

## COMMISSION DECISION

of 17 November 2010

**concerning aid for the costs of removal and destruction of fallen stock on agricultural holdings in the Walloon Region (State aid C 1/10 — Belgium)**

*(notified under document C(2010) 7263)***(Only the French and Dutch texts are authentic)**

(2010/789/EU)

THE EUROPEAN COMMISSION,

included in the register of non-notified aid, under No NN 56/2007, as part of the funds had clearly already been paid out.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2)(1) <sup>(1)</sup> thereof,

(4) At the request of the competent Belgian authorities a second technical meeting was held on 12 October 2007.

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) <sup>(2)</sup> thereof,

(5) By letter of 25 October 2007 the Commission services asked the Belgian authorities to provide further information. As no reply was received within the prescribed time limit, a reminder letter was sent to the Belgian authorities on 21 December 2007 with a new prescribed time limit to reply.

Having called on interested parties to submit their comments pursuant to those Articles <sup>(3)</sup>,

Whereas:

(6) On 4 June 2008, not having received a reply to the first reminder letter within the prescribed time limit, the Commission services sent a new reminder letter drawing the attention of the Belgian authorities to the fact that if the four-week time limit assigned for the sending of a reply was not complied with, the Commission could send an information injunction according to Article 10(2) and (3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(4)</sup>. This time limit expired on 4 July 2008. For this reason, on 1 October 2008 the Commission adopted a decision requiring the Belgian authorities to provide the relevant information. In this Decision, the Commission requested the Belgian authorities to submit, inter alia, the relevant information sheets, as provided for in Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(5)</sup> for the assessment of the aid granted after 31 January 2007.

## I. PROCEDURE

(1) Following a complaint submitted on 23 April 2007, the Commission decided to initiate an investigation concerning alleged State aid granted by Belgium to cover costs associated with the removal and destruction of fallen stock on agricultural holdings in the Walloon Region.

(2) On 2 July 2007 the Commission sent a letter to the Belgian authorities, asking for information on the measure in question. The Belgian authorities provided information by letter of 27 July 2007, registered on 3 August 2007. At the request of the competent Belgian authorities a technical meeting was held on 21 August 2007. Following the meeting, the Belgian authorities provided, on 4 October 2007, additional information concerning the case.

(3) By letter of 10 September 2007, the Commission services informed Belgium that the aid scheme was

(7) The Belgian authorities finally replied by letter of 27 November 2008 and sent additional information on 5 December 2008. However, they did not provide the information sheets as required in the Decision of the Commission of 1 October 2008.

<sup>(1)</sup> From 1 December 2009, Articles 87 and 88 of the EC Treaty became Articles 107 and 108 respectively of the Treaty on the Functioning of the European Union (TFEU). In both cases the provisions are identical in their substance. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood, where necessary, as being made to Articles 87 and 88 respectively of the EC Treaty.

<sup>(2)</sup> OJ L 1, 3.1.1994, p. 3.

<sup>(3)</sup> OJ C 191, 15.7.2010, p. 12.

(8) On 27 January 2009, the Commission sent the Belgian authorities a request for additional information. The Belgian authorities replied to this request by letter of 16 March 2009, registered on 19 March 2009.

<sup>(4)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(5)</sup> OJ L 140, 30.4.2004, p. 1.

- (9) By letter of 14 January 2010, the Commission informed Belgium that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) in respect of the notified aid. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 15 July 2010. The Commission invited interested parties to submit their comments on the measures concerned. No third party submitted comments.
- (10) By letter of 19 February 2010 the Belgian authorities requested that the deadline for replying set in the Commission letter of 14 January 2010 be extended by a further month. By letter of 5 March 2010 the Commission granted an extension of 1 month. Lastly, by letter of 12 March 2010 the Belgian authorities responded to the decision to initiate the procedure.

## II. BACKGROUND

### II.1. Commission Decision – Case No NN 48/2003

- (11) During the Commission's investigation it became clear that the complaint relates to the implementation of the aid scheme approved by the Commission on 26 November 2003, in State aid case NN 48/2003 (ex. N. 157/2003) entitled 'Management of removal and destruction of fallen stock on agricultural holdings in the Walloon Region'. This case concerned a scheme notified by the Belgian authorities, whereby the Belgian State would grant, through subsidised services, aid to agricultural holdings covering all costs relating to the removal, storage, processing and destruction of fallen stock.
- (12) In order for the clearance decision to be adopted, and in view of the imminent entry into force of the Community Guidelines for State aid concerning TSE tests, fallen stock and slaughterhouse waste ('the TSE Guidelines')<sup>(1)</sup> on 1 January 2004, the Belgian authorities committed themselves to amending their scheme. These amendments were necessary so as to comply with the conditions of the TSE Guidelines, and more specifically point 29 thereof. This point provided that Member States may grant State aid of up to 100 % of costs for the removal of fallen stock and 75 % of the costs of destruction of the carcasses. The Belgian scheme, as notified, was not in compliance with this provision, since it provided that the aid could cover 100 % of the costs of destruction of the carcasses.
- (13) Following the considerations mentioned in recitals (11) and (12) the Belgian authorities committed themselves (see recitals (33) and (34) of the Commission Decision in case No NN 48/2003) to amending their aid scheme accordingly so that from 1 January 2004, the aid provided for to cover the costs for the destruction of the carcasses would be covered only up to 75 % and not 100 %. The Belgian authorities also committed themselves to sending the Commission, at the latest by mid December 2003, evidence that the necessary changes had been made to the aid scheme.
- (14) Based on these commitments, the Commission approved this scheme for a duration of 5 years, beginning on 31 January 2002. This period therefore expired on 31 January 2007.

### II.2. Complaint

- (15) On 23 April 2007, the Commission received a complaint alleging that the Belgian authorities were in breach of the TSE Guidelines by continuing to grant aid of up to 100 % for both the removal of fallen stock and the destruction of carcasses.

## III. DETAILED DESCRIPTION OF THE MEASURE

- (16) The aid scheme in question concerns a regional measure aiming at covering all the costs for the provision of services for the removal, transport, storage, processing and destruction of fallen stock found on agricultural holdings located in the Walloon Region.
- (17) The organisation and management of the elimination of the carcasses found on the agricultural holdings has been organised through the award by the regional authorities of a service procurement contract. Following a general call for tender launched at European Union level by means of notice of a service procurement contract<sup>(2)</sup>, the contract was awarded on 31 January 2002 to the company S.A. RENDAC-UEDES. It was divided into three separate lots, which corresponded to the different services to be provided.
- the collection of animal carcasses found on agricultural holdings, their transport to a processing plant, possibly through a regrouping or intermediary storage centre,
  - the processing of animal carcasses, considered in their entirety as items of specified risk, and the transport of the waste resulting from the processing to thermal destruction units, and,
  - the complete destruction of the waste resulting from this treatment within ad hoc facilities.

<sup>(1)</sup> OJ C 324, 24.12.2002, p. 2.

<sup>(2)</sup> OJ S 156, 16.8.2001.

(18) The only company that submitted a bid in the framework of this call for tender was S.A. RENDAC-UEDES, and it did so for all three lots. Therefore, the contract was awarded to this company on 31 January 2002, for a period of 5 years. According to the information that the Belgian authorities have submitted, the validity of the contract was extended at least four times: up to 31 December 2007, up to 31 December 2008, up to 30 June 2009 and finally up to the future implementation of the new procurement contract which, according to the Belgian authorities, should be operational by the third quarter of 2010.

(19) The aid scheme in question involves aid to owners of agricultural holdings. The Belgian authorities confirmed that although the aid was granted directly to the company S.A. RENDAC-UEDES, as a service provider, for the costs of the services provided to owners of agricultural holdings, it was fully passed through to the farmers in order to cover all the costs linked to different activities of collection, transport, storage, processing and destruction, that they would otherwise have to bear. The Belgian authorities also confirmed that as regards the amounts paid directly to the company S.A. RENDAC-UEDES for the costs for the services provided to owners of agricultural holdings, these corresponded entirely and uniquely to the market prices for the services provided.

(20) The Walloon waste office (Office wallon des déchets), a service within the regional Ministry for the Environment, was in charge of paying the invoices presented by S.A. RENDAC-UEDES, partly on a flat-rate basis and partly on the basis of price schedules.

(21) In the framework of the examination of Case No NN 48/2003, the Belgian authorities have confirmed that the scheme concerns only fallen stock on agricultural holdings in the Walloon Region. It does not concern animal carcasses found in animal markets or slaughterhouses.

#### IV. COMMISSION DECISION OF 13 JANUARY 2010

(22) In its decision of 13 January 2010 to initiate an investigation procedure, the Commission expressed doubts as to the compatibility of the aid scheme with the EU State aid rules. More precisely the Commission concluded that the aid scheme measures in question aiming to cover more than 75 % of the costs of destroying carcasses, can be considered to be incompatible with the internal market on the basis of the TSE Guidelines and the Community Guidelines concerning State aid in the agricultural and forestry sector 2007-2013 ('the 2007-2013 Guidelines') <sup>(1)</sup>.

(23) In addition, given that the Commission approved the aid scheme until 31 January 2007 on the basis of the Belgian authorities' commitments to amend the scheme so as to meet the conditions of the TSE Guidelines as of 1 January 2004 and these commitments were not complied with by the Belgian authorities, the

Commission has concluded that the aid granted for measures aiming to cover more than 75 % of the costs for the destruction of the carcasses was misused.

(24) Therefore, in accordance with Article 4(4) of Regulation (EC) No 659/1999, and in conjunction with Article 16 of this Regulation concerning misuse of aid, the Commission has decided to initiate the formal investigation procedure and has invited Belgium to submit its comments.

#### V. COMMENTS FROM BELGIUM

(25) In its reply of 12 March 2010 Belgium informed the Commission that it would take the required measures to implement a new service procurement contract. According to the Belgian authorities, the specifications intended to govern the future service procurement contract was due to be finalised by 15 April 2010 at the latest and it should be operational by the third quarter of 2010. The Belgian authorities have since claimed that the service procurement contract implemented on 31 January 2002 has been extended by means of an amendment subject to the same conditions as those applicable when it was awarded on 31 January 2002.

(26) Moreover, the Belgian authorities have also claimed that (i) the Walloon Region will request the application of the *de minimis* principle in order to settle the situation of owners of agricultural holdings for the period of 1 January 2004 to 30 June 2008, and (ii) that within a maximum of 3 months it will recover from each owner of an agricultural holding an amount corresponding to 25 % of the costs of the processing and destruction of fallen stock, calculated for the period from 1 July 2008 to the date of entry into force of the next public contract.

(27) Finally, the Belgian authorities have informed the Commission that they would require the recovery of *de minimis* aid amounts on the basis of Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture sector <sup>(2)</sup> exceeding EUR 3 000 over a period of 3 years. The Belgian authorities have also indicated that the maximum admissible amount of EUR 3 000 would have been exceeded for 58 owners of agricultural holdings.

#### VI. ASSESSMENT OF THE MEASURE

##### VI.1. Existence of aid within the meaning of Article 107(1) of the TFEU

(28) According to Article 107(1) of the TFEU, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

<sup>(1)</sup> OJ C 319, 27.12.2006, p. 1.

<sup>(2)</sup> OJ L 325, 28.10.2004, p. 4.

- (29) These conditions are fulfilled in the present case with regard to aid in favour of the owners of agricultural holdings. The aid in question is granted by the public authorities of the Walloon Region and confers an advantage to owners of agricultural holdings in the Walloon Region, by eliminating the costs for the removal and destruction of carcasses, which in normal circumstances should have been borne by themselves.
- (30) According to the case law of the Court of Justice of the European Union, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition <sup>(1)</sup>.
- (31) Aid to an undertaking is considered to affect trade between Member States where that undertaking operates in a market open to trade within the European Union <sup>(2)</sup>. There is substantial trade in the sector concerned within the European Union. Therefore, the present measure is liable to affect trade between Member States.
- (32) In view of the above, it is obvious that the conditions of Article 107(1) of the TFEU are fulfilled, except for aid to which the *de minimis* legislation applies.

#### VI.1.1. *De minimis* legislation

- (33) On several occasions the Belgian authorities have claimed that they have applied the *de minimis* rules which apply to the agricultural sector. The rules which apply during the period for granting the aid are Regulation (EC) No 1860/2004, and Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production <sup>(3)</sup>, which repealed Regulation (EC) No 1860/2004.
- (34) Aid which fulfils the conditions for the application of Regulation (EC) No 1860/2004 or Regulation (EC) No 1535/2007 is considered not to fulfil all the criteria contained in Article 107(1) of the TFEU.

- (35) According to Article 3(7) of Regulation (EC) No 1535/2007, *de minimis* aid cannot be cumulated with

State aid in respect of the same eligible costs, if such cumulation would result in an aid intensity exceeding that laid down by European Union rules in the specific circumstances of each case. This provision applies in this case: there can be no cumulation of *de minimis* aid (which would represent 25 % of the costs for the destruction of carcasses that should be borne by the owners of agricultural holdings) with the remaining 75 % which according to European Union rules (point 133 of the 2007-2013 Guidelines in combination with Article 16(1)(d) of Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 <sup>(4)</sup>) can be considered compatible with Article 107(3)(c) of the TFEU.

- (36) However, according to the scheme laid down in Regulation (EC) No 1860/2004, it appears that a cumulation of the *de minimis* aid and the amounts making up 75 % of the costs of the destruction of carcasses was not excluded. This can be inferred by recital 7 of Regulation (EC) No 1860/2004, according to which '*The de minimis rule is without prejudice to the possibility that enterprises may receive, for the same project, State aid authorised by the Commission or covered by a group exemption Regulation*'. The conditions for applying the Regulation and in particular the maximum aid threshold of EUR 3 000 must be fulfilled, so that any aid in excess of the EUR 3 000 threshold cannot benefit from Regulation (EC) No 1860/2004 for the whole of the aid amount. In accordance with Article 6(2) of Regulation (EC) No 1535/2007, this cumulation would be possible up to 6 months after the entry into force of the Regulation, that is until 30 June 2008. After this date the provisions of Regulation (EC) No 1535/2007 will apply.

#### VI.2. Legality of the aid

- (37) The aid scheme, approved by the Commission under case No NN 48/2003 has been notified and approved for the period between 31 January 2003 and 31 January 2007. However, the Commission notes that although Belgium continued to apply the aid scheme after 1 February 2007, it failed to notify it to the Commission in accordance with Article 108(3) of the TFEU. The aid scheme therefore became an illegal State aid after 1 February 2007.

#### VI.3. Compatibility of the aid

- (38) Article 107(3)(c) of the TFEU provides that aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the internal market.

<sup>(1)</sup> Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980] ECR 2671.

<sup>(2)</sup> See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities* [1988] ECR 4067.

<sup>(3)</sup> OJ L 337, 21.12.2007, p. 35.

<sup>(4)</sup> OJ L 358, 16.12.2006, p. 3.



- (39) The scheme in question concerns the granting of aid, which takes the form of subsidised services, covering all the costs for services relating to the removal, transportation, processing and destruction of fallen stock on agricultural holdings in the Walloon Region.
- (40) As regards the period between 31 January 2002 until 31 December 2003, the Commission Decision in case No NN 48/2003 found that the scheme could benefit from the derogation of Article 107(3)(c) of the TFEU. However, as explained above, for the period after 1 January 2004, the Belgian authorities committed themselves to amending the notified State aid scheme so that it complies with the TSE Guidelines as applicable from 1 January 2004. In particular, they committed themselves to ensuring that the aid would cover only 75 % of the costs for the destruction of the carcasses (the remaining costs having to be borne by the owner of the agricultural holding himself) and to sending the Commission, at the latest by mid December 2003, evidence that the necessary changes had been made to the aid scheme.
- (41) This was a requirement imposed by the TSE Guidelines, which was the text applicable at the time. In point 29, the TSE Guidelines provided that:
- '29. From 1 January 2004 onwards, Member States may grant State aid of up to 100 % of costs of removal of fallen stock, which has to be disposed of, and 75 % of the costs of destruction of such carcasses; [...]*
- (42) Points 30 and 31 of the TSE Guidelines provided exceptions to the rule that the aid may cover only up to 75 % of the costs of destroying the fallen stock:
- '30. Alternatively, Member States may grant State aid of up to 100 % for costs of removal and destruction of carcasses where the aid is financed through fees or through compulsory contributions destined for the financing of the destruction of such carcasses, provided that such fees or contributions are limited to and directly imposed on the meat sector.*
- 31. Member States may grant State aid of up to 100 % for the costs of removal and destruction of fallen stock where there is an obligation to perform TSE tests on the fallen stock concerned.'*
- (43) It is to be noted, that within the framework of the examination of Case NN 48/2003, the Belgian authorities did at no time argue that one of these exceptions could apply.
- (44) The TSE Guidelines were revoked on 1 January 2007, as provided for in point 194 c) of the 2007-2013 Guidelines. Point 134 of the 2007-2013 Guidelines states that the Commission declares State aid concerning TSE tests and fallen stock compatible with Article 108(3)(c) of the TFEU, if it fulfils all the conditions of Article 16 of Regulation (EC) No 1857/2006.
- (45) Article 16 of the Regulation (EC) No 1857/2006 does not alter the substance as regards the assessment of aid granted for the removal and destruction of fallen stock. As was the case in the TSE Guidelines, it stipulates that aid at a rate of up to 100 % of costs of removal of fallen stock and 75 % of the costs of destruction of such carcasses shall be deemed compatible with the internal market (Article 16(1)(d)). The provisions of Article 16(1)(e) and 16(1)(f) provide for the possibility of derogating from the 75 % ceiling, whereby the aid rate can be increased to 100 %, when: (i) the aid is financed through fees or through compulsory contributions destined for the financing of the destruction of such carcasses, provided that such fees or contributions are limited to and directly imposed on the meat sector; or (ii) there is an obligation to carry out a TSE test on fallen stock.
- (46) Since the situation has not been changed in terms of the substance under the new rules (2007-2013 Guidelines and Regulation (EC) No 1857/2006) as compared to the old rules (the TSE Guidelines), the assessment of the case as regards the applicable European Union rules should be the same for the whole of the period concerned (1 January 2004 – present).
- (47) As emphasised above, the Belgian authorities had committed themselves, in the framework of the examination of Case No NN 48/2003, to amending their aid scheme in a way that from 1 January 2004, the aid provided for to cover the costs for the destruction of the carcasses would not exceed 75 % of those costs. However, during the investigation of the present case, the Belgian authorities did not deny that the State aid scheme had not been amended as they had promised.
- (48) In addition, the Belgian authorities have argued on several occasions (for instance in the letter dated 27 November 2008) that the second of the exceptions mentioned in recital 42 can indeed apply and that the aid can cover up to 100 % of the costs for the destruction of the carcasses. The reason, according to the Belgian authorities, was that there was an obligation to perform TSE tests on all fallen stock (Point 31 of the TSE Guidelines, and Article 16(1)(f) of Regulation (EC) No 1857/2006. However, they have not submitted evidence in support of this claim.

- (49) The main argument that Belgium brings in support of its claim is that it is obliged to perform such tests, in application of 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<sup>(1)</sup>. However, this argument cannot be accepted. The reason is that in application of this Regulation, the Walloon authorities have the obligation to test fallen stock for TSE as follows:
- between 1 July 2001 and 31 December 2008, on all bovine animals over 24 months of age which have died on the holding, and,
- as from 1 January 2009, on all bovine animals over 48 months of age which have died on the holding. A Member State may, however, decide to continue testing at a lower age limit between 24-48 months.
- (50) Therefore, the obligation to perform tests applies only for animals of a certain age (24 months for the period 1 July 2001-31 December 2008 and 48 months after that). More importantly the obligation applies only for bovine animals. Animals of other fallen species on the holding (pigs, horses, poultry etc.) do not have to be compulsorily subjected to TSE tests. From the information provided by the Belgian authorities (letter dated 27 November 2008) it appears that the number of carcasses that might be affected by this exemption under the provisions of Regulation (EC) No 999/2001 represents less than 20 % - 25 % of the total costs for the fallen stock processed within the framework of the service contract. Therefore only aid related to costs which are strictly linked to the obligation to carry out the TSE tests, as provided for by Regulation (EC) No 999/2001 may be declared compatible, on the condition that these costs can be quantified precisely.
- (51) The Commission also notes that the first exception allowing for the costs of removing and destroying carcasses to be covered up to 100 % by means of advance payments and compulsory contributions in the meat sector is not applicable in this case. The Belgian authorities have never invoked the applicability of this exception nor provided any evidence supporting it.
- (52) In the light of the above, the Commission concludes that the measures under the aid scheme in question aiming to cover more than 75 % of the costs of destroying the carcasses are not compatible with the internal market on the basis of the TSE Guidelines or the Guidelines for 2007-2013, with the exception of the costs which are directly linked to processing animal carcasses for which there is an obligation to carry out TSE tests.
- (53) In addition, given that the Commission has approved the aid scheme until 31 January 2007 on the basis of the commitments of the Belgian authorities to amend the scheme so as to comply with the conditions of the TSE Guidelines as of 1 January 2004, and these commitments were not complied with by the Belgian authorities, the Commission concludes that the aid to cover more than 75 % of the costs for the destruction of the carcasses was misused, at least with regard to the aid which is not intended to compensate the obligation to carry out TSE tests.
- (54) In accordance with Article 14(1) of Regulation (EC) No 659/1999, where an illegally granted State aid is incompatible with the internal market it must be recovered from the beneficiaries. The purpose is achieved once the aid in question, together where appropriate with default interest, has been repaid by the recipients or, in other words, by the undertakings which actually benefited from it.
- (55) This Decision must be implemented immediately, particularly with regard to the recovery of all the individual aid granted under the scheme, apart from that granted for specific projects which, at the time the aid was granted, fulfilled all the conditions set out in the *De minimis* Regulation or the exemption applicable on the basis of Articles 1 and 2 of Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid<sup>(2)</sup>, or in an aid scheme approved by the Commission.
- ## VII. CONCLUSION
- (56) The Commission finds that Belgium has unlawfully implemented the aid in question in breach of Article 108(3) of the TFEU. As the aid is partially incompatible with the internal market, Belgium must bring it to an end and recover from the beneficiary the amounts already unlawfully paid.
- HAS ADOPTED THIS DECISION:
- ### Article 1
1. The aid scheme implemented by Belgium for farmers in the Walloon Region for the costs of removing and destroying the carcasses of fallen stock on agricultural holdings in the Walloon Region is partially incompatible with the internal market.

<sup>(1)</sup> OJ L 147, 31.5.2001, p. 1.

<sup>(2)</sup> OJ L 142, 14.5.1998, p. 1.

2. Only the part of the aid intended strictly to compensate the farmers obligation to carry out TSE tests in accordance with Regulation (EC) No 999/2001 is compatible with the internal market, provided that it is possible to quantify the costs precisely.

#### *Article 2*

Belgium must abolish the aid scheme referred to in Article 1 above.

#### *Article 3*

The amounts granted under the aid scheme referred to in Article 1 of this Decision does not constitute aid within the meaning of the Treaty if, at the time it was granted, it fulfilled the conditions laid down by the regulation adopted pursuant to Article 2 of Regulation (EC) No 994/98 which was applicable at the time the aid was granted.

#### *Article 4*

Individual aid granted under the scheme referred to in Article 1 of this Decision which, at the time it was granted, fulfilled the conditions laid down by a regulation adopted pursuant to Article 1 of Regulation (EC) No 994/98 or by any other approved aid scheme is compatible with the internal market up to the maximum aid intensities applicable to that type of aid.

#### *Article 5*

1. Notwithstanding Article 1(2), Article 3 and Article 4, Belgium shall take all the necessary measures to recover from its beneficiaries the incompatible aid referred to in Article 1 which has already been made available unlawfully.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of this Decision. The aid to be recovered shall include interest from the date on which it was available to the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.

#### *Article 6*

Belgium shall inform the Commission within 2 months of the date of notification of this Decision of the measures taken to comply with it.

Belgium shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately forward to the Commission, at the latter's request, any information on the measures already taken and planned to comply with this Decision, as well as detailed information concerning the amounts of aid and interest already recovered from the beneficiary(ies).

#### *Article 7*

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 17 November 2010.

*For the Commission*

Dacian CIOLOŞ

*Member of the Commission*