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## I

*(Legislative acts)*

## DIRECTIVES

## COUNCIL DIRECTIVE 2010/24/EU

of 16 March 2010

**concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 113 and 115 thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with a special legislative procedure,

Whereas:

(1) Mutual assistance between the Member States for the recovery of each others' claims and those of the Union with respect to certain taxes and other measures contributes to the proper functioning of the internal market. It ensures fiscal neutrality and has allowed Member States to remove discriminatory protective measures in cross-border transactions designed to prevent fraud and budgetary losses.

(2) Arrangements for mutual assistance for recovery were first set out in Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties <sup>(3)</sup>. That Directive and the acts amending

it were codified by 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 <sup>(4)</sup>.

(3) Those arrangements, however, while providing a first step towards improved recovery procedures within the Union by approximating applicable national rules, have proved insufficient to meet the requirements of the internal market as it has evolved over the last 30 years.

(4) To better safeguard the financial interests of the Member States and the neutrality of the internal market, it is necessary to extend the scope of mutual assistance for recovery to claims relating to taxes and duties not yet covered by mutual assistance for recovery, whilst in order to cope with the increase in assistance requests and to deliver better results, it is necessary to make assistance more efficient and effective and to facilitate it in practice. In order to fulfil these objectives, important adaptations are necessary, whereby a mere modification of the existing Directive 2008/55/EC would not be sufficient. The latter should therefore be repealed and replaced by a new legal instrument which builds on the achievements of Directive 2008/55/EC but provides for clearer and more precise rules where necessary.

(5) Clearer rules would promote a wider information exchange between Member States. They would also ensure that all legal and natural persons in the Union are covered, taking into account the ever increasing range of legal arrangements, including not only traditional arrangements such as trusts and foundations, but any new instrument which may be set up by taxpayers

<sup>(1)</sup> Opinion of 10 February 2010 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of 16 July 2009 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 73, 19.3.1976, p. 18.

<sup>(4)</sup> OJ L 150, 10.6.2008, p. 28.

in the Member States. They would furthermore make it possible to take account of all forms that claims of the public authorities relating to taxes, duties, levies, refunds and interventions may take, including all pecuniary claims against the taxpayer concerned or against a third party which substitute the original claim. Clearer rules are primarily necessary to define better the rights and obligations of all the parties concerned.

- (6) This Directive should not affect the Member States' competence to determine the recovery measures available under their internal legislation. However, it is necessary to ensure that neither disparities between national laws nor lack of coordination between competent authorities jeopardise the seamless operation of the mutual assistance system provided for in this Directive.
- (7) Mutual assistance may consist of the following: the requested authority may supply the applicant authority with the information which the latter needs in order to recover claims arising in the applicant Member State and notify to the debtor all documents relating to such claims emanating from the applicant Member State. The requested authority may also recover, at the request of the applicant authority, the claims arising in the applicant Member State, or take precautionary measures to guarantee the recovery of these claims.
- (8) The adoption of a uniform instrument to be used for enforcement measures in the requested Member State, as well as the adoption of a uniform standard form for notification of instruments and decisions relating to the claim, should resolve the problems of recognition and translation of instruments emanating from another Member State, which constitute a major cause of the inefficiency of the current arrangements for assistance.
- (9) A legal basis for exchange of information without prior request on specific tax refunds should be created. For reasons of efficiency, it should also be rendered possible for tax officials of a Member State to attend or to participate in administrative enquiries in another Member State. Provision should also be made for more direct information exchange between services with a view to making assistance faster and more efficient.
- (10) Given the increasing mobility within the internal market, and the restrictions imposed by the Treaty or other legislation on the guarantees that can be requested from taxpayers not established within the national territory, the possibilities for requesting recovery or precautionary measures in another Member State should be extended. As the age of a claim is a critical factor, it should be possible for Member States to make a request for mutual assistance, even though the domestic means of recovery have not yet been fully exhausted, *inter alia*, where recourse to such procedures in the applicant Member State would give rise to disproportionate difficulty.
- (11) A general obligation to communicate requests and documents in a digital form and via an electronic network, and with precise rules on the use of languages for requests and documents, should allow Member States to handle requests faster and more easily.
- (12) During the recovery procedure in the requested Member State, the claim, the notification made by the authorities of the applicant Member State or the instrument authorising its enforcement might be contested by the person concerned. It should be laid down that in such cases the person concerned should bring the action before the competent body of the applicant Member State and that the requested authority should suspend, unless the applicant authority requests otherwise, any enforcement proceedings which it has begun until a decision is taken by the competent body of the applicant Member State.
- (13) To encourage Member States to devote sufficient resources to the recovery of other Member States' claims, the requested Member State should be able to recover the costs related to recovery from the debtor.
- (14) Efficiency would be best achieved if, when executing a request for assistance, the requested authority could make use of the powers provided under its national laws applying to claims concerning the same or similar taxes or duties. In the absence of a similar tax or duty, the most appropriate procedure would be that provided under the laws of the requested Member State which applies to claims concerning the tax levied on personal income. This use of national legislation should not, as a general rule, apply with regard to the preferences accorded to claims arising in the requested Member State. However, it should be made possible to extend preferences to claims of other Member States based on an agreement between the Member States concerned.

(15) With regard to questions on limitation, it is necessary to simplify the existing rules, by providing that the suspension, interruption or prolongation of periods of limitation is in general determined according to the laws in force in the requested Member State, except where suspension, interruption or prolongation of the period of limitation is not possible under the laws in force in that State.

(16) Efficiency requires that information communicated in the course of mutual assistance may be used in the Member State receiving the information for purposes other than those provided for in this Directive, where this is allowed under the domestic legislation of both the Member State providing the information and the Member State receiving the information.

(17) This Directive should not prevent the fulfilment of any obligation to provide wider assistance ensuing from bilateral or multilateral agreements or arrangements.

(18) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.

(19) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(20) Since the objectives of this Directive, namely the provision of a uniform system of recovery assistance within the internal market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the uniformity, effectiveness and efficiency required, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(21) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### Subject matter

This Directive lays down the rules under which the Member States are to provide assistance for the recovery in a Member State of any claims referred to in Article 2 which arise in another Member State.

#### Article 2

##### Scope

1. This Directive shall apply to claims relating to the following:

(a) all taxes and duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions, including the local authorities, or on behalf of the Union;

(b) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including sums to be collected in connection with these actions;

(c) levies and other duties provided for under the common organisation of the market for the sugar sector.

2. The scope of this Directive shall include:

(a) administrative penalties, fines, fees and surcharges relating to the claims for which mutual assistance may be requested in accordance with paragraph 1, imposed by the administrative authorities that are competent to levy the taxes or duties concerned or carry out administrative enquiries with regard to them, or confirmed by administrative or judicial bodies at the request of those administrative authorities;

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

(b) fees for certificates and similar documents issued in connection with administrative procedures related to taxes and duties;

(c) interest and costs relating to the claims for which mutual assistance may be requested in accordance with paragraph 1 or point (a) or (b) of this paragraph.

3. This Directive shall not apply to:

(a) compulsory social security contributions payable to the Member State or a subdivision of the Member State, or to social security institutions established under public law;

(b) fees not referred to in paragraph 2;

(c) dues of a contractual nature, such as consideration for public utilities;

(d) criminal penalties imposed on the basis of a public prosecution or other criminal penalties not covered by paragraph 2(a).

#### Article 3

##### Definitions

For the purposes of this Directive:

(a) 'applicant authority' means a central liaison office, a liaison office or a liaison department of a Member State which makes a request for assistance concerning a claim referred to in Article 2;

(b) 'requested authority' means a central liaison office, a liaison office or a liaison department of a Member State to which a request for assistance is made;

(c) '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, owning or managing assets which, including income derived

therefrom, are subject to any of the taxes covered by this Directive;

(d) '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;

(e) 'CCN network' means the common platform based on the common communication network (CCN) developed by the Union for all transmissions by electronic means between competent authorities in the area of customs and taxation.

#### Article 4

##### Organisation

1. Each Member State shall inform the Commission by 20 May 2010 of its competent authority or authorities (hereinafter respectively referred to as the 'competent authority') for the purpose of this Directive and shall inform the Commission without delay of any changes thereof.

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

2. The competent authority shall designate a central liaison office which shall have principal responsibility for contacts with other Member States in the field of mutual assistance covered by this Directive.

The central liaison office may also be designated as responsible for contacts with the Commission.

3. The competent authority of each Member State may designate liaison offices which shall be responsible for contacts with other Member States concerning mutual assistance with regard to one or more specific types or categories of taxes and duties referred to in Article 2.

4. The competent authority of each Member State may designate offices, other than the central liaison office or liaison offices, as liaison departments. Liaison departments shall request or grant mutual assistance under this Directive in relation to their specific territorial or operational competences.

5. Where a liaison office or a liaison department receives a request for mutual assistance requiring action outside the competence assigned to it, it shall forward the request without delay to the competent office or department, if known, or to the central liaison office, and inform the applicant authority thereof.

6. The competent authority of each Member State shall inform the Commission of its central liaison office and any liaison offices or liaison departments which it has designated. The Commission shall make the information received available to the Member States.

7. Every communication shall be sent by or on behalf or, on a case by case basis, with the agreement of the central liaison office, which shall ensure effectiveness of communication.

## CHAPTER II

### EXCHANGE OF INFORMATION

#### Article 5

##### Request for information

1. At the request of the applicant authority, the requested authority shall provide any information which is foreseeably relevant to the applicant authority in the recovery of its claims as referred to in Article 2.

For the purpose of providing that information, the requested authority shall arrange for the carrying-out of any administrative enquiries necessary to obtain it.

2. The requested authority shall not be obliged to supply information:

- (a) which it would not be able to obtain for the purpose of recovering similar claims arising in the requested Member State;
- (b) which would disclose any commercial, industrial or professional secrets;
- (c) the disclosure of which would be liable to prejudice the security of or be contrary to the public policy of the requested Member State.

3. Paragraph 2 shall in no case be construed as permitting a requested authority of a Member State to decline to supply

information solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

4. The requested authority shall inform the applicant authority of the grounds for refusing a request for information.

#### Article 6

##### Exchange of information without prior request

Where a refund of taxes or duties, other than value-added tax, relates to a person established or resident in another Member State, the Member State from which the refund is to be made may inform the Member State of establishment or residence of the upcoming refund.

#### Article 7

##### Presence in administrative offices and participation in administrative enquiries

1. By agreement between the applicant authority and the requested authority and in accordance with the arrangements laid down by the requested authority, officials authorised by the applicant authority may, with a view to promoting mutual assistance provided for in this Directive:

- (a) be present in the offices where the administrative authorities of the requested Member State carry out their duties;
- (b) be present during administrative enquiries carried out in the territory of the requested Member State;
- (c) assist the competent officials of the requested Member State during court proceedings in that Member State.

2. In so far as it is permitted under the legislation in force in the requested Member State, the agreement referred to in paragraph 1(b) may provide that officials of the applicant Member State may interview individuals and examine records.

3. Officials authorised by the applicant authority who make use of the possibilities offered by paragraphs 1 and 2 shall at all times be able to produce written authority stating their identity and their official capacity.



## CHAPTER III

**ASSISTANCE FOR THE NOTIFICATION OF DOCUMENTS***Article 8***Request for notification of certain documents relating to claims**

1. At the request of the applicant authority, the requested authority shall notify to the addressee all documents, including those of a judicial nature, which emanate from the applicant Member State and which relate to a claim as referred to in Article 2 or to its recovery.

The request for notification shall be accompanied by a standard form containing at least the following information:

- (a) name, address and other data relevant to the identification of the addressee;
- (b) the purpose of the notification and the period within which notification should be effected;
- (c) a description of the attached document and the nature and amount of the claim concerned;
- (d) name, address and other contact details regarding:
  - (i) the office responsible with regard to the attached document, and, if different;
  - (ii) the office where further information can be obtained concerning the notified document or concerning the possibilities to contest the payment obligation.

2. The applicant authority shall make a request for notification pursuant to this article only when it is unable to notify in accordance with the rules governing the notification of the document concerned in the applicant Member State, or when such notification would give rise to disproportionate difficulties.

3. The requested authority shall forthwith inform the applicant authority of any action taken on its request for notification and, more especially, of the date of notification of the document to the addressee.

*Article 9***Means of notification**

1. The requested authority shall ensure that notification in the requested Member State is effected in accordance with the national laws, regulations and administrative practices in force in the requested Member State.

2. Paragraph 1 shall be without prejudice to any other form of notification made by a competent authority of the applicant Member State in accordance with the rules in force in that Member State.

A competent authority established in the applicant Member State may notify any document directly by registered mail or electronically to a person within the territory of another Member State.

## CHAPTER IV

**RECOVERY OR PRECAUTIONARY MEASURES***Article 10***Request for recovery**

1. At the request of the applicant authority, the requested authority shall recover claims which are the subject of an instrument permitting enforcement in the applicant Member State.

2. As soon as any relevant information relating to the matter which gave rise to the request for recovery comes to the knowledge of the applicant authority, it shall forward it to the requested authority.

*Article 11***Conditions governing a request for recovery**

1. The applicant authority may not make a request for recovery if and as long as the claim and/or the instrument permitting its enforcement in the applicant Member State are contested in that Member State, except in cases where the third subparagraph of Article 14(4) applies.

2. Before the applicant authority makes a request for recovery, appropriate recovery procedures available in the applicant Member State shall be applied, except in the following situations:



- (a) where it is obvious that there are no assets for recovery in the applicant Member State or that such procedures will not result in the payment in full of the claim, and the applicant authority has specific information indicating that the person concerned has assets in the requested Member State;
- (b) where recourse to such procedures in the applicant Member State would give rise to disproportionate difficulty.

#### Article 12

##### **Instrument permitting enforcement in the requested Member State and other accompanying documents**

1. Any request for recovery shall be accompanied by a uniform instrument permitting enforcement in the requested Member State.

This uniform instrument permitting enforcement in the requested Member State shall reflect the substantial contents of the initial instrument permitting enforcement, and constitute the sole basis for the recovery and precautionary measures taken in the requested Member State. It shall not be subject to any act of recognition, supplementing or replacement in that Member State.

The uniform instrument permitting enforcement shall contain at least the following information:

- (a) information relevant to the identification of the initial instrument permitting enforcement, a description of the claim, including its nature, the period covered by the claim, any dates of relevance to the enforcement process, and the amount of the claim and its different components such as principal, interest accrued, etc.;
- (b) name and other data relevant to the identification of the debtor;
- (c) name, address and other contact details regarding:
  - (i) the office responsible for the assessment of the claim, and, if different;
  - (ii) the office where further information can be obtained concerning the claim or the possibilities for contesting the payment obligation.

2. The request for recovery of a claim may be accompanied by other documents relating to the claim issued in the applicant Member State.

#### Article 13

##### **Execution of the request for recovery**

1. For the purpose of the recovery in the requested Member State, any claim in respect of which a request for recovery has been made shall be treated as if it was a claim of the requested Member State, except where otherwise provided for in this Directive. The requested authority shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State applying to claims concerning the same or, in the absence of the same, a similar tax or duty, except where otherwise provided for in this Directive.

If the requested authority considers that the same or similar taxes or duties are not levied on its territory, it shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State which apply to claims concerning the tax levied on personal income, except where otherwise provided for in this Directive.

The requested Member State shall not be obliged to grant other Member States' claims preferences accorded to similar claims arising in that Member State, except where otherwise agreed between the Member States concerned or provided in the law of the requested Member State. A Member State which grants preferences to another Member State's claims may not refuse to grant the same preferences to the same or similar claims of other Member States on the same conditions.

The requested Member State shall recover the claim in its own currency.

2. The requested authority shall inform the applicant authority with due diligence of any action it has taken on the request for recovery.

3. From the date on which the recovery request is received, the requested authority shall charge interest for late payment in accordance with the laws, regulations and administrative provisions in force in the requested Member State.

4. The requested authority may, where the laws, regulations or administrative provisions in force in the requested Member State so permit, allow the debtor time to pay or authorise payment by instalment and it may charge interest in that respect. It shall subsequently inform the applicant authority of any such decision.

5. Without prejudice to Article 20(1), the requested authority shall remit to the applicant authority the amounts recovered with respect to the claim and the interest referred to in paragraphs 3 and 4 of this Article.

#### Article 14

##### Disputes

1. Disputes concerning the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State and disputes concerning the validity of a notification made by a competent authority of the applicant Member State shall fall within the competence of the competent bodies of the applicant Member State. If, in the course of the recovery procedure, the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State is contested by an interested party, the requested authority shall inform that party that such an action must be brought by the latter before the competent body of the applicant Member State in accordance with the laws in force there.

2. Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by a competent authority of the requested Member State shall be brought before the competent body of that Member State in accordance with its laws and regulations.

3. Where an action as referred to in paragraph 1 has been brought before the competent body of the applicant Member State, the applicant authority shall inform the requested authority thereof and shall indicate the extent to which the claim is not contested.

4. As soon as the requested authority has received the information referred to in paragraph 3, either from the applicant authority or from the interested party, it shall suspend the enforcement procedure, as far as the contested part of the claim is concerned, pending the decision of the body competent in the matter, unless the applicant authority requests otherwise in accordance with the third subparagraph of this paragraph.

At the request of the applicant authority, or where otherwise deemed to be necessary by the requested authority, and without prejudice to Article 16, the requested authority may take precautionary measures to guarantee recovery in so far as the laws or regulations in force in the requested Member State allow such action.

The applicant authority may, in accordance with the laws, regulations and administrative practices in force in the applicant Member State, ask the requested authority to recover a contested claim or the contested part of a claim, in so far as the relevant laws, regulations and administrative practices in force in the requested Member State allow such action. Any such request shall be reasoned. If the result of contestation is subsequently favourable to the debtor, the applicant authority shall be liable for reimbursing any sums recovered, together with any compensation due, in accordance with the laws in force in the requested Member State.

If a mutual agreement procedure has been initiated by the competent authorities of the applicant Member State or the requested Member State, and the outcome of the procedure may affect the claim in respect of which assistance has been requested, the recovery measures shall be suspended or stopped until that procedure has been terminated, unless it concerns a case of immediate urgency because of fraud or insolvency. If the recovery measures are suspended or stopped, the second subparagraph shall apply.

#### Article 15

##### Amendment or withdrawal of the request for recovery assistance

1. The applicant authority shall inform the requested authority immediately of any subsequent amendment to its request for recovery or of the withdrawal of its request, indicating the reasons for amendment or withdrawal.

2. If the amendment of the request is caused by a decision of the competent body referred to in Article 14(1), the applicant authority shall communicate this decision together with a revised uniform instrument permitting enforcement in the requested Member State. The requested authority shall then proceed with further recovery measures on the basis of the revised instrument.

Recovery or precautionary measures already taken on the basis of the original uniform instrument permitting enforcement in the requested Member State may be continued on the basis of the revised instrument, unless the amendment of the request is due to invalidity of the initial instrument permitting enforcement in the applicant Member State or the original uniform instrument permitting enforcement in the requested Member State.

Articles 12 and 14 shall apply in relation to the revised instrument.

## Article 16

### Request for precautionary measures

1. At the request of the applicant authority, the requested authority shall take precautionary measures, if allowed by its national law and in accordance with its administrative practices, to ensure recovery where a claim or the instrument permitting enforcement in the applicant Member State is contested at the time when the request is made, or where the claim is not yet the subject of an instrument permitting enforcement in the applicant Member State, in so far as precautionary measures are also possible, in a similar situation, under the national law and administrative practices of the applicant Member State.

The document drawn up for permitting precautionary measures in the applicant Member State and relating to the claim for which mutual assistance is requested, if any, shall be attached to the request for precautionary measures in the requested Member State. This document shall not be subject to any act of recognition, supplementing or replacement in the requested Member State.

2. The request for precautionary measures may be accompanied by other documents relating to the claim, issued in the applicant Member State.

## Article 17

### Rules governing the request for precautionary measures

In order to give effect to Article 16, Articles 10(2), 13(1) and (2), 14, and 15 shall apply *mutatis mutandis*.

## Article 18

### Limits to the requested authority's obligations

1. The requested authority shall not be obliged to grant the assistance provided for in Articles 10 to 16 if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the requested Member State, in so far as the laws, regulations and administrative practices in force in that Member State allow such exception for national claims.

2. The requested authority shall not be obliged to grant the assistance provided for in Articles 5 and 7 to 16, if the initial request for assistance pursuant to Article 5, 7, 8, 10 or 16 is

made in respect of claims which are more than 5 years old, dating from the due date of the claim in the applicant Member State to the date of the initial request for assistance.

However, in cases where the claim or the initial instrument permitting enforcement in the applicant Member State is contested, the 5-year period shall be deemed to begin from the moment when it is established in the applicant Member State that the claim or the instrument permitting enforcement may no longer be contested.

Moreover, in cases where a postponement of the payment or instalment plan is granted by the competent authorities of the applicant Member State, the 5-year period shall be deemed to begin from the moment when the entire payment period has come to its end.

However, in those cases the requested authority shall not be obliged to grant the assistance in respect of claims which are more than 10 years old, dating from the due date of the claim in the applicant Member State.

3. A Member State shall not be obliged to grant assistance if the total amount of the claims covered by this Directive, for which assistance is requested, is less than EUR 1 500.

4. The requested authority shall inform the applicant authority of the grounds for refusing a request for assistance.

## Article 19

### Questions on limitation

1. Questions concerning periods of limitation shall be governed solely by the laws in force in the applicant Member State.

2. In relation to the suspension, interruption or prolongation of periods of limitation, any steps taken in the recovery of claims by or on behalf of the requested authority in pursuance of a request for assistance which have the effect of suspending, interrupting or prolonging the period of limitation according to the laws in force in the requested Member State shall be deemed to have the same effect in the applicant Member State, on condition that the corresponding effect is provided for under the laws in force in the applicant Member State.

If suspension, interruption or prolongation of the period of limitation is not possible under the laws in force in the requested Member State, any steps taken in the recovery of claims by or on behalf of the requested authority in pursuance of a request for assistance which, if they had been carried out by or on behalf of the applicant authority in its Member State, would have had the effect of suspending, interrupting or prolonging the period of limitation according to the laws in force in the applicant Member State shall be deemed to have been taken in the latter State, in so far as that effect is concerned.

The first and second subparagraphs shall not affect the right of the competent authorities in the applicant Member State to take measures to suspend, interrupt or prolong the period of limitation in accordance with the laws in force in that Member State.

3. The applicant authority and the requested authority shall inform each other of any action which interrupts, suspends or prolongs the limitation period of the claim for which the recovery or precautionary measures were requested, or which may have this effect.

#### Article 20

##### Costs

1. In addition to the amounts referred to in Article 13(5), the requested authority shall seek to recover from the person concerned and retain the costs linked to the recovery that it incurred, in accordance with the laws and regulations of the requested Member State.

2. Member States shall renounce all claims on each other for the reimbursement of costs arising from any mutual assistance they grant each other pursuant to this Directive.

However, where recovery creates a specific problem, concerns a very large amount in costs or relates to organised crime, the applicant and requested authorities may agree reimbursement arrangements specific to the cases in question.

3. Notwithstanding paragraph 2, the applicant Member State shall remain liable to the requested Member State for any costs and any losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the

validity of the instrument permitting enforcement and/or precautionary measures issued by the applicant authority are concerned.

#### CHAPTER V

##### GENERAL RULES GOVERNING ALL TYPES OF ASSISTANCE REQUESTS

##### Article 21

##### Standard forms and means of communication

1. Requests pursuant to Article 5(1) for information, requests pursuant to Article 8(1) for notification, requests pursuant to Article 10(1) for recovery or requests pursuant to Article 16(1) for precautionary measures shall be sent by electronic means, using a standard form, unless this is impracticable for technical reasons. As far as possible, these forms shall also be used for any further communication with regard to the request.

The uniform instrument permitting enforcement in the requested Member State, the document permitting precautionary measures in the applicant Member State and the other documents referred to in Articles 12 and 16 shall also be sent by electronic means, unless this is impracticable for technical reasons.

Where appropriate, the standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof, which shall also be sent by electronic means, unless this is impracticable for technical reasons.

Standard forms and communication by electronic means may also be used for the exchange of information pursuant to Article 6.

2. Paragraph 1 shall not apply to the information and documentation obtained through the presence in administrative offices in another Member State or through the participation in administrative enquiries in another Member State, in accordance with Article 7.

3. If communication is not made by electronic means or with use of standard forms, this shall not affect the validity of the information obtained or of the measures taken in the execution of a request for assistance.

*Article 22***Use of languages**

1. All requests for assistance, standard forms for notification and uniform instruments permitting enforcement in the requested Member States shall be sent in, or shall be accompanied by a translation into, the official language, or one of the official languages, of the requested Member State. The fact that certain parts thereof are written in a language other than the official language, or one of the official languages, of the requested Member State, shall not affect their validity or the validity of the procedure, in so far as that other language is one agreed between the Member States concerned.

2. The documents for which notification is requested pursuant to Article 8 may be sent to the requested authority in an official language of the applicant Member State.

3. Where a request is accompanied by documents other than those referred to in paragraphs 1 and 2, the requested authority may, where necessary, require from the applicant authority a translation of such documents into the official language, or one of the official languages of the requested Member State, or into any other language bilaterally agreed between the Member States concerned.

*Article 23***Disclosure of information and documents**

1. Information communicated in any form pursuant to this Directive shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

Such information may be used for the purpose of applying enforcement or precautionary measures with regard to claims covered by this Directive. It may also be used for assessment and enforcement of compulsory social security contributions.

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

3. The Member State providing the information shall permit its use for purposes other than those referred to in paragraph 1 in the Member State receiving the information, if, under the

legislation of the Member State providing the information, the information may be used for similar purposes.

4. Where the applicant or requested authority considers that information obtained pursuant to this Directive is likely to be useful for the purposes referred to in paragraph 1 to a third Member State, it may transmit that information to that third Member State, provided this transmission is in accordance with the rules and procedures laid down in this Directive. It shall inform the Member State of origin of the information about its intention to share that information with a third Member State. The Member State of origin of the information may oppose such a sharing of information within ten working days of the date at which it received the communication from the Member State wishing to share the information.

5. Permission to use information pursuant to paragraph 3 which has been transmitted pursuant to paragraph 4 may be granted only by the Member State from which the information originates.

6. Information communicated in any form pursuant to this Directive may be invoked or used as evidence by all authorities within the Member State receiving the information on the same basis as similar information obtained within that State.

## CHAPTER VI

**FINAL PROVISIONS***Article 24***Application of other agreements on assistance**

1. This Directive shall be without prejudice to the fulfilment of any obligation to provide wider assistance ensuing from bilateral or multilateral agreements or arrangements, including for the notification of legal or extra-legal acts.

2. Where the Member States conclude such bilateral or multilateral agreements or arrangements on matters covered by this Directive other than to deal with individual cases, they shall inform the Commission thereof without delay. The Commission shall in turn inform the other Member States.

3. When providing such greater measure of mutual assistance under a bilateral or multilateral agreement or arrangement, Member States may make use of the electronic communication network and the standard forms adopted for the implementation of this Directive.



*Article 25***Committee**

1. The Commission shall be assisted by the Recovery Committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at 3 months.

*Article 26***Implementing provisions**

The Commission shall adopt, in accordance with the procedure referred to in Article 25(2), detailed rules for implementing Article 4(2), (3) and (4), Article 5(1), Articles 8, 10, 12(1), Article 13(2), (3), (4) and (5), Articles 15, 16(1) and 21(1).

Those rules shall relate to at least the following:

- (a) the practical arrangements with regard to the organisation of the contacts between the central liaison offices, the other liaison offices and the liaison departments, referred to in Article 4(2), (3) and (4), of different Member States, and the contacts with the Commission;
- (b) the means by which communications between authorities may be transmitted;
- (c) the format and other details of the standard forms to be used for the purposes of Article 5(1), Articles 8, 10(1), Article 12(1) and Article 16(1);
- (d) the conversion of the sums to be recovered and the transfer of sums recovered.

*Article 27***Reporting**

1. Each Member State shall inform the Commission annually by 31 March of the following:

- (a) the number of requests for information, notification and recovery or for precautionary measures which it sends to each requested Member State and which it receives from each applicant Member State each year;
- (b) the amount of the claims for which recovery assistance is requested and the amounts recovered.

2. Member States may also provide any other information that may be useful for evaluating the provision of mutual assistance under this Directive.

3. The Commission shall report every 5 years to the European Parliament and the Council on the operation of the arrangements established by this Directive.

*Article 28***Transposition**

1. Member States shall adopt and publish, by 31 December 2011, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply these provisions from 1 January 2012.

When these provisions are adopted by Member States, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

*Article 29***Repeal of Directive 2008/55/EC**

Directive 2008/55/EC is repealed with effect from 1 January 2012.

References to the repealed Directive shall be construed as references to this Directive.

*Article 30***Entry into force**

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

*Article 31***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 16 March 2010.

*For the Council*

*The President*

E. SALGADO

## II

(Non-legislative acts)

## REGULATIONS

## IMPLEMENTING REGULATION OF THE COUNCIL (EU) No 270/2010

of 29 March 2010

**amending Regulation (EC) No 452/2007 imposing a definitive anti-dumping duty on imports of ironing boards originating, *inter alia*, in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> ('the basic Regulation'), and in particular Article 11(3) thereof,

Having regard to the proposal submitted by the European Commission after consulting the Advisory Committee,

Whereas:

## 1. PROCEDURE

## 1.1. Measures in force

- (1) The Council, by Regulation (EC) No 452/2007<sup>(2)</sup>, imposed a definitive anti-dumping duty on imports of ironing boards originating, *inter alia*, in the People's Republic of China ('PRC'). The measures consist of an *ad valorem* duty rate of 38,1 %, with the exception of five companies expressly mentioned which are subject to individual duty rates.

## 1.2. Request for a review

- (2) In 2008, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation ('interim review'). The request, limited in scope to the examination of dumping, was lodged by a Chinese exporting producer Guangzhou Power Team Houseware Co. Ltd., Guangzhou ('Power Team' or 'the applicant'). The rate of the definitive anti-dumping duty applicable to the applicant is 36,5 %.
- (3) In its request, the applicant claimed that the circumstances on the basis of which measures were imposed

have changed and that these changes are of a lasting nature. The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level is no longer necessary to offset dumping.

- (4) In particular, the applicant has claimed that it now operates under market economy conditions, i.e. that it meets the criteria laid down in Article 2(7)(c) of the basic Regulation. The applicant therefore alleged that its normal value should be determined in accordance with Article 2(7)(b) of the basic Regulation. A comparison of this normal value and its export prices to the European Union ('EU') indicated that the dumping margin appears to be substantially lower than the current level of the measure.

- (5) Therefore, the applicant claimed that the continued imposition of measures at the existing level, which was based on the level of dumping previously established, was no longer necessary to offset dumping.

## 1.3. Initiation of a review

- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate an interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of the applicant<sup>(3)</sup>.

## 1.4. Product concerned and like product

- (7) The product concerned by the interim review is the same as that in the investigation that led to the imposition of the measures in force ('original investigation'), i.e. ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.<sup>(2)</sup> OJ L 109, 26.4.2007, p. 12.<sup>(3)</sup> OJ C 3, 8.1.2009, p. 14 ('Notice of Initiation').



the legs, the top and the iron rest originating in the People's Republic of China currently falling within CN codes ex 3924 90 00 <sup>(1)</sup>, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00.

- (8) The product produced and sold on the Chinese domestic market and that exported to the EU, as well as that produced and sold in Ukraine (used as analogue country) have the same basic physical and technical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

### 1.5. Parties concerned

- (9) The Commission officially advised the representative of the Union industry, the applicant and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.
- (10) The Commission sent a market economy treatment ('MET') claim form and a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the applicant.

### 1.6. Review investigation period

- (11) The investigation of dumping covered the period from 1 January 2008 to 31 December 2008 ('the review investigation period' or 'RIP'). It is recalled that the investigation period of the original investigation leading to the imposition of the measures was 1 January 2005 to 31 December 2005 ('the original investigation period').

## 2. RESULTS OF THE INVESTIGATION

### 2.1. Market Economy Treatment ('MET')

- (12) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the Article 2 of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in a summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with International Accounting Standards ('IAS') and applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— currency exchanges are carried out at market rates.

- (13) The applicant requested MET pursuant to Article 2(7)(b) of the basic Regulation and was invited to complete a MET claim form.

- (14) The investigation established that the applicant did not meet the MET criterion referred to in the first indent of Article 2(7)(c) (criterion 1) of the basic Regulation as regards costs of major inputs. It was established that after the investigation period in the original investigation, i.e. after 2005, export restrictions were imposed by the State on several steel products, including the main raw materials for the production of ironing boards, i.e. steel plate, steel pipes and steel wire. It is noted that the cost of these raw materials represent a significant part of the total raw materials cost. The imposition of export taxes decreased the incentive to export and thereby increased the volumes available domestically, leading in turn to lower prices. It was also found that a number of subsidy schemes were available for Chinese steel producers <sup>(2)</sup>, as well as publicly available accounts of a number of steel producers confirm that the Chinese State is actively supporting the development of the steel sector in the PRC.

- (15) As a consequence, domestic steel prices in the PRC were during the review investigation period far below prices on other sizeable world markets, notably steel prices in North America and North Europe <sup>(3)</sup>, and these price differences cannot be explained by any competitive advantage in the production of steel.

- (16) Moreover, from the information on the file, it was found that the applicant was benefiting from these artificially low and distorted prices of steel, as it purchased its raw materials on the domestic Chinese market.

<sup>(1)</sup> The modified code (3924 90 00 instead of 3924 90 90 as mentioned in the Notice of Initiation) is a result of the new Combined Nomenclature which became applicable on 1.1.2010 (see Regulation (EC) 948/2009, OJ L 287, 31.10.2009, p. 1).

<sup>(2)</sup> For instance 'Money for Metal: A detailed Examination of Chinese Government Subsidies to its Steel Industry' by Wiley Rein LLP, July 2007, 'China Government Subsidies Survey' by Anne Stevenson-Yang, February 2007, 'Shedding Light on Energy Subsidies in China: An Analysis of China's Steel Industry from 2000-2007' by Usha C.V. Haley, 'China's Specialty Steel Subsidies: Massive, Pervasive and Illegal' by the Specialty Steel Industry of North America, 'The China Syndrome: How Subsidies and Government Intervention Created the World's Largest Steel Industry' by Wiley Rein & Fielding LLP, July 2006 and 'The State-Business Nexus in China's Steel Industry — Chinese Market Distortions in Domestic and International Perspective' by Prof. Dr. Markus Taube & Dr. Christian Schmidkonz of THINK!DESK China Research & Consulting, 25.2.2009.

<sup>(3)</sup> Source: Steel Business Briefing, average prices for 2005 and 2008.

- (17) It was thus concluded that major inputs of Power Team do not substantially reflect market values. Consequently, it was concluded that the applicant has not shown that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.
- (18) The applicant, the exporting country and the Union industry were given an opportunity to comment on the above findings. Comments were received from the applicant and the Union industry.
- (19) The applicant put forward three main arguments within the deadline. Firstly, it stated that Power Team's raw material prices were still in line with domestic prices and that this finding was sufficient to fulfil criterion 1 in the original investigation. As a consequence, the company considered it a breach of Article 11(9) of the basic Regulation to compare the prices on the Chinese domestic market with prices on other international steel markets. In this context, the company also questioned the relevance of the North European and North American steel market prices to which a comparison was made. The applicant stated that there would be also prices of other international markets such as the Turkish export prices that were lower than the domestic prices in the PRC.
- (20) It is indeed true that the applicant fulfilled criterion 1 in the original investigation, but failed criterion 2. It is however considered that there is no breach of Article 11(9) of the basic Regulation as there is no change in methodology to assess whether the company operates under market economy conditions and notably whether it still fulfils criterion 1. In both investigations, the original investigation and the review investigation, the question of raw materials reflecting market values was assessed. In both investigations one of the indicators examined was domestic steel prices, but in the original investigation there were no other significant factors that appeared to influence raw material prices. Thus, the methodology remained the same, only the findings were different.
- (21) The review investigation revealed that after the original investigation period, i.e. since 2006, the circumstances have changed as several measures were imposed by the Chinese State to discourage exports of steel plate, pipes and wire by introducing an export tax and by eliminating the export VAT refund. This, together with the aforementioned subsidy schemes, had a distorting effect on the Chinese domestic steel prices because the price difference found between those prices and the domestic prices published for North America and North Europe, increased significantly to around 30 %. This price difference has not been challenged by the applicant following the disclosure of the MET findings.
- (22) As regards the argument that the domestic North American and North European steel prices are not the only internationally relevant prices, it is noted that both steel markets were selected for a comparison of prices as both markets have a high consumption of steel and are competitive markets with several active producers. It could thus reasonably be assumed that those domestic prices were representative for competitive market prices. Moreover, the claim that Turkish export prices would be lower than Chinese domestic prices was not further substantiated at this stage, i.e. no concrete prices were submitted within the deadline. Furthermore, no explanation as to why Turkish export prices, given the apparent relative small size of the Turkish export market compared to the domestic North American and North European markets, should be considered as more relevant.
- (23) The company secondly claimed that it was discriminated in the application of EU law, as in a number of recent other cases in which steel constituted a major input, there were some Chinese steel companies fulfilling criterion 1. These cases were all examined and it was found that none of the companies involved in those cases was granted MET as they all failed to satisfy at least one other criterion of Article 2(7)(c) of the basic Regulation. Thus, for reasons of administrative economy, it was not necessary to expand on criterion 1 in great detail when it was clear that the company would fail for another reason. In any event, in none of those recent cases had the Commission concluded that there were no distortions on the Chinese domestic steel market, but on the contrary, in recent cases, MET was denied whenever raw material distortions could be identified <sup>(1)</sup>.
- (24) Lastly, the applicant argued that an adjustment of the normal value would be more appropriate than denying MET. However, an adjustment to the normal value appears inappropriate given that one of the criteria to be granted MET is that costs of major inputs have to reflect market values. If this is not the case, the consequence should rather be that MET is denied and the normal value will be replaced by an analogue country normal value, in particular if the raw materials constitute such a significant part of the cost of the inputs.
- (25) To conclude, none of the arguments raised by Power Team were convincing or led to a different assessment of the findings.
- <sup>(1)</sup> See Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 29, 31.1.2009, p. 1); Commission Regulation (EC) No 287/2009 of 7 April 2009 imposing a provisional anti-dumping duty on imports of certain aluminium foil originating in, inter alia, the People's Republic of China (OJ L 94, 8.4.2009, p. 17).

- (26) The Union industry pointed out that the Chinese State had massively intervened in the steel industry which already prompted the EU and the US to request WTO consultations to resolve this matter.
- (27) On the basis of the above, the findings and the conclusion that MET should not be granted to Power Team were confirmed.
- (28) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend an amendment of Regulation (EC) No 452/2007, the applicant submitted further comments on the MET finding.
- (29) The applicant mainly reiterated its argument that its main inputs would reflect market values in the PRC and that Chinese prices would be broadly in line with other international markets. While it acknowledged the fact that the price increase for the main inputs was less pronounced in the PRC in 2008 compared to other international steel markets, the applicant alleged that this was not due to any distortions but that other pure commercial factors could be the reason for the lower prices on the Chinese domestic market. The applicant pointed to increased production in 2008 and indicated that the existing anti-dumping or countervailing duties in place against exports of most of the steel inputs produced in the PRC had led the Chinese producers to decrease their prices in the domestic market.
- (30) It is noted that the additional price information submitted by the applicant supported the finding that the main raw materials for the production of ironing boards in 2008 were on average significantly cheaper on the Chinese domestic market than on other sizeable world markets.
- (31) As to the argument that pure commercial factors were the reason for that price difference, i.e. the increased production in the PRC, it is noted that this argument was not sufficiently substantiated in particular with regard to any possible correlation between the alleged increase in production and the situation on the demand side. At the same time, the argument raised by the applicant that there were countervailing duties in place against exports of a number of steel products from the PRC, only demonstrates that indeed the Chinese steel producers were benefiting from subsidies.
- (32) Consequently, the applicant's argument that the steel market in the PRC is not distorted cannot be upheld and it is definitively concluded that the MET determination should not be revised and that MET should not be granted to Power Team.
- criteria for individual treatment set out in Article 9(5) of the basic Regulation. These criteria are set out in a summarised form below:
- in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
  - export prices and quantities, and conditions and terms of sale are freely determined;
  - the majority of the shares belong to private persons, and it must be demonstrated that the company is sufficiently independent from State interference;
  - exchange rate conversions are carried out at the market rate;
  - State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.
- (34) The applicant, as well as requesting MET, also claimed IT in the event of it not being granted MET.
- (35) The investigation showed that the applicant met all the above criteria and it is concluded that IT should be granted to Power Team.

### 2.3. Normal value

- (36) According to Article 2(7) of the basic Regulation, in case of imports from non-market-economy countries and to the extent that MET could not be granted, for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in an analogue country.
- (37) In the notice of initiation, the Commission indicated its intention to use again Turkey, which was used as an analogue country in the original investigation, as an appropriate analogue country for the purpose of establishing normal value for the PRC, but no Turkish producer co-operated in this interim review. However, co-operation was received from an Ukrainian exporting producer that was subject to a parallel investigation for another interim review. The interested parties were informed accordingly and no comments against using Ukraine as an analogue country were received at that stage.
- (38) As there were no apparent reasons found not to select Ukraine as an analogue country, and in particular as no other third country producer cooperated, the normal value was established pursuant to Article 2(7)(a) of the basic Regulation, i.e. on the basis of verified information received from the cooperating producer in the analogue country.

### 2.2. Individual Treatment ('IT')

- (33) Pursuant to Article 2(7) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all

- (39) In accordance with Article 2(2) of the basic Regulation, it was found that the volume of domestic sales of the like product of the cooperating producer in the analogue country was representative in comparison with the export sales of the applicant to the EU. Furthermore, for all exported product types, the comparable domestic sales (if necessary adjusted for physical characteristics) were considered representative since their sales volume was at least 5 % of the volume of the corresponding export sales to the EU.
- (40) The Commission subsequently examined whether the domestic sales in the analogue country of each type of ironing board sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the ironing board type in question.
- (41) Domestic sales transactions were considered profitable where the unit price of a specific product type was equal to or above the cost of production. Cost of production of each type sold on the domestic market of the analogue country during the IP was therefore determined.
- (42) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.
- (43) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of only profitable sales of that type.
- (44) Following the disclosure, the applicant commented that in cases where profitable sales would represent less than 10 % of total sales volume of a particular type, a constructed normal value should normally be used.
- (45) In this regard, it is noted that a situation of less than 10 % profitable sales did not occur in this investigation. Moreover, the practice of automatically constructing a normal value in such circumstances is no longer in place.

## 2.4. Export price

- (46) In all cases the product concerned was sold for export to independent customers in the Union via independent traders in the PRC, and therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of prices actually paid or payable for the product when sold for export to the EU.
- (47) Following disclosure, the applicant submitted that the export price should be established on the basis of the sales invoice price of the independent Chinese trader to independent customers in the EU, and not, as it was done, on the basis of the price paid or payable for the product when sold from Power Team to the independent trader in the PRC for export. Such an approach, however, would not be in line with Article 2(8) of the basic Regulation that requires that when products are sold for export, the first independent transaction should be the basis for establishing the export price. Consequently, this claim has to be rejected.

## 2.5. Comparison

- (48) The normal value and export price were compared on an ex-works basis. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for physical characteristics, transport costs, insurance, handling charges and credit costs were made where applicable and justified. Given that the export price was established exclusively on the basis of domestic sales to Chinese traders for export, there was no reason for an allowance for differences in taxation, since the normal value was also established on domestic sales in the analogue country subject to a similar taxation regime. Both normal value and export price were therefore calculated on a net of VAT basis.
- (49) Following disclosure, the applicant submitted that the grouping of the product types (that was indeed performed for comparison purposes) would cast certain doubts with regard to the correctness of the price comparison.
- (50) In this regard, it is noted that the grouping of product types in this investigation was identical to the grouping performed in the original investigation, and was considered necessary in order to increase comparability of the products sold for export to the Union by Power Team and those sold on the domestic market in the analogue country. It is also noted that the applicant did not substantiate its claim any further, in particular with respect to why the grouping as performed (and explained in the specific disclosure addressed to the applicant) would not be appropriate. Consequently, the claim has to be rejected.



## 2.6. Dumping margin

- (51) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed the existence of dumping.
- (52) The dumping margin of Power Team expressed as a percentage of the net, free-at-Union-frontier price was found to be 39,6 %.

## 3. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (53) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.
- (54) In this respect, it is recalled that the applicant was denied MET in the original investigation due to established irregularities with regard to its accounting practices. This review concluded that Power Team fulfilled this criterion. However, as indicated above, the applicant did not meet the MET criterion referred to in the first indent of Article 2(7)(c) of the basic Regulation concerning costs of major inputs. Consequently, as far as MET is concerned, the circumstances have not changed for the applicant.
- (55) However, the data collected and verified during the investigation (i.e. the applicant's individual prices for export to the EU and a normal value established in Ukraine as an analogue country) led to a higher dumping margin. This change is considered significant and the continued application of the measure at its current level would no longer be sufficient to offset dumping.

## 4. ANTI-DUMPING MEASURES

- (56) In the light of the results of this review investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from Power Team to 39,6 %.
- (57) As concerns the level of the residual duty, it is recalled that in the original investigation, cooperation was low.

Thus, the duty for the companies not co-operating was set at a level which corresponded to the weighted average dumping margin of the most sold product types of the co-operating exporting producer with the highest dumping margin. Applying the same methodology and considering the relevant data from the applicant, the residual duty has to be amended to 42,3 %.

- (58) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend an amendment of Regulation (EC) No 452/2007 and were given an opportunity to comment. The comments submitted by the parties were considered and, when appropriate, the definitive findings have been modified accordingly.

HAS ADOPTED THIS REGULATION:

### Article 1

Regulation (EC) No 452/2007 is hereby amended as follows:

- The entry concerning Guangzhou Power Team Houseware Co. Ltd., Guangzhou in the table in Article 1(2) shall be replaced by the following:

Country	Manufacturer	Rate of duty (%)	TARIC additional code
PRC	Guangzhou Power Team Houseware Co. Ltd., Guangzhou	39,6	A783

- The entry concerning all other companies in the PRC in the table in Article 1(2) shall be replaced by the following:

Country	Manufacturer	Rate of duty (%)	TARIC additional code
PRC	All other companies	42,3	A999

### 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, 29 March 2010

For the Council  
The President  
E. ESPINOSA

**COMMISSION REGULATION (EU) No 271/2010****of 24 March 2010****amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007, as regards the organic production logo of the European Union**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 <sup>(1)</sup> and in particular Article 25(3), Article 38(b), and Article 40 thereof,

Whereas:

- (1) Article 24 of Regulation (EC) No 834/2007 lays down that the Community logo is one of the compulsory indications to be used on the packaging of products bearing terms referring to the organic production method as referred to in Article 23(1), and that the use of this logo is optional for products imported from third countries. Article 25(1) of Regulation (EC) No 834/2007 allows the use of the Community logo in the labelling, presentation and advertising of products which satisfy the requirements set out under that Regulation.
- (2) Experience gained in the application of Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs <sup>(2)</sup>, which has been replaced by Regulation (EC) No 834/2007, has shown that the Community logo which could be used on a voluntary basis no longer meets the expectations of the operators in the sector nor of the consumers.
- (3) New rules concerning the logo should be introduced in Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control <sup>(3)</sup>. Those rules should allow that the logo is better adapted to the developments in the sector, in particular through better identification by the consumer of organic products falling under the EU regulations concerning the organic production.
- (4) Following the entry into force of the Lisbon Treaty, it is appropriate to refer to 'organic production logo of the European Union' instead of 'Community organic production logo'.
- (5) A competition was organised by the Commission amongst students of art and design from the Member States, with a view to gather proposals for a new logo, and an independent jury made a selection and ranking of the 10 best proposals. Further scrutiny from the point of view of the intellectual property allowed to identify the three best designs from that point of view, which were subsequently submitted to a consultation on the Internet opened from 7 December 2009 to 31 January 2010. The proposed logo chosen by a majority of visitors of the website over that period should be adopted as the new organic production logo of the European Union.
- (6) The change of the organic production logo of the European Union as from the 1 July 2010 should not cause difficulties on the market, and in particular it should be allowed that organic products which have been already placed on the market can be sold without the compulsory indications required by Article 24 of Regulation (EC) No 834/2007, provided that the products in question comply with Regulation (EEC) No 2092/91 or Regulation (EC) No 834/2007.
- (7) In order to enable the use of the logo as soon as it is compulsory in accordance with the EU legislation and to ensure the effective functioning of the internal market, to guarantee fair competition and to protect consumer interests, the new organic production logo of the European Union was registered as an Organic Farming Collective Mark in the Benelux Office for Intellectual Property and is consequently in force, usable and protected. The logo will also be registered in the Community and International Registers.
- (8) Article 58 of Regulation (EC) No 889/2008 lays down that the code number of the control body or authority should be placed immediately below the Community logo without specific indication about the format and the attribution of these codes. In order to establish a harmonised application of these code numbers, detailed rules about the format and the attribution of these codes should be set out.
- (9) Regulation (EC) No 889/2008 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Regulatory Committee on Organic Production,

<sup>(1)</sup> OJ L 189, 20.7.2007, p. 1.

<sup>(2)</sup> OJ L 198, 22.7.1991, p. 1.

<sup>(3)</sup> OJ L 250, 18.9.2008, p. 1.

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 889/2008 is amended as follows:

1. in Title III, the title of Chapter I is replaced by the following:

**‘Organic production logo of the European Union’;**

2. Article 57 is replaced by the following:

*‘Article 57*

**Organic logo of the EU**

In accordance with Article 25(3) of Regulation (EC) No 834/2007, the organic production logo of the European Union (hereinafter “Organic logo of the EU”) shall follow the model set out in Part A of Annex XI to this Regulation.

The Organic logo of the EU shall only be used if the product concerned is produced in accordance with the requirements of Regulation (EEC) No 2092/91 and its implementing regulations or Regulation (EC) No 834/2007 and the requirements of this Regulation.’;

3. in Article 58(1), points (b), (c) and (d) are replaced by the following:

‘(b) include a term which establishes a link with the organic production method, as referred to in Article 23(1) of Regulation (EC) No 834/2007 in accordance with Part B(2) of Annex XI to this Regulation;

(c) include a reference number to be decided by the Commission or by the competent authority of the Member States in accordance with Part B(3) of Annex XI to this Regulation; and

(d) be placed in the same visual field as the Organic logo of the EU, where the Organic logo of the EU is used in the labelling.’;

4. in Article 95, paragraphs 9 and 10 are replaced by the following:

‘9. Stocks of products produced, packaged and labelled before 1 July 2010 in accordance with either Regulation (EEC) No 2092/91 or Regulation (EC) No 834/2007 may continue to be brought on the market bearing terms referring to organic production until stocks are exhausted.

10. Packaging material in accordance with either Regulation (EEC) No 2092/91 or Regulation (EC) No 834/2007 may continue to be used for products placed on the market bearing terms referring to organic production until 1 July 2012, where the product otherwise complies with the requirements of Regulation (EC) No 834/2007.’;

5. Annex XI is replaced by the text set out in the Annex to this Regulation.

*Article 2*

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

It shall apply as from 1 July 2010.

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

Done at Brussels, 24 March 2010.

*For the Commission*

*The President*

José Manuel BARROSO



## ANNEX

## 'ANNEX XI

**A. Organic logo of the EU, referred to in Article 57**

1. The Organic logo of the EU shall comply with the model below:



2. The reference colour in Pantone is Green Pantone No 376 and Green (50 % Cyan + 100 % Yellow), when a four-colour process is used.
3. The Organic logo of the EU can also be used in black and white as shown, only where it is not practicable to apply it in colour:



4. If the background colour of the packaging or label is dark, the symbols may be used in negative format, using the background colour of the packaging or label.
5. If a symbol is used in colour on a coloured background, which makes it difficult to see, a delimiting outer line around the symbol can be used to improve contrast with the background colours.
6. In certain specific situations where there are indications in a single colour on the packaging, the Organic logo of the EU may be used in the same colour.
7. The Organic logo of the EU must have a height of at least 9 mm and a width of at least 13,5 mm; the proportion ratio height/width shall always be 1:1,5. Exceptionally the minimum size may be reduced to a height of 6 mm for very small packages.
8. The Organic logo of the EU may be associated with graphical or textual elements referring to organic farming, under the condition that they do not modify or change the nature of the Organic logo of the EU, nor any of the indications mentioned at Article 58. When associated to national or private logos using a green colour different from the reference colour mentioned in point 2, the Organic logo of the EU may be used in that non-reference colour.
9. The use of the Organic logo of the EU shall be in accordance with the rules accompanying its registration as Organic Farming Collective Mark in the Benelux Office for Intellectual Property and in the Community and International Trademark Registers.

**B. Code numbers referred to in Article 58**

The general format of the code numbers is as follows:

AB-CDE-999

Where:

1. "AB" is the ISO code as specified in Article 58(1)(a) for the country where the controls take place; and
2. "CDE" is a term, indicated in three letters to be decided by the Commission or each Member State, like "bio" or "öko" or "org" or "eko" establishing a link with the organic production method as specified in Article 58(1)(b); and
3. "999" is the reference number, indicated in maximum three digits, to be attributed, as specified in Article 58(1)(c) by:
  - (a) each Member State's competent authority to the Control Authorities or Control Bodies to which they have delegated control tasks in accordance with Article 27 of Regulation (EC) No 834/2007;
  - (b) the Commission, to:
    - (i) the Control Authorities and Control Bodies referred to in Article 3(2)(a) of Commission Regulation (EC) No 1235/2008 (\*) and listed in Annex I to that Regulation;
    - (ii) the third countries' competent authorities or Control Bodies referred to in Article 7(2)(f) of Regulation (EC) No 1235/2008 and listed in Annex III to that Regulation;
    - (iii) the Control Authorities and Control Bodies referred to in Article 10(2)(a) of Regulation (EC) No 1235/2008, and listed in Annex IV to that Regulation;
  - (c) each Member State's competent authority to the Control Authority or Control Body which has been authorised until 31 December 2012 for issuing the certificate of inspection in accordance with Article 19(1) fourth subparagraph of Regulation (EC) No 1235/2008 (import authorisations), upon proposal of the Commission.

The Commission shall make the code numbers available to the public by any appropriate technical means, including publication on the Internet.

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(\*) OJ L 334, 12.12.2008, p. 25.'

**COMMISSION REGULATION (EU) No 272/2010****of 30 March 2010****amending Regulation (EC) No 972/2006 laying down special rules for imports of Basmati rice and a transitional control system for determining their origin**

THE EUROPEAN COMMISSION,

husked Basmati rice of the varieties specified in Annex XVIII to Regulation (EC) No 1234/2007.

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>, and in particular Articles 138 and 143, in conjunction with Article 4 thereof,

Whereas:

(1) Under the Agreement in the form of an Exchange of Letters between the European Community and India pursuant to Article XXVIII of the GATT 1994 relating to the modification of concessions with respect to rice provided for in EC Schedule CXL annexed to the GATT 1994 <sup>(2)</sup>, approved by Council Decision 2004/617/EC <sup>(3)</sup>, the duty applicable to imports of husked rice of certain basmati varieties originating in India is fixed at zero.

(2) Under the Agreement in the form of an Exchange of Letters between the European Community and Pakistan pursuant to Article XXVIII of the GATT 1994 relating to the modification of concessions with respect to rice provided for in EC Schedule CXL annexed to the GATT 1994 <sup>(4)</sup>, approved by Council Decision 2004/618/EC <sup>(5)</sup>, the duty applicable to imports of husked rice of certain basmati varieties originating in Pakistan is fixed at zero.

(3) Article 1 of Commission Regulation (EC) No 972/2006 <sup>(6)</sup> provides that its rules are to apply to

(4) Article 6, paragraph 2, of Regulation (EC) No 972/2006 establishes that if the results of the checks made by Member States on imported Basmati show that the product analysed does not correspond to what is indicated on the authenticity certificate, the import duty on husked rice shall apply. To this respect, this provision does not indicate any tolerance for the presence of rice not corresponding to the varieties listed in Annex XVIII to Regulation (EC) No 1234/2007.

(5) The conditions of production and trade of Basmati rice make highly difficult to guarantee that any single lot is made out of 100 % of Basmati rice of the varieties listed in Annex XVIII to Regulation (EC) No 1234/2007. In order to allow smooth trade flows of Basmati into the European Union, and considering that the DNA-based Union control system is not operational yet and therefore the Member States can apply their own control protocols with at least 5 % uncertainty on the checks being cumulative upon any tolerance level, it is appropriate to establish a 5 % tolerance for the presence in the imported Basmati of long grain rice not corresponding to any of the varieties listed in that Annex XVIII.

(6) In order to extend the positive impact of this measure to all concerned importers, it should be provided that the tolerance is applicable to all Basmati imports for which a final decision on the eligibility of the lot has not yet been made by the responsible authorities of the Member States.

(7) Regulation (EC) No 972/2006 should therefore be amended accordingly.

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

<sup>(2)</sup> OJ L 279, 28.8.2004, p. 19.

<sup>(3)</sup> OJ L 279, 28.8.2004, p. 17.

<sup>(4)</sup> OJ L 279, 28.8.2004, p. 25.

<sup>(5)</sup> OJ L 279, 28.8.2004, p. 23.

<sup>(6)</sup> OJ L 176, 30.6.2006, p. 53.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

In Article 6(2) of Regulation (EC) No 972/2006, the following sentence is added:

‘However, the presence up to 5 % of husked rice falling within CN code 1006 20 17 or CN code 1006 20 98 not corresponding to any of the varieties listed in Annex XVIII to Council Regulation (EC) No 1234/2007 (\*) shall be accepted.

(\*) OJ L 299, 16.11.2007, p. 1.’

*Article 2*

Article 6(2) of Regulation (EC) No 972/2006 as amended by Article 1 of this Regulation shall also apply to Basmati imports carried out before the entry into force of this Regulation for which the competent authorities of the Member State have not yet finally established the eligibility to zero duty provided for in Article 138 of Regulation (EC) No 1234/2007.

*Article 3*

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

Article 2 shall cease to apply at the end of the 12th month following entry into force of this Regulation.

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

Done at Brussels, 30 March 2010.

*For the Commission*

*The President*

José Manuel BARROSO

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**COMMISSION REGULATION (EU) No 273/2010****of 30 March 2010****amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 2111/2005 of the European Parliament and the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the European Union and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/CE <sup>(1)</sup>, and in particular Article 4 thereof,

Whereas:

- (1) Commission Regulation (EC) No 474/2006 of 22 March 2006 established the Community list of air carriers which are subject to an operating ban within the European Union referred to in Chapter II of Regulation (EC) No 2111/2005 <sup>(2)</sup>.
- (2) In accordance with Article 4(3) of Regulation (EC) No 2111/2005, some Member States communicated to the Commission information that is relevant in the context of updating the Community list. Relevant information was also communicated by third countries. On this basis, the Community list should be updated.
- (3) The Commission informed all air carriers concerned either directly or, when this was not practicable, through the authorities responsible for their regulatory oversight, indicating the essential facts and considerations which would form the basis for a decision to impose on them an operating ban within the European Union or to modify the conditions of an operating ban imposed on an air carrier which is included in the Community list.
- (4) Opportunity was given by the Commission to the air carriers concerned to consult the documents provided by Member States, to submit written comments and to make an oral presentation to the Commission within 10 working days and to the Air Safety Committee established by Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation <sup>(3)</sup>.
- (5) The authorities with responsibility for regulatory oversight over the air carriers concerned have been consulted by the Commission as well as, in specific cases, by some Member States.

- (6) The Air Safety Committee has heard presentations by the European Aviation Safety Agency (EASA) and the Commission about the technical assistance projects carried out in countries affected by Regulation (EC) No 2111/2005. It has been informed about the requests for further technical assistance and cooperation to improve the administrative and technical capability of civil aviation authorities with a view to resolving any non compliance with applicable international standards.
- (7) The Air Safety Committee has also been informed about enforcement actions taken by EASA and Member States to ensure the continuing airworthiness and maintenance of aircraft registered in the European Union and operated by air carriers certified by civil aviation authorities of third countries.
- (8) Regulation (EC) No 474/2006 should therefore be amended accordingly.

**European Union carriers**

- (9) Following information resulting from SAFA ramp checks carried out on aircraft of certain European Union air carriers, as well as area specific inspections and audits carried out by their national aviation authorities, some Member States have taken certain enforcement measures. They informed the Commission and the Air Safety Committee about these measures: the competent authorities of Spain launched the procedure on 12 March 2010 to suspend the Air Operator Certificate (AOC) of the air carrier Baleares Link Express and suspended the AOC of the air carrier Euro Continental on 12 January 2010; the competent authorities of Germany suspended the AOC of Regional Air Express as of 28 January 2010; the competent authorities of the UK informed that the AOC of the carrier Trans Euro Air Limited was suspended on 08 December 2009; the competent authorities of Slovakia informed in writing that the AOC of the carrier Air Slovakia was suspended on 01 March 2010.
- (10) Finally, the competent authorities of Latvia informed the Air Safety Committee that following serious concerns about the safety of the operations and the continuing airworthiness of aircraft of type IL-76 operated by air carrier Aviation Company Inversija, they decided on 26 February 2010 to remove the aircraft from the AOC held by the air carrier Aviation Company Inversija and that the AOC was suspended on 16 March 2010.

<sup>(1)</sup> OJ L 344, 27.12.2005, p. 15.

<sup>(2)</sup> OJ L 84, 23.3.2006, p. 14.

<sup>(3)</sup> OJ L 373, 31.12.1991, p. 4.

**Air Koryo**

- (11) Pursuant to Regulation (EC) 1543/2006 the Commission has obtained detailed information describing the actions taken by the competent authorities of the Democratic People's Republic of Korea (GACA) responsible for the regulatory oversight of Air Koryo and by Air Koryo in addressing the safety deficiencies outlined in Regulation (EC) 474/2006.
- (12) In December 2008 the Commission communicated with GACA requesting a corrective action plan from Air Koryo demonstrating how they had corrected the serious safety deficiencies detected in the ramps inspections conducted prior to the carrier being placed in Annex A of the list of carriers banned from operating in the European Union. In addition the Commission requested relevant information demonstrating that the GACA has exercised adequate oversight of Air Koryo in compliance with ICAO provisions.
- (13) In June 2009 GACA formally responded and provided a set of documents which provided a comprehensive response to the requested information. There followed a series of communications between the Commission and the GACA which enabled clarification of the current aviation safety situation in the Democratic People's Republic of Korea to be achieved.
- (14) The documents provided by GACA and the discussions between the Commission and GACA have shown that, for the Tupolev Tu 204-300 aircraft, Air Koryo is able to demonstrate that the aircraft can be operated in full compliance with international safety standards, including continuing airworthiness and operations, and that GACA is capable of providing oversight of the air carrier in accordance with international standards.
- (15) For all other types of aircraft on the fleet of Air Koryo, GACA confirmed that they did not fully comply with international standards for aircraft equipment, notably EGPWS, and that these types were not authorised by GACA to conduct operations in European airspace.
- (16) Throughout the period GACA reacted promptly and cooperatively to the Commission's requests for information. Air Koryo made presentations to the Air Safety Committee on 18 March 2010 confirming the positive developments within the company.
- (17) Following the above, on the basis of the common criteria, it is assessed that Air Koryo should be allowed to operate the two aircraft type Tupolev Tu-204 with registration P-632 and P-633 into the European Union without operational restrictions. However, since the rest

of the fleet does not comply with relevant ICAO requirements, they should not be allowed to operate into the European Union until such requirements are fully complied with. Therefore, on the basis of the common criteria, it is assessed that Air Koryo should be included in Annex B. It may only have access to the EU with the two aircraft of type Tupolev Tu-204.

**Air carriers from Swaziland**

- (18) The competent authorities of Swaziland provided evidence by written submissions on 17 December 2009 of the withdrawal of the AOCs and of the operating licenses for the following air carriers: Aero Africa (PTY) Ltd, Jet Africa (PTY) Ltd, Royal Swazi National Airways, Scan Air Charter Ltd and Swazi Express Airways. These air carriers have ceased their activities since 8 December 2009.
- (19) In view of the above, on the basis of the common criteria, it is assessed that the aforementioned air carriers licensed in Swaziland should be removed from Annex A.

**Bellview Airlines**

- (20) There is verified evidence of serious deficiencies on the part of the air carrier Bellview Airlines certified in Nigeria, as demonstrated by the results of the investigations carried out by the competent authorities of France and by European Aviation Safety Agency.
- (21) The competent authorities of France (DGAC) informed the Commission that the above mentioned carrier had in its fleet two aircraft of type Boeing 737-200 registered in France with registration marks F-GHXX and F-GHXL, whose certificates of airworthiness expired in May and August 2008 respectively. Consequently, these aircraft are not in airworthy condition anymore.
- (22) The European Aviation Safety Agency (EASA) reported to the Commission that the Part-145 approval ref. EASA.145.0172 it had issued to this organisation was suspended on 8 May 2009 with immediate effect due to unresolved safety deficiencies which lowers the safety standards and hazards seriously the flight safety and that revocation of this approval is being considered.
- (23) Evidence exists that Bellview Airlines certified in Nigeria has taken over operations from the air carrier Bellview Airlines certified in Sierra Leone, an air carrier which was put on Annex A on 22 March 2006 <sup>(1)</sup> and which was withdrawn on 14 November 2008 <sup>(2)</sup> after the competent authorities of Sierra Leone informed the Commission of the revocation of its AOC.

<sup>(1)</sup> Recitals (75) to (86) of Regulation (EC) No 474/2006 of 22 March 2006, OJ L 84, 23.3.2006, p. 19-21.

<sup>(2)</sup> Recital (21) of Regulation (EC) No 1131/2008 of 14 November 2008, OJ L 306, 15.11.2008, p. 49.



- (24) The aircraft of type Boeing B737-200 with registration mark 5N-BFN experienced a fatal accident in Lagos on 22 October 2005, leading to the total loss of the aircraft and 117 fatalities. The competent authorities of Nigeria failed to provide details about the accident and have not issued any accident investigation report yet.
- (25) The Commission, having regard to the above mentioned deficiencies, has entered into consultations with the competent authorities of Nigeria, expressing serious concerns about the safety of the operations and the airworthiness of Bellview Airlines and asking for clarifications regarding the situation as well as the actions undertaken by the authorities as well as the air carrier to remedy the identified deficiencies.
- (26) The competent authorities of Nigeria indicated on 19 February 2010 that the operator holds an AOC but had stopped operations. They however failed to provide the status of the certificates held by the air carrier and the status of its aircraft.
- (27) Bellview Airlines requested to be heard by the Air Safety Committee and did so on 18 March 2010 assisted by the competent authorities of Nigeria (NCAA). Bellview Airlines provided an AOC stating validity until 22 April 2010 whilst mentioning that this AOC was suspended following the retirement of all aircraft mentioned on this AOC. The NCAA stated that according to the applicable Nigerian regulation the validity of this AOC had lapsed on 4 December 2009, 60 days after the end of the operations of the last aircraft but failed to provide evidence that the AOC was suspended or revoked as appropriate. Consequently, the NCAA was requested to provide urgently written confirmation of a) the administrative act of suspension or of revocation of the AOC of Bellview Airlines; b) confirmation that the company is in process of (re)certification by the Nigerian Civil Aviation Authority; c) the formal undertaking of the Nigerian Civil Aviation Authority to notify to the Commission the results of the (re)certification audit before an AOC is issued.
- (28) The competent authorities of Nigeria submitted the requested information on 25 March 2010. Therefore, on the basis of the common criteria, it is assessed that no further action is needed at this stage.
- (30) The competent authorities of Egypt have also undertaken to continue providing information regarding the satisfactory closure of findings previously raised during ramp checks of aircraft of Egypt Air in the course of 2008, 2009 and 2010. To that end, they addressed relevant correspondence to certain Member States where aircraft of Egypt Air had been subject to ramp checks. The process of closure of these finding is ongoing and shall be verified on a regular basis.
- (31) In accordance with Regulation (EC) No 1144/2009 <sup>(2)</sup>, a visit was carried out by the European Aviation Safety Agency with the assistance of Member States from 21 to 25 February 2010. During this visit an assessment of the oversight exercised by the Egyptian Civil Aviation Authority (ECAA) generally and in particular when following the implementation of the corrective action plan and the progressive closure of the findings by Egypt Air was also undertaken. The assessment visit provided evidence that the ECAA was capable of discharging its obligations under ICAO standards, for the oversight of operators to whom they issue an Air Operators Certificate, and identified areas for improvement: notably with regard to a consistent system to follow up on findings identified during the oversight activities carried out by the ECAA as well as in the training of personnel licensing staff.
- (32) The assessment visit demonstrated that Egypt Air is in the process of implementing the corrective action plan. Overall, no significant breach of ICAO standards was identified. The Commission acknowledges the efforts made by the carrier towards completing the actions necessary to redress its safety situation. However given the scope and range of the corrective action plan of the air carrier and the need to provide for sustainable/permanent solutions to the numerous previously identified safety deficiencies, the Commission requests the competent authorities of Egypt to continue to send monthly reports on verification of the implementation of the corrective action plan including the corrective actions addressing findings identified during the assessment visit and to provide information on all oversight activities in the area of continuing airworthiness, maintenance and operations carried out by the ECAA on this air carrier.
- (33) Member States will continue to verify the effective compliance of Egypt Air with the relevant safety standards through the prioritisation of ramp inspections to be carried out on aircraft of this carrier pursuant to Regulation (EC) No 351/2008.
- (34) The assessment visit also included a number of other Egyptian air carriers. Significant safety issues were reported for two air carriers, AlMasria Universal Airlines and Midwest Airlines.

#### **Air carriers from Egypt**

- (29) In accordance with Regulation (EC) No 1144/2009 <sup>(1)</sup>, the competent authorities of Egypt have submitted four monthly reports covering November and December 2009, as well January 2010 and February 2010 to show the status of implementation of the plan as verified by these authorities. Further to these reports which focused on ramp checks of aircraft of Egypt Air, on 18 November the audit reports for continued airworthiness, flight and ground operations were transmitted.

<sup>(1)</sup> OJ L 312, 27.11.2009, p. 16.

<sup>(2)</sup> OJ L 312, 27.11.2009, p. 16.



- (35) In the case of AlMasria Universal Airlines, significant deficiencies in the area of flight operations and training were reported, in particular with regard to the qualifications and knowledge of certain operational managers. This is all the more important in the event of fleet expansion.
- (36) By letter of 3 March 2010, the air carrier AlMasria Universal Airlines was invited to the Air Safety Committee to present its comments. AlMasria made a presentation to the Air Safety Committee on 17 March 2010 which provided for corrective actions addressing deficiencies identified during the assessment visit. In view of the company's planned expansion of the fleet the Commission requests the competent authorities of Egypt to send monthly reports on verification of the implementation of the corrective actions and to provide information on all oversight activities in the area of continuing airworthiness, maintenance and operations carried out by the ECAA on this air carrier.
- (37) Member States will verify the effective compliance of AlMasria with the relevant safety standards through the prioritisation of ramp inspections to be carried out on aircraft of this carrier pursuant to Regulation (EC) No 351/2008.
- (38) In the case of Midwest Airlines there is verified evidence of safety deficiencies identified by the competent authorities of Italy concerning the control of mass and balance on a Midwest Airlines flight. This evidence resulted in Italy denying the operator the permit to operate a flight<sup>(1)</sup>. In addition, during the assessment visit significant deficiencies were also reported in the areas of operational and maintenance management, operational control and crew training, and continuous airworthiness management having an impact on safety. As a result, on the basis of common criteria it is assessed that this air carrier is not able to ensure their operation and maintenance in conformity with ICAO standards. The Egyptian Civil Aviation Authority informed during the visit that they had taken action to suspend the operation of Midwest Airlines.
- (39) By letter of 3 March 2010, the air carrier Midwest Airlines was invited to the Air Safety Committee to present its comments. The competent authorities of Egypt provided evidence on 15 March 2010 that the AOC of Midwest Airlines had been revoked as of 28 February 2010.
- (40) In view of the action taken by the ECAA there is no need for further action. The ECAA is requested to provide the Commission with information about the process and results of the recertification before the issuance of an AOC to that company.
- Iran Air**
- (41) Pursuant to Regulations (EC) No 715/2008 Member States continued to seek verification of the effective compliance of Iran Air with the relevant safety standards through regular ramp checks of its aircraft landing on European Union airports. In 2009 Austria, France, Germany, Sweden, Italy and the United Kingdom reported such inspections. The results of these inspections showed a marked decline in compliance with international safety standards over the year.
- (42) The Commission requested information from the competent authorities and the company with a view to verifying how the detected deficiencies were being resolved. The air carrier Iran Air submitted an action plan in February 2010 which acknowledged failings in their previous action plan and identified the causes and set down specific actions to address the identified deficiencies.
- (43) However, information submitted by the competent authorities of Iran (CAO-IRI) responsible for the regulatory oversight of Iran Air indicated that they were unable to demonstrate they had taken effective action to address the deficiencies identified by the inspections conducted under the SAFA programme. Furthermore the CAO-IRI were not able to demonstrate that appropriate actions were taken to address the significant accident rate of aircraft registered in Iran and operated by air carriers certificated by the CAO-IRI.
- (44) Furthermore, the CAO-IRI submitted documentation in February 2010 which showed a lack of oversight activity of Iran Air in the area of maintenance and flight inspections and a lack of an effective system for the closure of significant safety findings. In addition, accident and incident data provided by CAO-IRI indicated a significant number of serious events to Iran Air aircraft in the preceding 11 months, of which more than half related to aircraft of the type Fokker 100. The documentation however did not provide evidence that any follow-up action had been taken by the CAO-IRI.
- (45) In March 2010 the CAO-IRI provided information demonstrating that inspections of Iran Air's compliance with maintenance requirements had taken place but the findings pointed to problems with engine monitoring and the performance of the Quality System of the carrier.

<sup>(1)</sup> The Italian Civil Aviation Authority (ENAC) informed Midwest Airlines on 5.2.2010 about these safety deficiencies which then led to the revocation of the authorisation to carry out the flight.

(46) On 17 March 2010 at the meeting of the Air Safety Committee the air carrier acknowledged that a decline in standards had occurred but confirmed they had introduced a Maintenance Control Centre and Maintenance Review Board to address the airworthiness issues, had improved safety training in all divisions of the company, had enhanced the activity of the Safety and Quality Assurance Department, and had established safety committees in the company divisions. They had also embarked on an extensive review of the company structure with a view to enhancing its ability to ensure a safe operation. The results of the ramp checks performed on Iran Air since February 2010 show a marked improvement in the air carrier's performance.

(47) Taking into account the recent notable improvement in SAFA results, the acknowledgement by Iran Air of the need for improvement and the steps they have taken to address the identified safety concerns the Commission considers that, because of the high number of incidents to the Fokker 100 aircraft their operation into the European Union should be suspended. With regard to the other types of aircraft on Iran Air's fleet (submission by CAO/IRI of 10 March 2010) – i.e. the Boeing 747, Airbus A300, A310 and A320, their operations should not be allowed to increase beyond their current level (frequencies and destinations) until such times as the Commission determines that there is clear evidence that the identified safety deficiencies have been effectively resolved.

(48) For these reasons, on the basis of the common criteria, it is assessed that the carrier should be placed on Annex B and should be permitted to operate into the European Union only provided that its operations are strictly limited to their present level (frequencies and destinations) with the aircraft currently used. Furthermore, the fleet of Fokker 100 should not be allowed to operate into the European Union.

(49) The Commission will continue to monitor closely the performance of Iran Air. Member States will verify the effective compliance with relevant safety standards through the prioritisation of enhanced ramp inspections to be carried out on aircraft of this carrier pursuant to Regulation (EC) No 351/2008. The Commission, in cooperation with the Member States and the European Aviation Safety Agency, intends to verify the satisfactory implementation of the announced measures by CAO-IRI and Iran Air by means of an on-site visit before the next meeting of the Air Safety Committee.

#### **Air carriers from Sudan**

(50) The authorities with responsibility for regulatory oversight of Sudan (SCAA) have shown an insufficient ability to address the significant findings made during the ICAO USOAP audit of Sudan conducted in November 2006. The SCAA notified the Commission in March 2008 that in the area of Operations, Airworthiness and Personnel Licensing all major and all significant findings had been closed or addressed. In December 2009 the SCAA notified the Commission that 70 % of the USOAP findings were corrected in accordance with ICAO recommendations.

(51) However, information provided by the SCAA to the Commission in December 2009 and March 2010 indicated that a significant number of findings had not been addressed or the actions taken to close the findings had not been effective. In particular in the area of trained and qualified Flight Operations Inspectors and in ensuring operators had an approved training manual.

(52) In addition, shortly before the fatal accident to Boeing 707, registration ST-AKW, an audit by the SCAA of Azza Air Transport in October 2009 found that the air carrier had not implemented significant safety actions in the area of training, a major finding of the ICAO audit. The SCAA confirmed that they had renewed the AOC annually since its initial issue in 1996.

(53) On 10 December 2009 the SCAA also informed the Commission that the AOC of air carrier Air West Company Ltd had been surrendered to them in July 2008, and that therefore Air West Ltd was no longer a registered AOC holder in the Republic of Sudan. Therefore, taking into account that the operator no longer has an AOC, and that as a consequence its operating licence cannot be considered as valid, on the basis of the common criteria, it is assessed that the Air West Ltd is no longer an 'air carrier'.

(54) As a result of the lack of progress with the implementation of corrective actions from the USOAP audit and the failure of the SCAA to ensure the corrective actions notified had been effectively implemented, on the basis of the common criteria, it is assessed that the SCAA has been unable to demonstrate that it can implement and enforce the relevant safety standards and as a consequence all air carriers certified in the Republic of Sudan should be subject to an operating ban and included in Annex A.

**Air carriers from Albania**

- (55) Further to the review of the situation of Albanian Airlines MAK in November 2009 and pursuant to the provisions of Regulation No 1144/2009 <sup>(1)</sup>, the European Aviation Safety Agency was mandated to carry out a comprehensive standardisation inspection of Albania and did so in January 2010. The final report of this inspection, issued on 7 March 2010, revealed significant deficiencies in all areas audited: 13 non-compliance findings were reported in the field of in airworthiness, including 6 safety related; 13 non-compliance findings were reported in the field of licensing and medical fitness, including 3 safety related; 9 non-compliance findings were reported in the field of air operations, amongst which 6 are safety related. In addition, an immediate safety hazard was found in relation to the AOC of one of the two AOC holders and was closed during the visit upon immediate corrective action of the DGCA.
- (56) The competent authorities of Albania (DGCA) were invited to report to the Air Safety Committee and did so on 18 March 2010.
- (57) The Air Safety Committee took note that the competent authorities of Albania (DGCA) have already submitted an action plan to EASA. The DGCA is invited to ensure this action plan is acceptable to EASA and urged to take the necessary actions to implement effectively this action plan, with priority to the resolution of the deficiencies identified by EASA that raise safety concerns if not promptly corrected.
- (58) In view of the need to urgently address the safety deficiencies in Albania, failing comprehensive and effective measures from the DGCA, the Commission will be compelled to exercise its responsibilities under article 21 of the Multilateral Agreement between the European Community and its Member States and the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations interim administration mission in Kosovo on the establishment of a European Common Aviation Area (ECAA Agreement) without prejudice to any measures under Regulation (EC) No 2111/2005.

**Air carriers from Angola***TAAG Angolan Airlines*

- (59) TAAG Angolan Airlines is allowed to operate in Portugal only with the aircraft of type Boeing 777-200 with registration marks D2-TED, D2-TEE, D2-TEF and with the

four aircraft of type Boeing B-737-700 with registration marks D2-TBF, D2-TBG, D2-TBH and D2-TBJ under the conditions presented in the recital (88) of Regulation (EC) No 1144/2009 <sup>(2)</sup>. The Commission requested the competent authorities of Angola (INAVIC) to provide information about the oversight of the air carrier TAAG Angolan Airlines, in particular in respect of the increased oversight of the flights to Portugal and on their results.

- (60) INAVIC informed the Air Safety Committee that it has further consolidated the continuous surveillance of TAAG Angolan Airlines. It carried out 34 planned inspections of the carrier in 2009. In addition, ramp inspections have been systematically carried out before every flight of the carrier to Europe.
- (61) TAAG Angolan Airlines requested to be heard by the Air Safety Committee in order to provide an update of its situation and did so on 18 March 2010. The carrier reported it has regained membership to IATA in December 2009 and provided extensive information to the Committee demonstrating the high performance of its operations to Lisbon, requesting on this basis to be allowed to resume operations to the rest of the EU.
- (62) The competent authorities of Portugal (INAC) provided their evaluation of the results of the ramp inspections of TAAG Angolan Airlines they had carried out since the operations to Lisbon have resumed. INAC reported that some 200 such inspections have been carried out since TAAG's operations resumed on 1 August 2009. INAC confirmed that these did not raise safety concerns and that INAC is fully satisfied with the operations of TAAG Angolan Airlines into and from Lisbon and is in a position to recommend their extension to the rest of the EU.
- (63) The carrier also reported it is investing to upgrade the equipment of its Boeing B737-200 fleet in order to install EGPWS, ELT406, RVSM capability, flight crew compartment door, digital flight recorder and digital airborne weather radar in compliance with international safety standards, but that this process, which is on-going, is not completed for all this fleet. The carrier also reported it intends to phase out the aircraft of type Boeing B747-300, in particular due to lower operational reliability.

<sup>(1)</sup> Recitals (10) to (16) of Regulation (EC) No 1144/2009 of 26 November 2009, OJ L 312, 27.11.2009, p. 17.

<sup>(2)</sup> OJ L 312, 27.11.2009, p. 24.

- (64) Consequently, on the basis of the common criteria, and taking into account the recommendation under paragraph 62 as well as the positive results of ramp checks of aircraft of this carrier, it is assessed that TAAG should be maintained in Annex B for the three aircraft of type Boeing B777 with registration marks D2-TED, D2-TEE and D2-TEF and with the four aircraft of type Boeing B737-700 with registration marks D2-TBF, D2-TBG, D2-TBH and D2-TBJ and that the current restrictions to operate these aircraft to Lisbon only should be removed. However, the operations of this carrier into the European Union should be subject to appropriate verification of effective compliance with the relevant safety standards through the prioritisation of ramp inspections to be carried out on aircraft of this air carrier pursuant to Regulation No 351/2008.

*Overall safety oversight of air carriers from Angola*

- (65) INAVIC reported further progress in the resolution of the findings remaining after the last EU safety assessment visit made in June 2009. In particular, INAVIC updated the Angolan aviation safety regulations to reflect the last amendments of ICAO standards, consolidated its surveillance programme and recruited two additional qualified flight operations inspectors.
- (66) INAVIC also reported progress in the recertification of Angolan air carriers, a process that is expected to be completed by end 2010, date by which INAVIC indicated that those carriers shall stop operations if not recertified in accordance with the Angolan aviation safety regulations. However apart from TAAG Angolan Airlines, no air carrier has been recertified yet.
- (67) INAVIC informed that in the course of the recertification process, oversight activities of certain air carriers have revealed safety concerns and violations of the safety regulations in force, leading INAVIC to take appropriate enforcement actions. Consequently, the AOC of Air Gemini was revoked in December 2009 and that the AOC of PHA and SAL were revoked in February 2010. The AOCs of Giraglobo, Mavewa and Airnave were suspended in February 2010. However, INAVIC failed to provide evidence of the revocation of these certificates.
- (68) The Commission urges INAVIC to continue the recertification of the Angolan air carriers with determination and due consideration to potential safety concerns identified in this process. On the basis of the common criteria, it is assessed that the other air carriers under the regulatory responsibility of INAVIC - Aerojet, Air26, Air Gicango, Air Jet, Air Nave, Alada, Angola Air Services, Diexim, Gira Globo, Heliang, Helimalongo, Mavewa, Rui &

Conceicao, Servisair and Sonair as well as Air Gemini, PHA, SAL, should remain in Annex A.

**Air carriers from the Russian Federation**

- (69) The competent authorities of the Russian Federation informed the Commission on 19 February 2010 that they modified their decision of 25 April 2008, whereby they excluded from operations into the European Union aircraft on the AOC of 13 Russian air carriers. These aircraft were not equipped to perform international flights as per ICAO standards (not equipped with TAWS/E-GPWS) and/or their certificate of airworthiness had expired and/or had not been renewed.
- (70) According to the new decision, the following aircraft are excluded from operations into, within and out of the European Union:
- (a) Aircompany Yakutia: Antonov AN-140: RA-41250; AN-24RV: RA-46496, RA-46665, RA-47304, RA-47352, RA-47353, RA-47360; AN-26: RA-26660.
  - (b) Atlant Soyuz: Tupolev TU-154M: RA-85672 and RA-85682.
  - (c) Gazpromavia: Tupolev TU-154M: RA-85625 and RA-85774; Yakovlev Yak-40: RA-87511, RA-88186 and RA-88300; Yak-40K: RA-21505 and RA-98109; Yak-42D: RA-42437; all (22) helicopters Kamov Ka-26 (unknown registration); all (49) helicopters Mi-8 (unknown registration); all (11) helicopters Mi-171 (unknown registration); all (8) helicopters Mi-2 (unknown registration); all (1) helicopter EC-120B: RA-04116.
  - (d) Kavminvodyavia: Tupolev TU-154B: RA-85307, RA-85494 and RA-85457.
  - (e) Krasnoyarsky Airlines: The aircraft of type TU-154M RA-85682 previously on the AOC of Krasnoyarsky Airlines, which was revoked in 2009 is currently operated by another air carrier certified in the Russian Federation.
  - (f) Kuban Airlines: Yakovlev Yak-42: RA-42331, RA-42336, RA-42350, RA-42538, and RA-42541.
  - (g) Orenburg Airlines: Tupolev TU-154B: RA-85602; all TU-134 (unknown registration); all Antonov An-24 (unknown registration); all An-2 (unknown registration); all helicopters Mi-2 (unknown registration); all helicopters Mi-8 (unknown registration).
  - (h) Siberia Airlines: Tupolev TU-154M: RA-85613, RA-85619, RA-85622 and RA-85690.



- (i) Tatarstan Airlines: Yakovlev Yak-42D: RA-42374, RA-42433; all Tupolev TU-134A including: RA-65065, RA-65102, RA-65691, RA-65970 and RA-65973; all Antonov AN-24RV including: RA-46625 and RA-47818; the aircraft of type AN24RV with registration marks RA-46625 and RA-47818 are currently operated by another Russian carrier.
- (j) Ural Airlines: Tupolev TU-154B: RA-85508 (the aircraft RA-85319, RA-85337, RA-85357, RA-85375, RA-85374 and RA-85432 are currently not operated for financial reasons).
- (k) UTAir: Tupolev TU-154M: RA-85733, RA-85755, RA-85806, RA-85820; all (25) TU-134: RA-65024, RA-65033, RA-65127, RA-65148, RA-65560, RA-65572, RA-65575, RA-65607, RA-65608, RA-65609, RA-65611, RA-65613, RA-65616, RA-65620, RA-65622, RA-65728, RA-65755, RA-65777, RA-65780, RA-65793, RA-65901, RA-65902, and RA-65977; the aircraft RA-65143 and RA-65916 are operated by another Russian carrier; all (1) TU-134B: RA-65726; all (10) Yakovlev Yak-40: RA-87348 (currently not operated for financial reasons), RA-87907, RA-87941, RA-87997, RA-88209, RA-88227 and RA-88280; all helicopters Mil-26: (unknown registration); all helicopters Mil-10: (unknown registration); all helicopters Mil-8 (unknown registration); all helicopters AS-355 (unknown registration); all helicopters BO-105 (unknown registration); the aircraft of type AN-24B: RA-46388, the aircraft RA-46267 and RA-47289 and the aircraft of type AN-24RV RA-46509, RA-46519 and RA-47800 are operated by another Russian carrier.
- (l) Rossiya (STC Russia): Tupolev TU-134: RA-65979, the aircraft RA-65904, RA-65905, RA-65911, RA-65921 and RA-65555 are operated by another Russian carrier; TU-214: RA-64504 and RA-64505 are operated by another Russian carrier; Ilyushin IL-18: RA-75454 and RA-75464 are operated by another Russian carrier; Yakovlev Yak-40: RA-87203, RA-87968, RA-87971, and RA-88200 are operated by another Russian carrier.

#### Yemenia Yemen Airways

- (71) Pursuant to Regulations (EC) No 1144/2009 the European Aviation Safety Agency (EASA) and the Member States conducted an on-site visit to the Republic of Yemen in December 2009 to verify the safety situation of Yemenia with a view to evaluating its actual compliance with international safety standards and to evaluate the capacity of CAMA to ensure the oversight of the safety of civil aviation in Yemen.

- (72) The assessment visit demonstrated that CAMA has the ability to conduct effective oversight of Yemenia Yemen Airways and thus ensure carriers, to whom they issue an AOC, are able to maintain a safe operation in accordance with ICAO Standards; and that Yemenia Yemen Airways control and supervision of their operation is adequate to ensure that they operate in accordance with the requirements governing their AOC.
- (73) In view of the results of the assessment visit, there is no need for further action at this stage. The Commission will continue to closely monitor the performance of the carrier and encourages the Yemen Authorities to continue their efforts in the framework of the investigation into the accident on 30 June 2009 to Yemenia Yemen Airways flight 626. Member States will verify the effective compliance with relevant safety standards through the prioritisation of ramp inspections to be carried out on aircraft of this carrier pursuant to Regulation (EC) No 351/2008.

#### Air carriers from the Republic of Philippines

- (74) There is verified evidence of the insufficient ability of the authorities responsible for the oversight of air carriers certified in the in the Philippines to address safety deficiencies and insufficient evidence of compliance with applicable ICAO safety standards and recommended practices on the part of the air carriers certified in the Republic of Philippines, as showed by the results of the audit of the Philippines carried out by ICAO in October 2009 in the framework of its Universal Safety Oversight Audit Programme (USOAP) as well as the continuous downgrading of the Philippines' rating by the competent authorities of the Unites States of America.
- (75) Following the USOAP audit of the Philippines carried out in October 2009, ICAO notified to all States party to the Chicago convention the existence of a significant safety concern affecting the safety oversight of carriers and aircraft registered in the Philippines<sup>(1)</sup>, according which 47 air operators in the Philippines, including international air operators, operate with Air Carrier Operator Certificates that were issued in accordance with repealed Administrative Orders. The competent authorities of the Philippines have not developed any type of implementation plan or transition plan for the certification of the remaining air operators in accordance with the Civil Aviation Regulations that replaced these Administrative Orders. In addition, the competent authorities of the Philippines have not been performing surveillance inspections of air operators for over a year. Corrective actions plans proposed by these authorities to ICAO were not considered acceptable to resolve this significant safety concern, which remains unresolved.

<sup>(1)</sup> ICAO finding OPS/01.

- (76) Furthermore the U.S. Department of Transportation's Federal Aviation Administration (FAA) continues to classify the country's safety rating in category two in the framework of its IASA programme, thereby indicating that the Republic of Philippines fails to comply with the international safety standards set by ICAO.
- (77) The significant safety concern published by ICAO reveals that the corrective action plan presented by the competent authorities of the Philippines to the Commission on 13 October 2008 <sup>(1)</sup>, whose completion was due for 31 March 2009, was not achieved and that the competent authorities of the Philippines have not been able to implement the said action plan in a timely manner.
- (78) The Commission, having regard to the significant safety concern published by ICAO, has pursued its consultations with the competent authorities of the Philippines, expressing serious concerns about the safety of the operations of all air carriers licensed in that State and asking for clarifications regarding the actions undertaken by the competent authorities of that State to remedy the identified safety deficiencies.
- (79) The competent authorities of the Philippines (CAAP) submitted documentation between January and March 2010 but failed to provide all the information requested and in particular the evidence that the safety deficiencies were appropriately addressed.
- (80) The CAAP was heard on 18 March 2010 by the Air Safety Committee and confirmed that 20 air carriers continue to operate with AOCs that were issued under the repealed Administrative Orders until their recertification or 1 December 2010 the latest. These carriers are: Aeroworks Aerial Spraying Services, Airtrack Agricultural Corp., Asia Aircraft Overseas, Philippines Inc., Aviation Technology Innovators Inc., Bendice Transport Management Inc., Canadian Helicopter Philippines Inc., CM Aero, Cyclone Airways, INAEC Aviation Corp., Macro Asia Air Taxi Services, Omni Aviation, Corp., Philippine Agricultural Aviation Corp., Royal Air Charter Services Inc., Royal Star Aviation Inc., Southstar Aviation Company, Subic International Air Charter Inc., Subic Seaplane Inc.. In addition, they confirmed that a significant number of these carriers continue to operate with an AOC that had expired, under the provisions of temporary exemptions, exempting them to have such an AOC. In particular, the air carrier Pacific East Asia Cargo Airlines Inc. continues to be involved in international cargo operations with large aircraft of type Boeing B727 whilst its AOC issued on 31 March 2008 under the repealed Administrative Orders expired on 30 March 2009, under the benefit of an exemption from the need to comply with such an AOC, issued on 16 December 2009 for a maximum period of 90 days expiring on 16 March 2010. The CAAP was not able to confirm that this operator had eventually stopped operating on 18 March 2010.
- (81) The CAAP reported that the following nine AOCs were expired or not renewed: Beacon, Corporate Air, Frontier Aviation Corp., Mora Air Service Inc., Pacific Airways Corp., Pacific Alliance Corp., Topflite Airways Inc., World Aviation Corp. and Yokota Aviation Corp. However, they failed to provide the evidence that the AOC of these carriers were revoked and that these carriers have consequently ceased to exist.
- (82) The CAAP indicated that it had engaged a recertification process early 2009 and that 21 air carriers have already been recertified in accordance with the civil aviation regulations that entered into force in 2008. These carriers are: Air Philippines Corp., Aviatour's Fly'n Inc., Cebu Pacific Air, Chemtrad Aviation Corp., Far East Aviation Services, F.F. Cruz & Company Inc., Huma Corp., Interisland Airlines Inc., Island Aviation, Lion Air Inc., Mindanao Rainbow Agricultural Development Services, Misibis Aviation and Development Corp., Philippine Airlines, South East Asian Airlines Inc., Spirit of Manila Airlines Corp., TransGlobal Airways Corp., WCC Aviation Company, Zenith Air Inc., Zest Airways Inc.. However, the CAAP failed to demonstrate the robustness of this recertification process. The CAAP could not provide the complete certificates of all these carriers, as the AOCs presented could not permit in particular to identify the number and the registration marks of the following recertified carriers: Zest Airways Inc., Lion Air, Inc., Aviatour's Fly'n Inc., Misibis Aviation and Development Corp. In addition, the CAAP failed to provide any pre-certification audit or to provide the evidence that sufficient investigations of the operations and the maintenance of the carriers had been carried out prior to their recertification in order to demonstrate effective implementation of the approved manuals and compliance of the operations and the maintenance of these carriers with the applicable safety standards. Moreover, the CAAP failed to demonstrate that the recertified carriers are subject to adequate post-certification oversight as the surveillance plans they produced for airworthiness and licensing for the year 2010 did not specify any date for the planned activities.
- (83) Philippines Airlines required to be heard by the Air Safety Committee and did so on 18 March 2010. The air carrier presented its activity and the recertification
- <sup>(1)</sup> Recital (16) of Regulation (EC) No 1131/2008 of 14 November 2008, OJ L 306, 15.11.2008, p. 49.

process it underwent in 2009 until the issuance of its new AOC on 9 October 2009 which states compliance with the civil aviation regulations that entered into force in 2008. The carrier presented the verifications carried out prior to the re-certification and confirmed they were focused on the review and approval of new manuals and procedures. The carrier also indicated that it had not been subject to a comprehensive on-site audit by the CAAP prior to the recertification and that, with regard to its operations, these have not been audited by the CAAP, such audit being yet to come. Philippines Airlines stated it does not operate to the EU and indicated that further to the downgrading of the Philippines rating by the US FAA, its operations to the United States are subject to restrictions and that the carrier is not allowed to serve additional routes nor change the aircraft on the routes he currently operates.

(84) Cebu Pacific Airlines required to be heard by the Air Safety Committee and did so on 18 March 2010. The air carrier presented its activity and the recertification process it underwent in 2009 until the issuance of its new AOC on 25 November 2009 which states compliance with the civil aviation regulations that entered into force in 2008. The carrier presented the verifications carried out prior to the re-certification and confirmed in particular that the certificate obtained includes a new approval to carry dangerous goods whilst this matter had not been audited by the CAAP. The carrier however stated it voluntarily does not make use of such approval. Cebu Pacific stated that further to the downgrading of the Philippines rating by the US FAA, it is not allowed to operate to the United States. The carrier further indicated that it does not intend to operate to the EU.

(85) The Commission acknowledges the recent efforts launched by the two air carriers to ensure safe operations and also recognises that they have put in place internal measures to enhance safety. The Commission is ready to conduct a visit to these operators with the participation of Member States and the European Aviation Safety Agency to verify their compliance with international safety standards.

(86) The Commission also acknowledges the recent efforts launched by the competent authorities to reform the civil aviation system in the Philippines and the steps undertaken to address the safety deficiencies reported by the FAA and ICAO. However, pending the effective implementation of adequate corrective actions to remedy the significant safety concerns issued by ICAO, on the basis of the common criteria, it is assessed that the

competent authorities of the Philippines are, at this stage, not able to implement and enforce the relevant safety standards on all air carriers under their regulatory control. Therefore, all air carriers certified in the Philippines should be subject to an operating ban and included in Annex A.

(87) The Commission however considers that the recent changes in the management of the CAAP as well as the immediate concrete actions of this new management, including the recruitment of 23 qualified inspectors and the use of a significant technical assistance provided by ICAO, demonstrate the willingness of the State to address quickly the safety deficiencies identified by the FAA and ICAO and pave the way for the successful resolution of these deficiencies without delay. The Commission is ready to support the efforts of the Philippines, through an assessment visit including the safety performance of the operators, in order to overcome the identified serious safety deficiencies.

#### **General considerations concerning the other carriers included in Annexes A and B**

(88) No evidence of the full implementation of appropriate remedial actions by the other air carriers included in the Community list updated on 26 November 2009 and by the authorities with responsibility for regulatory oversight of these air carriers has been communicated to the Commission so far in spite of specific requests submitted by the latter. Therefore, on the basis of the common criteria, it is assessed that these air carriers should continue to be subject to an operating ban (Annex A) or operating restrictions (Annex B), as the case may be.

(89) The measures provided for in this Regulation are in accordance with the opinion of the Air Safety Committee,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 474/2006 is amended as follows:

1. Annex A is replaced by the text set out in Annex A to this Regulation.
2. Annex B is replaced by the text set out in Annex B 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, 30 March 2010.

*For the Commission,  
On behalf of the President,  
Siim KALLAS  
Vice-President*

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## ANNEX A

LIST OF AIR CARRIERS OF WHICH ALL OPERATIONS ARE SUBJECT TO A BAN WITHIN THE COMMUNITY <sup>(1)</sup>

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
ARIANA AFGHAN AIRLINES	AOC 009	AFG	Afghanistan
SIEM REAP AIRWAYS INTERNATIONAL	AOC/013/00	SRH	Kingdom of Cambodia
SILVERBACK CARGO FREIGHTERS	Unknown	VRB	Republic of Rwanda
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Angola, with the exception of TAAG Angola Airlines put in Annex B, including</b>			Republic of Angola
AEROJET	015	Unknown	Republic of Angola
AIR26	004	DCD	Republic of Angola
AIR GEMINI	002	GLL	Republic of Angola
AIR GICANGO	009	Unknown	Republic of Angola
AIR JET	003	MBC	Republic of Angola
AIR NAVE	017	Unknown	Republic of Angola
ALADA	005	RAD	Republic of Angola
ANGOLA AIR SERVICES	006	Unknown	Republic of Angola
DIEXIM	007	Unknown	Republic of Angola
GIRA GLOBO	008	GGL	Republic of Angola
HELIANG	010	Unknown	Republic of Angola
HELIMALONGO	011	Unknown	Republic of Angola
MAVEWA	016	Unknown	Republic of Angola
PHA	019	Unknown	Republic of Angola
RUI & CONCEICAO	012	Unknown	Republic of Angola
SAL	013	Unknown	Republic of Angola
SERVISAIR	018	Unknown	Republic of Angola
SONAIR	014	SOR	Republic of Angola

<sup>(1)</sup> Air carriers listed in Annex A could be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Benin, including</b>		—	Republic of Benin
AERO BENIN	PEA No 014/MDCTTATP-PR/ANAC/DEA/SCS	Unknown	Republic of Benin
AFRICA AIRWAYS	Unknown	AFF	Republic of Benin
ALAFIA JET	PEA No 014/ANAC/MDCTTATP-PR/DEA/SCS	N/A	Republic of Benin
BENIN GOLF AIR	PEA No 012/MDCTTP-PR/ANAC/DEA/SCS.	Unknown	Republic of Benin
BENIN LITTORAL AIRWAYS	PEA No 013/MDCTTATP-PR/ANAC/DEA/SCS.	LTL	Republic of Benin
COTAIR	PEA No 015/MDCTTATP-PR/ANAC/DEA/SCS.	COB	Republic of Benin
ROYAL AIR	PEA No 11/ANAC/MDCTTP-PR/DEA/SCS	BNR	Republic of Benin
TRANS AIR BENIN	PEA No 016/MDCTTATP-PR/ANAC/DEA/SCS	TNB	Republic of Benin
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of the Republic of Congo, including</b>			Republic of Congo
AERO SERVICE	RAC06-002	RSR	Republic of Congo
EQUAFLIGHT SERVICES	RAC 06-003	EKA	Republic of Congo
SOCIETE NOUVELLE AIR CONGO	RAC 06-004	Unknown	Republic of Congo
TRANS AIR CONGO	RAC 06-001	Unknown	Republic of Congo
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Democratic Republic of Congo (RDC), including</b>		—	Democratic Republic of Congo (RDC)
AFRICAN AIR SERVICES COMMUTER	409/CAB/MIN/TVC/051/09	Unknown	Democratic Republic of Congo (RDC)
AIR KASAI	409/CAB/MIN/ TVC/036/08	Unknown	Democratic Republic of Congo (RDC)
AIR KATANGA	409/CAB/MIN/TVC/031/08	Unknown	Democratic Republic of Congo (RDC)
AIR TROPIQUES	409/CAB/MIN/TVC/029/08	Unknown	Democratic Republic of Congo (RDC)
BLUE AIRLINES	409/CAB/MIN/TVC/028/08	BUL	Democratic Republic of Congo (RDC)
BRAVO AIR CONGO	409/CAB/MIN/TC/0090/2006	BRV	Democratic Republic of Congo (RDC)
BUSINESS AVIATION	409/CAB/MIN/TVC/048/09	Unknown	Democratic Republic of Congo (RDC)

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
BUSY BEE CONGO	409/CAB/MIN/TVC/052/09	Unknown	Democratic Republic of Congo (RDC)
CETRACA AVIATION SERVICE	409/CAB/MIN/TVC/026/08	CER	Democratic Republic of Congo (RDC)
CHC STELLAVIA	409/CAB/MIN/TC/0050/2006	Unknown	Democratic Republic of Congo (RDC)
COMPAGNIE AFRICAINE D'AVIATION (CAA)	409/CAB/MIN/TVC/035/08	Unknown	Democratic Republic of Congo (RDC)
DOREN AIR CONGO	409/CAB/MIN/TVC/0032/08	Unknown	Democratic Republic of Congo (RDC)
ENTREPRISE WORLD AIRWAYS (EWA)	409/CAB/MIN/TVC/003/08	EWS	Democratic Republic of Congo (RDC)
FILAIR	409/CAB/MIN/TVC/037/08	Unknown	Democratic Republic of Congo (RDC)
GALAXY KAVATSI	409/CAB/MIN/TVC/027/08	Unknown	Democratic Republic of Congo (RDC)
GILEMBE AIR SOUTENANCE (GISAIR)	409/CAB/MIN/TVC/053/09	Unknown	Democratic Republic of Congo (RDC)
GOMA EXPRESS	409/CAB/MIN/TC/0051/2006	Unknown	Democratic Republic of Congo (RDC)
GOMAIR	409/CAB/MIN/TVC/045/09	Unknown	Democratic Republic of Congo (RDC)
HEWA BORA AIRWAYS (HBA)	409/CAB/MIN/TVC/038/08	ALX	Democratic Republic of Congo (RDC)
INTERNATIONAL TRANS AIR BUSINESS (ITAB)	409/CAB/MIN/TVC/033/08	Unknown	Democratic Republic of Congo (RDC)
KIN AVIA	409/CAB/MIN/TVC/042/09	Unknown	Democratic Republic of Congo (RDC)
LIGNES AÉRIENNES CONGOLAISES (LAC)	Ministerial signature (or-donnance No 78/205)	LCG	Democratic Republic of Congo (RDC)
MALU AVIATION	409/CAB/MIN/TVC/04008	Unknown	Democratic Republic of Congo (RDC)
MANGO AVIATION	409/CAB/MIN/TVC/034/08	Unknown	Democratic Republic of Congo (RDC)
SAFE AIR COMPANY	409/CAB/MIN/TVC/025/08	Unknown	Democratic Republic of Congo (RDC)
SERVICES AIR	409/CAB/MIN/TVC/030/08	Unknown	Democratic Republic of Congo (RDC)
SWALA AVIATION	409/CAB/MIN/TVC/050/09	Unknown	Democratic Republic of Congo (RDC)
TMK AIR COMMUTER	409/CAB/MIN/TVC/044/09	Unknown	Democratic Republic of Congo (RDC)
TRACEP CONGO AVIATION	409/CAB/MIN/TVC/046/09	Unknown	Democratic Republic of Congo (RDC)
TRANS AIR CARGO SERVICES	409/CAB/MIN/TVC/024/08	Unknown	Democratic Republic of Congo (RDC)
WIMBI DIRA AIRWAYS	409/CAB/MIN/TVC/039/08	WDA	Democratic Republic of Congo (RDC)
ZAABU INTERNATIONAL	409/CAB/MIN/TVC/049/09	Unknown	Democratic Republic of Congo (RDC)

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Djibouti, including</b>			Djibouti
DAALLO AIRLINES	Unknown	DAO	Djibouti
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Equatorial Guinea, including</b>			Equatorial Guinea
CRONOS AIRLINES	unknown	Unknown	Equatorial Guinea
CEIBA INTERCONTINENTAL	unknown	CEL	Equatorial Guinea
EGAMS	unknown	EGM	Equatorial Guinea
EUROGUINEANA DE AVIACION Y TRANSPORTES	2006/001/MTTCT/DGAC/SOPS	EUG	Equatorial Guinea
GENERAL WORK AVIACION	002/ANAC	n/a	Equatorial Guinea
GETRA — GUINEA ECUATORIAL DE TRANSPORTES AEREOS	739	GET	Equatorial Guinea
GUINEA AIRWAYS	738	n/a	Equatorial Guinea
STAR EQUATORIAL AIRLINES	Unknown	Unknown	Equatorial Guinea
UTAGE — UNION DE TRANSPORT AEREO DE GUINEA ECUATORIAL	737	UTG	Equatorial Guinea
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Indonesia, with the exception of Garuda Indonesia, Airfast Indonesia, Mandala Airlines, and Ekspres Transportasi Antarbenua, including</b>			Republic of Indonesia
AIR PACIFIC UTAMA	135-020	Unknown	Republic of Indonesia
ALFA TRANS DIRGANTATA	135-012	Unknown	Republic of Indonesia
ASCO NUSA AIR	135-022	Unknown	Republic of Indonesia
ASI PUDJIASTUTI	135-028	Unknown	Republic of Indonesia
AVIASTAR MANDIRI	135-029	Unknown	Republic of Indonesia
CARDIG AIR	121-013	Unknown	Republic of Indonesia
DABI AIR NUSANTARA	135-030	Unknown	Republic of Indonesia
DERAYA AIR TAXI	135-013	DRY	Republic of Indonesia
DERAZONA AIR SERVICE	135-010	DRZ	Republic of Indonesia
DIRGANTARA AIR SERVICE	135-014	DIR	Republic of Indonesia

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
EASTINDO	135-038	Unknown	Republic of Indonesia
GATARI AIR SERVICE	135-018	GHS	Republic of Indonesia
INDONESIA AIR ASIA	121-009	AWQ	Republic of Indonesia
INDONESIA AIR TRANSPORT	135-034	IDA	Republic of Indonesia
INTAN ANGKASA AIR SERVICE	135-019	Unknown	Republic of Indonesia
JOHNLIN AIR TRANSPORT	135-043	Unknown	Republic of Indonesia
KAL STAR	121-037	KLS	Republic of Indonesia
KARTIKA AIRLINES	121-003	KAE	Republic of Indonesia
KURA-KURA AVIATION	135-016	KUR	Republic of Indonesia
LION MENTARI AIRLINES	121-010	LNI	Republic of Indonesia
MANUNGGAL AIR SERVICE	121-020	Unknown	Republic of Indonesia
MEGANTARA	121-025	MKE	Republic of Indonesia
MERPATI NUSANTARA AIRLINES	121-002	MNA	Republic of Indonesia
METRO BATAVIA	121-007	BTV	Republic of Indonesia
MIMIKA AIR	135-007	Unknown	Republic of Indonesia
NATIONAL UTILITY HELICOPTER	135-011	Unknown	Republic of Indonesia
NUSANTARA AIR CHARTER	121-022	Unknown	Republic of Indonesia
NUSANTARA BUANA AIR	135-041	Unknown	Republic of Indonesia
NYAMAN AIR	135-042	Unknown	Republic of Indonesia
PELITA AIR SERVICE	121-008	PAS	Republic of Indonesia
PENERBANGAN ANGKASA SEMESTA	135-026	Unknown	Republic of Indonesia
PURA WISATA BARUNA	135-025	Unknown	Republic of Indonesia
REPUBLIC EXPRESS AIRLINES	121-040	RPH	Republic of Indonesia
RIAU AIRLINES	121-016	RIU	Republic of Indonesia
SAMPOERNA AIR NUSANTARA	135-036	SAE	Republic of Indonesia
SAYAP GARUDA INDAH	135-004	Unknown	Republic of Indonesia
SKY AVIATION	135-044	Unknown	Republic of Indonesia
SMAC	135-015	SMC	Republic of Indonesia
SRIWIJAYA AIR	121-035	SJY	Republic of Indonesia



Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
SURVEI UDARA PENAS	135-006	Unknown	Republic of Indonesia
TRANSWISATA PRIMA AVIATION	135-021	Unknown	Republic of Indonesia
TRAVEL EXPRESS AVIATION SERVICE	121-038	XAR	Republic of Indonesia
TRAVIRA UTAMA	135-009	Unknown	Republic of Indonesia
TRI MG INTRA ASIA AIRLINES	121-018	TMG	Republic of Indonesia
TRIGANA AIR SERVICE	121-006	TGN	Republic of Indonesia
UNINDO	135-040	Unknown	Republic of Indonesia
WING ABADI AIRLINES	121-012	WON	Republic of Indonesia
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Kazakhstan, with the exception of Air Astana put in Annex B, including</b>			Republic of Kazakhstan
AERO AIR COMPANY	Unknown	Unknown	Republic of Kazakhstan
AEROPRAKT KZ	Unknown	APK	Republic of Kazakhstan
AIR ALMATY	AK-0331-07	LMY	Republic of Kazakhstan
AIR COMPANY KOKSHETAU	AK-0357-08	KRT	Republic of Kazakhstan
AIR DIVISION OF EKA	Unknown	Unknown	Republic of Kazakhstan
AIR FLAMINGO	Unknown	Unknown	Republic of Kazakhstan
AIR TRUST AIRCOMPANY	Unknown	Unknown	Republic of Kazakhstan
AK SUNKAR AIRCOMPANY	Unknown	AKS	Republic of Kazakhstan
ALMATY AVIATION	Unknown	LMT	Republic of Kazakhstan
ARKHABAY	Unknown	KEK	Republic of Kazakhstan
ASIA CONTINENTAL AIRLINES	AK-0345-08	CID	Republic of Kazakhstan
ASIA CONTINENTAL AVIALINES	AK-0371-08	RRK	Republic of Kazakhstan
ASIA WINGS	AK-0390-09	AWA	Republic of Kazakhstan
ASSOCIATION OF AMATEUR PILOTS OF KAZAKHSTAN	Unknown	Unknown	Republic of Kazakhstan
ATMA AIRLINES	AK-0372-08	AMA	Republic of Kazakhstan
ATYRAU AYE JOLY	AK-0321-07	JOL	Republic of Kazakhstan
AVIA-JAYNAR	Unknown	Unknown	Republic of Kazakhstan
BEYBARS AIRCOMPANY	Unknown	Unknown	Republic of Kazakhstan

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
BERKUT AIR/BEK AIR	AK-0311-07	BKT/BEK	Republic of Kazakhstan
BERKUT KZ	Unknown	Unknown	Republic of Kazakhstan
BURUNDAYAVIA AIRLINES	AK-0374-08	BRY	Republic of Kazakhstan
COMLUX	AK-0352-08	KAZ	Republic of Kazakhstan
DETA AIR	AK-0344-08	DET	Republic of Kazakhstan
EAST WING	AK-0332-07	EWZ	Republic of Kazakhstan
EASTERN EXPRESS	AK-0358-08	LIS	Republic of Kazakhstan
EURO-ASIA AIR	AK-0384-09	EAK	Republic of Kazakhstan
EURO-ASIA AIR INTERNATIONAL	Unknown	KZE	Republic of Kazakhstan
FENIX	Unknown	Unknown	Republic of Kazakhstan
FLY JET KZ	AK-0391-09	FJK	Republic of Kazakhstan
IJT AVIATION	AK-0335-08	DVB	Republic of Kazakhstan
INVESTAVIA	AK-0342-08	TLG	Republic of Kazakhstan
IRTYSH AIR	AK-0381-09	MZA	Republic of Kazakhstan
JET AIRLINES	AK-0349-09	SOZ	Republic of Kazakhstan
JET ONE	AK-0367-08	JKZ	Republic of Kazakhstan
KAZAIR JET	AK-0387-09	KEJ	Republic of Kazakhstan
KAZAIRTRANS AIRLINE	AK-0347-08	KUY	Republic of Kazakhstan
KAZAIRWEST	Unknown	Unknown	Republic of Kazakhstan
KAZAVIA	Unknown	KKA	Republic of Kazakhstan
KZAVIASPAS	Unknown	KZS	Republic of Kazakhstan
KOKSHETAU	AK-0357-08	KRT	Republic of Kazakhstan
MEGA AIRLINES	AK-0356-08	MGK	Republic of Kazakhstan
MIRAS	AK-0315-07	MIF	Republic of Kazakhstan
NAVIGATOR	Unknown	Unknown	Republic of Kazakhstan
ORLAN 2000 AIRCOMPANY	Unknown	KOV	Republic of Kazakhstan
PANKH CENTER KAZAKHSTAN	Unknown	Unknown	Republic of Kazakhstan
PRIME AVIATION	Unknown	Unknown	Republic of Kazakhstan
SALEM AIRCOMPANY	Unknown	KKS	Republic of Kazakhstan

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
SAMAL AIR	Unknown	SAV	Republic of Kazakhstan
SAYAKHAT AIRLINES	AK-0359-08	SAH	Republic of Kazakhstan
SEMEYAVIA	Unknown	SMK	Republic of Kazakhstan
SCAT	AK-0350-08	VSV	Republic of Kazakhstan
SKYBUS	AK-0364-08	BYK	Republic of Kazakhstan
SKYJET	AK-0307-09	SEK	Republic of Kazakhstan
SKYSERVICE	Unknown	Unknown	Republic of Kazakhstan
TYAN SHAN	Unknown	Unknown	Republic of Kazakhstan
UST-KAMENOGORSK	AK-0385-09	UCK	Republic of Kazakhstan
ZHETYSU AIRCOMPANY	Unknown	JTU	Republic of Kazakhstan
ZHERSU AVIA	Unknown	RZU	Republic of Kazakhstan
ZHEZKAZGANAIR	Unknown	Unknown	Republic of Kazakhstan
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of the Kyrgyz Republic, including</b>			Kyrgyz Republic
AIR MANAS	17	MBB	Kyrgyz Republic
ASIAN AIR	Unknown	AAZ	Kyrgyz Republic
AVIA TRAFFIC COMPANY	23	AVJ	Kyrgyz Republic
AEROSTAN (EX BISTAIR-FEZ BISHKEK)	08	BSC	Kyrgyz Republic
CLICK AIRWAYS	11	CGK	Kyrgyz Republic
DAMES	20	DAM	Kyrgyz Republic
EASTOK AVIA	15	EEA	Kyrgyz Republic
GOLDEN RULE AIRLINES	22	GRS	Kyrgyz Republic
ITEK AIR	04	IKA	Kyrgyz Republic
KYRGYZ TRANS AVIA	31	KTC	Kyrgyz Republic
KYRGYZSTAN	03	LYN	Kyrgyz Republic
MAX AVIA	33	MAI	Kyrgyz Republic
S GROUP AVIATION	6	SGL	Kyrgyz Republic
SKY GATE INTERNATIONAL AVIATION	14	SGD	Kyrgyz Republic
SKY WAY AIR	21	SAB	Kyrgyz Republic

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
TENIR AIRLINES	26	TEB	Kyrgyz Republic
TRAST AERO	05	TSJ	Kyrgyz Republic
VALOR AIR	07	VAC	Kyrgyz Republic
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Liberia</b>		—	Liberia
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of the Republic of Gabon, with the exception of Gabon Airlines, Afrijet and SN2AG put in Annex B, including</b>			Republic of Gabon
AIR SERVICES SA	0002/MTACCMDH/SGACC/DTA	AGB	Republic of Gabon
AIR TOURIST (ALLEGIANCE)	0026/MTACCMDH/SGACC/DTA	NIL	Republic of Gabon
NATIONALE ET REGIONALE TRANSPORT (NATIONALE)	0020/MTACCMDH/SGACC/DTA	Unknown	Republic of Gabon
SCD AVIATION	0022/MTACCMDH/SGACC/DTA	Unknown	Republic of Gabon
SKY GABON	0043/MTACCMDH/SGACC/DTA	SKG	Republic of Gabon
SOLENTA AVIATION GABON	0023/MTACCMDH/SGACC/DTA	Unknown	Republic of Gabon
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of the Philippines, including</b>			Republic of the Philippines
AEROWURKS AERIAL SPRAYING SERVICES	4AN2008003	Unknown	Republic of the Philippines
AIR PHILIPPINES CORPORATION	2009006	Unknown	Republic of the Philippines
AIR WOLF AVIATION INC.	200911	Unknown	Republic of the Philippines
AIRTRACK AGRICULTURAL CORPORATION	4AN2005003	Unknown	Republic of the Philippines
ASIA AIRCRAFT OVERSEAS PHILIPPINES INC.	4AN9800036	Unknown	Republic of the Philippines
AVIATION TECHNOLOGY INNOVATORS, INC.	4AN2007005	Unknown	Republic of the Philippines
AVIATOUR'S FLY'N INC.	200910	Unknown	Republic of the Philippines
AYALA AVIATION CORP.	4AN9900003	Unknown	Republic of the Philippines
BEACON	Unknown	Unknown	Republic of the Philippines

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
BENDICE TRANSPORT MANAGEMENT INC.	4AN2008006	Unknown	Republic of the Philippines
CANADIAN HELICOPTERS PHILIPPINES INC.	4AN9800025	Unknown	Republic of the Philippines
CEBU PACIFIC AIR	2009002	Unknown	Republic of the Philippines
CHEMTRAD AVIATION CORPORATION	2009018	Unknown	Republic of the Philippines
CM AERO	4AN2000001	Unknown	Republic of the Philippines
CORPORATE AIR	Unknown	Unknown	Republic of the Philippines
CYCLONE AIRWAYS	4AN9900008	Unknown	Republic of the Philippines
FAR EAST AVIATION SERVICES	2009013	Unknown	Republic of the Philippines
F.F. CRUZ AND COMPANY, INC.	2009017	Unknown	Republic of the Philippines
HUMA CORPORATION	2009014	Unknown	Republic of the Philippines
INAEC AVIATION CORP.	4AN2002004	Unknown	Republic of the Philippines
ISLAND AVIATION	2009009	Unknown	Republic of the Philippines
INTERISLAND AIRLINES, INC.	2010023	Unknown	Republic of the Philippines
ISLAND TRANSVOYAGER	2010022	Unknown	Republic of the Philippines
LION AIR, INCORPORATED	2009019	Unknown	Republic of the Philippines
MACRO ASIA AIR TAXI SERVICES	4AN9800035	Unknown	Republic of the Philippines
MINDANAO RAINBOW AGRICULTURAL DEVELOPMENT SERVICES	2009016	Unknown	Republic of the Philippines
MISIBIS AVIATION & DEVELOPMENT CORP.	2010020	Unknown	Republic of the Philippines
OMNI AVIATION CORP.	4AN2002002	Unknown	Republic of the Philippines
PACIFIC EAST ASIA CARGO AIRLINES, INC.	4AS9800006	Unknown	Republic of the Philippines
PACIFIC AIRWAYS CORPORATION	Unknown	Unknown	Republic of the Philippines
PACIFIC ALLIANCE CORPORATION	Unknown	Unknown	Republic of the Philippines
PHILIPPINE AIRLINES	2009001	Unknown	Republic of the Philippines
PHILIPPINE AGRICULTURAL AVIATION CORP.	4AN9800015	Unknown	Republic of the Philippines
ROYAL AIR CHARTER SERVICES INC.	4AN2003003	Unknown	Republic of the Philippines
ROYAL STAR AVIATION, INC.	4AN9800029	Unknown	Republic of the Philippines
SOUTH EAST ASIA INC.	2009004	Unknown	Republic of the Philippines

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
SOUTHSTAR AVIATION COMPANY, INC.	4AN9800037	Unknown	Republic of the Philippines
SPIRIT OF MANILA AIRLINES CORPORATION	2009008	Unknown	Republic of the Philippines
SUBIC INTERNATIONAL AIR CHARTER	4AN9900010	Unknown	Republic of the Philippines
SUBIC SEAPLANE, INC.	4AN2000002	Unknown	Republic of the Philippines
TOPFLITE AIRWAYS, INC.	Unknown	Unknown	Republic of the Philippines
TRANSGLOBAL AIRWAYS CORPORATION	2009007	Unknown	Republic of the Philippines
WORLD AVIATION, CORP.	Unknown	Unknown	Republic of the Philippines
WCC AVIATION COMPANY	2009015	Unknown	Republic of the Philippines
YOKOTA AVIATION, INC.	Unknown	Unknown	Republic of the Philippines
ZENITH AIR, INC.	2009012	Unknown	Republic of the Philippines
ZEST AIRWAYS INCORPORATED	2009003	Unknown	Republic of the Philippines
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Sao Tome and Principe, including</b>	—	—	Sao Tome and Principe
AFRICA CONNECTION	10/AOC/2008	Unknown	Sao Tome and Principe
BRITISH GULF INTERNATIONAL COMPANY LTD	01/AOC/2007	BGI	Sao Tome and Principe
EXECUTIVE JET SERVICES	03/AOC/2006	EJZ	Sao Tome and Principe
GLOBAL AVIATION OPERATION	04/AOC/2006	Unknown	Sao Tome and Principe
GOLIAF AIR	05/AOC/2001	GLE	Sao Tome and Principe
ISLAND OIL EXPLORATION	01/AOC/2008	Unknown	Sao Tome and Principe
STP AIRWAYS	03/AOC/2006	STP	Sao Tome and Principe
TRANSAFRIK INTERNATIONAL LTD	02/AOC/2002	TFK	Sao Tome and Principe
TRANSCARG	01/AOC/2009	Unknown	Sao Tome and Principe
TRANSLIZ AVIATION (TMS)	02/AOC/2007	TMS	Sao Tome and Principe
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Sierra Leone, including</b>	—	—	Sierra Leone
AIR RUM, LTD	Unknown	RUM	Sierra Leone
DESTINY AIR SERVICES, LTD	Unknown	DTY	Sierra Leone



Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
HEAVYLIFT CARGO	Unknown	Unknown	Sierra Leone
ORANGE AIR SIERRA LEONE LTD	Unknown	ORJ	Sierra Leone
PARAMOUNT AIRLINES, LTD	Unknown	PRR	Sierra Leone
SEVEN FOUR EIGHT AIR SERVICES LTD	Unknown	SVT	Sierra Leone
TEEBAH AIRWAYS	Unknown	Unknown	Sierra Leone
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Sudan</b>			Republic of Sudan
SUDAN AIRWAYS	Unknown		Republic of the Sudan
SUN AIR COMPANY	Unknown		Republic of the Sudan
MARSLAND COMPANY	Unknown		Republic of the Sudan
ATTICO AIRLINES	Unknown		Republic of the Sudan
FOURTY EIGHT AVIATION	Unknown		Republic of the Sudan
SUDANESE STATES AVIATION COMPANY	Unknown		Republic of the Sudan
ALMAJARA AVIATION	Unknown		Republic of the Sudan
BADER AIRLINES	Unknown		Republic of the Sudan
ALFA AIRLINES	Unknown		Republic of the Sudan
AZZA TRANSPORT COMPANY	Unknown		Republic of the Sudan
GREEN FLAG AVIATION	Unknown		Republic of the Sudan
ALMAJAL AVIATION SERVICE	Unknown		Republic of the Sudan
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Swaziland, including</b>	—	—	Swaziland
SWAZILAND AIRLINK	Unknown	SZL	Swaziland
<b>All air carriers certified by the authorities with responsibility for regulatory oversight of Zambia, including</b>			Zambia
ZAMBEZI AIRLINES	Z/AOC/001/2009	ZMA	Zambia

## ANNEX B

**LIST OF AIR CARRIERS OF WHICH OPERATIONS ARE SUBJECT TO OPERATIONAL RESTRICTIONS  
WITHIN THE COMMUNITY <sup>(1)</sup>**

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number	ICAO airline designation number	State of the Operator	Aircraft type restricted	Registration mark(s) and, when available, construction serial number(s)	State of registry
AIR KORYO	GAC-AOC/KOR-01		DPRK	All fleet with the exception of: 2 aircraft of type Tu 204	All fleet with the exception of: P-632, P-633	DPRK
AFRIJET <sup>(2)</sup>	CTA 0002/MTAC/ ANAC-G/DSA		Republic of Gabon	All fleet with the exception of: 2 aircraft of type Falcon 50; 1 aircraft of type Falcon 900	All fleet with the exception of: TR-LGV; TR-LGY; TR-AFJ	Republic of Gabon
AIR ASTANA <sup>(2)</sup>	AK-0388-09	KZR	Kazakhstan	All fleet with the exception of: 2 aircraft of type B767; 4 aircraft of type B757; 10 aircraft of type A319/320/321; 5 aircraft of type Fokker 50	All fleet with the exception of: P4-KCA, P4-KCB; P4-EAS, P4-FAS, P4-GAS, P4-MAS; P4-NAS, P4-OAS, P4-PAS, P4-SAS, P4-TAS, P4-UAS, P4-VAS, P4-WAS, P4-YAS, P4-XAS; P4-HAS, P4-IAS, P4-JAS, P4-KAS, P4-LAS	Aruba (Kingdom of the Netherlands)
AIR BANGLADESH	17	BGD	Bangladesh	B747-269B	S2-ADT	Bangladesh
AIR SERVICE COMORES	06-819/TA-15/ DGACM	KMD	Comoros	All fleet with the exception of: LET 410 UVP	All fleet with the exception of: D6-CAM (851336)	Comoros
GABON AIRLINES <sup>(3)</sup>	CTA 0001/MTAC/ ANAC	GBK	Republic of Gabon	All fleet with the exception of: 1 aircraft of type Boeing B-767-200	All fleet with the exception of: TR-LHP	Republic of Gabon
IRAN AIR <sup>(4)</sup>	FS100	IRA	Islamic Republic of Iran	All fleet with the exception of: 14 aircraft of type A300, 4 aircraft of type A310, 9 aircraft of type B747, 1 aircraft B737, 6 aircraft of type A320	All fleet with the exception of: EP-IBA EP-IBB EP-IBC EP-IBD EP-IBG EP-IBH EP-IBI EP-IBJ EP-IBS EP-IBT EP-IBV EP-IBZ EP-ICE EP-ICF	Islamic Republic of Iran

<sup>(1)</sup> Air carriers listed in Annex B could be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number	ICAO airline designation number	State of the Operator	Aircraft type restricted	Registration mark(s) and, when available, construction serial number(s)	State of registry
					EP-IBK EP-IBL EP-IBP EP-IBQ EP-IAA EP-IAB EP-IBC EP-IBD EP-IAG EP-IAH EP-IAI EP-IAM EP-ICD EP-AGA EP-IEA EP-IEB EP-IED EP-IEE EP-IEF EP-IEG	
NOUVELLE AIR AFFAIRES GABON (SN2AG)	CTA 0003/MTAC/ANAC-G/DSA	NVS	Republic of Gabon	All fleet with the exception of: 1 aircraft of type Challenger; CL601 1 aircraft of type HS-125-800	All fleet with the exception of: TR-AAG, ZS-AFG	Republic of Gabon; Republic of South Africa
TAAG ANGOLA AIRLINES	001	DTA	Republic of Angola	All fleet with the exception of: 3 aircraft of type Boeing B-777 and 4 aircraft of type Boeing B-737-700	All fleet with the exception of: D2-TED, D2-TEE, D2-TEF, D2-TBF, D2, TBG, D2-TBH, D2-TBJ	Republic of Angola
UKRAINIAN MEDITERRANEAN	164	UKM	Ukraine	All fleet with the exception of one aircraft of type MD-83	All fleet with the exception of: UR-CFF	Ukraine

(<sup>1</sup>) Afrijet is only allowed to use the specific aircraft mentioned for its current operations within the European Community.

(<sup>2</sup>) Air Astana is only allowed to use the specific aircraft mentioned for its current operations within the European Community.

(<sup>3</sup>) Gabon Airlines is only allowed to use the specific aircraft mentioned for its current operations within the European Community.

(<sup>4</sup>) Iran Air is allowed to operate to the European Union using the specific aircraft under the conditions set out in recitals (48) and (49) of this Regulation.

**COMMISSION REGULATION (EU) No 274/2010****of 30 March 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) <sup>(1)</sup>,Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector <sup>(2)</sup>, and in particular Article 138(1) thereof,

Whereas:

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 31 March 2010.

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

Done at Brussels, 30 March 2010.

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

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<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.<sup>(2)</sup> OJ L 350, 31.12.2007, p. 1.

## ANNEX

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

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	IL	156,4
	JO	98,8
	MA	166,6
	TN	154,7
	TR	123,2
	ZZ	139,9
0707 00 05	JO	75,8
	MA	108,5
	TR	127,2
	ZZ	103,8
0709 90 70	MA	142,0
	TR	100,2
	ZZ	121,1
0805 10 20	EG	47,6
	IL	53,2
	MA	50,7
	TN	46,9
	TR	62,7
	ZZ	52,2
0805 50 10	EG	63,7
	IL	91,6
	MA	49,1
	TR	64,8
	ZA	71,7
	ZZ	68,2
0808 10 80	AR	80,6
	BR	89,2
	CA	74,4
	CL	94,4
	CN	95,2
	MK	23,6
	US	132,0
	UY	93,5
	ZA	92,9
	ZZ	86,2
0808 20 50	AR	78,4
	CL	150,4
	CN	35,0
	MX	100,0
	UY	106,8
	ZA	92,6
	ZZ	93,9

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

# DECISIONS

## COMMISSION DECISION

of 29 March 2010

**exempting exploration for and exploitation of oil and gas in England, Scotland and Wales from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors**

(notified under document C(2010) 1920)

(Only the English text is authentic)

(Text with EEA relevance)

(2010/192/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors <sup>(1)</sup>, and in particular Article 30(5) and (6),

Having regard to the request submitted by Shell U.K. Limited (hereinafter referred to as Shell) by e-mail of 15 October 2009,

After consulting the Advisory Committee for Public Contracts,

Whereas:

### I. FACTS

(1) According to Article 27 of Directive 2004/17/EC contracting entities exploring for or extracting oil or gas in the United Kingdom were authorised to apply an alternative regime in place of the normal set of rules. The alternative regime entailed certain statistical obligations and an obligation to observe the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions.

(2) The mechanism of Article 30, pertaining derogation from the provisions of Directive 2004/17/EC, under certain

circumstances for certain operators, applies also in respect of these reduced obligations under Article 27 of the same Directive.

(3) On 15 October 2009, Shell transmitted a request pursuant to Article 30(5) of Directive 2004/17/EC to the Commission by e-mail. In accordance with Article 30(5) first subparagraph, the Commission informed the United Kingdom authorities thereof by letter of 21 October 2009, to which the said authorities answered by e-mail of 16 November 2009. The Commission also requested additional information of Shell by e-mail of 17 November 2009, which was transmitted by Shell by e-mail of 25 November 2009.

(4) The request submitted by Shell concerns the exploration for and exploitation of oil and gas in England, Scotland and Wales. In line with previous Commission Merger Decisions <sup>(2)</sup>, three distinct activities where Shell is active, have been described in the request, namely:

(a) exploration for oil and natural gas;

(b) production of oil, and

(c) production of natural gas.

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

<sup>(1)</sup> OJ L 134, 30.4.2004, p. 1.

<sup>(2)</sup> See in particular Commission Decision 2004/284/EC of 29 September 1999 declaring a concentration compatible with the common market and the EEA Agreement (Case No IV/M.1383 — Exxon/Mobil) (OJ L 103, 7.4.2004, p. 1) and subsequent decisions, inter alia, Commission Decision of 3 May 2007 declaring a concentration to be compatible with the common market (Case No IV/M.4545 — Statoil/Hydro) according to Council Regulation (EC) No 139/2004.



## II. LEGAL FRAMEWORK

- (5) Article 30 of Directive 2004/17/EC provides that contracts intended to enable the performance of one of the activities to which Directive 2004/17/EC applies shall not be subject to that Directive if, in the Member State in which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. Access is deemed to be unrestricted if the Member State has implemented and applied the relevant EU legislation opening a given sector or a part of it.
- (6) Since the United Kingdom have implemented and applied Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons <sup>(1)</sup>, access to the market should be deemed not to be restricted in accordance with the first subparagraph of Article 30(3) of Directive 2004/17/EC. Direct exposure to competition in a particular market should be evaluated on the basis of various criteria, none of which are, *per se*, decisive.
- (7) For the purposes of assessing whether the relevant operators are subject to direct competition in the markets concerned by this decision, the market share of the main players and the degree of concentration of those markets shall be taken into account. As the conditions vary for the different activities that are concerned by this Decision, a separate assessment shall be undertaken for each activity/market.
- (8) This Decision is without prejudice to the application of the rules on competition.

## III. ASSESSMENT

- (9) Each of the three activities that are the subject of this request (exploration for oil and natural gas, production of oil and production of natural gas) have been considered to constitute separate product markets in the previous Commission Decisions referred to in Recital 4 above. They should therefore be examined separately.

### Exploration for oil and natural gas

- (10) According to established Commission practice <sup>(2)</sup>, exploration for oil and natural gas constitutes one relevant product market, since it is not possible from the outset to determine whether the exploration will result in

finding oil or natural gas. It has furthermore been established through the same, long-standing Commission practice that the geographical scope of that market is worldwide.

- (11) The market shares of operators active in exploration can be measured by reference to three variables: the capital expenditure, proven reserves and expected production. The use of capital expenditure to measure the market shares of operators on the exploration market has been found to be unsuitable, i.e. because of the large differences between the required levels of investments that are necessary in different geographic areas. Thus, larger investments are needed to explore for oil and gas in the North Sea than is the case for exploration in, e.g., the Middle East.
- (12) Two other parameters have typically been applied to assess the market shares of economic operators within this sector, namely, their share of proven reserves and of the expected production <sup>(3)</sup>.
- (13) As of 31 December 2008, the global, proven oil and gas reserves amounted to a total of 385 billion standard cubic metres oil equivalent (in the following Sm<sup>3</sup> o. e.) worldwide, according to the available information <sup>(4)</sup>. Shell's part thereof amounted to 1,759 billion Sm<sup>3</sup> o. e., giving it a market share of 0,46 %. As of 1 January 2009, the combined, proven oil and gas reserves in Great Britain amounted to slightly more than 0,88 billion Sm<sup>3</sup> o. e. <sup>(5)</sup>, or slightly more than 0,22 %. Shell's share thereof is even smaller. According to the available information, there is a direct correlation between proven reserves of oil and gas and expected future production. Nothing in the available information therefore indicates that Shell's market share would be substantially different if measured in terms of expected production rather than in terms of its share of proven reserves. Recitals (14) and (17) below present the market shares of Shell of its principal competitors of the production of, respectively, oil and gas. Given the links between proven reserves and actual production these figures can be taken as an indication also of the state of competition on the market concerned here. The exploration market is not highly concentrated. Apart from state owned companies, the market is characterised by the presence of two other international vertically integrated private players named the super majors (BP and ExxonMobil) as well as a certain number of so-called 'majors'. These elements are an indication of direct exposure to competition.

<sup>(1)</sup> OJ L 164, 30.6.1994, p. 3.

<sup>(2)</sup> See in particular the above-mentioned Exxon/Mobil Decision and, more recently, Commission Decision of 19 November 2007 declaring a concentration to be compatible with the common market (Case COMP/M.4934 — KazMunaiGaz/Rompetrol) according to Council Regulation (EEC) No 139/2004.

<sup>(3)</sup> See in particular the above-mentioned Exxon/Mobil Decision (recitals 25 and 27).

<sup>(4)</sup> See point 5.2.1 of the application and the sources quoted there, in particular the BP Statistical Review of World Energy, June 2009, annexed to it.

<sup>(5)</sup> That is, 0,34 trillion Sm<sup>3</sup> gas, equal to 0,34 billion Sm<sup>3</sup> o. e., and 3,4 thousand million barrels oil equal 0,540 billion Sm<sup>3</sup>, giving a total of 0,88 billion Sm<sup>3</sup>.

### Production of oil

- (14) According to established Commission practice<sup>(1)</sup>, development and production of (crude) oil is a separate product market whose geographic scope is worldwide. According to the available information<sup>(2)</sup>, the total, daily production of oil worldwide amounted to 81 820 million barrels in 2008. That same year, Shell produced a total of 1 771 million barrels per day, giving it a market share of 2,16 %. For the purposes of this analysis, it is important to have regard to the degree of concentration and the relevant market as a whole. In this view, the Commission notes that the market for crude oil production is characterised by the presence of big state owned companies and two other international vertically integrated private players (the so called super majors: BP and ExxonMobil whose respective parts of oil production in 2008 amounted to 3,08 % and 2,32 %) as well as a certain number of so-called 'majors'<sup>(3)</sup>. These factors suggest that the market comprises a number of players between whom effective competition can be presumed.

### Production of natural gas

- (15) A previous Commission Decision<sup>(4)</sup> concerning downstream supply of gas to end-customers has distinguished between Low Calorific Value (LCV) Gas, High Calorific Value (HCV) gas. The Commission has also considered whether Liquefied Natural Gas (LNG) supplies should be distinguished from supplies of piped natural gas<sup>(5)</sup>. However, a subsequent Commission Decision<sup>(6)</sup> concerning i.a. development and production of natural gas left the question open whether, for the purpose of that Decision, separate markets existed for Low Calorific Value (LCV) Gas, High Calorific Value (HCV) gas and Liquefied Natural Gas (LNG), 'as the final assessment is not affected regardless of the definition adopted'. For the purpose of this Decision, the question can also be left open for the following reasons:

— Shell does not produce LNG;

— Shell U.K. Limited operates in Great Britain (Scotland England and Wales), where the spot market for gas, the so-called National Balancing Point, makes no distinction between LCV and HCV. National Grid plc (the British national gas network manager) is responsible for supervising the quality of gas entering the network.

- (16) As far as the geographic market is concerned, previous Commission Decisions<sup>(7)</sup> have considered that it includes the European Economic Area (EEA) and possibly also Russia and Algeria.

- (17) According to the available information<sup>(8)</sup>, the total gas production in the EU amounted to 190,3 billion Sm<sup>3</sup> in 2008 and that of the EEA for the same year to 289,5 billion Sm<sup>3</sup>. Shell's production for 2008 amounted to 37,60 billion Sm<sup>3</sup>, giving it a market share of 12,99 %. For 2008, productions in Russia and Algeria amounted to respectively 601,7 and 86,5 billion Sm<sup>3</sup>. The total production for the EEA plus Russia and Algeria therefore amounted to a total of 976,7 billion Sm<sup>3</sup> of which Shell's share amounted to 3,85 %. The degree of concentration on the market for natural gas production is also low, considering the presence of the super majors (ExxonMobil and BP with market shares between of between, respectively, [10-20] % and [5-10] %), and of the majors (Statoil and Total with market shares of the order, respectively, of [10-20] % and [5-10] % each), and the pressure of two other important state owned companies namely, the Russian Gazprom and the Algerian Sonatrach (with market shares between [30-40] % and of [10-20] %<sup>(9)</sup>, respectively). This provides further indication of direct exposure to competition.

### IV. CONCLUSIONS

- (18) In view of the factors examined in recitals (5) to (17), the condition of direct exposure to competition laid down in Article 30(1) of Directive 2004/17/EC should be considered to be met in England, Scotland and Wales in respect of the following services:

- (a) exploration for oil and natural gas;
- (b) production of oil, and
- (c) production of natural gas.

- (19) Since the condition of unrestricted access to the market is deemed to be met, Directive 2004/17/EC should not apply when contracting entities award contracts intended to enable the services listed in points (a) to (c) of recital (18) to be carried out in England, Scotland and Wales, nor when design contests are organised for the pursuit of such an activity in those geographic areas.

- (20) This Decision is based on the legal and factual situation as of October to December 2009 as it appears from the information submitted by Shell and the authorities of the United Kingdom. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are no longer met,

<sup>(1)</sup> See in particular the above-mentioned Exxon/Mobil Decision and, more recently, the above-mentioned KazMunaiGaz/Rompotrol Decision.

<sup>(2)</sup> See p. 8 of BP Statistical Review of World Energy, June 2009, annexed to request, in the following referred to as BP Statistics.

<sup>(3)</sup> Whose market shares are smaller than those of the super majors.

<sup>(4)</sup> Commission Decision 2007/194/EC of 14 November 2006 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.4180 — Gaz de France/Suez) (OJ L 88, 29.3.2007, p. 47).

<sup>(5)</sup> See in particular the above-mentioned Gaz de France/Suez Decision.

<sup>(6)</sup> The above-mentioned Statoil/Hydro Decision, point 12.

<sup>(7)</sup> See for instance those mentioned under Recital (4) above.

<sup>(8)</sup> See in particular BP Statistics, p. 24.

<sup>(9)</sup> See the above-mentioned Statoil/Hydro Decision.

HAS ADOPTED THIS DECISION:

*Article 1*

Directive 2004/17/EC shall not apply to contracts awarded by contracting entities and intended to enable the following services to be carried out in England, Scotland and Wales:

- (a) exploration for oil and natural gas;
- (b) production of oil, and
- (c) production of natural gas.

*Article 2*

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 29 March 2010.

*For the Commission*

Michel BARNIER

*Member of the Commission*

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## COMMISSION DECISION

of 29 March 2010

**amending Decision 2003/135/EC as regards the eradication and emergency vaccination plans for classical swine fever in feral pigs in certain areas of North Rhine-Westphalia and Rhineland-Palatinate (Germany)**

*(notified under document C(2010) 1931)***(Only the German and French texts are authentic)**

(2010/193/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever <sup>(1)</sup>, and in particular the fifth subparagraph of Article 16(1) and the fifth subparagraph of Article 20(2) thereof,

Whereas:

- (1) Commission Decision 2003/135/EC of 27 February 2003 on the approval of the plans for the eradication of classical swine fever and the emergency vaccination of feral pigs against classical swine fever in Germany, in the federal states of Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Saarland <sup>(2)</sup> was adopted as one of a number of measures to combat classical swine fever.
- (2) Germany has informed the Commission about the recent evolution of that disease in feral pigs in certain areas of the federal states of North Rhine-Westphalia and Rhineland-Palatinate.
- (3) That information indicates that classical swine fever in feral pigs has been eradicated in certain areas in the south of Rhineland-Palatinate and in the region of Eifel.

Accordingly, the eradication and emergency vaccination plans for classical swine fever in feral pigs no longer need to be applied in those particular areas.

- (4) Decision 2003/135/EC should therefore be amended accordingly.
- (5) 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*

The Annex to Decision 2003/135/EC is replaced by the text in the Annex to this Decision.

*Article 2*

This Decision is addressed to the Federal Republic of Germany and the French Republic.

Done at Brussels, 29 March 2010.

*For the Commission*

John DALLI

*Member of the Commission*

<sup>(1)</sup> OJ L 316, 1.12.2001, p. 5.

<sup>(2)</sup> OJ L 53, 28.2.2003, p. 47.

ANNEX

‘ANNEX

**1. AREAS WHERE ERADICATION PLANS ARE IN PLACE****A. In the federal state Rhineland-Palatinate**

- (a) The Kreise Altenkirchen and Neuwied.
- (b) In the Kreis Westerwald: the municipalities Bad Marienberg, Hachenburg, Ransbach-Baumbach, Rennerod, Selters, Wallmerod and Westerburg, the municipality Höhr-Grenzhausen north of the motorway A48, the municipality Montabaur north of the motorway A3 and the municipality Wirges north of the motorways A48 and A3.
- (c) In the Landkreis Südwestpfalz: the municipalities Thaleischweiler-Fröschen, Waldfischbach-Burgalben, Rodalben and Wallhalben.
- (d) In the Kreis Kaiserslautern: the municipalities Bruchmühlbach-Miesau south of the motorway A6, Kaiserslautern-Süd and Landstuhl.
- (e) The city of Kaiserslautern south of the motorway A6.

**B. In the federal state North Rhine-Westphalia**

- (a) In the Rhein-Sieg-Kreis: the cities Bad Honnef, Königswinter, Hennef (Sieg), Sankt Augustin, Niederkassel, Troisdorf, Siegburg and Lohmar and the municipalities Neunkirchen-Seelscheid, Eitorf, Ruppichteroth, Windeck and Much.
- (b) In the Kreis Siegen-Wittgenstein: in the municipality Kreuztal the localities Krombach, Eichen, Fellinghausen, Osthelden, Junkernhees and Mittelhees, in the city Siegen the localities Sohlbach, Dillnhütten, Geisweid, Birkenbach, Trupbach, Seelbach, Achenbach, Lindenberg, Rosterberg, Rödgen, Obersdorf, Eisern and Eiserfeld, the municipalities Freudenberg, Neunkirchen and Burbach, in the municipality Wilnsdorf the localities Rinsdorf and Wilden.
- (c) In the Kreis Olpe: in the city Drolshagen the localities Drolshagen, Lüdespert, Schlade, Hützemert, Feldmannshof, Gipperich, Benolpe, Wormberg, Gelsingen, Husten, Halbhusten, Iseringhausen, Brachtpe, Berlinghausen, Eichen, Heiderhof, Forth and Buchhagen, in the city Olpe the localities Olpe, Rhode, Saßmicke, Dahl, Friedrichsthal, Thieringhausen, Günsen, Altenkleusheim, Rhonard, Stachelau, Lütringhausen and Rüblinghausen, the municipality Wenden.
- (d) In the Märkische Kreis: the cities Halver, Kierspe and Meinerzhagen.
- (e) In the city Remscheid: the localities Halle, Lusebusch, Hackenberg, Dörper Höhe, Niederlangenbach, Durchsholz, Nagelsberg, Kleeback, Niederfeldbach, Endringhausen, Lennep, Westerholt, Grenzwall, Birgden, Schneppendahl, Oberfeldbach, Hasenberg, Lüdorf, Engelsburg, Forsten, Oberlangenbach, Niederlangenbach, Karlsruhe, Sonnenschein, Buchholzen, Bornefeld and Bergisch Born.
- (f) In the cities Köln and Bonn: the municipalities on the right side of the river Rhine.
- (g) The city Leverkusen.
- (h) The Rheinisch-Bergische Kreis.
- (i) The Oberbergische Kreis.



## 2. AREAS WHERE THE EMERGENCY VACCINATION IS APPLIED

### A. In the federal state Rhineland-Palatinate

- (a) The Kreise Altenkirchen and Neuwied.
- (b) In the Kreis Westerwald: the municipalities Bad Marienberg, Hachenburg, Ransbach-Baumbach, Rennerod, Selters, Wallmerod and Westerburg, the municipality Höhr-Grenzhausen north of the motorway A48, the municipality Montabaur north of the motorway A3 and the municipality Wirges north of the motorways A48 and A3.
- (c) In the Landkreis Südwestpfalz: the municipalities Thaleischweiler-Fröschen, Waldfischbach-Burgalben, Rodalben and Wallhalben.
- (d) In the Kreis Kaiserslautern: the municipalities Bruchmühlbach-Miesau south of the motorway A6, Kaiserslautern-Süd and Landstuhl.
- (e) The city of Kaiserslautern south of the motorway A6.

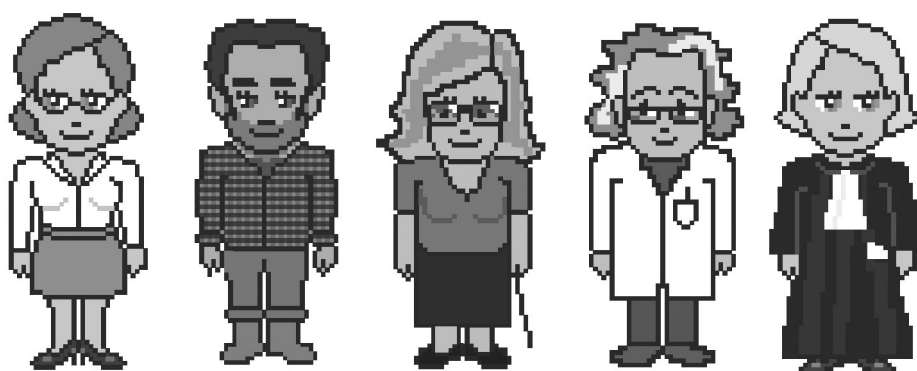
### B. In the federal state North Rhine-Westphalia

- (a) In the Rhein-Sieg-Kreis: the cities Bad Honnef, Königswinter, Hennef (Sieg), Sankt Augustin, Niederkassel, Troisdorf, Siegburg and Lohmar and the municipalities Neunkirchen-Seelscheid, Eitorf, Ruppichteroth, Windeck and Much.
  - (b) In the Kreis Siegen-Wittgenstein: in the municipality Kreuztal the localities Krombach, Eichen, Fellinghausen, Osthelden, Junkernhees and Mittelhees, in the city Siegen the localities Sohlbach, Dillnhütten, Geisweid, Birlenbach, Trupbach, Seelbach, Achenbach, Lindenberg, Rosterberg, Rödgen, Obersdorf, Eisern and Eiserfeld, the municipalities Freudenberg, Neunkirchen and Burbach, in the municipality Wilnsdorf the localities Rinsdorf and Wilden.
  - (c) In the Kreis Olpe: in the city Drolshagen the localities Drolshagen, Lüdespert, Schlade, Hützemert, Feldmannshof, Gipperich, Benolpe, Wormberg, Gelsingen, Husten, Halbhusten, Iseringhausen, Brachtpe, Berlinghausen, Eichen, Heiderhof, Forth and Buchhagen, in the city Olpe the localities Olpe, Rhode, Saßmicke, Dahl, Friedrichsthal, Thieringhausen, Günsen, Altenkleusheim, Rhonard, Stachelau, Lüttringhausen and Rüblinghausen, the municipality Wenden.
  - (d) In the Märkische Kreis: the cities Halver, Kierspe and Meinerzhagen.
  - (e) In the city Remscheid: the localities Halle, Lusebusch, Hackenberg, Dörper Höhe, Niederlangenbach, Durchsholz, Nagelsberg, Kleebach, Niederfeldbach, Endringhausen, Lennep, Westerholt, Grenzwall, Birgden, Schneppendahl, Oberfeldbach, Hasenberg, Lüdorf, Engelsburg, Forsten, Oberlangenbach, Niederlangenbach, Karlsruhe, Sonnenschein, Buchholzen, Bornefeld and Bergisch Born.
  - (f) In the cities Köln and Bonn: the municipalities on the right side of the river Rhine.
  - (g) The city Leverkusen.
  - (h) The Rheinisch-Bergische Kreis.
  - (i) The Oberbergische Kreis.
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