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Commission Decision of 11 August 2006 concerning certain protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in wild birds in the Community and repealing Decision 2006/115/EC (notified under document number C(2006) 3585) (Text with EEA relevance) (2006/563/EC)

COMMISSION DECISION

of 11 August 2006

concerning certain protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in wild birds in the Community and repealing Decision 2006/115/EC

(notified under document number C(2006) 3585)

(Text with EEA relevance)

(2006/563/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market⁽²⁾, and in particular Article 10(4) thereof,

Having regard to Regulation (EC) No 998/2003 of the European Parliament and of the Council of 26 May 2003 on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC⁽³⁾, and in particular Article 18 thereof,

Whereas:

- (1) Avian influenza is an infectious viral disease in poultry and birds, causing mortality and disturbances which can quickly take epizootic proportions liable to present a serious threat to animal and public health and to reduce sharply the profitability of poultry farming. There is a risk that the disease agent might be spread from wild birds to domestic birds, notably poultry, and from one Member State to other Member States and third countries through international trade in live birds or their products.
- (2) Cases of highly pathogenic avian influenza (HPAI) of the subtype virus H5N1, hereinafter 'HPAI H5N1', have been suspected or confirmed in several Member States. Taking into account the epidemiological situation, Commission Decision 2006/115/EC of 17 February 2006 concerning certain protection measures in relation to highly pathogenic avian influenza in wild birds in the Community and repealing Decisions

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2006/86/EC, 2006/90/EC, 2006/91/EC, 2006/94/EC, 2006/104/EC and 2006/105/EC⁽⁴⁾ was adopted.

- (3) The measures laid down in Council Directive 92/40/EEC of 19 May 1992 introducing Community measures for the control of avian influenza⁽⁵⁾ were reviewed in-depth in the light of recent scientific knowledge on the risk of avian influenza for animal and public health, the development of new laboratory tests and vaccines and the experience gained during recent outbreaks of that disease in the Community as well as in third countries. Taking account of that review, Directive 92/40/EEC was repealed and replaced by Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC⁽⁶⁾, which is to be transposed by Member States by 1 July 2007.
- (4) Pending the transposition of Directive 2005/94/EC and given the current disease situation in relation to avian influenza in the Community, it was necessary to lay down transitional measures to be applied on holdings where outbreaks of avian influenza caused by HPAI viruses are suspected or confirmed in poultry or other captive birds.
- (5) Those transitional measures, which are laid down in Commission Decision 2006/416/EC of 14 June 2006 concerning certain transitional measures in relation to highly pathogenic avian influenza in poultry or other captive birds in the Community⁽⁷⁾, should enable the Member States to adopt disease control measures in a proportionate and flexible manner, taking into account the various levels of risk posed by the different virus strains, the likely social and economic impact of the measures in question on the agriculture sector and other sectors involved, while at the same time ensuring that the measures taken for each specific scenario are the most appropriate.
- (6) With progress made in transposition of Directive 2005/94/EC by certain Member States, any reference to the transitional measures should be construed as a reference to the corresponding paragraph in Directive 2005/94/EC.
- (7) In order to complement the measures pursuant to Directive 92/40/EEC Commission Decision 2006/135/EC of 22 February 2006 concerning certain protection measures in relation to highly pathogenic avian influenza in poultry in the Community⁽⁸⁾ was adopted.
- (8) Decision 2006/135/EC has now been replaced by Commission Decision 2006/415/EC of 14 June 2006 concerning certain protection measures in relation to highly pathogenic avian influenza of the subtype H5N1 in poultry in the Community and repealing Decision 2006/135/EC⁽⁹⁾ in order to harmonise the interaction between the transitional measures to be taken in case of a HPAI outbreak in poultry and the additional restrictions in case of a HPAI H5N1 suspected or confirmed outbreak in poultry or other captive birds.
- (9) Experience with the implementation of Decision 2006/115/EC in affected Member States has shown that certain adjustments for the establishment of the restricted zones and for certain restrictions of movements of live poultry or products derived from them should be permitted on the basis of a risk assessment performed by the competent

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authority taking into account the level of risk influenced by geographical, limnological, ecological and epizootiological factors.

- (10) In the interests of consistency of Community legislation, it is appropriate to apply for the purposes of this Decision certain definitions provided for in Directive 2005/94/EC, Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin⁽¹⁰⁾ and Regulation (EC) No 998/2003.
- (11) A control and a monitoring area should be established around the place where HPAI of H5 subtype was detected in wild birds. Those areas should be limited to what is necessary to prevent virus introduction into commercial and non-commercial poultry flocks.
- (12) In the interests of consistency of Community legislation, the biosecurity measures provided for in Commission Decision 2005/734/EC of 19 October 2005 laying down biosecurity measures to reduce the risk of transmission of highly pathogenic avian influenza caused by influenza virus A subtype H5N1 from birds living in the wild to poultry and other captive birds and providing for an early detection system in areas at particular risk⁽¹¹⁾ should be taken into account in control and monitoring areas, independently of the defined risk status of the area where highly pathogenic avian influenza is suspected or confirmed in wild birds.
- (13) It is appropriate to restrict the movement of, in particular, live poultry and other captive birds, day-old chicks, hatching eggs and products of avian origin from the established control and monitoring areas. However, the dispatch under official control from these areas may only be authorised under certain conditions to avoid the possible spread of the disease.
- (14) Specific derogations should also be provided for hatching eggs or SPF-eggs used in specialised laboratories or institutes for scientific, diagnostic or pharmaceutical purposes, as they pose a negligible risk for the spread of infection.
- (15) The transport of hatching eggs from the control area should be permitted under certain conditions. The dispatch of hatching eggs to other Member States may be permitted subject in particular to compliance with the conditions referred to in Directive 2005/94/EC. In such cases, the animal health certificates provided for in accordance with Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs⁽¹²⁾ should include a reference to this Decision.
- (16) The dispatch from the control area of meat, minced meat, meat preparations and meat products derived from poultry and farmed feathered game produced in compliance with certain requirements of Regulation (EC) No 853/2004 and of Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption⁽¹³⁾ and subject to official veterinary controls including ante- and post mortem inspection should be permitted.

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- (17) The same official animal health controls apply for meat derived from poultry and farmed feathered game originating from the control area and produced in accordance with the provisions of Regulation (EC) No 2076/2005, which provides for transitional measures allowing the use of a national identification mark for products of animal origin intended for human consumption and which may only be marketed in the territory of the Member State where they are produced.
- (18) Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption⁽¹⁴⁾ establishes a list of treatments rendering meat from restricted areas safe, and provides for the possibility to establish a specific health mark and the health mark required for meat not authorised for placing on the market for animal health reasons. It is appropriate to permit the dispatch from the control area of meat derived from poultry and farmed feathered game bearing the health mark provided for in that Directive and destined for treatment within the affected Member State to ensure inactivation of the avian influenza virus. Meat products having undergone such treatment may then be dispatched to other Member States and third countries.
- (19) It is necessary to limit the dispatch from the control area of animal by-products of avian origin to those complying with specific conditions for the production, use, treatment or disposal as provided for in Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption⁽¹⁵⁾ that prevent the possible spread of avian influenza virus.
- (20) It is necessary to specify the minimum duration of the measures provided for in this Decision which should take account of the incubation period of the disease and the requirements of Directive 2005/94/EC. However it is also necessary to introduce conditions for granting specific derogations following the positive outcome of a risk assessment by the competent authorities.
- (21) In the interests of clarity of Community legislation, Decision 2006/115/EC should be repealed and replaced by the present Decision.
- (22) 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

Subject-matter and scope

1 This Decision lays down certain protection measures to be applied in cases where highly pathogenic avian influenza (HPAI) caused by the highly pathogenic influenza A virus of subtype H5 is detected and the neuraminidase type N1 (H5N1) is suspected or confirmed in wild birds, in a Member State (the affected Member State), in order to prevent the spread of avian influenza from wild birds to poultry or other captive birds, as well as the contamination of products thereof.

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- 2 This Decision shall apply without prejudice to:
- a Decision 2006/416/EC; or
 - b Decision 2006/415/EC and other protective measures in relation to an outbreak of HPAI in poultry or other captive birds caused by an avian influenza virus of the subtype H5 where the neuraminidase type N1 is suspected or confirmed HPAI H5N1.

Article 2

Definitions

For the purpose of this Decision, the definitions in Directive 2005/94/EC shall apply.

The following definitions shall also apply:

- (a) 'hatching eggs' means eggs for incubation laid by poultry as defined in Article 2(4) of Directive 2005/94/EC;
- (b) 'wild feathered game' means, as far as avian species are concerned, game as defined in point 1.5, second indent, and in point 1.7 of Annex I to Regulation (EC) No 853/2004;
- (c) 'other captive birds' means birds as defined in Article 2(6) of Directive 2005/94/EC, excluding:
 - (i) pet animals of the bird species as referred to in Article 3(a) of Regulation (EC) No 998/2003;
 - (ii) birds for zoos, circuses, amusement parks and experimental laboratories and sentinel birds placed by the competent authority in the frame of surveillance and research activities.

Article 3

Establishment of control and monitoring areas

1 The affected Member State shall establish around the area where the presence of HPAI caused by avian influenza A virus of subtype H5 is confirmed in wild birds and the neuraminidase type N1 is either suspected or confirmed:

- a a control area with a radius of at least three kilometres (the control area); and
- b a monitoring area with a radius of initially at least 10 kilometres, including the control area (the monitoring area).

2 The establishment of the control and the monitoring areas shall take account of geographical, limnological, administrative, ecological and epizootiological factors relating to the species of wild birds, the characteristics of the avian influenza viruses and the monitoring facilities.

3 The affected Member State shall notify to the Commission and to the other Member States the details of any control and monitoring areas and shall, as appropriate, inform the public of the measures taken.

4 If the control or the monitoring areas cover the territories of more than one Member State, the competent authorities of those Member States shall collaborate in order to establish those areas.

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5 If wild birds are suspected or confirmed to be infected with HPAI H5N1 in a protection or surveillance zone established pursuant to Article 11(1) of Decision 2006/416/EC (the protection or surveillance zones) due to such infection in poultry or other captive birds, the competent authority shall:

- a establish control and monitoring areas; and
- b undertake a risk assessment to consider whether the radius of the control and monitoring areas needs to be extended to overlap with the protection and surveillance zones.

The competent authority may apply the protection measures provided for in Article 5(b), (c) and (d), in any parts of the protection and surveillance zones that do not overlap with the control and monitoring areas when the risk assessment indicates that there is a risk of spread of HPAI H5N1 to poultry or other captive birds in those parts.

Article 4

Derogations from measures provided for in Article 3(1)

1 By way of derogation from Article 3(1), the affected Member State may refrain from the establishment of control and monitoring areas on basis of the favourable results of a risk assessment by the competent authority.

That assessment shall take into account geographical considerations, the ecology of the infected bird species and lead the competent authority to conclude that HPAI H5N1 is not present in the area in poultry or other captive birds or wild birds, or that the infected wild bird did not present a risk of spreading that virus to poultry or other captive birds or wild birds in the locality.

In those circumstances the competent authority shall attempt, where necessary in liaison with the competent authorities of other Member States or third countries, to establish with the help of ornithological experts whether the wild birds are resident or migrating, such that an assessment can be made as to whether HPAI H5N1 exists in wild birds in other areas under their jurisdiction.

2 By way of derogation from Article 3(1) (a) and on the basis of favourable results to a risk assessment which has taken into account at least the criteria referred to in Article 3(2) and confirmed the existence of sufficient protection of the local poultry or other captive birds based on natural barriers or the absence of suitable habitats for wild birds presenting a risk of spreading HPAI H5N1 the control area may be:

- a amended to an area of sufficient size but in any event not less than of 1 km in radius; or
- b established as a band of 1 km in width from the banks of a river or the shores of a lake or coast for a length of at least 3 km.

In this case and by way of derogation from Article 3(1)(b) the competent authority shall then also adapt the shape and the size of the monitoring area accordingly to separate the control area from the unaffected parts of the territory.

Article 5

Measures in the control area

The affected Member State shall ensure that at least the following measures are applied in the control area:

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- (a) the identification of all commercial poultry holdings and non-commercial holdings;
- (b) the implementation of the biosecurity measures laid down in Decision 2005/734/EC for poultry and other captive birds, including disinfection at the entrances and exits to premises where poultry or other captive birds are kept;
- (c) intensified official surveillance of wild bird populations, in particular water fowl, and further monitoring for dead or sick birds, if necessary with the co-operation of hunters and bird-watchers, and the reporting of dead bird findings to the competent authority and the removal, as far as possible, of carcasses of dead birds by personnel who have been specifically instructed on measures to protect themselves from infection with the virus and to prevent the spread of the virus to susceptible animals;
- (d) campaigns to inform the public and to increase disease awareness among owners of poultry or other captive birds, hunters, bird-watchers and those providing the services of water-related recreation;
- (e) periodic and documented visits to all commercial poultry holdings and targeted visits to non-commercial poultry holdings, prioritising those considered to be at greater risk, which must include:
 - (i) a clinical inspection of the poultry or other captive birds including, if necessary, the collection of samples for laboratory examination targeting poultry or other captive birds that had not been confined prior to the positive finding in a wild bird and in particular ducks and geese;
 - (ii) an assessment of the implementation of the biosecurity measures referred to in point (b).

Article 6

Prohibitions in the control area

The affected Member State shall ensure that the following are prohibited in the control area:

- (a) the removal of poultry or other captive birds from the holding on which they are kept;
- (b) the assembly of poultry or other captive birds at fairs, markets, shows or other gatherings;
- (c) the transport through the control area of poultry or other captive birds, except transit through the control area by road or rail without unloading or stopping;
- (d) the dispatch of hatching eggs collected from holdings which on the date of collection were situated in the control area;
- (e) [^{F1}the dispatch from the control area of fresh meat, minced meat, mechanically separated meat, meat preparations and meat products from poultry originating from the control area and from wild feathered game taken from the wild in that area.]
- (f) the transport or spread of unprocessed manure from holdings of poultry or other captive birds within the control area, except the transport for treatment in accordance with Regulation (EC) No 1774/2002;

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- (g) the dispatch to other Member States and third countries of animal by-products of avian origin derived from poultry or other captive birds or wild feathered game originating from the control area;
- (h) the hunting of wild birds or otherwise taking them from the wild, unless authorised by the competent authority for specific purposes;
- (i) the release of game birds from captivity into the wild.

Textual Amendments

- F1** Substituted by [Commission Decision of 16 February 2007 amending Decisions 2006/415/EC, 2006/416/EC and 2006/563/EC as regards the identification mark to be applied to fresh poultrymeat \(notified under document number C\(2007\) 431\) \(Text with EEA relevance\) \(2007/119/EC\)](#).

Article 7

Measures in the monitoring area

The affected Member State shall ensure that at least the measures provided for in Article 5(a) to (d) are applied in the monitoring area.

Article 8

Prohibitions in the monitoring area

The affected Member State shall ensure that the following are prohibited in the monitoring area:

- (a) the removal of poultry or other captive birds out of the monitoring area for the first 15 days following the date of establishment of that area;
- (b) the assembly of poultry or other captive birds at fairs, markets, shows or other gatherings;
- (c) the hunting of wild birds or otherwise taking them from the wild, unless authorised by the competent authority for specific purposes;
- (d) the release of game birds from captivity into the wild.

Article 9

Derogations for live birds and day-old chicks

1 By way of derogation from Article 6(a), the affected Member State may authorise the transport of:

- a poultry to holdings under official control situated in the control and monitoring areas;
- b ready-to-lay pullets and turkeys for fattening to holdings under official control in the same Member State on which the poultry must remain for at least 21 days following the date of arrival of those poultry.

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- 2 By way of derogation from Article 6(a) and Article 8(a), the affected Member State may authorise the transport of:
- a poultry for immediate slaughter to a slaughterhouse located in the control or monitoring area or, if that is not possible, to a slaughterhouse designated by the competent authority outside those areas;
 - b poultry from the monitoring area to holdings under official control on its territory;
 - c day-old chicks, hatched from eggs collected from holdings which were on the date of collection situated in the control area, to a holding or shed of that holding in the same Member State, preferably located outside that area, subject to the following conditions:
 - (i) appropriate biosecurity measures are applied during transport and at the holding of destination;
 - (ii) the holding of destination is placed under official surveillance following the arrival of the day-old-chicks;
 - (iii) the poultry must remain on the holding of destination for at least 21 days from the date of their arrival, if that holding is situated outside the control or monitoring area.
 - d day-old chicks hatched from eggs collected from holdings which were on the date of collection situated in the monitoring area to holdings under official control on its territory;
 - e day-old chicks hatched from eggs collected from holdings which were on the date of collection situated outside the control or monitoring area to any holding, provided that the hatchery of dispatch can ensure by its logistics and by its hygienic working conditions that no contact has occurred between those eggs and any other hatching eggs or day-old chicks originating from poultry flocks within the monitoring area and which are therefore of a different health status.

Article 10

Derogations for hatching eggs

- 1 By way of derogation from Article 6(d), the affected Member State may authorise the transport of hatching eggs collected from holdings that were situated in the control area on the date of collection:
- a to a hatchery designated by the competent authority within its territory;
 - b to any hatchery provided that:
 - (i) poultry on the holding have tested negative in a serological survey for HPAI H5N1 capable of detecting 5 % prevalence of disease with at least a 95 % level of confidence; and
 - (ii) the conditions provided for in Article 21(1)(b), (c) and (d) of Decision 2006/416/EC are fulfilled;
 - c to an establishment for the manufacture of egg products as set out in Chapter II of Section X of Annex III to Regulation (EC) No 853/2004 to be handled and treated in accordance with Chapter XI of Annex II to Regulation (EC) No 852/2004 of the European Parliament and of the Council⁽¹⁶⁾; or
 - d for disposal.
- 2 By way of derogation from Article 6(d), the affected Member State may authorise the dispatch of hatching eggs or SPF-eggs collected on holdings in the control area to designated

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laboratories, institutes or vaccine manufacturers for scientific, diagnostic or pharmaceutical uses.

3 The animal health certificates accompanying consignments of hatching eggs referred to in paragraph 1(b) and paragraph 2 dispatched to other Member States shall include the following:

‘This consignment complies with the animal health conditions laid down in Commission Decision 2006/563/EC’.

[^{F1} Article 11

Derogations for meat, minced meat, meat preparations, mechanically separated meat and meat products

1 By way of derogation from Article 6(e), the affected Member State may authorise the dispatch from the control area for placing on the market or export to third countries of the following meat:

- a fresh meat from poultry, including meat of farmed feathered game, that was:
 - (i) produced in accordance with Annex II and Sections II and III of Annex III to Regulation (EC) No 853/2004; and
 - (ii) controlled in accordance with Sections I, II, III, and Chapters V(A)(1) and VII of Section IV of Annex I to Regulation (EC) No 854/2004;
- b minced meat, meat preparations, mechanically separated meat and meat products containing meat referred to in point (a) and produced in accordance with Sections V and VI of Annex III to Regulation (EC) No 853/2004;
- c meat products that have undergone the treatment specified for avian influenza in Table 1(a), (b) or (c) of Annex III to Directive 2002/99/EC;
- d fresh meat, minced meat, mechanically separated meat from poultry, farmed feathered game and wild feathered game taken from the wild in the area before the control area was established, and meat preparations and meat products containing such meat, produced in establishments in the control area.

2 By way of derogation from Article 6(e), the affected Member State may authorise the dispatch from the control area onto the national market of fresh meat, minced meat and mechanically separated meat from poultry or farmed feathered game originating in the control area, and meat preparations and meat products containing such meat, provided such meat complies with the following conditions:

- a it is marked:
 - (i) either with the special identification mark as provided for in Annex II to Directive 2002/99/EC, or
 - (ii) in accordance with Article 2 of Decision 2007/118/EC; and
- b it has been obtained, cut, stored and transported separately from other meat from poultry or farmed feathered game and is not introduced into meat preparations or meat products destined for dispatch to other Member States or for exports to third countries.]

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Article 12

Derogations for animal by-products

- 1 By way of derogation from Article 6(g), the affected Member State shall authorise:
 - a the dispatch from the control area of animal by-products of avian origin which:
 - (i) comply with the conditions set out in the following Annexes, or parts thereof, to Regulation (EC) No 1774/2002:
 - Annex V;
 - Chapters II(A), III(B), IV(A), Chapter VI(A) and (B), and Chapters VII(A), VIII(A), IX(A) and X(A) of Annex VII; and
 - Chapter II(B), Chapter III(II)(A) and Chapter VII(A)(1)(a) of Annex VIII; or
 - (ii) are transported under biosecurity measures to avoid the spread of the avian influenza virus to designated plants approved in accordance with Articles 12 to 15 or Articles 17 or 18 of Regulation (EC) No 1774/2002 for disposal, further transformation or use which ensure at least the inactivation of that virus; or
 - (iii) are transported under biosecurity measures to avoid the spread of the avian influenza virus to users or collection centres authorised and registered in accordance with Article 23(4) of Regulation (EC) No 1774/2002 for the feeding of animals after a treatment in accordance with points (5)(a)(ii) and (iii) of Annex IX to that Regulation to ensure at least the inactivation of the avian influenza virus;
 - b the dispatch from the control area to other Member States of untreated feathers or parts of feathers in accordance with point 1(a) of Section A of Chapter VIII of Annex VIII to Regulation (EC) No 1774/2002, produced from poultry or farmed feathered game;
 - c the dispatch from the control area of feathers and parts of feathers that have been treated with a steam current, or by some other method that ensures that no pathogens remain, produced from poultry or wild feathered game;
- 2 The affected Member State shall ensure that the products referred to in paragraph (1) (b) and (c) of Article are accompanied by a commercial document in accordance with Chapter X of Annex II to Regulation (EC) No 1774/2002 stating, in the case of the products referred to in paragraph 1(c) of this Article, in point 6.1 of that document that those products have been treated with a steam current or by some other method ensuring that no pathogens remain.

However, that commercial document shall not be required for processed decorative feathers, processed feathers carried by travellers for their private use or consignments of processed feathers sent to private individuals for non-industrial purposes.

- 3 By derogation from Article 6(f) the transport or spread of unprocessed manure from poultry holdings within the control area may be authorised if originating from stables or sheds:

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- a from where poultry has been moved in accordance with paragraph 1 Article 9(1)(a) and (b) or (2)(a); or
- b where poultry and farmed feathered game have been kept for the production of fresh meat produced in compliance with the provisions of Article 11.

Article 13

Conditions for movements

1 Where movements of animals or products thereof covered by this Decision are authorised under Articles 9, 10, 11 or 12, the authorisation shall be based on the favourable results of a risk assessment carried out by the competent authority, and all appropriate biosecurity measures shall be taken to avoid the spread of avian influenza.

2 Where the dispatch, movement or transport of products referred to in paragraph 1 are authorised under Articles 10, 11 or 12, they must be obtained, handled, treated, stored and transported without compromising the animal health status of other products fulfilling all the animal health requirements for trade, placing on the market or export to third countries.

Article 14

Duration of the measures in the control and monitoring areas

1 If the neuraminidase type is confirmed as being different from N1, the measures provided for in Articles 5 to 8 shall no longer apply.

2 If the presence of HPAI H5N1 is confirmed in wild birds, the measures provided for in Articles 5 to 8 shall apply for as long as is necessary having regard to the geographical, limnological, administrative, ecological and epizootiological factors relating to avian influenza and for at least 21 days in the case of the control area and 30 days in the case of the monitoring area following the date of collection from wild birds of the samples on which a HPAI H5N1 virus was confirmed.

Article 15

Derogations concerning the duration of measures in the control and monitoring areas

1 By way of derogation from Article 14(2), the competent authority may decide, following the favourable outcome of a risk assessment taking into account the criteria in Article 3(2), to suspend the measures provided for in Article 6(a) to (g) in the control area and those provided for in Article 8 in the monitoring area, even where further infected wild birds have been found, provided that at least 21 days have lapsed since the initial establishment of the control and monitoring areas and there has been no outbreak of HPAI H5N1 and no suspicion of avian influenza in poultry and other captive birds in those areas.

2 By way of derogation from Article 14(2), where, in accordance with Article 3(5), a control or monitoring area overlap with a surveillance zone and that surveillance zone has been lifted, the competent authority may, on the basis of a favourable outcome of a risk assessment, suspend some or all of the measures provided for in Article 5(a) and (e) and of Article 6 in the control area.

Status: Point in time view as at 20/02/2007.

Changes to legislation: There are outstanding changes not yet made to Commission Decision of 11 August 2006 concerning certain protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in wild birds in the Community and repealing Decision 2006/115/EC (notified under document number C(2006) 3585) (Text with EEA relevance) (2006/563/EC). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- 3 By way of derogation from Article 14(2), the competent authority may decide to replace the control area by a monitoring area subject to the following conditions:
- a favourable results of a risk assessment, taking into account the criteria in Article 3(2);
 - b the completion of the measures provided for in Article 5(a);
 - c at least one visit to each holding has been made as provided for in Article 5(e);
 - d negative results have been obtained for all laboratory tests carried out as provided for in Article 5(e)(i).

Where the competent authority decides to replace the control area by a monitoring area, it may change the shape and size of that monitoring area provided such monitoring area remains at least 1 km in radius or a band of 1 km in width from the banks of a river or the shores of a lake or coast for a length of at least 3 km. The measures provided for in Article 5(b), (c) and (d) and Article 6(h) and (i) shall be maintained until the end of the 30 day period from the date of the establishment of the control and monitoring areas in accordance with Article 3(1).

Article 16

Information obligations of affected Member State

The affected Member State shall regularly provide to the Commission and the other Member States:

- (a) the necessary information on the epidemiology of HPAI H5N1, and where appropriate the additional control and surveillance measures and the awareness campaigns provided for in Article 5; and
- (b) in advance notification, where the competent authority intends that the measures provided for in Article 7 and 8 are no longer applicable.

Article 17

Repeals

Decision 2006/115/EC is repealed.

Article 18

Compliance

Member States shall immediately adopt and publish the measures necessary to comply with this Decision. They shall immediately inform the Commission thereof.

The affected Member State shall apply those measures as soon as it reasonably suspects the presence of HPAI H5N1 in a wild bird.

Article 19

Addressee

This Decision is addressed to the Member States.

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- (1) [OJ L 395, 30.12.1989, p. 13](#). Directive as last amended by Directive 2004/41/EC of the European Parliament and of the Council ([OJ L 157, 30.4.2004, p. 33](#), corrected by [OJ L 195, 2.6.2004, p. 12](#)).
- (2) [OJ L 224, 18.8.1990, p. 29](#). Directive as last amended by Directive 2002/33/EC of the European Parliament and of the Council ([OJ L 315, 19.11.2002, p. 14](#)).
- (3) [OJ L 146, 13.6.2003, p. 1](#). Regulation as last amended by Commission Regulation (EC) No 590/2006 ([OJ L 104, 13.4.2006, p. 8](#)).
- (4) [OJ L 48, 18.2.2006, p. 28](#). Decision as amended by Decision 2006/277/EC ([OJ L 103, 12.4.2006, p. 29](#)).
- (5) [OJ L 167, 22.6.1992, p. 1](#). Directive as last amended by Regulation (EC) No 806/2003 ([OJ L 122, 16.5.2003, p. 1](#)).
- (6) [OJ L 10, 14.1.2006, p. 16](#).
- (7) [OL L 164, 16.6.2006, p. 61](#).
- (8) [OJ L 52, 23.2.2006, p. 41](#). Decision as last amended by Decision 2006/384/EC ([OJ L 148, 2.6.2006, p. 53](#)).
- (9) [OJ L 164, 16.6.2006, p. 51](#). Decision as amended by Decision 2006/506/EC ([OJ L 199, 21.7.2006, p. 36](#)).
- (10) [OJ L 139, 30.4.2004, p. 55](#), corrected by [OJ L 226, 25.6.2004, p. 22](#). Regulation as last amended by Commission Regulation (EC) No 2076/2005 ([OJ L 338, 22.12.2005, p. 83](#)).
- (11) [OJ L 274, 20.10.2005, p. 105](#). Decision as last amended by Decision 2006/405/EC ([OJ L 158, 10.6.2006, p. 14](#)).
- (12) [OJ L 303, 31.10.1990, p. 6](#). Directive as last amended by Regulation (EC) No 806/2003.
- (13) [OJ L 139, 30.4.2004, p. 206](#), corrected by [OJ L 226, 25.6.2004, p. 83](#). Regulation as last amended by Regulation (EC) No 2076/2005.
- (14) [OJ L 18, 23.1.2003, p. 11](#).
- (15) [OJ L 273, 10.10.2002, p. 1](#). Regulation as last amended by Commission Regulation (EC) No 208/2006 ([OJ L 36, 8.2.2006, p. 25](#)).
- (16) [OJ L 139, 30.4.2004, p. 1](#), corrected by [OJ L 226, 25.6.2004, p. 3](#).

Status:

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