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COMMISSION DECISION

of 17 February 2006

concerning certain protection measures in relation to highly pathogenic avian influenza in wild birds in the Community and repealing Decisions 2006/86/EC, 2006/90/EC, 2006/91/EC, 2006/94/EC, 2006/104/EC and 2006/105/EC

(notified under document number C(2006) 554)

(Text with EEA relevance)

(2006/115/EC)

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(Text with EEA relevance)

(2006/115/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 26 May 2003 of the European Parliament and of the Council 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 the international trade in live birds or their products.
- (2) Cases of highly pathological avian influenza of the subtype virus H5NI are suspected or confirmed in several Member States. The Commission has already adopted interim protection measures. Taking into account the epidemiological situation, it is appropriate to take the necessary protection measures at Community level, to prevent that disease from spreading from wild birds to poultry.
- (3) Where an H5 avian influenza virus collected from a clinical case in wild birds is isolated on the territory of a Member State and where pending the determination of the neuraminidase (N) type and of the pathogenicity index the clinical picture and the epidemiological circumstances justify the suspicion of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 or the presence of that subtype has been confirmed, the affected Member State should apply certain protection measures to minimise the risk for poultry.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13. Directive as last amended by Directive 2004/41/EC (OJ L 157, 30.4.2004, p. 33).

⁽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 18/2006 (OJ L 4, 7.1.2006, p. 3).

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- (4) The specific measures provided for in this Decision should apply without prejudice to the measures to be taken by Member States in the framework of Council Directive 92/40/EEC of 19 May 1992 introducing Community measures for the control of avian influenza ⁽¹⁾.
- (5) In the interests of consistency, it is appropriate to apply for the purposes of this Decision certain definitions provided for in Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC ⁽²⁾, 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 ⁽³⁾, 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 ⁽⁴⁾, 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 ⁽⁵⁾.
- (6) Protection and surveillance zones should be established around the place where the disease was detected in wild birds. Those zones should be limited to what is necessary to prevent virus introduction into commercial and non-commercial poultry flocks.
- (7) It is appropriate to control and restrict the movement of, in particular, live birds and hatching eggs while allowing the controlled dispatch from the zones of such birds and products of avian origin subject to certain conditions.
- (8) The measures laid down 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 ⁽⁶⁾ should be implemented in protection and surveillance zones, independently of the defined risk status of the area where highly pathogenic avian influenza is suspected or confirmed in wild birds.
- (9) Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC ⁽⁷⁾ provides for approved bodies, institutes and centres and a model certificate to accompany animals or their gametes between such approved premises in different Member States. A derogation from the transport restrictions should be envisaged for birds coming from and proceeding to bodies, institutes and centres approved in accordance with that Directive.
- (10) Transport of hatching eggs from the protection zones should be permitted under certain conditions. The dispatch of hatching eggs to other countries may be permitted subject in particular to compliance with the conditions referred to in Directive 2005/94/

⁽¹⁾ OJ L 167, 22.6.1992, p. 1. Directive as last amended by Regulation (EC) No 806/2003.

⁽²⁾ OJ L 10, 14.1.2006, p. 16.

⁽³⁾ OJ L 303, 31.10.1990, p. 6. Directive as last amended by the 2003 Act of Accession.

⁽⁴⁾ OJ L 139, 30.4.2004, p. 206; corrected version in OJ L 226, 25.6.2004, p. 83. Regulation as last amended by Commission Regulation (EC) No 2076/2005 (OJ L 338, 22.12.2005, p. 83).

⁽⁵⁾ OJ L 146, 13.6.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 18/2006 (OJ L 4, 7.1.2006, p. 3).

⁽⁶⁾ OJ L 274, 20.10.2005, p. 105. Decision as last amended by Decision 2005/855/EC (OJ L 316, 2.12.2005, p. 21).

⁽⁷⁾ OJ L 268, 14.9.1992, p. 54. Directive as last amended by Directive 2004/68/EC (OJ L 139, 30.4.2004, p. 321).

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EC. In such cases the animal health certificates provided for in accordance with Directive 90/539/EEC should include a reference to this Decision.

- (11) The dispatch from protection zones of meat, minced meat, meat preparations and meat products should be permitted subject to certain conditions, in particular as regards 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 ⁽¹⁾.
- (12) 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 ⁽²⁾ 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 protection zones of meat bearing the health mark provided for in that Directive and meat products subjected to treatment referred to therein.
- (13) 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 ⁽³⁾ authorises the placing on the market of a range of animal by-products, such as gelatine for technical use, materials for pharmaceutical use and others, originating in areas of the Community under animal health restrictions, because those products are considered safe due to the specific conditions of production, processing and utilisation that effectively inactivate possible pathogens or prevent contact with susceptible animals.
- (14) This Decision should be reviewed in the light of the transposition of Directive 2005/94/EC by Member States.
- (15) Following the notification of cases of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 in wild avian fauna in Greece, Italy and Slovenia the Commission, in collaboration with the Member State concerned, adopted Decisions 2006/86/EC ⁽⁴⁾, 2006/90/EC ⁽⁵⁾, 2006/91/EC ⁽⁶⁾, 2006/94/EC ⁽⁷⁾, 2006/104/EC ⁽⁸⁾ and 2006/105/EC ⁽⁹⁾ concerning certain interim protection measures in relation to suspected cases of highly pathogenic avian influenza in wild birds in the respective Member State, which should be repealed.
- (16) 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:

⁽¹⁾ OJ L 139, 30.4.2004, p. 55; corrected version in 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).

⁽²⁾ OJ L 18, 23.1.2003, p. 11.

⁽³⁾ OJ L 273, 10.10.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 416/2005 (OJ L 66, 12.3.2005, p. 10).

⁽⁴⁾ OJ L 40, 11.2.2006, p. 26.

⁽⁵⁾ OJ L 42, 14.2.2006, p. 46.

⁽⁶⁾ OJ L 42, 14.2.2006, p. 52.

⁽⁷⁾ OJ L 44, 15.2.2006, p. 25.

⁽⁸⁾ OJ L 46, 16.2.2006, p. 53.

⁽⁹⁾ OJ L 46, 16.2.2006, p. 59.

▼ **B***Article 1***Subject matter, scope and definitions**

1. This Decision lays down certain protection measures to be applied in cases where highly pathogenic avian influenza is isolated in wild birds in the territory of a Member State (hereinafter the 'affected Member State'), caused by influenza A virus of subtype H5 suspected or confirmed to be of the neuraminidase type N1, 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.
2. Except as otherwise provided, the definitions of Directive 2005/94/EC shall apply. In addition, the following definitions shall apply:
 - (a) 'hatching eggs' means eggs as defined in Article 2(2) of Directive 90/539/EEC;
 - (b) 'wild feathered game' means game as defined in point 1.5, second indent, and point 1.7 of Annex I to Regulation (EC) No 853/2004;
 - (c) 'other captive birds' means birds as defined in point 6 of Article 2 of Directive 2005/94/EC, including:
 - (i) pet animals of the bird species as referred to in Article 3(a) of Regulation (EC) No 998/2003, and
 - (ii) birds for zoos, circuses, amusement parks and experimental laboratories.

*Article 2***Establishment of protection and surveillance zones**

1. The affected Member State shall establish around the area where the presence of highly pathogenic avian influenza caused by influenza A virus of subtype H5 in wild birds is confirmed and the neuraminidase type N1 is either suspected or confirmed:
 - (a) a protection zone with a radius of at least three kilometres, and
 - (b) a surveillance zone with a radius of at least 10 kilometres, including the protection zone.
2. The establishment of the protection and surveillance zones referred to in paragraph 1 shall take account of geographical, administrative, ecological and epizootiological factors relating to avian influenza, and of monitoring facilities.
3. If the protection or surveillance zones cover the territories of other Member States, the affected Member State shall collaborate with the authorities of those Member States to establish the zones.
4. The affected Member State shall notify to the Commission and to the other Member States the details of any protection and surveillance zones established under this Article, and shall, as appropriate, inform the public of the measures taken.

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5. The measures laid down in this Decision shall be applied without prejudice to the measures to be applied in the event of an outbreak of avian influenza in poultry taken in accordance with Directive 92/40/EEC or, where applicable, to more stringent Community protective measures in relation to highly pathogenic avian influenza in poultry caused by an influenza virus of the type H5N1.

▼ **B***Article 3***Measures in the protection zone**

1. The affected Member State shall ensure that at least the following measures are applied in the protection zone:
 - (a) the identification of all holdings within the zone;

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- (b) periodic and documented visits to all commercial holdings a clinical inspection of poultry including, if necessary, the collection of samples for laboratory examination;
 - (c) the implementation of appropriate on-farm biosecurity measures, including disinfection at the entrances and exits of the holding, the housing of the poultry or the confinement of poultry to places where the direct and indirect contact with other poultry and captive birds can be prevented;
 - (d) the implementation of the biosecurity measures laid down in Decision 2005/734/EC;
 - (e) the control of the movement of products from poultry in accordance with Article 9;
 - (f) active disease monitoring in the population of wild birds, in particular water fowl, if necessary with the co-operation of hunters and bird-watchers 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;
 - (g) campaigns to inform the public and to increase disease awareness amongst owners, hunters and bird-watchers.
2. The affected Member State shall ensure that the following are prohibited in the protection zone:
- (a) the removal of poultry and other captive birds from the holding on which they are kept;
 - (b) the assembly of poultry and other captive birds at fairs, markets, shows or other gatherings;
 - (c) the transport through the zone of poultry and other captive birds, except transit on major roads or railways and transport to a slaughterhouse for direct slaughter;
 - (d) the dispatch from the zone of hatching eggs;
 - (e) the dispatch from the zone of fresh meat, minced meat, meat preparations and meat products from poultry and other captive birds and wild feathered game;
 - (f) the transport or spread outside the zone of unprocessed used litter or manure from holdings within the zone, except the transport for treatment in accordance with Regulation (EC) No 1774/2002;
 - (g) the hunting of wild birds.

*Article 4***Measures in the surveillance zone**

1. The affected Member State shall ensure that at least the following measures are applied in the surveillance zone:
- (a) the identification of all holdings within the zone;
 - (b) the implementation of appropriate on-farm biosecurity measures, including the use of appropriate means of disinfection at the entrances and exits of the holding;
 - (c) the implementation of the biosecurity measures laid down in Decision 2005/734/EC;
 - (d) the control of movement of poultry and other captive birds and hatching egg within the zone.
2. The affected Member State shall ensure that the following are prohibited in the surveillance zone:
- (a) movement of poultry and other captive birds out of the zone for the first 15 days following the establishment of the zone;
 - (b) the assembly of poultry and other birds at fairs, markets, shows or other gatherings;
 - (c) the hunting of wild birds.

▼ **B***Article 5***Duration of the measures**

If the neuraminidase type is confirmed as being different from N1, or the virus as of low pathogenicity, the measures provided for in Articles 3 and 4 shall be abolished.

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If the presence of a highly pathogenic influenza A virus, in particular of the subtype H5N1, is confirmed in wild birds, the measures provided for in Articles 3 and 4 shall apply for as long as is necessary having regard to the geographical, administrative, ecological and epizootiological factors relating to avian influenza and for at least 21 in the case of the protection zone and 30 days in the case of the surveillance zone after the date of collection from wild birds of the samples on which a highly pathogenic H5 avian influenza virus was confirmed.

▼ **B***Article 6***Derogations for live birds and day-old chicks**▼ **M1**

1. By way of derogation from Article 3(2)(a), the affected Member State may authorise the transport of

- (a) poultry and farmed feathered game to holdings under official control situated either in the protection or in the surveillance zone;
- (b) ready-to-lay pullets to holdings under official control in the same Member State and the poultry shall remain on the holding of destination for 21 days following the arrival of those pullets.

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2. By way of derogation from Article 3(2)(a) or Article 4(2)(a), the affected Member State may authorise the transport of:

- (a) poultry for immediate slaughter, including spent laying hens, to a slaughterhouse located in the protection zone or in the surveillance zone or, if that is not possible, to a slaughterhouse designated by the competent authority outside the zones;

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- (b) day-old chicks from the protection zone to holdings under official control on its territory provided, that either on the holding of destination there are no other poultry or captive birds, except pet birds referred to in Article 1(2)(c)(i), which are kept separated from poultry, or the transport is carried out under the conditions described in Article 24(1)(a) and (b) of Directive 2005/94/EC and the poultry shall remain on the holding of destination for 21 days following the arrival of those chicks;

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- (c) day-old chicks from the surveillance zone to holdings under official control on its territory;
- (d) ready-to-lay pullets, turkeys for fattening and other poultry and farmed feathered game from the surveillance zone to holdings under official control on its territory;
- (e) pet birds referred to in Article 1(2)(c)(i), to premises on its territory not keeping poultry, if the consignment consists of five or fewer caged birds, notwithstanding national rules referred to in Article 1, third paragraph, of Directive 92/65/EEC;
- (f) birds referred to in Article 1(2)(c)(ii) coming from bodies, institutes and centres and proceeding to bodies, institutes and centres approved in accordance with Article 13 of Directive 92/65/EEC.

*Article 7***Derogations for hatching eggs**

1. By way of derogation from Article 3(2)(d), the affected Member State may authorise:

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- (a) the transport of hatching eggs from the protection zone to a designated hatchery within its territory;
- (b) the dispatch of hatching eggs from the protection zone to hatcheries situated outside the territory of the affected Member State provided that:
 - (i) the hatching eggs were collected from flocks which:
 - are not suspected of being infected with avian influenza, and
 - have tested negative in a serological survey for avian influenza capable of detecting 5 % prevalence of disease with at least a 95 % level of confidence, and
 - (ii) the conditions laid down in Article 26(1)(b), (c) and (d) of Directive 2005/94/EC are fulfilled;

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- (c) the dispatch of hatching eggs or SPF-eggs from the protection zone to designated laboratories or institutes for scientific, diagnostic or pharmaceutical uses.

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2. The animal health certificates in accordance with Model 1 of Annex IV to Council Directive 90/539/EEC accompanying consignments of hatching eggs referred to in paragraph 1(b) dispatched to other Member States shall include the words:

‘This consignment complies with the animal health conditions laid down in Commission Decision 2006/115/EC’.

*Article 8***Derogations for meat, minced meat, meat preparations, mechanically separated meat and meat products**

1. By way of derogation from Article 3(2)(e), the affected Member State may authorise the dispatch from the protection zone of:

- (a) fresh meat from poultry, including meat from ratites, originating in or outside that zone and produced in accordance with Annex II and Sections II and III of Annex III to Regulation (EC) No 853/2004 and controlled in accordance with Sections I, II, III, and Chapters V 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) fresh meat from wild feathered game originating in that zone, if such meat is marked with the health mark provided for in Annex II to Directive 2002/99/EC and is intended for transport to an establishment for treatment as required for avian influenza in accordance with Annex III to that Directive;
- (d) meat products produced from meat from wild feathered game which were subjected to a treatment as required for avian influenza in accordance with Annex III to Directive 2002/99/EC;
- (e) fresh meat from wild feathered game originating outside the protection zone and produced in establishments within the protection zone in accordance with Section IV of Annex III to Regulation (EC) No 853/2004 and controlled in accordance with Chapter VIII of Section IV of Annex I to Regulation (EC) No 854/2004;
- (f) minced meat, meat preparations, mechanically separated meat and meat products containing meat referred to in point (e) and produced in establishments situated in the protection zone in accordance with Sections V and VI of Annex III to Regulation (EC) No 853/2004;

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- (g) fresh meat from poultry or farmed feathered game, minced meat and meat preparations and mechanically separated meat containing such meat, obtained from slaughter poultry or farmed feathered game originating in or outside that zone to the remaining part of its national territory, if such meat:

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- (i) was, in accordance with Article 4 of Directive 2002/99/EC, identified either with the mark provided for in Annex II to Directive 2002/99/EC or the national mark established in accordance with Article 4 of Regulation (EC) No 2076/2005;
- (ii) was obtained, cut, stored and transported separately from other fresh meat from poultry or farmed feathered game destined for dispatch to other Member States or for exports to third countries; and
- (iii) is used in such a way as to avoid it being introduced into meat products or meat preparations intended for placing on the market in other Member States or for export to third countries, unless it has undergone the treatment as required for avian influenza specified in table 1(a), (b) or (c) of Annex III to Directive 2002/99/EC.

▼ B*Article 9***Conditions for animal by-products**

1. In accordance with Article 3(1)(e), the affected Member State may authorise the dispatch of:

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- (a) animal by-products which
 - (i) comply with the conditions set out in Chapters II(A), III(B), IV(A), VI(A and B), VII(A), VIII(A), IX(A) and X(A) of Annex VII, and Chapter II(B) and Chapter III Title (II)(A) of Annex VIII to Regulation (EC) No 1774/2002; or
 - (ii) are transported under bio-secure conditions to designated processing plants approved in accordance with Chapter III or Chapter IV of Regulation (EC) No 1774/2002 for treatment to ensure at least the inactivation of the avian influenza virus; or
 - (iii) are transported under bio-secure conditions for processing into feed for animals in accordance with the derogation provided for in Article 23(2)(c) of Regulation (EC) No 1774/2002;

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- (b) untreated feathers or parts of feathers in accordance with Chapter VIII (A)(1)(a) of Annex VIII to Regulation (EC) No 1774/2002, produced from poultry coming from outside the protection zone;
- (c) treated poultry feathers and parts of poultry feathers that have been treated with a steam current or by some other method that ensures that no pathogens remain;
- (d) products derived from poultry or other captive birds which, in accordance with Community legislation, are not subject to any animal health conditions or which are not subject to any ban or restriction for reasons of animal health, including the products referred to in Chapter VII (A)(1)(a) of Annex VIII to Regulation (EC) No 1774/2002.

2. The affected Member State shall ensure that the products referred to in paragraph 1(b) and (c) of this 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 remains.

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.

*Article 10***Conditions for movements**

1. Where movements of animals or products thereof covered by this Decision are authorised under Articles 6, 7, 8 or 9, the authorisation shall be based on the favourable outcome 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 7, 8 or 9, subject to justified conditions or limitations, 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 11***Compliance**

All 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 highly pathogenic avian influenza virus, in particular of the subtype H5N1.

The affected Member State shall regularly provide to the Commission and the other Member States the necessary information on the epidemiology of the disease, where appropriate the additional control and surveillance measures and the awareness campaigns, and in any case in advance the information on the scheduled withdrawal of the measures in accordance with Article 5.

*Article 12***Repeals**

Commission Decisions 2006/86/EC, 2006/90/EC, 2006/91/EC, 2006/94/EC, 2006/104/EC and 2006/105/EC are repealed.

*Article 13***Addressee**

This Decision is addressed to the Member States.