COMMISSION REGULATION (EC) No 1428/2007

of 4 December 2007

amending Annex VII to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ([1]), and in particular the first paragraph of Article 23 thereof,

Whereas:

(1) Annex VII to Regulation (EC) No 999/2001 lays down eradication measures to be carried out following the confirmation of a transmissible spongiform encephalopathy (TSE) in ovine and caprine animals.

(2) In the framework of the Communication from the Commission TSE Roadmap ([2]) of 15 July 2005, and in line with the SANCO work programme 2006-07 on TSEs ([3]) of 21 November 2006, the Commission adopted Regulation (EC) No 727/2007 of 26 June 2007 amending Annexes I, III, VII and X to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies. Regulation (EC) No 999/2001, as thus amended, provides for certain measures to be applied in the case of confirmation of a TSE in a holding of ovine or caprine animals and where the presence of bovine spongiform encephalopathy (BSE) has been excluded.

(3) Given that the structure of the sector for ovine and caprine animals is notoriously different across the Community, Regulation (EC) No 999/2001, as amended by Regulation (EC) No 727/2007, introduced the possibility to apply alternative policies, provided that harmonised rules are established at Community level.

(4) Annex VII to Regulation (EC) No 999/2001, before the amendments made thereto by Regulation (EC) No 727/2007, provided for a derogation regarding the destruction of ovine and caprine animals following the confirmation on a holding of a case of TSE in such animals. Accordingly, Member States could decide to delay the destruction of the animals up to five breeding years under certain conditions. However, that derogation was not included in Annex VII to Regulation (EC) No 999/2001, as thus amended, as it was no longer necessary.

(5) On 17 July 2007, in Case T-257/07, before the Court of First Instance of the European Communities, France brought an action against the European Commission seeking the annulment of certain provisions of Regulation (EC) No 727/2007, in particular regarding the measures to be applied to TSE-affected flocks, or alternatively the entire annulment of that Regulation. In its Order of 28 September 2007, as an interim measure, the Court suspended the application of those provisions until a final judgment is delivered.

(6) Following that Order, the Member States have no longer the possibility to apply the suspended measures. Therefore, certain Member States may have difficulties to proceed with the immediate destruction of the animals concerned.

(7) It is therefore necessary to reintroduce the derogation that applied before the amendments made to the relevant provisions of Annex VII to Regulation (EC) No 999/2001, by Regulation (EC) No 727/2007, in order to allow Member States where the frequency of the ARR allele within the breed or holding is low, or where it is deemed necessary in order to avoid inbreeding, to delay the destruction of the animals concerned up to five breeding years, as from the date of that Order.

(8) Regulation (EC) No 999/2001 should therefore be amended accordingly.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

([1]) OJ L 147, 31.5.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 727/2007 (OJ L 165, 27.6.2007, p. 8).
([2]) COM(2005) 322 final.
([3]) SEC(2006) 1527.

HAS ADOPTED THIS REGULATION:

Article 1

In Annex VII, Chapter A, point 2.3, the following point (f) is added:

'(f) Where the frequency of the ARR allele within the breed or holding is low, or where it is deemed necessary in order to avoid inbreeding, a Member State may decide to delay the destruction of animals as referred to in point 2.3 (b)(i) and (ii) for up to five breeding years.'

Article 2

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

It shall apply from 28 September 2007.

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

Done at Brussels, 4 December 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission