN code	Description	Period of application	Trigger level (tonnes)
78.0015	0702 00 00	Tomatoes	From 1 October to 31 May	1 215 717
78.0020			From 1 June to 30 September	966 474
78.0065	0707 00 05	Cucumbers	From 1 May to 31 October	12 303
78.0075			From 1 November to 30 April	33 447
78.0085	0709 90 80	Artichokes	From 1 November to 30 June	17 258
78.0100	0709 90 70	Courgettes	From 1 January to 31 December	55 369
78.0110	0805 10 20	Oranges	From 1 December to 31 May	368 535
78.0120	0805 20 10	Clementines	From 1 November to end of February	175 110
78.0130	0805 20 30 0805 20 50 0805 20 70 0805 20 90	Mandarins (including tangerines and satsumas); wilkings and similar citrus hybrids	From 1 November to end of February	115 625
78.0155	0805 50 10	Lemons	From 1 June to 31 December	329 903
78.0160			From 1 January to 31 May	92 638
78.0170	0806 10 10	Table grapes	From 21 July to 20 November	146 510
78.0175	0808 10 80	Apples	From 1 January to 31 August	1 262 435
78.0180			From 1 September to 31 December	95 357
78.0220	0808 20 50	Pears	From 1 January to 30 April	280 764
78.0235			From 1 July to 31 December	83 435
78.0250	0809 10 00	Apricots	From 1 June to 31 July	49 314
78.0265	0809 20 95	Cherries, other than sour cherries	From 21 May to 10 August	90 511
78.0270	0809 30	Peaches, including nectarines	From 11 June to 30 September	6 867
78.0280	0809 40 05	Plums	From 11 June to 30 September	57 764'

COMMISSION REGULATION (EU) No 906/2010**of 11 October 2010****amending for the 137th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, ⁽¹⁾ and in particular Articles 7(1)(a) and 7a(5) ⁽²⁾ thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

- (2) On 27 and 29 September 2010 the Sanctions Committee of the United Nations Security Council decided to amend the identifying data concerning two natural persons on its list of persons, groups and entities to whom the freezing of funds and economic resources should apply.

- (3) Annex I should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 is hereby amended as set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 11 October 2010.

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

Karel KOVANDA

Acting Director-General for External Relations

⁽¹⁾ OJ L 139, 29.5.2002, p. 9.

⁽²⁾ Article 7a was inserted by Regulation (EU) No 1286/2009 (OJ L 346, 23.12.2009, p. 42).

ANNEX

Annex I to Regulation (EC) No 881/2002 is amended as follows:

- (1) The entry 'Yasser Mohamed Ismail **Abu Shaweesh** (*alias* Yasser Mohamed Abou Shaweesh). Date of birth: 20.11.1973. Place of birth: Benghazi, Libya. Passport No: (a) 939254 (Egyptian travel document), (b) 0003213 (Egyptian passport), (c) 981358 (Egyptian passport), (d) C00071659 (passport substitute issued by the Federal Republic of Germany). Other information: In detention in Germany as of January 2005. Date of designation referred to in Article 2a (4) (b): 6.12.2005.' under the heading 'Natural persons' shall be replaced by the following:

'Yasser Mohamed Ismail **Abu Shaweesh** (*alias* Yasser Mohamed Abou Shaweesh). Date of birth: 20.11.1973. Place of birth: Benghazi, Libya. Passport No: (a) 939254 (Egyptian travel document), (b) 0003213 (Egyptian passport), (c) 981358 (Egyptian passport), (d) C00071659 (passport substitute issued by the Federal Republic of Germany). Other information: His brother is Ismail Mohamed Ismail Abu Shaweesh. Date of designation referred to in Article 2a (4) (b): 6.12.2005.'

- (2) The entry 'Mohammed **Benhammedi** (*alias* (a) Mohamed Hannadi, (b) Mohamed Ben Hammedi, (c) Muhammad Muhammad Bin Hammidi, (d) Ben Hammedi, (e) Panhammedi, (f) Abu Hajir, (g) Abu Hajir Al Libi, (h) Abu Al Qassam). Address: Midlands, United Kingdom. Date of birth: 22.9.1966. Place of birth: Libya. Nationality: Libyan.' under the heading 'Natural persons' shall be replaced by the following:

'Mohammed **Benhammedi** (*alias* (a) Mohamed Hannadi, (b) Mohamed Ben Hammedi, (c) Muhammad Muhammad Bin Hammidi, (d) Ben Hammedi, (e) Panhammedi, (f) Abu Hajir, (g) Abu Hajir Al Libi, (h) Abu Al Qassam (i) Hammedi Mohamedben). Address: Midlands, United Kingdom. Date of birth: 22.9.1966. Place of birth: Libya. Nationality: Libyan.'

COMMISSION REGULATION (EU) No 907/2010
of 11 October 2010
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 12 October 2010.

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

Done at Brussels, 11 October 2010.

For the Commission,
On behalf of the President,
Jean-Luc DEMARTY
Director-General for Agriculture and
Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	80,7
	MK	56,9
	TR	78,0
	XS	50,2
	ZZ	66,5
0707 00 05	MK	54,8
	TR	135,2
	ZZ	95,0
0709 90 70	TR	120,5
	ZZ	120,5
0805 50 10	AR	92,3
	BR	100,4
	CL	62,4
	IL	102,3
	TR	98,9
	UY	117,2
	ZA	73,9
	ZZ	92,5
0806 10 10	BR	221,3
	TR	124,4
	ZA	64,2
	ZZ	136,6
0808 10 80	AR	75,7
	BR	51,1
	CL	121,2
	CN	82,6
	NZ	96,3
	ZA	86,9
	ZZ	85,6
0808 20 50	CN	75,4
	ZA	77,5
	ZZ	76,5

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

COMMISSION REGULATION (EU) No 908/2010**of 11 October 2010****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 903/2010 ⁽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 12 October 2010.

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

Done at Brussels, 11 October 2010.

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

Jean-Luc DEMARTY
*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 266, 9.10.2010, p. 58.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 12 October 2010

(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⁾	57,56	0,00
1701 11 90 ⁽¹⁾	57,56	0,00
1701 12 10 ⁽¹⁾	57,56	0,00
1701 12 90 ⁽¹⁾	57,56	0,00
1701 91 00 ⁽²⁾	48,93	2,79
1701 99 10 ⁽²⁾	48,93	0,00
1701 99 90 ⁽²⁾	48,93	0,00
1702 90 95 ⁽³⁾	0,49	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.

COMMISSION REGULATION (EU) No 909/2010**of 11 October 2010****establishing the allocation coefficient to be applied to applications for export licences for cheese to be exported to the United States of America in 2011 under certain GATT quotas**

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 1187/2009 of 27 November 2009 laying down special detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards export licences and export refunds for milk and milk products ⁽²⁾, and in particular Article 23(1) and (3) thereof,

Whereas:

- (1) Commission Regulation (EU) No 635/2010 of 19 July 2010 opening the procedure for the allocation of export licences for cheese to be exported to the United States of America in 2011 under certain GATT quotas ⁽³⁾ opens the procedure for the allocation of export licences for cheese to be exported to the United States of America in 2011 under the GATT quotas referred to in Article 21 of Regulation (EC) No 1187/2009.
- (2) Applications for export licences for certain quotas and product groups exceed the quantities available for the 2011 quota year. Allocation coefficients as provided for in Article 23(1) of Regulation (EC) No 1187/2009 should therefore be established.
- (3) In the case of product groups and quotas for which the applications lodged are for quantities less than those available, it is appropriate, in accordance with Article 23(3) of Regulation (EC) No 1187/2009, to provide for the allocation of the remaining quantities

to the applicants in proportion to the quantities applied for. The allocation of such further quantities should be conditional upon the competent authority being notified of the quantities accepted by the operator concerned and upon the interested operators lodging a security.

- (4) Given the time limit for carrying out the procedure for establishing those coefficients, as provided for in Article 4 of Regulation (EU) No 635/2010, this Regulation should apply as soon as possible,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for export licences lodged pursuant to Regulation (EU) No 635/2010 in respect of the product groups and quotas identified by 16-Tokyo, 16-, 17-, 18-, 20- and 21-Uruguay in column 3 of the Annex to this Regulation shall be accepted, subject to the application of the allocation coefficients in column 5 of that Annex.

Article 2

Applications for export licences lodged pursuant to Regulation (EU) No 635/2010 in respect of the product groups and quotas identified by 22- and 25- Tokyo, 22- and 25-Uruguay in column 3 of the Annex to this Regulation shall be accepted for the quantities requested.

Export licences may be issued for further quantities distributed in accordance with the allocation coefficients in column 6 of the Annex, after acceptance by the operator within one week of publication of this Regulation and subject to the lodging of the security applicable.

Article 3

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 318, 4.12.2009, p. 1.

⁽³⁾ OJ L 186, 20.7.2010, p. 16.

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

Done at Brussels, 11 October 2010.

*For the Commission,
On behalf of the President*
Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

ANNEX

Identification of group in accordance with Additional Notes in Chapter 4 of the Harmonised Tariff Schedule of the United States		Identification of group and quota	Quantity available for 2011 (in tonnes)	Allocation coefficient provided for under Article 1	Allocation coefficient provided for under Article 2
Note No	Group				
(1)	(2)	(3)	(4)	(5)	(6)
16	Not specifically provided for (NSPF)	16-Tokyo	908,877	0,2409568	
		16-Uruguay	3 446,000	0,1832277	
17	Blue Mould	17-Uruguay	350,000	0,0542064	
18	Cheddar	18-Uruguay	1 050,000	0,3125000	
20	Edam/Gouda	20-Uruguay	1 100,000	0,1776486	
21	Italian type	21-Uruguay	2 025,000	0,0851556	
22	Swiss or Emmenthaler cheese other than with eye formation	22-Tokyo	393,006		4,9125750
		22-Uruguay	380,000		4,7500000
25	Swiss or Emmenthaler cheese with eye formation	25-Tokyo	4 003,172		4,2262326
		25-Uruguay	2 420,000		2,5548447

COMMISSION REGULATION (EU) No 910/2010
of 11 October 2010
amending Regulation (EU) No 869/2010 fixing the import duties in the cereals sector applicable
from 1 October 2010

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Regulation (EU) No 642/2010 of 20 July 2010 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector applicable from 1 October 2010 were fixed by Commission Regulation (EU) No 869/2010 ⁽³⁾.

- (2) As the average of the import duties calculated differs by more than EUR 5/tonne from that fixed, a corresponding adjustment must be made to the import duties fixed by Regulation (EU) No 869/2010.

- (3) Regulation (EU) No 869/2010 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EU) No 869/2010 are hereby replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from 12 October 2010.

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

Done at Brussels, 11 October 2010.

For the Commission,
On behalf of the President,
Jean-Luc DEMARTY
Director-General for Agriculture and
Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 187, 21.7.2010, p. 5.

⁽³⁾ OJ L 259, 1.10.2010, p. 7.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 12 October 2010

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	14,39
1005 10 90	Maize seed other than hybrid	0,00
1005 90 00	Maize, other than seed ⁽²⁾	0,00
1007 00 90	Grain sorghum other than hybrids for sowing	14,39

⁽¹⁾ For goods arriving in the Union via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EU) No 642/2010, from a reduction in the duty of:

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

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 3 of Regulation (EU) No 642/2010 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

30.9.2010-8.10.2010

1. Averages over the reference period referred to in Article 2(2) of Regulation (EU) No 642/2010:

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	221,79	150,02	—	—	—	—
Fob price USA	—	—	182,97	172,97	152,97	93,04
Gulf of Mexico premium	—	15,90	—	—	—	—
Great Lakes premium	13,18	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 5(3) of Regulation (EU) No 642/2010).⁽²⁾ Discount of 10 EUR/t (Article 5(3) of Regulation (EU) No 642/2010).⁽³⁾ Discount of 30 EUR/t (Article 5(3) of Regulation (EU) No 642/2010).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EU) No 642/2010:

Freight costs: Gulf of Mexico–Rotterdam: 20,48 EUR/t

Freight costs: Great Lakes–Rotterdam: 49,61 EUR/t

DECISIONS

COMMISSION DECISION

of 6 July 2010

on measure C 48/07 (ex NN 60/07) implemented by Poland for WRJ and WRJ-Serwis

(notified under document C(2010) 4476)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2010/612/EU)

THE EUROPEAN COMMISSION,

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

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

Having regard to Protocol No 8 of the Accession Treaty on the restructuring of the Polish steel industry⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the provisions cited above⁽²⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) The Commission was made aware of irregularities in the Polish steel tubes sector during monitoring of the restructuring of the Polish steel industry. After the accession of Poland to the EU, checks were carried out *ex officio* on aid to Walcownia Rur Jedność Sp. z o.o. ('WRJ') and WRJ-Serwis Sp. z o.o. ('WRJ-Serwis'). The Commission requested information from the Polish authorities by letters dated 6 April 2005, 4 August 2005, 3 November 2005, 4 May 2006, 17 November 2006 and 11 July 2007. The Polish authorities replied by letters dated 7 June 2005, 29 September 2005, 2 December 2005, 18 May 2006, 31 May 2006, 10 January 2007 and 3 August 2007.
- (2) By letter dated 23 October 2007 the Commission informed Poland that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on

the Functioning of the European Union ('TFEU')⁽³⁾ in respect of several measures awarded to WRJ and WRJ-Serwis.

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 24 November 2007⁽⁴⁾. The Commission invited interested parties to submit comments on the measures.
- (4) The Commission received comments from one interested party. It forwarded them to Poland, which was given the opportunity to react; its comments were received by letter dated 16 February 2009. Poland's response to the initiation of the formal investigation procedure was submitted by letters dated 21 January and 1 February 2008.
- (5) The Commission requested further information on 16 February 2009, which Poland submitted by letter dated 4 June 2009.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. The beneficiaries

2.1.1. WRJ

- (6) WRJ is based in Katowice and employs 12 persons for administrative purposes. 40,736 % of the shares in WRJ are held by Towarzystwo Finansowe Silesia Sp. z o.o. ('TFS'), a 99,6 % State-owned company. Another 7,235 % of shares are held by Walcownia Rur Silesia S.A. ('Walcownia Rur Silesia'), a 100 % subsidiary of TFS.
- (7) The other shareholders are:
- PIW Enpol Sp. z o.o. (share of 19,009 %),
 - Polskie Górnictwo Naftowe i Gazownictwo S.A. (share of 8,3 %),

⁽¹⁾ OJ L 236, 23.9.2003, p. 948.

⁽²⁾ OJ C 282, 24.11.2007, p. 21.

⁽³⁾ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty became Articles 107 and 108 respectively of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

⁽⁴⁾ See footnote 2.

- Kulczyk Privatstiftung (share of 4,533 %),
 - Huta Jedność (share of 0,817 %),
 - several other minority shareholders, each holding shares ranging from 0,004 % to 3,4 %.
- (8) WRJ was created in 1995 in order to construct a new seamless tube rolling mill with a production capacity of 160 000 tonnes per year ('the WRJ project').
- (9) Another company named Huta Jedność initially started construction of a 400 000 tonne seamless tube rolling mill in 1978, but work was stopped in 1980 when State subsidies were suspended. After various attempts to restart the project, Huta Jedność filed a motion for bankruptcy including liquidation of assets, which was rejected by the court. Huta Jedność is currently a company in liquidation with activities consisting in leasing out its production assets to other companies and acting as a utilities provider.
- (10) The WRJ project comprised elements of the infrastructure as well as some of the machines and equipment collected earlier by Huta Jedność for the original project and was to be built on a piece of land previously owned by Huta Jedność. New investors were invited to participate in the WRJ project, which started in 1997. Implementation of the project was stopped in 2001 and since then the investors have withdrawn from it. Although it seems that 86 % of the work has been realised, WRJ has never commenced production.
- (11) On 4 September 2007 Walcownia Rur Silesia, a wholly-owned subsidiary of TFS set up to consolidate the Polish steel tube sector (see recitals 15 to 17 below), had filed for bankruptcy of WRJ including the liquidation of its assets. Katowice District Court declared WRJ bankrupt on 23 January 2008 and ordered the liquidation of its assets, for which it appointed a bankruptcy receiver. It seems that so far none of WRJ's assets have been sold under the bankruptcy proceedings.

2.1.2. WRJ-Serwis

- (12) WRJ-Serwis was created in 2001 following the transformation of Zakład Usług Energomechanicznych 'Jedność' S.A., which had been established in 1999. Its shareholders are TFS (share of 54,66 %), PIW ENPOL Sp. z o.o. (share of 36,77 %), Commplex Sp. z o.o. (share of 8,29 %) and Huta Jedność (share of 0,28 %).
- (13) The original purpose of WRJ-Serwis was to implement part of the WRJ project and to provide WRJ with better credit opportunities. However, WRJ-Serwis has never commenced any investment activities, but has been producing seamless cold drawn steel tubes since May 2004, after Huta Jedność stopped production at the drawing mill at the beginning of 2004. This activity is

conducted on the basis of assets leased initially from Huta Jedność. These assets were subsequently taken over by ING Bank Śląski S.A. and finally by Walcownia Rur Silesia. In addition, WRJ-Serwis acquired 9/10 of the perpetual usufruct of the land on which the WRJ project is located as well as 9/10 ownership of the buildings erected on that land.

- (14) WRJ-Serwis ceased operating in April 2008, when Walcownia Rur Silesia took over production of steel tubes at the drawing mill.

2.1.3. Consolidation of WRJ and WRJ-Serwis and attempts to privatise them

- (15) TFS started looking for a strategic investor for WRJ and WRJ-Serwis in 2004. In 2005, interested parties were invited to tender, and two submitted bids. Finally, a framework agreement was concluded with one of the bidders on the acquisition of the assets of WRJ and WRJ-Serwis, free of any encumbrances; however, this was terminated in October 2006 as the conditions had not been met. TFS launched a new tender procedure in December 2006 but did not receive any binding offers.
- (16) Following a new invitation to tender sent out in 2007, TFS decided to consolidate WRJ and WRJ-Serwis to make it easier to privatise them. To that end, TFS created two new companies, namely FEREX Sp. z o.o. ('FEREX') and Walcownia Rur Silesia. TFS holds 100 % of shares in both companies. Through Walcownia Rur Silesia and FEREX, TFS acquired the assets required to implement the WRJ project and took over the debts of WRJ and WRJ-Serwis:
- (a) Walcownia Rur Silesia became a creditor of WRJ by acquiring receivables due from WRJ of PLN 168 940 469 and PLN 95 595 057 from the banking syndicate and Stalexport respectively. In addition, Walcownia Rur Silesia purchased the movable assets of the drawing mill from the banking syndicate led by ING Bank Śląski;
 - (b) FEREX also became a creditor of WRJ by acquiring from the banks receivables due from WRJ of PLN 142 941 270,43 in total, secured by a mortgage on land owned by WRJ and WRJ-Serwis.
- (17) In August 2008 another attempt was made by the Polish authorities to sell WRJ, WRJ-Serwis, FEREX and Walcownia Rur Silesia. TFS and Walcownia Rur Silesia invited interested parties to take part in negotiations for the joint purchase of Walcownia Rur Silesia's assets, the share capital of FEREX, TFS receivables due from FEREX and TFS shares in the capital of WRJ-Serwis. The procedure ended on 15 January 2009 and did not result in the sale of any of the assets offered.

2.2. The measures under assessment

- (18) The measures awarded to WRJ consist of capital investments by TFS (2.2.1), guarantees provided by TFS (2.2.2) and security provided by the Treasury (2.2.3). The measures awarded to WRJ-Serwis consist of capital investments by TFS (2.2.4).

2.2.1. Capital investments in WRJ by TFS

- (19) The first capital investment of TFS in WRJ took place on 26 June 2002, when WRJ's shareholders decided to increase the share capital. TFS was allocated shares with a nominal value of PLN 15 million in exchange for receivables. These receivables were owed to TFS by Huta Andrzej and Huta Katowice and amounted to PLN 15 million. The capital increase was registered and came into effect on 22 November 2002.
- (20) The second increase in share capital took place on 17 January 2003, when WRJ's shareholders decided to increase the share capital of the company again. TFS was allocated shares with a nominal value of PLN 40 million in exchange for receivables owed to TFS by WRJ (debt for equity swap). The receivables had a nominal value of PLN 40 million and TFS had taken them over earlier, in December 2002, from ING Bank Śląski S.A. The capital increase was registered and came into effect on 25 August 2003.

2.2.2. Provision of guarantees to WRJ by TFS

- (21) In 2001 TFS granted a guarantee covering up to PLN 5 million of a loan amounting to PLN 20 million. The loan had been granted to WRJ in 1999 by the Regional Environmental and Water Management (WFOŚiGW).
- (22) In 2001 TFS granted a guarantee covering up to PLN 50 million of a loan amounting to PLN 115 million. The loan had been granted to WRJ in 1996 by the National Environmental and Water Management (WFOŚiGW).

2.2.3. Provision of security to WRJ by the Treasury

- (23) On 14 October 1997 the Treasury granted a guarantee covering 45 % of principal and interest on two loans amounting to PLN 262,5 million in total. These loans consisted of a foreign-currency credit facility and a PLN credit facility, both granted by a banking syndicate in 1997.
- (24) On 2 January 2003 the state guarantee was increased to 55 % by the Cabinet when it signed the relevant documents. The increase in the guarantee has not been implemented.

2.2.4. Capital investments in WRJ-Serwis by TFS

- (25) TFS made capital interventions in WRJ-Serwis in December 2003 with the objective of obtaining a

majority shareholding in the company in order to gain control over the WRJ project. By decision of December 2003, the shareholders of WRJ-Serwis agreed that TFS could acquire shares in the company. The shares had a nominal value of PLN 7 910 000. TFS acquired the shares mainly in exchange for receivables due to TFS from Huta Jedność. Those receivables were transferred to WRJ-Serwis. TFS also paid for the shares in cash (PLN 890 000) and with a contribution in kind (metal chips of Huta Jedność for further processing; transfer value PLN 450 000). The share acquisition agreement was signed on 8 June 2004. The capital increase was not registered until 17 August 2007.

- (26) Simultaneously with TFS, shares in the increased share capital were taken up by one of the existing shareholders, PIW Enpol Sp. z o.o., and a new shareholder, Complex Sp. z o.o. (both private companies). The companies acquired the shares by assigning receivables due from Huta Jedność to WRJ-Serwis.

3. GROUNDS FOR OPENING THE FORMAL INVESTIGATION

- (27) As described in recital 3, the Commission decided on 23 October 2007 to open a formal investigation procedure ('the opening decision'). In the opening decision the Commission first expressed its view that it was competent to decide on the case and that the measures in question constituted State aid that was not compatible with the Internal Market.

3.1. Applicable law and Commission competence

- (28) In the opening decision, the Commission took the view that Articles 107 and 108 TFEU (then Articles 87 and 88 of the EC Treaty) did not normally apply to aid granted before accession which was no longer applied after accession. However, the provisions of Protocol No 8 of the Accession Treaty on the restructuring of the Polish steel industry ('Protocol No 8') could be regarded as *lex specialis* in relation to Articles 107 and 108 TFEU, which extended State aid monitoring under the TFEU to any aid granted for the restructuring of the Polish steel industry between 1997 and 2006. Accordingly, the Commission would in principle be competent to assess such aid.
- (29) As regards whether tube producers such as WRJ and WRJ-Serwis are part of the 'steel industry' for the purposes of Protocol No 8, the Commission considered the following: Protocol No 8 was based on the national restructuring programme (Restructuring and Development Plan for the Polish Iron and Steel Industry, ('the NRP')). The scope of the NRP and Protocol No 8 was not limited to the scope of Annex I of the Treaty establishing the European Coal and Steel Community ('the ECSC Treaty'), but also covered certain steel sectors such as seamless tubes and large welded tubes.

(30) According to the opening decision, firstly, this interpretation was in line with the definition of the steel industry under the EU State aid rules, namely the definition in Annex B to the Multisectoral Framework ⁽⁵⁾. Secondly, this followed from the NRP, of which half of the beneficiaries were tube producers. Indeed, Huta Jedność, the predecessor of WRJ and WRJ-Serwis, participated in the restructuring programme process and was explicitly mentioned in the draft NRP several times, but was in the end not considered as a potential beneficiary, as at the time there were plans to wind it up following its bankruptcy in 2002.

(31) As a result, the Commission took the view that the prohibition on awarding aid not caught by the NRP and Protocol No 8 applied to Huta Jedność, WRJ and WRJ-Serwis.

3.2. Existence of State aid

(32) As regards the investments made in WRJ by TFS and the security given to the company by TFS, the Commission expressed strong doubts that they would have met the requirements of the market economy investor principle. WRJ was facing difficulties at the time the measures were taken and would not have itself been able to raise the funds on the capital market. The Commission also doubted that there would have been a sufficient return on investment. Lastly, it took the view that the investments could hardly be justified by the fact that TFS intended to privatise WRJ at a later date.

(33) As regards the guarantee provided by the Treasury to WRJ, the Commission noted that it was not clear whether WRJ had been in difficulty at the time when the guarantee was granted, i.e. in 1997. On the other hand, as regards the increase of the guarantee in 2003, WRJ could be considered as being in difficulty and the Commission therefore expressed doubts as regards the compliance of this increase of the guarantee with the market economy investor principle.

(34) As regards the investments made in WRJ-Serwis by TFS, the Commission expressed doubts that they would have met the requirements of the market economy investor principle. The Commission noted that the company was in difficulty in 2003 and therefore considered it doubtful that the investments had promised a reasonable return.

3.3. Compatibility of the State aid

(35) The Commission could not identify any grounds on which the potential State aid could have been declared compatible, as investment or restructuring aid to the steel

sector between 1997 and 2006 was prohibited under Protocol No 8 and hence under the EU State aid rules.

4. COMMENTS FROM POLAND ON THE OPENING DECISION

(36) Poland submitted its comments on the opening decision by letters dated 21 January and 1 February 2008. In summary, Poland did not agree with the Commission's interpretation of Protocol No 8 and reiterated its view that the measures in question did not constitute State aid.

4.1. Applicable law and Commission competence

(37) Poland considers that generalisations should not be made on the basis of Protocol No 8, which constitutes an exception to the non-intervention rule concerning State aid before accession.

(38) Firstly, it points out that tube producers and their products were not included in Annex I to Protocol 2 to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part ⁽⁶⁾ ('Protocol 2 to the Europe Agreement') and therefore did not fall within the scope of its application.

(39) Secondly, the prohibition on granting State aid to tube producers in the Member States was introduced on 24 July 2002, when Annex B to the Multisectoral Framework, which defined the scope of the term 'steel industry', entered into force. According to that definition, the seamless tube and large welded tube sector were part of the 'steel industry'. Accordingly, the NRP approved by the Commission in 2003 and Protocol No 8 also included tube producers. Previously, when the ECSC Treaty was applicable, the tube sector had been excluded.

(40) Poland concludes that Protocol No 8 has to be interpreted in such a way that before 24 July 2002 aid granted to tube producers was not subject to the Commission's control (as with any other interventions which occurred before the Accession Treaty entered into force). After that date, the tube producers were subject to the said restrictions.

(41) As regards the beneficiaries' awareness, Poland points out that WRJ-Serwis can be classified as a steel producer only as of 2004, when it started to use the drawing mill facilities, and that prior to that date, state interventions could not be regarded as constituting State aid to the steel industry.

(42) Lastly, Poland emphasises that the WRJ project is not a continuation of the former Huta Jedność project.

⁽⁵⁾ See Annex B to the Multisectoral Framework (OJ C 70, 19.3.2002, p. 8), which has applied since 24 July 2002 (paragraph 39) and which was replaced by Annex 1 to the Guidelines on national regional aid for 2007-12 (OJ C 54, 4.3.2006, p. 13).

⁽⁶⁾ OJ L 348, 31.12.1993, p. 2.

4.2. Existence of State aid

- (43) In addition, Poland claims that TFS, although controlled by the Treasury, is operating on market terms to generate profits. The actions it took as regards WRJ and WRJ-Serwis did not result from any particular control or supervision by the state. Accordingly, the Treasury did not necessarily exercise control within the meaning of the Stardust Marine judgement⁽⁷⁾.
- (44) As regards the capital increases in WRJ and the guarantees provided by TFS, Poland considers that TFS did not inject any significant funds into the WRJ project. Indeed, the exchange of receivables in return for shares in WRJ was more economically rational than direct enforcement of those receivables. In addition, at the time of TFS' investment in WRJ, TFS was in possession of business plans that showed the profitability of the WRJ project. Lastly, the banking syndicate was also willing to provide further financing to WRJ at that time. Accordingly, TFS acted like a market economy investor.
- (45) Poland considers the increase of the state guarantee to WRJ to be in line with the market economy investor principle, as it was secured with valuable collateral and WRJ paid a market rate guarantee fee to the Treasury. In addition, the guarantee was contingent on the banks recommending financing of the WRJ project, which did not take place. Accordingly, the increase in the guarantee was never implemented and Poland considers that no advantage accrued to WRJ.
- (46) The capital intervention in WRJ-Serwis is considered to comply with the market economy investor principle. Firstly, private shareholders took up shares together with TFS. Secondly, WRJ-Serwis was not in a difficult financial situation and TFS took the decision in view of the profits to be generated in the future by WRJ-Serwis. Finally, TFS was able to assume control over WRJ-Serwis and the property on which the WRJ project was built.
- (47) As regards the consolidation of WRJ and WRJ-Serwis, Poland argues that this was the only way of enabling the WRJ project to be rapidly taken over and completed by a private investor while also ensuring maximum recovery of the capital so far injected by the state.

5. COMMENTS FROM INTERESTED PARTIES

- (48) The Commission received comments from one interested third party which strongly opposed the subsidies given by Poland. The party recalls that pipes were never products caught by the ECSC Treaty and that the pipe industry had to restructure at its own costs, without

having been granted State aid. Acceptance of the aid in this case would harm the European pipe industry. The party also states that accepting the aid might jeopardise its attempts to demonstrate that some pipe-importing countries are importing into the EU at dumped or subsidised prices. Lastly, the party argues that the European seamless steel pipe industry was in a special economic situation, with overcapacity in Europe and a need to export large quantities, while imports from China increased in 2007.

6. POLAND'S COMMENTS ON THE OBSERVATIONS OF THE INTERESTED PARTY

- (49) The observations of the interested party were forwarded to Poland, which submitted its comments on 16 February 2009. Poland supports the view that there should be transparent rules on fair competition in the tube market.
- (50) Poland agrees with the third party that pipes were never a product caught by the ECSC Treaty and reiterates that the 'steel sector' did not include tube producers until the Multisectoral Framework came into force on 24 July 2002. Accordingly, the ban on State aid in the tube sector has only applied since 24 July 2002, when the 'expanded' definition of the steel sector came into force.
- (51) Lastly, Poland reiterates that WRJ never started production activities and WRJ-Serwis stopped production in 2008. Poland emphasises that it has never granted State aid to WRJ.

7. ASSESSMENT OF THE MEASURE

7.1. Applicable law and Commission competence

- (52) The measures in question were granted before the accession of Poland to the European Union (i.e. before 1 May 2004). In principle, Articles 107 and 108 TFEU do not apply to aid which was granted before accession and which no longer applies after accession⁽⁸⁾. By derogation from this general rule, and therefore on an exceptional basis, the Commission is competent to review State aid granted by Poland in the context of the restructuring of its steel industry before accession on the basis of Protocol No 8 to the Accession Treaty.

⁽⁸⁾ In paragraph 90 of the judgment of 1 July 2009 in joined cases T-273/06 and T-297/06 *ISD Polska and Others v Commission*, the General Court confirmed that '[...] it is common ground that, in principle, Articles 87 EC and 88 EC do not apply to aid granted before accession which was no longer applicable thereafter'. See also paragraph 108 of Commission Decision 2006/937/EC of 5 July 2005 on State aid C-20/04 (ex NN 25/04) in favour of Huta Czeszochowa S.A. (OJ L 366, 21.12.2006, p. 1) and paragraphs 202 et seq of Commission Decision 2010/3/EC of 6 November 2008 on State aid C 19/05 (ex N 203/05) granted by Poland to Stocznia Szczecińska (OJ L 5, 8.1.2010, p. 1).

⁽⁷⁾ Case C-482/99 *Stardust Marine* [2002] ECR I-4397.

7.1.1. *The lex specialis nature of Protocol No 8*

- (53) Protocol No 8 contains provisions allowing Poland to conclude the restructuring of its steel industry initiated before accession. The pre-accession restructuring of the Polish steel sector was carried out on the basis of Protocol 2 to the Europe Agreement, as extended by a decision of the EU-Poland Association Council ('the Decision of the Association Council')⁽⁹⁾.
- (54) Protocol 2 to the Europe Agreement granted Poland a so-called 'grace period' of five years, from 1992 to end-1996, during which it was allowed to restructure its ECSC steel sector with State aid.
- (55) This grace period was extended by the Decision of the Association Council for a further period of eight years starting on 1 January 1997, or until the accession of Poland to the EU. In this period, Poland could exceptionally, in respect of 'steel products', grant State aid for restructuring purposes under the terms and conditions enshrined in Protocol 2 to the Europe Agreement (as extended by the Decision of the Association Council) and on the basis of the NRP, which Poland submitted to the Commission in April 2003. After assessment of the NRP by the Commission, the Member States approved the Polish proposal in July 2003⁽¹⁰⁾.
- (56) Protocol No 8 allows the Commission to monitor after Poland's accession State aid granted by Poland to the steel sector on the basis of Protocol 2 to the Europe Agreement (as extended by the Decision of the Association Council) and the NRP. In addition, Protocol No 8 empowers the Commission to recover aid given in breach of Protocol 2 to the Europe Agreement and the NRP. Accordingly, Protocol No 8 is *lex specialis* allowing, on an exceptional basis and by derogation from the general regime, the retroactive monitoring and review of State aid granted by Poland to the Polish steel industry before accession. This was confirmed by the Court, which held that Protocol No 8 is *lex specialis* in relation to Articles 107 and 108 TFEU which extends the review of State aid carried out by the Commission pursuant to the TFEU to aid granted for the reorganisation of the Polish steel industry during the period from 1997 to 2003⁽¹¹⁾.

7.1.2. *Scope of the Commission's retroactive control competence under Protocol No 8*

- (57) In the context of this procedure, the Commission must assess whether the exceptional retroactive control competence described in recitals 53 to 56 above also covers measures granted before accession by Poland to tube producers. To this end, the legal bases applicable to this case, i.e. Protocol No 8, read in conjunction with Protocol 2 to the Europe Agreement and the Decision of the Association Council, must be interpreted with a view to determining whether their provisions cover measures granted to Polish tube producers before accession.
- (58) It is a generally-recognised principle of law that the provisions of *lex specialis* which derogates from the general regime must be interpreted *stricto sensu*. A strict interpretation of the above-mentioned legal bases (see recitals 59 to 65 below) leads to the conclusion that the exceptional retroactive control competence of the Commission is limited to pre-accession measures granted to ECSC producers, thereby excluding measures to tube producers.

7.1.3. *Interpretation of the legal bases*

- (59) Points 12 and 18 of Protocol No 8 lay down the monitoring and retroactive control competences of the Commission with respect to pre-accession aid to the Polish steel industry. Point 12 empowers the Commission and the Council to monitor the implementation of the NRP before and after accession, until 2006. Point 18 empowers the Commission to order recovery of State aid granted in breach of the conditions laid down in Protocol No 8.
- (60) Point 1 of Protocol No 8 stipulates that State aid granted by Poland for the restructuring of 'specified parts of the Polish steel industry' shall be deemed compatible with the internal market provided that 'the period provided for in Article 8(4) of Protocol 2 on ECSC products to the Europe Agreement [...] has been extended until the date of accession', the terms set out in the NRP are respected, the conditions set out in Protocol No 8 are met and 'no State aid for restructuring is to be paid to the Polish steel industry after the date of accession'.
- (61) Point 2 of Protocol No 8 stipulates that the restructuring of the Polish steel sector, as described in the individual business plans of the companies listed in Annex 1, shall be completed no later than 31 December 2006. Point 3 of Protocol No 8 indicates that only the companies listed in Annex 1 to the Protocol are eligible for State aid in the framework of the Polish steel restructuring programme.

⁽⁹⁾ Decision No 3/2002 of the EU-Poland Association Council of 23 October 2002 extending the period set in Article 8(4) of Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement (OJ L 186, 25.7.2003, p. 38).

⁽¹⁰⁾ Council Decision 2003/588/EC of 21 July 2003 on the fulfilment of the conditions laid down in Article 3 of Decision No 3/2002 of the EU-Poland Association Council of 23 October 2002 extending the period set in Article 8(4) of Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement (OJ L 199, 7.8.2003, p. 17).

⁽¹¹⁾ Case T-288/06 *Huta Czerwona* [2009] ECR II-2247, paragraph 44.

- (62) Point 1 of Protocol No 8 refers explicitly to Article 8(4) of Protocol 2 to the Europe Agreement, as extended by Decision of the Association Council. Protocol 2 to the Europe Agreement only applied to 'ECSC steel products' (Article 8(4) of Protocol 2) and even listed the steel products in an Annex. The latter reproduced the list of ECSC products as laid down in Annex I to the ECSC Treaty, where the definition of 'ECSC steel products' expressly excludes tubes ('steel tubes (seamless or welded) [...] bright bars and iron castings (tubes, pipes and fittings, and other iron castings)').
- (63) The ECSC Treaty expired on 23 July 2002. As of that date, State aid to the steel industry was brought under the general EC regime. On that occasion it was decided to broaden the definition of the European steel sector to include tube producers. This was codified in Article 27 and Annex B to the Multisectoral Framework, which defined the EU steel sector as including 'seamless tubes, pipes and hollow profiles' as well as 'welded iron or steel tubes and pipes'. This extended definition of the steel sector was subsequently taken over in Annex I to the Guidelines on national regional aid for 2007-2013 ⁽¹²⁾, and in Point 29 of Article 2 of the General Block Exemption Regulation ⁽¹³⁾.
- (64) However, neither Protocol 2 to the Europe Agreement nor the Decision of the Association Council was explicitly amended to incorporate this broadened definition of the EU steel sector including tube producers. Protocol 2 to the Europe Agreement had expired on 31 December 1996. The Decision of the Association Council extended the validity of Protocol 2 to the Europe Agreement from 1 January 1997 for eight years or until the date of Poland's accession (whichever came first). Article 1 of the Decision of the Association Council refers to 'steel products' in general, but its scope of application is also specifically linked to Article 8(4) of Protocol 2 to the Europe Agreement, which covered ECSC steel products only. In particular, the extension of Protocol 2 to the Europe Agreement was made conditional on the submission by Poland to the Commission of a NRP and business plans for its beneficiaries that both met 'the requirements listed in Article 8(4) of Protocol 2 and that have been assessed and agreed by its national State aid monitoring authority (the Office for Competition and Consumer Protection)' (Article 2 of the Decision of the Association Council).
- (65) In the light of the above, the Commission concludes that point 18 of Protocol No 8, interpreted in the light of points 1 to 3 of Protocol No 8 together with Protocol 2 to the Europe Agreement and the Decision of the

Association Council, does not give the Commission competence to control aid granted to Polish tube producers prior to accession.

7.1.4. *Implementing Rules for the Europe Agreement as an interpretation instrument*

- (66) In addition to the legal interpretation of the scope of the relevant legal bases (i.e. Protocol No 8, Protocol 2 to the Europe Agreement and the Decision of the Association Council — see recitals 59 to 65 above), the Commission also examined the question of whether the Implementing Rules for the application of the State aid provisions in the Europe Agreement and Protocol 2, as adopted by the EU-Poland Association Council in 2001 ('the Implementing Rules') ⁽¹⁴⁾, are of relevance in order to determine the scope of the Commission's retroactive control competence with respect to pre-accession measures awarded to Polish tube producers.
- (67) As a matter of general principle, the Implementing Rules contain rules of procedure to be distinguished from the substantive State aid provisions in the Europe Agreement and Protocol 2 to the Europe Agreement. It must be noted however that the Implementing Rules also contain specific provisions on the criteria for assessing the compatibility of aid with the Europe Agreement and with Protocol 2 to the Europe Agreement respectively.
- (68) The first sentence of Article 2(1) of the Implementing Rules states: 'The assessment of compatibility of individual aid awards and programmes with the Europe Agreement, as provided for in Article 1 of these Rules, shall be made on the basis of the criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community, including the present and future secondary legislation, frameworks, guidelines and other relevant administrative acts in force in the Community, as well as the case law of the Court of First Instance and the Court of Justice of the European Communities and any decision taken by the Association Council pursuant to Article 4(3)'. This phrase establishes the general principle that the substantive criteria for assessing compatibility of State aid in general with the Europe Agreement are 'evolutive' in the sense of incorporating along the way changes/developments in EU law and jurisprudence.

⁽¹²⁾ OJ C 54, 4.3.2006, p. 13.

⁽¹³⁾ OJ L 214, 9.8.2008, p. 3.

⁽¹⁴⁾ Decision No 3/2001 of the EU-Poland Association Council of 23 May 2001 adopting the implementing rules for the application of the provisions on State aid referred to in Article 63(1)(iii) and (2) pursuant to Article 63(3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, and in Article 8(1)(iii) and (2) of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement (OJ L 215, 9.8.2001, p. 39).

- (69) The second sentence of Article 2(1) of the Implementing Rules refers in particular to the compatibility criteria under Protocol 2: 'Insofar as the aid awards or aid programmes are destined for products covered by Protocol 2 to the Europe Agreement, the first sentence of this paragraph applies fully with the exception that the assessment shall not be made on the basis of the criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community but on the basis of the criteria arising from the application of the rules on State aid of the Treaty establishing the European Coal and Steel Community'. The wording of this sentence clearly indicates that, contrary to the situation of general aid covered by the first sentence of Article 2(1) (see recital 68 above), for the purposes of aid covered by Protocol 2 to the Europe Agreement, the compatibility criteria evolve by reference to the ECSC Treaty. No specific indications are given as to the evolution of the compatibility criteria after the expiry of the ECSC Treaty in 2002.
- (70) Articles 2(2) and 2(3) of the Implementing Rules lay down the mechanism whereby changes to the EU compatibility criteria have to be incorporated by Poland. In particular, Poland shall be informed of any changes in the Community compatibility criteria which were not published, and '[w]here such changes do not encounter objections from the Republic of Poland within three months from the date of receiving the official information about them, they shall become criteria of compatibility as provided for in paragraph 1 of this Article. Where such changes encounter objections from the Republic of Poland and having regard to the approximation of legislation as provided for in the Europe Agreement, consultations shall take place, in accordance with Articles 7 and 8 of these Rules'.
- (71) Even if Poland did not object within three months to the change made in 2002 to the Community definition of the steel industry to include tube producers, these changes in Community law could not have become applicable to measures that fall outside of the scope of the Europe Agreement, i.e. those that were not covered by the ECSC Treaty. Furthermore, Protocol No 8 is *lex specialis*, and therefore, for determining its scope of application, the Commission cannot rely on the broadening of

the definition of the EU steel sector following the expiry of the ECSC Treaty. It must therefore be concluded that a clear distinction must be made between, on the one hand, the 'evolutive' nature of the law applicable to State aid for the steel sector in Poland before accession under the Europe Agreement, and on the other hand, the necessarily strict interpretation of the scope of the Commission's retroactive control competence as stemming from Protocol No 8, Protocol 2 to the Europe Agreement and the Decision of the Association Council.

8. CONCLUSION

- (72) On the basis of the foregoing, the Commission must conclude that it is not competent to review measures in favour of Polish tube producers before accession, and in particular over the period from 1997 to 2003, on the basis of Protocol No 8. This procedure is closed in view of the fact that the Commission is not competent to assess the measures caught by this procedure,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure laid down in Article 108(2) TFEU initiated by letter addressed to Poland dated 23 October 2007, is closed in view of the fact that the Commission is not competent under the provisions of Protocol No 8 to the Accession Treaty of Poland to review the measures granted by Poland to WRJ and WRJ-Serwis in 2001, 2002 and 2003.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 6 July 2010.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION DECISION

of 8 October 2010

derogating from Decisions 92/260/EEC and 2004/211/EC as regards the temporary admission of certain male registered horses participating in the equestrian events of the pre-Olympic test event in 2011, the Olympic Games or the Paralympic Games in 2012 in the United Kingdom*(notified under document C(2010) 6854)***(Text with EEA relevance)**

(2010/613/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae⁽¹⁾, and in particular Article 19(ii) thereof,

Whereas:

(1) Commission Decision 92/260/EEC of 10 April 1992 on animal health conditions and veterinary certification for temporary admission of registered horses⁽²⁾ assigns third countries from which the temporary admission into the Union of registered horses is to be authorised to specific sanitary groups for the use of the corresponding specimen health certificates set out in Annex II to that Decision. This Decision provides for guarantees that uncastrated male horses older than 180 days do not pose a risk as regards equine viral arteritis.

(2) Commission Decision 2004/211/EC of 6 January 2004 establishing the list of third countries and parts of territory thereof from which Member States authorise imports of live equidae and semen, ova and embryos of the equine species⁽³⁾ establishes such a list of third countries and parts of territories thereof from which Member States are to authorise the temporary admission of registered horses and sets out the conditions for the importation of equidae from third countries.

(3) The summer games of the XXX Olympiad ('Olympic Games') will be held in London, the United Kingdom, from 27 July to 12 August 2012, followed by the XIV summer Paralympic Games ('Paralympics') between

29 August and 9 September 2012. The equestrian events of the Olympic Games and of the Paralympics, forming an integral part of the 2012 Olympic Games and Paralympics, will be preceded by equestrian events within the framework of the pre-Olympic test event, which is planned to be a two-star International Eventing Competition from 4 to 10 July 2011.

(4) Registered horses participating in the equestrian events of the pre-Olympic test event, the Olympic Games and the Paralympics will be under the veterinary supervision of the competent authorities of the United Kingdom and the organising World Equestrian Federation (FEI).

(5) Certain male registered horses, which have qualified for participation in those high level equestrian events may not comply with the requirements as regards equine viral arteritis laid down in Decisions 92/260/EEC and 2004/211/EC. A derogation from those requirements should therefore be provided for uncastrated male registered horses temporarily admitted to participate in those sporting events. That derogation should set out the animal health and veterinary certification requirements to exclude the risk of spreading equine viral arteritis through breeding or semen collection.

(6) Because equine viral arteritis is a notifiable disease in South Africa, has not been reported since 2001 and is subject to controls in that country, it is unnecessary to extend the derogation to horses accompanied by a health certificate in accordance with specimen 'F' in Annex II to Decision 92/260/EEC.

(7) The requirements for veterinary checks on imports from third countries are laid down in Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries⁽⁴⁾.

⁽¹⁾ OJ L 224, 18.8.1990, p. 42.

⁽²⁾ OJ L 130, 15.5.1992, p. 67.

⁽³⁾ OJ L 73, 11.3.2004, p. 1.

⁽⁴⁾ OJ L 268, 24.9.1991, p. 56.

- (8) The development of the integrated computerised veterinary system Traces, provided for by Commission Decision 2003/623/EC of 19 August 2003 concerning the development of an integrated computerised veterinary system known as Traces ⁽¹⁾, involves the standardisation of documents relating to the declaration and checks so that the data gathered can be properly managed and processed in order to improve health safety in the European Union. The Commission therefore adopted Regulation (EC) No 282/2004 of 18 February 2004 introducing a document for the declaration of, and veterinary checks on, animals from third countries entering the Community ⁽²⁾.
- (9) Commission Decision 2004/292/EC of 30 March 2004 on the introduction of the Traces system ⁽³⁾ created a single electronic database ('TRACES') for monitoring the movement of animals within the European Union and from third countries, as well as providing all the reference data relating to trade in such goods.
- (10) Commission Regulation (EC) No 599/2004 of 30 March 2004 concerning the adoption of a harmonised model certificate and inspection report linked to intra-Community trade in animals and products of animal origin ⁽⁴⁾ provides a format for the identification of the consignment which allows to establish a link to animal health documents which accompanied the animal to the border inspection post at the point of entry into the European Union.
- (11) Commission Decision 2009/821/EC of 28 September 2009 drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces ⁽⁵⁾ provides details of a communication network connecting veterinary units in Member States in order to follow-up movements of, for example, temporarily admitted registered horses.
- (12) The common veterinary entry document issued in accordance with Regulation (EC) No 282/2004 in conjunction with certification for the movement of such horses from the Member State of first destination to other Member States ('onward certification'), is the most suitable instrument to ensure that uncastrated male registered horses temporarily admitted under specific conditions as regards equine viral arteritis leave the European Union within a period of less than 90 days following their entry and without delay following the end of the equestrian events in which they participated.
- (13) However, because the onward certification in Section VII of the specimen health certificate in accordance with Decision 92/260/EEC is not implemented in TRACES, it is necessary to connect this onward certification through the common veterinary entry document with a health attestation in accordance with Annex B to Directive 90/426/EEC.
- (14) With a view to the importance of the event and the limited number of well-known individual horses entering the European Union under the specific conditions provided for in this Decision, the additional administrative procedures appear to be appropriate.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 1 of Decision 92/260/EEC and Article 6(a) of Decision 2004/211/EC, Member States shall authorise the temporary admission of uncastrated male registered horses which do not meet the requirement for equine viral arteritis provided for in point (e)(v) of Section III of the specimen certificates 'A' to 'E' set out in Annex II to Decision 92/260/EEC, provided these horses are:

- (a) intended to participate in the following equestrian events in London, the United Kingdom:
- (i) the pre-Olympic test event from 4 to 10 July 2011;
 - (ii) the XXX Olympiad ('Olympic Games') from 27 July to 12 August 2012;
 - (iii) the XIV summer Paralympic Games ('Paralympics') from 29 August to 9 September 2012; and
- (b) in compliance with the conditions set out in Article 2 of this Decision.

Article 2

1. Member States shall ensure that the horses referred to in Article 1 ('the horses') are accompanied by a health certificate corresponding to the appropriate specimen 'A' to 'E' set out in Annex II to Decision 92/260/EEC which has been amended as follows:

- (a) the following is added to point (e)(v) of Section III relating to equine viral arteritis:

'or

— the registered horse is to be admitted in accordance with Commission Decision 2010/613/EU;

⁽¹⁾ OJ L 216, 28.8.2003, p. 58.

⁽²⁾ OJ L 49, 19.2.2004, p. 11.

⁽³⁾ OJ L 94, 31.3.2004, p. 63.

⁽⁴⁾ OJ L 94, 31.3.2004, p. 44.

⁽⁵⁾ OJ L 296, 12.11.2009, p. 1.

(b) the following indents are added to the part of Section IV to be completed by the official veterinarian:

- the horse is intended to participate in the equestrian events of the pre-Olympic test event in July 2011/Olympic Games in July and August 2012/Paralympics in August and September 2012 (*underline applicable and delete non-applicable*),
- arrangements have been made to transport the horse out of the European Union without delay after the end of the equestrian event of the pre-Olympic test event/Olympic Games/Paralympics (*underline applicable and delete non-applicable*) on (*insert date*) through the exit point (*insert name of exit point*),
- the horse is not intended for breeding or for the collection of semen during its residence of less than 90 days in a Member State of the European Union.'

2. Member States shall not implement an alternative control system, as provided for in Article 6 of Directive 90/426/EEC, for the horses.

3. The status of the horses cannot be converted from temporary entry into permanent entry.

Article 3

1. Member States shall ensure that in addition to the veterinary checks on the horses in accordance with Directive 91/496/EEC, the veterinary authorities issuing the common veterinary entry document ('CVED') in accordance with Regulation (EC) No 282/2004 also:

- (a) notify the exit point indicated in Section IV of the certificate referred to in Article 2(b) of the scheduled export from the European Union by completing point 20 of the CVED; and
- (b) communicate by FAX or e-mail the arrival of the horses to the local veterinary unit (GB04001) as defined in Article 2(b)(iii) of Decision 2009/821/EC responsible for the venue designated for the equestrian event as referred to in Article 1 ('the venue').

2. Member States shall ensure that the horses on their way from the Member State of first destination indicated in the CVED to a subsequent Member State, or to the venue, are accompanied by the following health documents:

- (a) the health certificate completed in accordance with Article 2(1) in which the dedicated Section VII for certification of movements between Member States is completed; and
- (b) the health attestation in accordance with Annex B to Directive 90/426/EEC, which must be notified to the place of destination in the format prescribed by Regulation (EC) No 599/2004 and bear a cross reference to the certificate mentioned in point (a) in Section I.6 of Part I of that format.

3. Member States being notified of the movement of the horses in accordance with paragraph 2 shall confirm the arrival of the horses in point 45 of Part 3 of the CVED.

Article 4

The United Kingdom shall ensure that the competent authority, in collaboration with the organiser of the events referred to in Article 1 and the appointed transport company, take the necessary measures to ensure that the horses:

- (a) are only admitted to the venue if their movements from the Member State of first destination indicated in the CVED to the United Kingdom is documented as provided for in Article 3(2); and
- (b) leave the European Union without delay following the end of the event.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 8 October 2010.

For the Commission
John DALLI
Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EU) No 665/2010 of 23 July 2010 on the issue of licences for importing rice under the tariff quotas opened for the July 2010 subperiod by Regulation (EC) No 327/98*(Official Journal of the European Union L 193 of 24 July 2010)*

On page 13, in the Annex, the table '(a) Quota of wholly milled or semi-milled rice falling within CN code 1006 30 provided for in Article 1(1)(a) of Regulation (EC) No 327/98' should read as follows:

'Origin	Order number	Allocation coefficient for the July 2010 subperiod	Total quantities available for the September 2010 subperiod (kg)
United States of America	09.4127	— ⁽¹⁾	10 026 128
Thailand	09.4128	— ⁽¹⁾	2 623 395
Australia	09.4129	— ⁽¹⁾	790 000
Other origins	09.4130	— ⁽²⁾	0

⁽¹⁾ Applications cover quantities less than or equal to the quantities available: all applications are therefore acceptable.

⁽²⁾ No remaining quantity available for this subperiod.

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