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COMMISSION OF THE EUROPEAN COMMUNITIES

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2009/0079 (ACC)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 733/2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station

EXPLANATORY MEMORANDUM

Historical background

The Community's initial reaction to the Chernobyl accident was for the Commission to adopt a recommendation addressed to the Member States concerning the coordination of national measures for marketing agricultural products contaminated by fallout from the accident¹. It was followed by a Commission Decision² suspending the inclusion of certain countries on the list of countries from which the Member States authorise imports of live animals and fresh meat. On 12 May 1986, the Council adopted a regulation provisionally suspending the import of certain agricultural products originating in certain third countries³. Since these arrangements for banning imports were limited in time, the Council replaced them with a regulation authorising the resumption of imports subject to certain conditions. This regulation laid down maximum permitted levels for radioactive caesium in imported products, compliance with which had to be checked by the importing Member States⁴. From the end of 1987⁵ onwards, the Council introduced Article 133 (ex-113) of the EC Treaty as the legal basis for adopting regulations extending the period of validity of the control system; the legislative corner-stone being Council Regulation (EEC) No 737/90⁶ adopted in 1990. This regulation was then extended on several occasions, with certain changes being incorporated. The latest extension of the Community system for controlling imports of agricultural products following the Chernobyl accident, for a period of ten years, dates from March 2000⁷. Furthermore, in the framework of the simplification procedure, Council Regulation (EEC) No 737/90 which had been amended several times, has been codified in 2008 into Council Regulation (EC) No 733/2008⁸.

Since 1990, several regulations have been adopted by the Commission under the "comitology procedure" to define the scope of the control system and the procedures for implementing Council Regulation (EEC) No 737/90, and in particular the list of agricultural products originating in third countries which must be subject to checks at the borders of the European Union. This list has evolved over time and currently includes certain live animals for slaughter, meat (including wild game), dairy products, natural honey, non-cultivated mushrooms and certain wild berries⁹. Import controls imposed on the Member States by Community legislation must of course take account of the degree of contamination of the country of origin. On the basis of the atlas of radioactive caesium deposition in Europe¹⁰, but above all on the basis of the results of on-the-spot surveys, the Commission decided in 1999

¹ Commission Recommendation of 6 May 1986, OJ L 118, 7.5.1986, p. 28.

² Commission Decision of 7 May 1986, OJ L 120, 8.5.1986, p. 66.

³ Council Regulation (EEC) No 1388/86 of 12 May 1986, OJ L 127, 13.5.1986, p. 1.

⁴ Council Regulation (EEC) No 1707/86 of 30 May 1986, OJ L 146, 31.5.1986, p. 88.

⁵ Council Regulation (EEC) No 3955/87 of 22 December 1987, OJ L 371, 30.12.1987, p. 14.

⁶ Council Regulation (EEC) No 737/90 of 22 March 1990, OJ L 82, 29.3.1990, p. 1.

⁷ Council Regulation (EC) No 616/2000 of 20 March 2000, OJ L 75, 24.3.2000, p. 1.

⁸ OJ L 201, 30.7.2008, p. 1.

⁹ Commission Regulation (EC) No 1609/2000, OJ L 185, 25.7.2000, p. 27.

¹⁰ Atlas of caesium deposition on Europe after the Chernobyl Accident, Office for Official Publications of the European Communities, Luxembourg 1998, catalogue number CG-NA-16-733-29-C, ISBN 92-828-3140-X.

that certain categories of products originating in third countries should be subjected to stricter controls¹¹.

Aim of the proposal

The aim of the proposal is to extend for ten years the system for checking compliance with the maximum permitted levels of radioactivity in agricultural products laid down by Regulation (EC) No 733/2008 (codified version of Council Regulation (EEC) No 737/90 which was extended in time by Council Regulation (EC) No 686/95 until 31 March 2000 and by Council Regulation (EC) No 616/2000 until 31 March 2010).

This extension is justified because the reasons behind the adoption of Council Regulation 737/90 and its previous extensions remain valid. The radioactive caesium contamination of certain agricultural products originating in the third countries most affected by the accident still exceeds the maximum permitted levels laid down in the 1990 Regulation. A number of products originating from species living and growing in natural and semi-natural areas may present high levels of caesium-137 contamination and the reduction with time of these levels in these products essentially relates to the physical half-life of that radionuclide, which is 30 years.

This was confirmed in the framework of a study launched by the Commission on the "potential imports by Member States of agricultural products containing radio-caesium concentrations in excess of EC limits". The contractor presented the results of the study and its recommendations at the meeting of the *ad hoc* Committee set up under article 5 of Council Regulation (EC) No 733/2008 (previous Article 7 of Regulation (EEC) No 737/90) which took place in December 2007. On the basis of the results of the study the Committee recommended that all products present in the current list should remain in this list and be subject to checks at the borders of the European Union. In addition, as proposed in the study, the Committee concluded that an extension of the provisions of Council Regulation (EC) No 733/2008 for a minimum of ten years would be appropriate. The Group of experts referred to in Article 31 of the Euratom Treaty was also consulted on the advisability of further extending in time the provisions of Council Regulation (EC) No 733/2008 at its meeting on 26 November 2008. It issued a favourable opinion on the Commission's proposal and concluded that such an extension would be appropriate.

Finally, it is to be recalled that Council Regulation (Euratom) No 3954/87¹² allows for the introduction, by means of a Commission Regulation, of different more generalized restrictions in the event of a future nuclear accident or radiological emergency and if such restrictions were to be introduced there would be discrepancies with those set out in Regulation (EC) No 733/2008. Hence there is a need to confirm the provision that the latter will automatically be repealed in the event of the former entering into force.

¹¹ Adoption in 1999 by the Commission of a regulation introducing stricter controls for non-cultivated mushrooms originating in 23 third countries, Commission Regulation (EC) 1635/2006, OJ L 306, 7.11.2006, p. 3 (Recast version of Commission Regulation (EC) No 1661/1999, OJ L 197, 29.07.1999, p. 17, as amended by Commission Regulation (EC) No 1627/2000 of 24 July 2000, OJ L 187, 26.7.2000, p. 7; Commission Regulation (EC) No 1621/2001 of 8 August 2001, OJ L 215, 09.08.2001, p. 18; and Commission Regulation (EC) No 1608/2002 of 10 September 2002, OJ L 243, 11.09.2002, p. 7).

¹² OJ L 371, 30.12.1987, p. 11. Regulation as last amended by Regulation (Euratom) No 2218/89 (OJ L 211, 22.7.1989, p. 1).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Regulation (EC) No 733/2008¹³, which is the codified version of repealed Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station¹⁴, fixed maximum permitted levels of radioactivity for agricultural products originating in third countries and intended for human consumption, with which imports must comply and in connection with which checks are carried out by the Members States. However, Regulation (EC) No 733/2008 expires on 31 March 2010.
- (2) Radioactive caesium contamination of certain products originating in the third countries most affected by the Chernobyl accident still exceeds the maximum permitted levels of radioactivity laid down in Regulation (EC) No 733/2008.
- (3) There is scientific evidence that the duration of caesium-137 contamination following the Chernobyl accident, for a number of products originating from species living and growing in forests and wooded areas, essentially relates to the physical half-life of that radionuclide, which is 30 years.
- (4) Regulation (EC) No 733/2008 should therefore be amended accordingly,

¹³ OJ L 201, 30.7.2008, p. 1.

¹⁴ OJ L 82, 29.3.1990, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

The second paragraph of Article 7 of Regulation (EC) No 733/2008 shall be replaced by the following:

"It shall expire:

1. on 31 March 2020, unless the Council decides otherwise at an earlier date, in particular if the list of excluded products referred to in Article 4 covers all the products fit for human consumption to which this Regulation applies;
2. upon the entry into force of the Commission Regulation provided for in Article 2 (1) of Regulation (Euratom) No 3954/87, if such entry into force takes place before 31 March 2020."

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,

For the Council

The President