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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/635

of 22 April 2016

amending the Annex to Regulation (EC) No 2870/2000 as regards certain reference methods for the analysis of spirit drinks

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 ⁽¹⁾, and in particular Article 28(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2870/2000 ⁽²⁾ lists and describes the reference methods for the analysis of spirit drinks. However, some of the methods listed in the Annex to that Regulation, among which, the methods for the determination of volatile acidity and total sugars in spirit drinks, are not yet described.
- (2) The methods for the determination of volatile acidity and total sugars in certain spirit drinks have been subjected to two international validation studies that were conducted in accordance with internationally agreed procedures and their method performance parameters have been found to be acceptable. The studies were carried out as part of a research project under the European Commission (EC) framework IV standards measurements and testing (SMT) programme. The description of those methods should therefore be included in the Annex to Regulation (EC) No 2870/2000.
- (3) Regulation (EC) No 110/2008 lays down requirements for some categories of spirit drinks to be aged in wood and provides that others may undergo such ageing. Analysis of the principal compounds coming from wood can be helpful when considering if a sample is consistent with the definition corresponding to the relevant category of spirit drink. The International Organisation of Vine and Wine (OIV) has recognised a method of analysis for the determination of those compounds in its Resolution OIV/OENO 382A/2009. The recognition of the method was based on data obtained from an international method-performance study on different spirit drinks carried out following internationally-agreed procedures. This method and its description should therefore be added to the Union reference methods for the analysis of spirit drinks set out in the Annex to Regulation (EC) No 2870/2000.
- (4) Regulation (EC) No 2870/2000 should therefore be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Spirit Drinks,

⁽¹⁾ OJ L 39, 13.2.2008, p. 16.

⁽²⁾ Commission Regulation (EC) No 2870/2000 of 19 December 2000 laying down Community reference methods for the analysis of spirit drinks (OJ L 333, 29.12.2000, p. 20).

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 2870/2000 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 22 April 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

The Annex to Regulation (EC) No 2870/2000 is amended as follows:

(1) The table of contents is amended as follows:

(a) in points III.3 and VIII, the term '(p.m.)' is deleted;

(b) the following point is added:

'X. Determination of wood compounds: furfural, 5-hydroxymethylfurfural, 5-methylfurfural, vanillin, syringaldehyde, coniferaldehyde, sinapaldehyde, gallic acid, ellagic acid, vanillic acid, syringic acid and scopoletin.'

(2) In Chapter III the following part is added:

III.3. DETERMINATION OF VOLATILE ACIDITY OF SPIRIT DRINKS

1. **Scope**

The method has been validated in an interlaboratory study for rum, brandy, marc and fruit spirits, at levels ranging from 30 mg/l to 641 mg/l.

2. **Normative references**

ISO 3696: 1987 Water for analytical use — Specifications and test methods.

3. **Definitions**

3.1. Volatile acidity is calculated by deducting the fixed acidity from the total acidity.

3.2. Total acidity is the sum of titratable acidities.

3.3. Fixed acidity is the acidity of the residue left after evaporating the spirit to dryness.

4. **Principle**

The total acidity and fixed acidity are determined by titration or by potentiometry.

5. **Reagents and materials**

During the analysis, unless otherwise stated, use only reagents of recognised analytical grade and water of at least grade 3 as defined in ISO 3696:1987.

5.1. 0,01 M sodium hydroxide solution (NaOH)

5.2. Mixed indicator solution:

Weigh 0,1 g of indigo carmine and 0,1 g of phenol red.

Dissolve in 40 ml water and make up to 100 ml with ethanol.

6. **Apparatus and equipment**

Indirect laboratory apparatus, grade A glassware and the following:

6.1. Water pump

- 6.2. Rotary evaporator or ultrasonic bath
- 6.3. Equipment for potentiometric titration (optional).

7. **Sampling and samples**

Samples are stored at room temperature prior to analysis.

8. **Procedure**

8.1. Total acidity

8.1.1. Preparation of sample

The spirit is irradiated with ultrasonic (ultrasonication) or stirred two minutes under a vacuum to rid it of carbon dioxide if required.

8.1.2. Titration

Pipette 25 ml of the spirit into a 500 ml Erlenmeyer flask.

Add about 200 ml of cooled boiled distilled water (prepared fresh daily) and 2-6 drops of the mixed indicator solution (5.2).

Titrate with the 0,01 M sodium hydroxide solution (5.1) until the yellow-green colour changes to violet in the case of colourless spirits, the yellow-brown colour to red-brown in the case of brown-coloured spirits respectively.

The titration may also be carried out by potentiometry, to pH 7,5.

Let n_1 ml be the volume of the 0,01 M sodium hydroxide solution added.

8.1.3. Calculation

The total acidity (TA) expressed in milliequivalents per l of spirit is equal to $0,4 \times n_1$.

The total acidity (TA') expressed in mg of acetic acid per l of spirit is equal to $24 \times n_1$.

8.2. Fixed acidity

8.2.1. Preparation of sample

Evaporate 25 ml of the spirit to dryness:

Pipette 25 ml of the spirit into a flat-bottomed cylindrical evaporating dish 55 mm in diameter. During the first hour of evaporation the evaporating dish is placed on the lid of a boiling water bath so that the liquid will not boil, as this could lead to losses through splattering.

Complete the drying by placing the evaporating dish in a drying oven at 105 °C for two hours. Allow the evaporating dish to cool in a desiccator.

8.2.2. Titration

Dissolve the residue left after evaporating with cooled boiled distilled water (prepared fresh daily) and make up to a volume to circa 100 ml and add 2-6 drops of the mixed indicator solution (5.2).

Titrate with the 0,01 M sodium hydroxide solution (5.1).

The titration may also be carried out by potentiometry, to pH 7,5.

Let n_2 ml be the volume of the 0,01 M sodium hydroxide solution added.

8.2.3. Calculation

The fixed acidity (FA) expressed in milliequivalents per l of spirit is equal to $0,4 \times n_2$.

The fixed acidity (FA) expressed in mg of acetic acid per l of spirit is equal to $24 \times n_2$.

9. Calculation of volatile acidity

9.1. Expression in milliequivalents per l:

Let:

TA = total acidity in milliequivalents per l

FA = fixed acidity in milliequivalents per l

Volatile acidity, VA, in milliequivalents per l is equal to:

TA – FA.

9.2. Expression in mg of acetic acid per l:

Let:

TA' = total acidity in mg of acetic acid per l

FA' = fixed acidity in mg of acetic acid per l

Volatile acidity, VA, in mg of acetic acid per l is equal to:

TA' – FA'.

9.3. Expression in g of acetic acid per hl of pure 100 % vol. alcohol is equal to: $\frac{TA' - FA'}{A} \times 10$

where A is the alcoholic strength by volume of the spirit drink.

10. Method performance characteristics (Precision)

10.1. Statistical results of the interlaboratory test

The following data were obtained from an international method performance study carried out to internationally agreed procedures (1) (2).

Year of interlaboratory test	2000
Number of laboratories	18
Number of samples	6

Samples	A	B	C	D	E	F
Number of laboratories retained after eliminating outliers	16	18	18	14	18	18
Number of outliers (laboratories)	2			4		
Number of accepted results	32	36	36	28	36	36
Mean value (\bar{x}) (mg/L)	272* 241*	30	591* 641*	46	107	492
Repeatability standard deviation, s_r (mg/l)	8,0	3,6	15,0	3,7	6,7	8,5
Repeatability relative standard deviation, RSD _r (%)	3,1	11,8	2,4	8,0	6,2	1,7
Repeatability limit, r (mg/l)	23	10	42	10	19	24
Reproducibility standard deviation, s_R (mg/l)	8,5	8,4	25,0	4,55	13,4	24,4
Reproducibility relative standard deviation, RSD _R (%)	3,3	27,8	4,1	9,9	12,5	5,0
Reproducibility limit, R (mg/l)	24	23	70	13	38	68

Sample types:

A Plum spirit; split level *

B Rum I; blind duplicates

C Rum II; split level *

D Slivovitz; blind duplicates

E Brandy; blind duplicates

F Marc spirit; blind duplicates.

(1) "Protocol for the design, conduct and interpretation of method-performance studies", Horwitz, W. (1995) *Pure and Applied Chemistry*, 67, 332-343.

(2) Horwitz, W. (1982) *Analytical Chemistry*, 54, 67A-76A.'

(3) The following Chapter VIII is inserted:

VIII. TOTAL SUGARS

1. Scope

The HPLC-RI method is applicable for the determination of total sugars (expressed as invert sugar) in spirit drinks, with the exclusion of liqueurs containing egg and milk products.

The method has been validated in an interlaboratory study for pastis, distilled anis, cherry liqueur, crème de (followed by the name of a fruit or the raw material used) and crème de cassis, at levels ranging from 10,86 g/l to 509,7 g/l. However, linearity of the instrument response was proven for the concentration range 2,5 g/l to 20,0 g/l.

This method is not intended for determining low levels of sugars.

2. Normative references

ISO 3696:1987 Waters for analytical use — Specifications and test methods.

3. Principle

High-performance liquid chromatography assays of sugar solutions, in order to determine their glucose, fructose, sucrose, maltose and lactose concentrations.

This method uses an alkylamine stationary phase and differential refractometry detection and is given as an example. The use of anion exchange resins as stationary phase would also be possible.

4. Reagents and materials

- 4.1. Glucose (CAS 50-99-7), at least 99 % pure.
- 4.2. Fructose (CAS 57-48-7), at least 99 % pure.
- 4.3. Sucrose (CAS 57-50-1), at least 99 % pure.
- 4.4. Lactose (CAS 5965-66-2), at least 99 % pure.
- 4.5. Maltose monohydrate (CAS 6363-53-7), at least 99 % pure.
- 4.6. Pure acetonitrile (CAS 75-05-8) for HPLC analysis.
- 4.7. Distilled or demineralised water, preferably microfiltered.

4.8. Solvents (example)

The elution solvent is composed of:

75 parts by volume of acetonitrile (4.6),

25 parts by volume of distilled water (4.7).

Pass helium through at a slow rate for 5-10 minutes prior to use to degas.

If the water being used has not been microfiltered, the solvent should be filtered with a filter for organic solvents with a pore size less than or equal to 0,45 µm.

- 4.9. Ethanol absolute (CAS 64-17-5).
- 4.10. Ethanol solution (5 %, v/v).
- 4.11. Preparation of stock standard solution (20 g/l)

Weigh 2 g each of the sugars to be analysed (4.1 to 4.5), transfer them without loss to a 100 ml volumetric flask. (NB 2,11 g of maltose monohydrate is equivalent to 2 g of maltose).

Adjust to 100 ml with a 5 % vol. alcohol solution (4.10), shake and store at around + 4 °C. Prepare a new stock solution once a week.

4.12. Preparation of working standard solutions (2,5, 5,0, 7,5, 10,0 and 20,0 g/L)

Dilute the stock solution, 20 g/l (4.11) appropriately with a 5 % vol. alcohol solution (4.10) to give five working standards of 2,5, 5,0, 7,5, 10,0 and 20,0 g/l. Filter with a filter of a pore size less than or equal to 0,45 µm (5.3).

5. Apparatus and Equipment

- 5.1. HPLC system capable of achieving baseline resolution of all of the sugars.
 - 5.1.1. High-performance liquid chromatograph with a six-way injection valve fitted with a 10 µl loop or any other device, whether automatic or manual, for the reliable injection of microvolumes.
 - 5.1.2. Pumping system enabling one to achieve and maintain a constant or programmed rate of flow with great precision.
 - 5.1.3. Differential refractometer.
 - 5.1.4. Computational integrator or recorder, the performance of which is compatible with the rest of the set-up.
 - 5.1.5. Pre-column:

It is recommended that a suitable pre-column is attached to the analytical column.

5.1.6. Column (example):

Material: stainless steel or glass.

Internal diameter: 2-5 mm.

Length: 100-250 mm (depending on the packing particle size), for example, 250 mm if the particles are 5 µm in diameter.

Stationary phase: alkylamine functional groups bonded to silica, maximum particle size 5 µm.

5.1.7. Chromatography conditions (example):

Elution solvent (4.8), flow rate: 1 ml/minute.

Detection: Differential refractometry.

To make certain that the detector is perfectly stable, it should be switched on a few hours before use. The reference cell must be filled with the elution solvent.

- 5.2. Analytical balance accurate to 0,1 mg.
- 5.3. Filtration set-up for small volumes using a 0,45 µm micromembrane.

6. Sample storage

On receipt, samples are to be stored at room temperature prior to analysis.

7. Procedure

7.1. PART A: Sample preparation

7.1.1. Shake the sample.

7.1.2. Filter the sample through a filter with a pore size less than or equal to 0,45 µm (5.3).

7.2. PART B: HPLC

7.2.1. Determination

Inject 10 µl of the standard solutions (4.12) and samples (7.1.2). Perform the analysis under suitable chromatography conditions, for example those described above.

- 7.2.2. Should any peak of a sample have a greater area (or height) than the corresponding peak in the most concentrated standard, then the sample should be diluted with distilled water and reanalysed.

8. Calculation

Compare the two chromatograms obtained for the standard solution and spirit. Identify the peaks by their retention times. Measure their areas (or heights) to calculate the concentrations by the external standard method. Take into account any dilutions made to the sample.

The final result is the sum of sucrose, maltose, lactose, glucose and fructose, expressed as invert sugar in g/l.

Invert sugar is calculated as the sum of all monosaccharides and reducing disaccharides present, plus the stoichiometric amount of glucose and fructose calculated from the sucrose present.

Invert sugar (g/l) = glucose (g/l) + fructose (g/l) + maltose (g/l) + lactose (g/l) + (sucrose (g/l) × 1,05).

1,05 = (molecular weight of fructose + molecular weight of glucose)/molecular weight of sucrose.

9. Method performance characteristics (precision)

9.1. Statistical results of the interlaboratory test

The following data were obtained from an international method performance study carried out to internationally agreed procedures ⁽¹⁾ ⁽²⁾.

Year of interlaboratory test 2000

Number of laboratories 24

Number of samples 8

⁽¹⁾ "Protocol for the design, conduct and interpretation of method-performance studies", Horwitz, W. (1995) *Pure and Applied Chemistry*, 67, 332-343.

⁽²⁾ Horwitz, W. (1982) *Analytical Chemistry*, 54, 67A-76A.

Table 1

Fructose, glucose, maltose

Analyte	Fructose		Glucose			Maltose	
	Crème de Cassis	Standard (50 g/l)	Aniseed-flavoured spirit drink	Crème de Cassis	Standard (50 g/l)	Aniseed-flavoured spirit drink	Standard (10 g/l)
Mean value (g/l)	92,78	50,61	15,62	93,16	50,06	15,81	9,32
No of labs without outliers	21	22	21	23	19	21	22
Repeatability standard deviation, s_r (g/l)	2,34	2,12	0,43	3,47	1,01	0,48	0,54

Analyte	Fructose		Glucose			Maltose	
	Crème de Cassis	Standard (50 g/l)	Aniseed-flavoured spirit drink	Crème de Cassis	Standard (50 g/l)	Aniseed-flavoured spirit drink	Standard (10 g/l)
Repeatability relative standard deviation, RSD_r (%)	2,53	4,2	2,76	3,72	2,03	3,02	5,77
Repeatability limit, r (g/l) ($r = 2,8 \times s_r$)	6,56	5,95	1,21	9,71	2,84	1,34	1,51
Reproducibility standard deviation, s_R (g/l)	7,72	3,13	0,84	9,99	2,7	0,88	1,4
Reproducibility relative standard deviation, RSD_R (%)	8,32	6,18	5,37	10,72	5,4	5,54	15,06
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	21,62	8,76	2,35	27,97	7,57	2,45	3,93

Table 2

Sucrose

Analyte	Sucrose					
	Pastis	Ouzo	Cherry liqueur	Crème de Menthe	Crème de Cassis	Standard (100 g/l)
Mean value (g/l)	10,83	29,2 19,7 (*)	103,33	349,96	319,84	99,83
No of labs without outliers	19	19	20	18	18	18
Repeatability standard deviation, s_r (g/l)	0,09	0,75	2,17	5,99	4,31	1,25
Repeatability relative standard deviation, RSD_r (%)	0,81	3,07	2,1	1,71	1,35	1,25
Repeatability limit, r (g/l) ($r = 2,8 \times s_r$)	0,25	2,1	6,07	16,76	12,06	3,49
Reproducibility standard deviation, s_R (g/l)	0,79	0,92	4,18	9,94	16,11	4,63
Reproducibility relative standard deviation, RSD_R (%)	7,31	3,76	4,05	2,84	5,04	4,64
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	2,22	2,57	11,7	27,84	45,12	12,97

(*) split level.

Table 3

Total Sugars

(Note: this data was calculated for total sugars, not invert sugar as defined in Section 8 above.)

Samples	Pastis	Ouzo	Aniseed-flavoured spirit drink	Cherry liqueur	Crème de Menthe	Crème de Cassis	Standard (220 g/l)
Mean value (g/l)	10,86	29,2 19,7 (*)	31,59	103,33	349,73	509,69	218,78
No of Labs without outliers	20	19	20	20	18	18	19
Repeatability standard deviation, s_r (g/l)	0,13	0,75	0,77	2,17	5,89	5,59	2,71
Repeatability relative standard deviation, RSD_r (%)	1,16	3,07	2,45	2,1	1,69	1,1	1,24
Repeatability limit, r (g/l) ($r = 2,8 \times s_r$)	0,35	2,1	2,17	6,07	16,5	15,65	7,59
Reproducibility standard deviation s_R (g/l)	0,79	0,92	1,51	4,18	9,98	14,81	8,53
Reproducibility relative standard deviation, RSD_R (%)	7,25	3,76	4,79	4,04	2,85	2,91	3,9
Reproducibility limit R (g/l) ($R = 2,8 \times s_R$)	2,21	2,57	4,24	11,7	27,94	41,48	23,89

(*) split level.

(4) The following Chapter X is added:

- X. **DETERMINATION OF THE FOLLOWING WOOD COMPOUNDS IN SPIRIT DRINKS BY HIGH PERFORMANCE LIQUID CHROMATOGRAPHY (HPLC): FURFURAL, 5-HYDROXYMETHYLFURFURAL, 5-METHYLFURFURAL, VANILLIN, SYRINGALDEHYDE, CONIFERALDEHYDE, SINAPALDEHYDE, GALLIC ACID, ELLAGIC ACID, VANILLIC ACID, SYRINGIC ACID AND SCOPOLETIN**

1. **Scope**

The method pertains to the determination of furfural, 5-hydroxymethylfurfural, 5-methylfurfural, vanillin, syringaldehyde, coniferaldehyde, sinapaldehyde, gallic acid, ellagic acid, vanillic acid, syringic acid and scopoletin, by high-performance liquid chromatography.

2. **Normative reference**

Analytical method recognised by the General Assembly of the International Organisation of Vine and Wine (OIV) and published by OIV under the reference OIV-MA-BS-16: R2009.

3. **Principle**

Determination by high-performance liquid chromatography (HPLC), with detection by ultraviolet spectrophotometry at several wavelengths and by spectrofluorimetry.

4. Reagents

The reagents must be of analytical quality. The water used must be distilled water or water of at least equivalent purity. It is preferable to use microfiltered water with a resistivity of 18,2 M Ω .cm.

- 4.1. 96 % vol. alcohol.
- 4.2. HPLC-quality methanol (Solvent B).
- 4.3. Acetic acid diluted to 0,5 % vol. (Solvent A).
- 4.4. Mobile phases: (given as an example only).

Solvent A (0,5 % acetic acid) and solvent B (pure methanol). Filter through a membrane (porosity 0,45 μ m). Degas in an ultrasonic bath, if necessary.

- 4.5. Reference standards of 99 % minimum purity: furfural, 5-hydroxymethyl furfural, 5-methylfurfural, vanillin, syringaldehyde, coniferaldehyde, sinapaldehyde, gallic acid, ellagic acid, vanillic acid, syringic acid and scopoletin.
- 4.6. Reference solution: the standard substances are dissolved in a 50 % vol. aqueous-alcoholic solution. The final concentrations in the reference solution should be of the order of:

furfural: 5 mg/l; 5-hydroxymethyl furfural: 10 mg/l; 5-methylfurfural 2 mg/l; vanillin: 5 mg/l; syringaldehyde: 10 mg/l; coniferaldehyde: 5 mg/l; sinapaldehyde: 5 mg/l; gallic acid: 10 mg/l; ellagic acid: 10 mg/l; vanillic acid: 5 mg/l; syringic acid: 5 mg/l; scopoletin: 0,5 mg/l.

5. Apparatus

Standard laboratory apparatus

- 5.1. A high-performance liquid chromatograph capable of functioning in binary gradient mode and equipped with:
 - 5.1.1. A spectrophotometric detector capable of measuring at wavelengths from 260 to 340 nm. It is however preferable to work with a multiple wavelength detector with a diode array or similar, in order to confirm the purity of the peaks.
 - 5.1.2. A spectrofluorimetric detector — excitation wavelength: 354 nm, emission wavelength: 446 nm (for the trace determination of scopoletin; which is also detectable at 313 nm by spectrophotometry).
 - 5.1.3. An injection device capable of introducing 10 or 20 μ l (for example) of the test sample.
 - 5.1.4. A high-performance liquid chromatography column, RP C18 type, 5 μ m maximum particle size.
- 5.2. Syringes for HPLC.
- 5.3. Device for membrane-filtration of small volumes.
- 5.4. Integrator-computer or recorder with performance compatible with the entire apparatus, and in particular, it must have several acquisition channels.

6. Procedure

- 6.1. Preparation of the solution to be injected

The reference solution and the spirit drink are filtered, if necessary, through a membrane with a maximum pore diameter of 0,45 μ m.

- 6.2. Chromatographic operating conditions: carry out the analysis at ambient temperature by means of the equipment described in (5.1) and using the mobile phases (4.4) with a flow of approximately 0,6 ml per minute following the gradient below (given as an example only)

Time: 0 min 50 min 70 min 90 min

solvent A (water-acid): 100 % 60 % 100 % 100 %

solvent B (methanol): 0 % 40 % 0 % 0 %

Note that in certain cases this gradient should be modified to avoid co-elutions.

- 6.3. Determination

- 6.3.1. Inject the reference standards separately, then mixed.

Adapt the operating conditions so that the resolution factors of the peaks of all the compounds are equal to at least 1.

- 6.3.2. Inject the sample as prepared in 6.1.

- 6.3.3. Measure the area of the peaks in the reference solution and the spirit drink and calculate the concentrations.

7. Expression of results

Express the concentration of each constituent in mg/l.

8. Performance characteristics of the method (precision)

The following data were obtained in 2009 from an international method-performance study on a variety of spirit drinks, carried out following internationally-agreed procedures ⁽¹⁾ ⁽²⁾.

8.1. Furfural

Analyte	Furfural					
	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	15	15	15	15	15	15
No of results accepted (laboratories)	14	12	13	14	13	13
Mean value (mg/l)	2,9	1,2	1,7	10,6	15,3	13,9
Repeatability standard deviation, s_r (mg/l)	0,04	0,05	0,04	0,18	0,23	0,20
Repeatability relative standard deviation, RSD_r (%)	1,4	4,5	2,3	1,7	1,5	1,5

Analyte	Furfural					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,1	0,2	0,1	0,5	0,6	0,6
Reproducibility standard deviation, s_R (mg/l)	0,24	0,18	0,09	1,4	0,49	0,69
Reproducibility relative standard deviation, RSD_R (%)	8	15	5	13	3	5
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	0,7	0,5	0,3	3,8	1,4	1,9

8.2. 5-Hydroxymethylfurfural

Analyte	5-Hydroxymethylfurfural					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	16	16	16	16	16	16
No of results accepted (laboratories)	14	14	14	14	14	14
Mean value (mg/l)	5,0	11,1	9,4	33,7	5,8	17,5
Repeatability standard deviation, s_r (mg/l)	0,09	0,09	0,09	0,42	0,07	0,13
Repeatability relative standard deviation, RSD_r (%)	1,7	0,8	1,0	1,3	1,2	0,8
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,2	0,3	0,3	1,2	0,2	0,4
Reproducibility standard deviation, s_R (mg/l)	0,39	1,01	0,50	4,5	0,4	1,6
Reproducibility relative standard deviation, RSD_R (%)	8	9	5	13	7	9
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	1,1	2,8	1,4	12,5	1,1	4,6

8.3. 5-Methylfurfural

Analyte	5-Methylfurfural					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	11	11	11	11	11	11
No of results accepted (laboratories)	11	11	8	11	10	11
Mean value (mg/l)	0,1	0,2	0,1	0,5	1,7	0,8
Repeatability standard deviation, s_r (mg/l)	0,01	0,01	0,02	0,02	0,03	0,07
Repeatability relative standard deviation, RSD_r (%)	10,7	6,1	13,6	4,7	2,0	10,0
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,0	0,0	0,1	0,1	0,1	0,2
Reproducibility standard deviation, s_R (mg/l)	0,03	0,04	0,03	0,18	0,20	0,26
Reproducibility relative standard deviation, RSD_R (%)	35	18	22	39	12	35
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	0,1	0,1	0,1	0,5	0,6	0,7

8.4. Vanillin

Analyte	Vanillin					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	16	15	16	16	16	16
No of results accepted (laboratories)	16	15	16	16	16	16
Mean value (mg/l)	0,5	0,2	1,2	1,2	3,2	3,9
Repeatability standard deviation, s_r (mg/l)	0,03	0,02	0,06	0,11	0,11	0,09

Analyte	Vanillin					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
Repeatability relative standard deviation, RSD_r (%)	6,8	9,6	4,6	8,9	3,5	2,3
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,1	0,1	0,2	0,3	0,3	0,3
Reproducibility standard deviation, s_R (mg/l)	0,09	0,06	0,18	0,27	0,41	0,62
Reproducibility relative standard deviation, RSD_R (%)	19	25	15	22	13	16
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	0,3	0,2	0,5	0,8	1,2	1,7

8.5. Syringaldehyde

Analyte	Syringaldehyde					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	16	15	16	16	16	16
No of results accepted (laboratories)	13	13	13	12	14	13
Mean value (mg/l)	1,0	0,2	4,8	3,2	10,5	9,7
Repeatability standard deviation, s_r (mg/l)	0,03	0,02	0,04	0,08	0,10	0,09
Repeatability relative standard deviation, RSD_r (%)	2,6	8,1	0,8	2,6	0,9	0,9
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,1	0,1	0,1	0,2	0,3	0,3
Reproducibility standard deviation, s_R (mg/l)	0,08	0,07	0,23	0,19	0,39	0,43
Reproducibility relative standard deviation, RSD_R (%)	8	33	5	6	4	4
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	0,2	0,2	0,7	0,5	1,1	1,2

8.6. Coniferaldehyde

Analyte	Coniferaldehyde					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	13	12	13	12	13	13
No of results accepted (laboratories)	12	12	13	12	13	13
Mean value (mg/l)	0,2	0,2	0,6	0,8	4,6	1,3
Repeatability standard deviation, s_r (mg/l)	0,02	0,02	0,03	0,03	0,09	0,06
Repeatability relative standard deviation, RSD_r (%)	9,2	9,8	4,6	4,3	1,9	4,5
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,04	0,04	0,07	0,09	0,24	0,16
Reproducibility standard deviation, s_R (mg/l)	0,04	0,04	0,11	0,18	0,38	0,25
Reproducibility relative standard deviation, RSD_R (%)	23	27	21	23	8	19
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	0,1	0,1	0,3	0,5	1,1	0,7

8.7. Sinapaldehyde

Analyte	Sinapaldehyde					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	14	14	14	14	15	14
No of results accepted (laboratories)	14	13	12	13	13	12
Mean value (mg/l)	0,3	0,2	0,2	1,6	8,3	0,3
Repeatability standard deviation, s_r (mg/l)	0,02	0,01	0,02	0,06	0,14	0,03

Analyte	Sinapaldehyde					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
Repeatability relative standard deviation, RSD_r (%)	7,5	4,6	11,2	3,7	1,6	11,4
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,06	0,03	0,06	0,17	0,38	0,08
Reproducibility standard deviation, s_R (mg/l)	0,09	0,05	0,08	0,20	0,81	0,18
Reproducibility relative standard deviation, RSD_R (%)	31	27	46	13	10	73
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	0,2	0,2	0,2	0,6	2,3	0,5

8.8. Gallic acid

Analyte	Gallic acid					
Sample	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	16	15	16	16	16	16
No of results accepted (laboratories)	15	14	16	16	16	16
Mean value (mg/l)	1,2	0,4	2,0	6,1	7,3	21,8
Repeatability standard deviation, s_r (mg/l)	0,07	0,04	0,06	0,18	0,18	0,60
Repeatability relative standard deviation, RSD_r (%)	6,1	8,1	2,9	3,0	2,4	2,8
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,2	0,1	0,2	0,5	0,5	1,7
Reproducibility standard deviation, s_R (mg/l)	0,43	0,20	0,62	3,3	2,2	7,7
Reproducibility relative standard deviation, RSD_R (%)	36	47	31	53	30	35
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	1,2	0,6	1,7	9,1	6,2	21,7

8.9. Ellagic acid

Analyte	Ellagic acid					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	7	7	7	7	7	7
No of results accepted (laboratories)	7	7	7	7	7	6
Mean value (mg/l)	3,2	1,0	9,5	13	13	36
Repeatability standard deviation, s_r (mg/l)	0,20	0,16	0,30	0,41	0,95	0,34
Repeatability relative standard deviation, RSD_r (%)	6,3	16	3,2	3,2	7,4	1,0
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,6	0,4	0,9	1,1	2,7	1,0
Reproducibility standard deviation, s_R (mg/l)	1,41	0,42	4,0	5,0	4,9	14
Reproducibility relative standard deviation, RSD_R (%)	44	43	42	39	39	40
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	4,0	1,2	11	14	14	40

8.10. Vanillic acid

Analyte	Vanillic acid					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	15	15	15	15	15	15
No of results accepted (laboratories)	12	11	14	14	15	14
Mean value (mg/l)	0,2	0,2	1,5	0,8	2,4	2,7
Repeatability standard deviation, s_r (mg/l)	0,03	0,04	0,03	0,10	0,13	0,21

Analyte	Vanillic acid					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
Repeatability relative standard deviation, RSD_r (%)	14,2	16,5	2,3	12,6	5,3	7,7
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,1	0,1	0,1	0,3	0,4	0,6
Reproducibility standard deviation, s_R (mg/l)	0,06	0,05	0,51	0,2	1,22	0,70
Reproducibility relative standard deviation, RSD_R (%)	28	20	35	31	51	26
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	0,2	0,1	1,4	0,7	3,4	2,0

8.11. Syringic acid

Analyte	Syringic acid					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	16	15	16	16	16	16
No of results accepted (laboratories)	16	15	15	15	16	15
Mean value (mg/l)	0,4	0,2	2,5	1,4	3,4	4,8
Repeatability standard deviation, s_r (mg/l)	0,03	0,02	0,06	0,13	0,08	0,11
Repeatability relative standard deviation, RSD_r (%)	6,7	12,6	2,3	9,0	2,3	2,3
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,1	0,1	0,2	0,4	0,2	0,3
Reproducibility standard deviation, s_R (mg/l)	0,08	0,05	0,29	0,26	0,43	0,67
Reproducibility relative standard deviation, RSD_R (%)	19	29	11	18	13	14
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	0,2	0,1	0,8	0,7	1,2	1,9

8.12. Scopoletin

Analyte	Scopoletin					
Samples	Whisky	Brandy	Rum	Cognac 1	Bourbon	Cognac 2
No of laboratories participating	10	10	10	10	10	10
No of results accepted (laboratories)	9	8	9	8	8	8
Mean value (mg/l)	0,09	0,04	0,11	0,04	0,65	0,15
Repeatability standard deviation, s_r (mg/l)	0,0024	0,0008	0,0018	0,0014	0,0054	0,0040
Repeatability relative standard deviation, RSD_r (%)	2,6	2,2	1,6	3,3	0,8	2,7
Repeatability limit, r (mg/l) ($r = 2,8 \times s_r$)	0,007	0,002	0,005	0,004	0,015	0,011
Reproducibility standard deviation, s_R (mg/l)	0,01	0,01	0,03	0,01	0,09	0,02
Reproducibility relative standard deviation, RSD_R (%)	15	16	23	17	15	15
Reproducibility limit, R (g/l) ($R = 2,8 \times s_R$)	0,04	0,02	0,07	0,02	0,26	0,06

(1) "Protocol for the design, conduct and interpretation of method-performance studies", Horwitz, W. (1995) *Pure and Applied Chemistry*, 67, 332-343.

(2) Horwitz, W. (1982) *Analytical Chemistry*, 54, 67A-76A.'

COMMISSION IMPLEMENTING REGULATION (EU) 2016/636**of 22 April 2016****withdrawing the approval of the active substance Z,Z,Z,Z-7,13,16,19-docosatetraen-1-yl isobutyrate, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council, and amending Commission Implementing Regulation (EU) No 540/2011****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular the second alternative of Article 21(3) and Article 78(2) thereof,

Whereas:

- (1) Commission Directive 2008/127/EC ⁽²⁾ included Z,Z,Z,Z-7,13,16,19-docosatetraen-1-yl isobutyrate as active substance in Annex I to Council Directive 91/414/EEC ⁽³⁾. Commission Implementing Regulation (EU) 2015/308 ⁽⁴⁾ requested the notifier to submit confirmatory information on the specification of the technical material, as commercially manufactured, including information on any relevant impurities by 30 June 2015.
- (2) Active substances included in Annex I to Directive 91/414/EEC are deemed to have been approved under Regulation (EC) No 1107/2009 and are listed in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽⁵⁾.
- (3) The notifier did not submit the confirmatory information requested by the deadline of 30 June 2015. After being informed by the Commission on the consequence of the lack of submission, the applicant did not express intention to submit the required confirmatory information.
- (4) Consequently, it is appropriate to withdraw the approval of Z,Z,Z,Z-7,13,16,19-docosatetraen-1-yl isobutyrate.
- (5) The Annex to Implementing Regulation (EU) No 540/2011 should therefore be amended accordingly.
- (6) Member States should be provided with time to withdraw authorisations for plant protection products containing Z,Z,Z,Z-7,13,16,19-docosatetraen-1-yl isobutyrate.
- (7) For plant protection products containing Z,Z,Z,Z-7,13,16,19-docosatetraen-1-yl isobutyrate, where Member States grant any grace period in accordance with Article 46 of Regulation (EC) No 1107/2009, that period should, at the latest, expire 18 months after entry into force of this Regulation.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Commission Directive 2008/127/EC of 18 December 2008 amending Council Directive 91/414/EEC to include several active substances (OJ L 344, 20.12.2008, p. 89).

⁽³⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/308 of 26 February 2015 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance Z,Z,Z,Z-7,13,16,19-docosatetraen-1-yl isobutyrate (OJ L 56, 27.2.2015, p. 9).

⁽⁵⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Withdrawal of approval

The approval of the active substance Z,Z,Z,Z-7,13,16,19-docosatetraen-1-yl isobutyrate is withdrawn.

Article 2

Amendment to Implementing Regulation (EU) No 540/2011

In Part A of the Annex to Implementing Regulation (EU) No 540/2011, row 259, Z,Z,Z,Z-7,13,16,19-docosatetraen-1-yl isobutyrate, is deleted.

Article 3

Transitional measures

Member States shall withdraw authorisations for plant protection products containing Z,Z,Z,Z-7,13,16,19-docosatetraen-1-yl isobutyrate as active substance by 13 November 2016.

Article 4

Grace period

Any grace period granted by Member States in accordance with Article 46 of Regulation (EC) No 1107/2009 shall be as short as possible and shall expire on 13 November 2017 at the latest.

Article 5

Entry into force

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

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

Done at Brussels, 22 April 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION REGULATION (EU) 2016/637**of 22 April 2016****amending Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council as regards removal from the Union list of certain flavouring substances****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC ⁽¹⁾, and in particular Articles 11(3) and 25(3) thereof,

Having regard to Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings ⁽²⁾, and in particular Article 7(4) thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 1334/2008 lays down a Union list of flavourings and source materials approved for use in and on foods and their conditions of use.
- (2) Commission Implementing Regulation (EU) No 872/2012 ⁽³⁾ adopted the list of flavouring substances and introduced that list in Part A of Annex I to Regulation (EC) No 1334/2008.
- (3) That list may be updated in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1331/2008, either on the initiative of the Commission or following an application submitted by a Member State or by an interested party.
- (4) The Union list of flavourings and source materials contains a number of substances for which the European Food Safety Authority ('Authority') has requested additional scientific data to be provided for completion of the evaluation before specific deadlines established in Part A of Annex I to Regulation (EC) No 1334/2008.
- (5) In case of the following four substances belonging to chemical subgroup 2.2 of FGE.19: 2,6,6-trimethyl-1-cyclohexen-1-carboxaldehyde (FL No 05.121), myrtenyl formate (FL No 09.272), myrtenyl-2-methylbutyrate (FL No 09.899), and myrtenyl-3-methylbutyrate (FL No 09.900), the deadline of 31 December 2012 was established in the Union list for the submission of requested additional scientific data. Such data has been submitted by the applicant.
- (6) This chemical group includes also the substance *p*-mentha-1,8-dien-7-al (FL No 05.117) which was used as representative substance for the group and for which the toxicity data were submitted.

⁽¹⁾ OJ L 354, 31.12.2008, p. 34.

⁽²⁾ OJ L 354, 31.12.2008, p. 1.

⁽³⁾ Commission Implementing Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances provided for by Regulation (EC) No 2232/96 of the European Parliament and of the Council, introducing it in Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council and repealing Commission Regulation (EC) No 1565/2000 and Commission Decision 1999/217/EC (OJ L 267, 2.10.2012, p. 1).

- (7) The Authority has evaluated the submitted data and concluded in its scientific opinion of 24 June 2015 ⁽¹⁾ that the substance *p*-mentha-1,8-dien-7-al (FL No 05.117) is genotoxic *in vivo* and therefore its use as a flavouring substance raises a safety concern. That substance has already been removed from the Union list by Commission Regulation (EU) 2015/1760 ⁽²⁾.
- (8) In that opinion, the Authority also concluded that since *p*-mentha-1,8-dien-7-al (FL No 05.117) is representative for the substances in this group, there is a potential safety concern for such substances.
- (9) Therefore, 2,6,6-trimethyl-1-cyclohexen-1-carboxaldehyde (FL No 05.121), myrtenyl formate (FL No 09.272), myrtenyl-2-methylbutyrate (FL No 09.899), and myrtenyl-3-methylbutyrate (FL No 09.900) should be removed from the Union list.
- (10) Taking into account technical reasons, transitional periods should be laid down to cover food to which one of the four flavouring substances has been added, which has been placed on the market or dispatched from third countries for the Union, before the date of entry into force of this Regulation.
- (11) Part A of Annex I to Regulation (EC) No 1334/2008 should therefore be amended accordingly.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Part A of Annex I to Regulation (EC) No 1334/2008 is amended in accordance with the Annex to this Regulation.

Article 2

1. Foods to which one of the flavouring substances listed in the Annex to this Regulation has been added and were lawfully placed on the market before the date of entry into force of this Regulation, excluding mixtures of flavourings, may be marketed until their date of minimum durability or use by date.
2. Foods imported into the Union to which one of the flavouring substances listed in the Annex to this Regulation has been added, excluding mixtures of flavourings, may be marketed until their date of minimum durability or use by date where the importer of such food can demonstrate that they were dispatched from the third country concerned and were en route to the Union before the date of entry into force of this Regulation.

Article 3

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

⁽¹⁾ Scientific Opinion on Flavouring Group Evaluation 208 Revision 1 (FGE.208Rev1): Consideration of genotoxicity data on representatives for 10 alicyclic aldehydes with the α,β -unsaturation in ring/side-chain and precursors from chemical subgroup 2.2 of FGE.19. *EFSA Journal* 2015;13(7):4173, 28 pp. doi:10.2903/j.efsa.2015.4173 Available online: www.efsa.europa.eu/efsajournal

⁽²⁾ Commission Regulation (EU) 2015/1760 of 1 October 2015 amending Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council as regards removal from the Union list of the flavouring substance *p*-mentha-1,8-dien-7-al (OJ L 257, 2.10.2015, p. 27).

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

Done at Brussels, 22 April 2016.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

In Part A of Annex I to Regulation (EC) No 1334/2008, the following entries are deleted:

05.121	2,6,6-Trimethyl-1-cyclohexen-1-carboxaldehyde	432-25-7	979	2133			2	EFSA
09.272	Myrtenyl formate	72928-52-0	983	10858			2	EFSA
09.899	Myrtenyl-2-methylbutyrate	138530-44-6					2	EFSA
09.900	Myrtenyl-3-methylbutyrate	33900-84-4					2	EFSA

COMMISSION IMPLEMENTING REGULATION (EU) 2016/638**of 22 April 2016****withdrawing the approval of the active substance Z-13-hexadecen-11-yn-1-yl acetate, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council, and amending Commission Implementing Regulation (EU) No 540/2011****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular the second alternative of Article 21(3) and Article 78(2) thereof,

Whereas:

- (1) Commission Directive 2008/127/EC ⁽²⁾ included Z-13-hexadecen-11-yn-1-yl acetate as active substance in Annex I to Council Directive 91/414/EEC ⁽³⁾. Commission Implementing Regulation (EU) 2015/418 ⁽⁴⁾ requested the notifier to submit confirmatory information on the specification of the technical material, as commercially manufactured including information on any relevant impurities by 30 June 2015.
- (2) Active substances included in Annex I to Directive 91/414/EEC are deemed to have been approved under Regulation (EC) No 1107/2009 and are listed in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽⁵⁾.
- (3) The notifier did not submit the confirmatory information requested by the deadline of 30 June 2015. By email of 10 September 2015 it confirmed to the Commission its intention not to submit such information.
- (4) Consequently, it is appropriate to withdraw the approval of Z-13-hexadecen-11-yn-1-yl acetate.
- (5) The Annex to Implementing Regulation (EU) No 540/2011 should therefore be amended accordingly.
- (6) Member States should be provided with time to withdraw authorisations for plant protection products containing Z-13-hexadecen-11-yn-1-yl acetate.
- (7) For plant protection products containing Z-13-hexadecen-11-yn-1-yl acetate, where Member States grant any grace period in accordance with Article 46 of Regulation (EC) No 1107/2009, that period should, at the latest, expire 18 months after entry into force of this Regulation.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Commission Directive 2008/127/EC of 18 December 2008 amending Council Directive 91/414/EEC to include several active substances (OJ L 344, 20.12.2008, p. 89).

⁽³⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/418 of 12 March 2015 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance Z-13-hexadecen-11-yn-1-yl acetate (OJ L 68, 13.3.2015, p. 36).

⁽⁵⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Withdrawal of approval

The approval of the active substance Z-13-hexadecen-11-yn-1-yl acetate is withdrawn.

Article 2

Amendment to Implementing Regulation (EU) No 540/2011

In Part A of the Annex to Implementing Regulation (EU) No 540/2011, row 258, Z-13-hexadecen-11-yn-1-yl acetate, is deleted.

Article 3

Transitional measures

Member States shall withdraw authorisations for plant protection products containing Z-13-hexadecen-11-yn-1-yl acetate as active substance by 13 November 2016.

Article 4

Grace period

Any grace period granted by Member States in accordance with Article 46 of Regulation (EC) No 1107/2009 shall be as short as possible and shall expire on 13 November 2017 at the latest.

Article 5

Entry into force

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

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

Done at Brussels, 22 April 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/639**of 22 April 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 22 April 2016.

*For the Commission,
On behalf of the President,
Jerzy PLEWA*

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	275,5
	MA	97,8
	TR	108,9
	ZZ	160,7
0707 00 05	MA	81,5
	TR	107,2
	ZZ	94,4
0709 93 10	MA	99,6
	TR	128,0
	ZZ	113,8
0805 10 20	CR	66,6
	EG	50,0
	IL	79,4
	MA	60,7
	TR	39,9
	ZZ	59,3
	ZZ	59,3
0805 50 10	MA	132,7
	ZZ	132,7
0808 10 80	AR	86,1
	BR	101,0
	CL	115,8
	CN	90,8
	NZ	159,8
	US	177,1
	ZA	85,2
	ZZ	116,5
	ZZ	116,5
	ZZ	116,5
0808 30 90	AR	128,4
	CL	110,9
	CN	90,6
	ZA	109,5
	ZZ	109,9

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION (EU, Euratom) 2016/640
of 21 April 2016
appointing five members of the Court of Auditors

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 286(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposals by the Czech Republic, the Republic of Latvia, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,

Having regard to the opinions of the European Parliament ⁽¹⁾,

Whereas:

- (1) The terms of office of Mr Jan KINŠT, Mr Igors LUDBORŽS, Mr Augustyn KUBIK, Mr Milan Martin CVIKL and Mr Ladislav BALKO are due to expire on 6 May 2016.
- (2) New appointments should therefore be made,

HAS ADOPTED THIS DECISION:

Article 1

The following are hereby appointed members of the Court of Auditors for the period from 7 May 2016 to 6 May 2022:

- Mr Jan GREGOR,
- Mr Mihails KOZLOVS,
- Mr Janusz WOJCIECHOWSKI,
- Mr Samo JEREB,
- Mr Ladislav BALKO.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 21 April 2016.

For the Council
The President
G.A. VAN DER STEUR

⁽¹⁾ Opinions of 13 April 2016 (not yet published in the Official Journal).

COUNCIL DECISION (EU, Euratom) 2016/641**of 21 April 2016****appointing a member, proposed by the Federal Republic of Germany, of the European Economic and Social Committee**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 302 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal of the German Government,

Having regard to the opinion of the European Commission,

Whereas:

- (1) On 18 September 2015 and 1 October 2015, the Council adopted Decisions (EU, Euratom) 2015/1600 ⁽¹⁾ and 2015/1790 ⁽²⁾ appointing the members of the European Economic and Social Committee for the period from 21 September 2015 to 20 September 2020.
- (2) A member's seat on the European Economic and Social Committee has become vacant following the end of the term of office of Mr Egbert BIERMANN,

HAS ADOPTED THIS DECISION:

Article 1

Herr Dr Norbert KLUGE, *Leiter der Abteilung Mitbestimmungsförderung der Hans-Böckler-Stiftung*, is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2020.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 21 April 2016.

For the Council
The President
G.A. VAN DER STEUR

⁽¹⁾ Council Decision (EU, Euratom) 2015/1600 of 18 September 2015 appointing the members of the European Economic and Social Committee for the period from 21 September 2015 to 20 September 2020 (OJ L 248, 24.9.2015, p. 53).

⁽²⁾ Council Decision (EU, Euratom) 2015/1790 of 1 October 2015 appointing the members of the European Economic and Social Committee for the period from 21 September 2015 to 20 September 2020 (OJ L 260, 7.10.2015, p. 23).

COUNCIL DECISION (EU) 2016/642**of 21 April 2016****appointing a member and an alternate member, proposed by Romania, of the Committee of the Regions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Romanian Government,

Whereas:

- (1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 ⁽¹⁾, (EU) 2015/190 ⁽²⁾ and (EU) 2015/994 ⁽³⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020.
- (2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Mihai STEPANESCU.
- (3) An alternate member's seat has become vacant following the appointment of Mr Robert Sorin NEGOIȚĂ as member of the Committee of the Regions,

HAS ADOPTED THIS DECISION:

Article 1

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

(a) as a member:

— Mr Robert Sorin NEGOIȚĂ, *primarul sectorului 3 al municipiului București*;
and

(b) as an alternate member:

— Mr Ovidiu Iulian PORTARIUC, *primarul municipiului Botoșani, județul Botoșani*.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 21 April 2016.

For the Council
The President
G.A. VAN DER STEUR

⁽¹⁾ Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).

⁽²⁾ Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).

⁽³⁾ Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

COUNCIL DECISION (EU) 2016/643**of 21 April 2016****appointing a member, proposed by the Italian Republic of the Committee of the Regions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Italian Government,

Whereas:

- (1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 ⁽¹⁾, (EU) 2015/190 ⁽²⁾ and (EU) 2015/994 ⁽³⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020.
- (2) A member's seat on the Committee of the Regions has become vacant following the end of the mandate on the basis of which Mr Mauro D'ATTIS (*Consigliere comunale di Brindisi*) was proposed,

HAS ADOPTED THIS DECISION:

Article 1

The following is hereby appointed as a member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

— Sig. Mauro D'ATTIS, *Assessore del Comune di Roccafronza (ME)* (change of mandate).

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 21 April 2016.

For the Council

The President

G.A. VAN DER STEUR

⁽¹⁾ Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).

⁽²⁾ Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).

⁽³⁾ Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

COMMISSION DECISION (EU) 2016/644**of 16 January 2015****on the State aid No SA 31855 (11/C, ex N 503/10) which Cyprus is planning to grant for the restructuring of the Central Slaughterhouse of Kofinos***(notified under document C(2015) 58)***(Only the Greek text is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above ⁽¹⁾, and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) On 6 May 2010, the Commission approved a rescue aid for the Central Slaughterhouse of Kofinos ('CSK') in the form of a state guarantee backing a EUR 1,6 million loan ⁽²⁾.
- (2) By letter of 3 November 2010, Cyprus notified according to Article 108(3) of the TFEU a restructuring plan for CSK.
- (3) By letter of 7 December 2010, the Commission asked for supplementary information which the Cypriot authorities provided on 10 January 2011. On 20 January 2011 the Commission received a complaint from the company Cypra Ltd ('Cypra'), a competitor of CSK.
- (4) On 7 February 2011, the Commission addressed a letter to Cyprus, inviting it to provide its comments on the complainant's allegations, and requesting additional information on the restructuring plan. Cyprus provided its comments on 4 March 2011.
- (5) On 16 February 2011, the Commission addressed a request for additional information to the complainant. Cypra responded on 2 March 2011.
- (6) By letter dated 26 April 2011, the Commission informed Cyprus that it had decided on 20 April 2011 to initiate the procedure laid down in Article 108(2) TFEU in respect of the restructuring aid. It also informed Cyprus that it had decided to investigate a number of aids allegedly granted to the beneficiary. Those aids were: (i) the continuous state tolerance for delays in the payment of amounts due; (ii) the loan of EUR 512 850 by the Municipalities Union; (iii) the alleged aid in connection with government-backed bonds; and (iv) the takeover of existing employees and the relating pension liabilities by the municipalities.
- (7) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments on the aid.
- (8) By letter of 25 May 2011, the Cypriot authorities asked for a delay extension of one month for the submission of their comments. This delay extension was granted by a letter from the Commission dated 7 June 2011.

⁽¹⁾ OJ C 165, 7.6.2011, p. 12.

⁽²⁾ Commission Decision of 6 May 2010 in State aid N 60/10 (OJ C 233, 28.8.2010, p. 2).

⁽³⁾ See footnote 1.

- (9) The Cypriot authorities submitted their comments on the Commission's decision by letter dated 24 June 2011.
- (10) The Commission also received comments from interested parties, namely Cypra, A&A Sfagia Ltd, the Cyprus Pig Farmers Association and a fourth interested party that asked for confidential treatment of its submission. The Commission forwarded the comments received from interested parties to the Cypriot authorities giving them the opportunity to react; Cyprus submitted comments by letter dated 8 November 2011.
- (11) By letter dated 1 March 2012, the Commission asked for supplementary information which the Cypriot authorities provided by letter dated 30 March 2012.
- (12) By letter of 24 October 2012, the Commission asked for further clarifications and updated information. The Cypriot authorities submitted a reply on 26 November 2012.
- (13) On 14 May 2013, the Cypriot authorities submitted further information and clarifications.

II. DETAILED DESCRIPTION OF THE AID

II.1. TITLE

- (14) The notification concerned the restructuring aid to CSK. However, the subject matter of the Commission's investigation was extended to also include other aids allegedly granted to the beneficiary.

II.2. DURATION AND BUDGET

- (15) According to the Cypriot authorities, the restructuring aid would only be granted to the beneficiary upon its approval by the Commission. The initial aid amount as notified in November 2010 was EUR 15 million. However, in their submission of 14 May 2013 the Cypriot authorities indicated an aid amount of EUR 17,8 million, in view of the increased restructuring costs.

II.3. BENEFICIARY

- (16) The beneficiary of this aid is CSK. CSK was established in 1981 as a state-owned public utility company, aiming at serving the needs of certain municipalities of Lefkosia, Lemesos and Larnaka Districts. In 2003, the relevant regulatory regime was liberalised through the adoption of Law 26(I) of 2003 ⁽⁴⁾. That law regulates the structure, organisation and functions of central slaughterhouses, such as CSK. According to the same law, the movable and immovable property of such organisations cannot be the subject of normal enforcement or seizure proceedings, nor of any other procedure following an action against them. In 2010 (i.e. at the time of notification of the restructuring aid) CSK had a market share of approximately 30,7 % in the Cypriot market ⁽⁵⁾. As of November 2012 the share had decreased to some 26,5 %. The Cypriot authorities have confirmed that CSK operates in an assisted area for regional aid purposes under the derogation of Article 107(3)(c) of the TFEU.
- (17) Under Cypriot law, only private-law companies can be subject to bankruptcy proceedings, as the relevant provisions of company law only apply to private-law companies. As a consequence, it would appear that state-owned public utility companies cannot be subject to bankruptcy proceedings.
- (18) According to the financial statements submitted, at the end of 2009 CSK had short-term liabilities of some EUR 19,4 million and had accumulated losses of some EUR 28,6 million. By the end of 2012, the short term liabilities exceeded EUR 30 million and the accumulated losses had increased to almost EUR 40 million.

⁽⁴⁾ Official Gazette Annex I(I), No 3679, 31 January 2003.

⁽⁵⁾ Calculated as livestock units within the meaning of Article 4(A) of Council Directive 64/433/EEC of 26 June 1964 on health conditions for the production and marketing of fresh meat (OJ L21, 29.7.1964, p. 1977/64).

- (19) At the time of the restructuring notification CSK had 110 employees, of whom 22 were employees with a civil servant status, whereas the remaining were day-labourers. The turnover of the company for the year 2009 was approximately EUR 5 million. The turnover had dropped to some EUR 3,6 million in 2012. Despite its low turnover, the company cannot be regarded as an SME pursuant to the Commission's recommendation concerning the definition of micro, small and medium-sized enterprises ⁽⁶⁾ because more than 25 % of its voting rights (within the meaning of Article 3(4) of the Annex to that recommendation) is controlled by a public body. CSK is entirely state-owned, and all the members of its Board of Directors are appointed by the participating local authorities.
- (20) As explained in the Commission Decision of 6 May 2010 relating to the rescue aid to CSK (Case No N 60/10), CSK received rescue aid because it could no longer function under its current form. The Cypriot authorities have indicated as the main reason that led CSK to its financial situation the fact that, unlike its main competitors, CSK was a state-owned public utility company. This resulted in inflexibility (as regards decision-making and personnel relations), as well as high labour costs and lack of company culture. This, given the liberalisation of the market and the entry of new privately-owned slaughterhouses into the market, led to the erosion of CSK's market shares and the subsequent accumulation of debts.
- (21) The Commission acknowledged in its Decision in Case No N 60/10 that CSK was a firm in difficulty. The annual accounts of the company for the years 2006-2009 confirmed this finding. They showed that the company's income could not cover current expenditures, mainly due to high labour costs. As a result, the company could not pay back loan instalments and other liabilities. CSK showed the following signs of a firm in difficulty: increasing losses, diminishing turnover, increasing excess capacity, declining cash flow, increasing debt and decreasing net asset value. The Commission also found in its Decision of 6 May 2010 that CSK could not recover through its own resources, since its funds and assets were rapidly declining and that it could not obtain funds from market sources.
- (22) The negative trend in the economic development of CSK has continued since. Turnover plummeted to some EUR 3,6 million in 2012 when accumulated losses, and at the same time negative equity, amounted to almost EUR 40 million.
- (23) By 31 December 2011, CSK had accumulated overdue debt towards the Cypriot Loan Commissioner of some EUR 11 million, overdue payments towards social security and tax authorities of some EUR 8,7 million and veterinary expenses of some EUR 1,3 million.

II.4. LEGAL BASIS

- (24) The legal basis of the restructuring aid is Decision No 71.196 dated 2 November 2010 adopted by the Ministerial Council of Cyprus.

II.5. DESCRIPTION OF THE MEASURE

- (25) The initially notified restructuring aid that was to be granted to the beneficiary amounted to EUR 15 million. This corresponded to 55,6 % of the total cost of restructuring of EUR 26,85 million. The remaining 44,4 % was to be financed through contributions by CSK itself (cf. recital 26 below). However, in their submission of 14 May 2013, the Cypriot authorities indicated that the restructuring costs had meanwhile increased and that, consequently, the amount of the restructuring aid would also be increased to EUR 17,772 million. The breakdown of the restructuring costs according to the Cypriot authorities is as follows:

Restructuring Measure	Cost as of November 2010 (EUR million)	Cost as of May 2013 (EUR million)
Personnel Compensation	3,5	3,340
Payment of debts towards Social Security Organisms	4,891	6,140

⁽⁶⁾ OJ L 124, 20.5.2003, p. 36.

Restructuring Measure	Cost as of November 2010 (EUR million)	Cost as of May 2013 (EUR million)
Payment of debts towards Section of Internal Income	2,361	3,646
Personnel Pension Payments and other one-off payments to staff	4,9	3,340
Loan Repayments	11,1	13,306
Consultancy Services	0,1	
Total	26,852	29,772

- (26) According to the Cypriot authorities CSK intended to finance its own contribution by the contraction of a new loan of EUR 5 million and by the sale of property amounting to EUR 7 million. The beneficiary's own contribution of EUR 12 million would therefore correspond to 40,3 % of the total updated restructuring costs. The Cypriot authorities have submitted a valuation of the immovable property of CSK of April 2013 that estimates the value of the slaughterhouse's immovable assets (land, buildings and lease) at some EUR 8,2 million. However, as regards the contraction of a new loan the Cypriot authorities indicated in their submission of 14 May 2013 that under the current economic environment obtaining such a loan must be considered doubtful.

II.6. RESTRUCTURING PLAN

- (27) The restructuring plan had been prepared in October 2010 and sent to the Commission as part of the notification submitted on 3 November 2010. The reply Cyprus provided on 26 November 2012 included an update as regards relevant financial projections and market data. The original restructuring plan includes the following sections:

II.6.1. Market analysis

- (28) This section of the restructuring plan begins by explaining the functioning of slaughterhouses in Cyprus. Private slaughterhouses were permitted as of 2003, in view of the imminent entry of Cyprus into the European Union.
- (29) The plan goes on presenting the meat production market (production per meat type — pork, beef and ovine/caprine, prices, quality, employment, imports/exports, competitors) as well as the meat consumption in Cyprus (consumption per capita, consumption of imported products, consumption per selling points — supermarkets/butcheries/Horeca/prepared meat products industries, branding, meat quality). The plan further provides estimates on the future prospects for supply and demand on the markets concerned.
- (30) Concerning the slaughter market, there are five companies active in Cyprus. The market share of the beneficiary according to the plan was around 31 % in 2010. If the market is broken down by meat category, the market shares were as follows for 2009 and the first eight months of 2010:

Animal Type	Sheep/goats		Cattle		Swine		Total (!)	
	2009	2010	2009	2010	2009	2010	2009	2010
Cypra Ltd	20,39	22,37	—	—	63,34	70,40	50,79	56,79
Kofinou Central Slaughterhouse	34,24	30,53	100	100	27,26	21,96	34,84	30,72

(%)

(%)

Animal Type	Sheep/goats		Cattle		Swine		Total (1)	
	2009	2010	2009	2010	2009	2010	2009	2010
Agioi Trimithias	18,97	17,15	—	—	4,74	2,46	6,71	4,26
A&A Slaughterhouses Ltd	14,52	18,37	—	—	4,66	5,18	5,87	6,62
Polis Chrysochous Municipal Slaughterhouse	11,89	11,58	—	—	—	—	1,73	1,61

(1) Calculated as livestock units, Article 4(A) of Directive 64/433/EEC.

Source: Veterinary Department, Ministry of Agriculture, Natural Resources and Environment.

- (31) From the information submitted by the Cypriot authorities on 26 November 2012 it emerges that CSK's total market share has further dropped to 29,3 % in 2011 and to 26,5 % in 2012. It also lost its monopoly of cattle slaughtering, following the market entry of Cypra, but still held over 92 % of market share in this segment. Overall, the Cypriot market for animal slaughter shows a general downward trend with a stagnation in 2010, a contraction of 2 % in 2011 and a further contraction of 3,8 % in 2012.
- (32) At the end of 2012, the five slaughterhouses active on the Cypriot market had the following daily slaughter capacity:

No	Name of slaughterhouse	Daily slaughter capacity		
		Cattle	Swine	Sheep/goats
1	Kofinou Central Slaughterhouse	200	3 040	960
2	Cypra Ltd	104	1 920	1 200
3	A + A Slaughterhouses Ltd	—	1 200	880
4	Agioi Trimithias	—	700	700
5	Polis Chrysochous Municipal Slaughterhouse	—	—	500

- (33) The figures provided show indeed the considerable fall of CSK's market share in the last few years. Back in 2005, CSK's overall market share was still as high as 68 %. This figure had dropped to 41 % in 2008 and to 26,5 % in 2012. This development is largely due to the liberalisation of the market in 2003 and the subsequent entry of privately owned undertakings.
- (34) Concerning cattle slaughter, the restructuring plan was based on the assumption that at least two current competitors (Cypra and Ayioi Trimithias) intended to enter into the market. Further, it is argued that another company (Pan-Cypriot Organisation of Cattle Breeders) intends to enter the market. That organisation controls 75 % of the cattle production market in Cyprus. Cypra eventually entered this segment in 2012 and also acknowledges that Agioi Trimithias and the Pan-Cypriot Organisation of Cattle Breeders are also planning to enter the market for cattle slaughter.

II.6.2. Presentation of the Beneficiary

- (35) CSK was created by Ministerial Decree as a Public Service organisation, aiming at serving several municipalities, including the major cities in Cyprus that had to maintain slaughterhouse facilities. The Board of Directors is composed of 15 members (6 mayors, 5 municipal counsellors and 4 representatives by the Community Union).

- (36) As explained before, the competitive position of the company has begun to deteriorate as of the liberalisation of the market in 2003. According to the Cypriot authorities, the main factors that have contributed to its situation include the following:
- (a) functioning of the company and composition of its Board of Directors (municipal officials that have other priorities and therefore do not necessarily focus on the company's problems);
 - (b) initial equity base;
 - (c) liberalisation of the market, without a strategic plan to face relevant challenges;
 - (d) heavy labour costs (superfluous personnel, lack of motivation, low productivity, lack of flexibility in terminating contracts, no service-oriented culture, etc.);
 - (e) low productivity.
- (37) The management of the company tried to tackle some of these problems, with some positive results. However, the fall of the company's market shares resulted in increasing losses over the years.
- (38) The plan provides a SWOT analysis (strengths — weaknesses — opportunities and threats) for CSK. It is argued that its strengths include a significant production capacity, know-how and tradition and compliance with EU regulations. The weaknesses include high production costs, dependence on a single activity, lack of service-oriented culture and loss of customers' trust as regards slaughter schedules. Further, the company lacks flexibility as regards its functioning, as well as employment. If the company was functioning as a private company, with a participation of private investors, then the relevant decisions would be adopted by the Board of Directors and its general assembly. Finally, the employees of the company have a civil servant status, which makes their dismissal extremely difficult and costly.
- (39) The threats include the entry of new players into the market, the expected increase in imports of meat from other EU Member States, due to lower prices and better quality of imported products, which would lead to a reduction in slaughters in Cyprus, the fall of animal-breeding activities in Cyprus and the high production costs. As opportunities, the plan recognises the possibility to lease production lines to third companies, the improvement of the company's financial situation through the sale of real estate, as well as the collaboration with big players in the market.

II.6.3. Restructuring measures

- (40) The total cost for the restructuring of the company amounted initially to approximately EUR 27 million. 55,6 % of that amount would have been provided by the state, whereas the company's participation would have represented the remaining 44,4 % (EUR 12 million). However, as explained in recital 25 above, the Cypriot authorities indicated in their submission of 14 May 2013 that the restructuring costs had meanwhile increased to some EUR 29,8 million while CSK's contribution will stay the same.
- (41) CSK's own contribution will be collected from (i) the sale of immovable property (EUR 7 million), which, according to the Cypriot authorities, would be devoid of a State aid element, since the price will be calculated at the market value by an independent valuator; and (ii) the contraction of a new loan agreement (EUR 5 million). The Cypriot authorities however also acknowledged in their submission of 14 May 2013 that under the current economic environment obtaining such a loan must be considered doubtful.
- (42) The plan foresees the following restructuring measures:

II.6.3.1. Flexibility — Change of legal status

- (43) For the improvement of its flexibility in all fields, the restructuring plan proposes the transformation of CSK into a company under private law. It is expected that this will improve the company's flexibility as regards its decision-making. This should also stimulate interest by private investors, who could enter into the shareholding of the company. Finally, the change in the employees' status will make hiring and laying-off of staff easier.

II.6.3.2. *Reduction of the company's liabilities*

- (44) The restructuring plan foresees the full payment of the company's debts to the Social Securities Fund (EUR 6,14 million as of end 2012) and to the Section for Internal Income (EUR 3,646 million as of end 2012). Further, the company will pay off mature debts amounting to EUR 13,306 million (including the already approved rescue loan of EUR 1,6 million). The overall cost of this measure is calculated at approximately EUR 23,1 million. Furthermore, the Cypriot authorities confirmed in their submission of 14 May 2013 that outstanding liabilities towards the Veterinary Service will be paid off gradually after the restructuring.

II.6.3.3. *Personnel*

- (45) The plan foresees the migration of all employees with civil servants status to municipalities and the laying-off of the remaining personnel. The company under its new status will then replace its personnel with new employees. New employees will be engaged under new salary conditions and pension schemes. The company will also have recourse to outsourcing services whenever needed. It is foreseen that following the restructuring of the company, the personnel will be comprised by only 9 management posts and 67 employees/workers. The cost of all the relevant measures for CSK will amount to EUR 6,68 million, broken down between costs for personnel compensation (EUR 3,34 million) and payment of pension rights (EUR 3,34 million). It is foreseen that once the plan is put into effect, the salary costs will be drastically reduced.

II.6.4. **Compensatory measures**

- (46) The plan proposes the following compensatory measures:
- commitment by CSK not to extend its activities to other associated markets (meat trade, creation of facilities for meat slicing) for a period of three years,
 - commitment by CSK not to upgrade its technology for the slaughter of pigs, with the purchase of a line for the stunning of pigs with the use of carbon dioxide, for a period of three years,
 - commitment by CSK, for a period of three years, not to have recourse to aggressive actions for increasing its market shares to the levels above the ones that it held in 2009. As aggressive actions the Cypriot authorities have identified the following: (i) active advertisement campaigns; (ii) aggressive price reductions; (iii) technological upgrades in order to improve quality; and (iv) takeover of competitors.
- (47) According to the Cypriot authorities it would not be possible for CSK to reduce its capacity. The reason is that CSK has only one production line for every animal type. The Cypriot authorities argue that divesting relevant machines in order to reduce the capacity would be tantamount to CSK exiting the relevant market segment.

II.7. STANDSTILL OBLIGATION

- (48) According to the Cypriot authorities, the restructuring aid can only be granted after its approval by the Commission.

II.8. ANNUAL REPORTS

- (49) The Cypriot authorities have committed to submit regular detailed reports on the implementation of the restructuring plan.

III. COMPLAINT

- (50) On 20 January 2011, Cypra, a competitor of CSK submitted a complaint. Cypra is a privately owned company that began operating in the Cypriot slaughter market in 2006. At the time of launching the complaint, Cypra had the largest market share in the pig slaughter market (71 %), as well as in the overall Cypriot slaughter market (57 %).

- (51) The complaint alleged that the beneficiary has in the recent past benefited from numerous aids. More specifically, it is argued that CSK has received the following aids:
- (a) aid in the form of continuous state tolerance for delays in the payment of amounts due of approximately EUR 29 million such as tax and social security liabilities, loans granted by the Loan Commissioners, relevant interests as well as amounts representing slaughter fees. In support of its claim, the complainant submitted a reasoned opinion issued by the Cypriot State aid Commissioner on 9 July 2007, published in the Official Gazette of the Cypriot Republic on 20 July 2007. The opinion acknowledges indeed that the Cypriot authorities, by omitting to take all necessary steps in order to collect CSK's debts, are in reality granting State aid;
 - (b) change of the housing and planning zone of CSK's plot from agriculture to industrial zone in March 2007;
 - (c) the grant of a loan amounting to EUR 512 850 by the Municipalities Union implemented in December 2007;
 - (d) the rescue aid of EUR 1,6 million approved by the European Commission in May 2010, which according to the complainant would not have been approved had Cyprus not failed to disclose material facts, most notably the previous granting of State aid.
- (52) The complaint concludes that the grant of the restructuring aid will distort competition, since the beneficiary has constantly enjoyed in the past years aids granted by the Cypriot state.
- (53) The Commission considered that the change of the housing and planning zone of CSK's plot did not seem to involve the transfer of state resources, while the rescue aid had already been the subject of the Commission's scrutiny. The Commission offered therefore to the Cypriot authorities the opportunity to provide their comments on the allegations about the grant of the aids referred to under recital 51(a) and (c) above.
- (54) The Cypriot authorities, in their reply of 4 March 2011, did not provide adequate information showing that the continuous tolerance for delays in the payment of amounts due does not constitute State aid. Concerning the EUR 512 850 loan, the Cypriot authorities indicated that following a negative opinion by the Cypriot State aid Commissioner, CSK paid back the loan to the Municipalities Union with interest, through the transfer of land ownership.

IV. COMMISSION DECISION OF 20 APRIL 2011

- (55) By the Decision of 20 April 2011, the Commission decided to initiate the procedure laid down in Article 108(2) of the TFEU. More specifically, it concluded that as regards the restructuring aid, all conditions of Article 107(1) are, *prima facie*, fulfilled. It was also found that there were indications that other aid might have been granted in the form of: (i) the continuous state tolerance for delays in the payment of amounts due; (ii) the loan of EUR 512 850 by the Municipalities Union; (iii) the alleged aid in connection with government-backed bonds; and (iv) the takeover of existing employees and the relating pension liabilities by the municipalities.

IV.1. COMMENTS FROM CYPRUS TO COMMISSION DECISION OF 20 APRIL 2011

- (56) The Cypriot authorities provided their comments on the Commission Decision of 20 April 2011 by letter dated 24 June 2011. The arguments of the Cypriot authorities are presented in the following points.

IV.1.1. State tolerance for delays in the payment of amounts due

- (57) In their reply, the Cypriot authorities argue that several public authorities, such as the Internal Income Department and the Social Security Department, have in the past obtained court rulings ordering CSK to pay back its debts to the relevant authorities. However, on the basis of Article 18 of Law 26(I) of 2003, the movable and immovable property of public slaughterhouses cannot be the subject of normal enforcement or seizure proceedings, nor of any other procedure following an action against them. Therefore, under the current regulatory regime, the court orders issued against CSK cannot be enforced.

- (58) It is further argued that given the inability to enforce court decisions against CSK and given the ongoing restructuring process, no further measures will be undertaken by the authorities until the conclusion of the restructuring process. It is also noted that any different course of action for the collection of the debts in question would not result in the recovery of any amounts. The Cypriot authorities conclude that their decision to grant the restructuring aid to CSK constitutes a proof of the government's intention to settle CSK's debts to government departments.

IV.1.2. Grant of a loan of EUR 512 850 by the Municipalities Union

- (59) The Cypriot authorities acknowledge that the Municipalities Union granted a loan of EUR 512 850 to CSK in December 2007. Following the submission of a complaint, the Cypriot State aid Commissioner ruled that the grant of this sum should be considered as illegal operating aid which has been granted without prior notification to the European Commission. The Cypriot authorities add that CSK paid back this amount on 15 January 2010 to the Municipalities Union with interest, through the transfer of land ownership of a value of EUR 580 000. The valuation of the land was effected by the Department of Land Register and Surveying, which is considered the official valuator of the state. The Cypriot authorities argue that the interest of EUR 67 150 corresponds to an annual interest rate of 6,12 %, if the annual capitalisation is also taken into account. According to the Cypriot authorities, this interest rate is not lower than the market interest rates with immovable collateral during the period in question.

IV.1.3. Alleged new aid in connection with state-backed bonds

- (60) The Cypriot authorities reiterate that the bonds in question were issued in 1985 with a guarantee of the state and they were re-issued in 1992 and 1999 on the basis of a Law approved by the Parliament. On 9 July 2007, the Regional Court of Lefkosia ordered the payment of the debt by the state as the guarantor to one of the bond owners. Following this Court decision, the government had to repay the relevant sums, including interest. The state did not have any counter-claims against the CSK, and for that reason, no cancelling of claims took place.

IV.1.4. Transfer of personnel to municipalities

- (61) Concerning the transfer of personnel to the municipalities, the Cypriot authorities argue that this concerned only 19 employees. The pension benefits for these people have already been taken into account in the restructuring costs, and would amount according to the restructuring plan to EUR 1,4 million. 13 municipalities agreed to hire 15 out of the 19 permanent members of CSK's staff, covering this way their own needs in personnel. Following this understanding, the Ministry of Interior and the Ministry of Finance would not authorise the creation of new or additional jobs in the municipalities involved.
- (62) Following the above, it was agreed that every permanent employee of the CSK would be transferred under the same position and under the same salary as the one previously held in CSK. For this reason, it has been agreed that the municipalities that will take over CSK's former employees will pay the part of the salary that corresponds to the initial salary scale of a newly hired employee, and the state would pay the salary difference. The amounts paid by the state would concern the period from the transfer until the end of each employee's career. This sum for the 15 employees of CSK has been estimated at approximately EUR 3,4 million. According to the Cypriot authorities, this sum does not concern expenditure that should have been borne by the CSK, and for this reason it is not included in the restructuring costs. This is a standard practice in similar circumstances. The Cypriot authorities conclude that for this reason the measure does not have a selective character and therefore does not fulfil one of the conditions for the existence of State aid. However, the Cypriot authorities argue that even if it should be considered as State aid, it constitutes aid of social character going beyond the interests of the beneficiary. For such aids, the Guidelines state that the Commission takes a positive approach.

IV.1.5. Efficiency of restructuring plan measures

- (63) Concerning the prediction of the restructuring plan for an increase of the slaughterhouse market of 2 % in all three scenarios (best-case, worst-case and intermediate), the Cypriot authorities note that this percentage was the

average annual increase of slaughters in Cyprus during the period 1998-2008. This has also been the prediction made by CSK's management for the following 5-year period. A reduction in the growth rate of 0,5 % would translate in a reduction in CSK's profits by EUR 500 000, however, the beneficiary would still be profitable after the restructuring period.

- (64) Concerning the costs for the transfer of personnel to the municipalities, the Cypriot authorities reiterate that only 19 persons would be transferred, and that the majority of the redundant personnel will be laid off.
- (65) The Commission in its decision of 20 April 2011 raises doubts as to the ability of CSK to contract loan agreements with financial institutions. The Cypriot authorities argue in this respect that CSK has contracted loans with commercial banks, which are being repaid normally and without delays. Given the fact that as explained above, according to relevant legislation CSK's property cannot be the subject of normal enforcement and seizure proceedings, the loans contracted with the banks are covered by state guarantees. The Cypriot authorities add that this will change with the company's restructuring and the change of its legal status. Future loans on market conditions will be able to be obtained thanks to the company's property, among which immovable property of a value of approximately EUR 7 million. As regards the value of CSK's immovable property, the Cypriot authorities specify that such value has been calculated by the Department of Land Register and Surveying of the Ministry of Interior.
- (66) Finally, the Cypriot authorities reiterate that CSK's problems lay on the following facts: (a) lack of flexibility as regards its structure and its functioning; (b) high labour costs; and (c) high debts. The restructuring plan manages to confront these causes by changing the legal status of the company, reducing labour costs and reducing the company's debts.

IV.1.6. Efficiency of compensatory measures

- (67) Concerning the compensatory measures, the Cypriot authorities first reiterate their concern about the possibility that Cypra might gain a monopoly position on the market. According to the Cypriot authorities, Cypra has addressed a letter to the Cypriot Ministers of Interior, Commerce and Finance where it is mentioned that the company has a market share of 71 % in the pig-slaughter market, that its prices are 20 % higher and that the customers' preference lays among others on the fact that it offers better quality of meat. This, in the view of the Cypriot authorities constitutes proof of the fact that Cypra has a dominant position and that if CSK stops operating prices will increase. The Cypriot authorities add that even if Cypra had indicated its intention to enter the cattle-slaughter market within six months, it hasn't done so yet. Further, the Cypriot authorities argue that Cypra does not yet have all necessary spatial planning licences and licences of other nature, which makes its entry into the cattle-slaughter segment unlikely in the set time frame. According to the information in the possession of the Cypriot authorities, no other company has the intention to enter into this segment either.
- (68) As regards the issue of overcapacity, the Cypriot authorities note that overcapacity in the pig-slaughter segment reaches 39 % and that capacity in this segment has increased by 32 % since Cypra entered into the market in 2006, while for ovine/caprine slaughters overcapacity reaches 51 %, having increased by 17 % since Cypra's entry. This, according to the Cypriot authorities, points to the conclusion that overcapacity in the market was created by the entry of Cypra. The Cypriot authorities conclude that given the financial situation of CSK, any additional constraint on CSK's operations would negatively affect its viability.

IV.2. COMMENTS FROM THIRD PARTIES

IV.2.1. Comments of complainant to Commission Decision of 20 April 2011

- (69) The complainant submitted its comments on the Commission's Decision of 20 April 2011 by letter dated 4 July 2011. In its letter Cypra reiterates that there is the intention by the Pan-Cypriot Organisation of Cattle Breeders to create a slaughterhouse.

- (70) As regards the compensatory measures, Cypra notes that if the restructuring aid is cleared and if the pig breeders are involved in CSK, given in addition the construction of A&A's new slaughterhouse, its viability will be jeopardised. The reason is that the number of pig slaughters that it will perform will decrease by a significant extent. Cypra also reminds that it has recently invested important sums for the increase of its capacity. It is also added that the Cyprus Pig Farmers Association (representing 100 % of the island's pig breeders) is involved in the restructuring process. Apparently, the government is offering to this association stakes in the new company that will be created following the restructuring. This by itself, according to Cypra, goes against the commitment not to have recourse to aggressive actions in order to increase market shares for three years. Concerning capacity, the three companies Cypra, A&A and Trimithias, have a capacity exceeding 20 000 pig slaughters a week, while the relevant production is around 14 000.
- (71) Cypra argues that before the aid is approved, the Cypriot authorities should prove that it would be possible for CSK to contract a loan of EUR 5 million. In any case, the best solution according to the complainant is the closing down of the pig-slaughter production line. This would not create any shortage in the market since the remaining companies can cover the needs of the country. Cypra also makes allegations on the close relationship between current and previous members of the Cypriot government with the management of CSK, which, if continued, would be tantamount to further unjust behaviour against privately owned slaughterhouses.
- (72) As regards state claims against CSK, Cypra claims that CSK has collected veterinary fees amounting to EUR 900 000, that have not been given back to the state. As concerns the transfer of personnel, the state has agreed to subsidise the cost of transfer of the employees, by paying the difference between the salary of a newly appointed employee (to the municipalities) and the current salary of the workers, for all employees that will be transferred. Further, for the employees that will remain in the new company the state will subsidise 40 % of the previous salary, until the end of their service, while the new company will pay 60 %.
- (73) Concerning the company's own contribution, Cypra claims that the sale of CSK's immovable property should be made on the free market. Cypra suspects that the value of the land in question, as shown by the rent the state charges to another company (Sigan Management Limited) in the same area, is much lower than the one indicated in the restructuring plan. As regards the grant of the EUR 512 850 loan by the Municipalities Union, Cypra doubts that the loan has been repaid through the transfer of land ownership.
- (74) Finally, the complainant proposes that any future restructuring of CSK should include the temporary lease of the cattle-slaughter line to the Pan-Cypriot Organisation of Cattle Breeders, the temporary lease of the ovine/caprine production line to whomever is interested, and the closing down of the pig-slaughter line. When the Pan-Cypriot Organisation of Cattle Breeders creates its own slaughterhouse, CSK slaughterhouse should close down, and the government should sell the land involved to third parties.

IV.2.2. Comments of other interested parties to Commission Decision of 20 April 2011

- (75) A number of other third parties submitted comments on the Commission Decision of 20 April 2011.
- (76) One competitor (A&A Slaughterhouses) maintains that it has just finished updating its production site, and that currently it has the possibility to handle 35-40 % of the country's needs in pig slaughtering, and 30 % of the country's ovine/caprine slaughtering. The company argues further that the restructuring plan for CSK did not take into account developments, such as the update of the production line of CSK's competitors, such as A&A's or the company Agioi Trimithias. As a result, it is argued that the situation of the beneficiary is much worse than that portrayed in the restructuring plan, even if one takes into account the worst-case scenario. In addition, A&A claims that the argument of the Cypriot authorities that Cypra might gain a monopolistic position if CSK stops one of its production lines is not a valid one, given the update of A&A's and Agioi Trimithias' production lines and the capacity of those companies. In A&A's view, the compensatory measures proposed cannot be accepted. The only credible compensatory measure that could be accepted would be for CSK to stop offering pig-slaughter services. At the same time, the management of CSK should be assigned to a management team with market experience, and only a small number of employees should remain in the company for the functioning of the cattle and ovine/caprine-slaughter lines.

- (77) One party, that asked for confidential treatment of its submission, argued that CSK duly fulfils its obligations under EU directives concerning waste. Its competitors however have been abusing the inadequate implementation and control by local authorities of the relevant EU directives, causing direct and indirect unfair competition to CSK, which in its turn is one of the reasons for the current financial situation of the company, since CSK, unlike its competitors, pays fees to treat its wastes, unlike its competitors.
- (78) One party, the Cyprus Pig Farmers Association, expressed concerns as regards the '*aggressiveness of the dominant company in the pig slaughtering segment*', i.e. Cypra. It is argued that if CSK stops operating, then Cypra would acquire a monopoly position at least in the pig-slaughter segment. Further, it is argued that entry in the cattle-slaughter segment is not probable. The association also notes that pig breeders have recently created a company which currently controls 60 % of the country's production. At the moment, the choice of the slaughterhouse is made by the client (meat retailer or wholesaler). However, the association notes that in the future that company could base its choice of slaughterhouse on considerations of the viability of a slaughterhouse, e.g. by requiring offers for slaughtering its animals. Therefore, given the market structure in Cyprus, the viability of no company should be taken for granted.

IV.3. COMMENTS OF CYPRUS TO THIRD PARTY SUBMISSIONS

- (79) By letter dated 8 November 2011, the Cypriot authorities provided their comments on the third party submissions.
- (80) As regards the comments made by A&A, the Cypriot authorities argued that the restructuring plan was based on the situation of the market at the time of its elaboration. The plan took indeed into account the functioning of the Agioi Trimithias and Cypra slaughterhouses. As regards the opening of A&A's new facility, CSK believes that it will not affect the conditions on the market to a significant extent. It is noted that A&A's comments are based on the fact that this company would benefit from a potential exit of CSK from the market. However, if that happens, CSK would be dissolved, and its assets would not suffice to cover its debts. In this case, the state will take over CSK's liabilities, and another private operator might reopen the slaughterhouse. On the other hand, the restructuring plan gives the opportunity to CSK to cover itself its liabilities, and at the same time there is the possibility of entry of private investors. As regards the compensatory measures, the Cypriot authorities argue that A&A does not substantiate its suggestions, which in addition are arbitrary, do not make economic sense and in any case would not lead to the company's viability. The Cypriot authorities argue further that A&A's submission gives the impression that the restructuring plan has not been drafted carefully. However, A&A seems to ignore basic elements of the relevant legislation and of the restructuring plan itself.
- (81) As regards the comments made by Cypra, the Cypriot authorities argue that concerning the risks of monopoly, it is not clear at the moment whether new slaughterhouses will open. In any case the authorities would favour measures that will permit CSK to continue operating and that will deter the creation of monopolies or oligopolies. CSK's restructuring serves this purpose, especially if CSK continues operating in the pig-slaughter segment. Cypra's concerns about its own viability seem to relate more to the re-opening of A&A slaughterhouse together with the further functioning of CSK. As concerns the identity of the private investors, the Cypriot authorities note that one of the possible investors could indeed be members of the Cyprus Pig Farmers Association. However, this would not mean that one of the conditions for such participation would be that the numbers of pig slaughters of CSK should increase, or that the pig breeders should be the clients of CSK.
- (82) The Cypriot authorities reject the claim of close relationship between past and current members of the government with CSK and argue that such claims are unfounded. As regards the veterinary fees, it is argued that they are paid back gradually. As an example, the Cypriot authorities note that in the period 2008-2011 CSK paid fees of EUR 479 000. Concerning the sale of CSK's immovable property, the Cypriot authorities mention that the valuation of the land has been conducted by an independent valuator (Department of Land Register and Surveying) and that the claims of Cypra are equally unfounded. The Cypriot authorities submitted a letter by the Department of Land Register and Surveying of the State, justifying the price difference between the rent paid by Sigan Management Limited and the evaluation of CSK's land. Finally, the Cypriot authorities argue that Cypra's proposals cannot be accepted. Even in case the restructuring of CSK is not completed, the state or CSK's liquidator will have the obligation and the right to sell or rent out its assets to private investors or undertakings.

IV.4. ADDITIONAL INFORMATION SUBMITTED BY THE CYPRIOT AUTHORITIES

- (83) On request by the Commission the Cypriot authorities provided further clarifications and updated information by letters of 30 March 2012 and 26 November 2012. They supplemented their submission with additional elements on 14 May 2013.
- (84) As regards CSK's outstanding liabilities, Cyprus provided a breakdown with the letter of 30 March 2012 and further specified the nature of those liabilities and their actual due dates in the letter of 26 November 2012. The Cypriot authorities also drew the Commission's attention to the fact that Law 26(I) of 2003, which regulates the structure, organisation and operation of central slaughterhouses, such as CSK and according to which the movable and immovable property of such organisations cannot be the subject of normal enforcement or seizure proceedings, nor of any other procedure following an action against them, merely replaced Law 69 of 1981 on Slaughterhouses, which contained exactly the same provision in its Article 22. The Cypriot authorities therefore urge the Commission to examine to what extent that provision of the 2003 Law constitutes existing aid by virtue of the relevant Accession Treaty and point to a similar case examined by the Commission (E 12/2005 — Poland — Unlimited state guarantee in favour of Poczta Polska) where the Commission considered that although the current legislative provision preventing the undertaking in question from going bankrupt is contained in a 2003 Law, it was a case of an existing aid because the substance of that provision originated in a Law dating back to 1934.
- (85) The Cypriot authorities furthermore confirmed in their submission of 14 May 2013 that the amounts to be settled in the context of the restructuring include nominal amounts plus interest arrears. They furthermore confirmed that the outstanding debt towards the Veterinary Services will be paid off gradually by CSK following the restructuring.
- (86) As regards the transfer of employees to municipalities the Cypriot authorities specified in their letter of 30 March 2012 that on the date of the letter eight employees had already been transferred at the request of the municipalities themselves who had additional staff needs and where, in the prevailing economic climate, the Ministry of Interior and the Ministry of Finance were unable to approve the creation of new/additional posts in the municipalities. The restructuring plan foresees the transfer of 15 employees in total and includes a provision for pension rights for those 15 employees. It is foreseen that the municipalities will pay those employees a sum corresponding to the first step of the scale as if they were recruiting a new appointee to the same position and that the state will cover the difference up to the employees' actual salary. The total amount required to cover the salary difference of 15 employees was estimated by the Cypriot authorities at EUR 3 342 450, from the date of transfer until the retirement of each of the employees. In the same context the Cypriot authorities stressed that under the Termination of Employment Law (N.24/1976) the minimum cost for privately owned slaughterhouses to lay off 15 employees corresponds to a compulsory notice period of eight weeks. According to the Cypriot authorities, a private slaughterhouse is not obliged to pay in addition any compensation for the laying-off of workers, unless there are specific collective agreements with trade unions. The same authorities furthermore indicated that the main competitor of CSK does not appear to have any collective union agreements.
- (87) The Cypriot authorities furthermore submitted an updated business plan based on recent developments as well as market data. They also provided an updated breakdown of the actual restructuring costs and their financing and in this context submitted a valuation of the immovable property of CSK of 24 April 2013 carried out by the Land and Survey Department of the Ministry of the Interior, which estimates the market value of the land and buildings belonging to CSK at some EUR 8,16 million.
- (88) The same authorities also acknowledged in their submission of 14 May 2013 that, as regards the contraction of a new loan, obtaining such a loan must be considered doubtful under the current economic environment.

V. ASSESSMENT OF THE AID

V.1. APPLICABILITY OF STATE AID RULES

- (89) CSK is active in the slaughter of animals, namely sheep/goats, swine and cattle. Article 180 of Council Regulation (EC) No 1234/2007 ⁽⁷⁾, which was in force at the time of notification of the restructuring aid for CSK, states that

⁽⁷⁾ Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).

Articles 87, 88 and 89 of the Treaty (now Articles 107, 108 and 109 TFEU) shall apply to the production of and trade in beef and veal, pigmeat, sheepmeat and goatmeat. Therefore, the measures in question have to be examined in the light of State aid rules.

V.2. PRESENCE OF AID

- (90) Pursuant to Article 107(1) of the TFEU, aid granted by a Member State or through state resources in any form whatsoever that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is prohibited, insofar as it affects trade between Member States.
- (91) The restructuring aid is granted by the Cyprus state and it confers a selective advantage on its recipient, since it is only granted to CSK. According to the case law of the Court of Justice, 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⁽⁸⁾. CSK is active in a market where trade between Member States takes place, and therefore the aid distorts or threatens to distort competition and affects trade between Member States since an advantage is conferred on CSK as compared to its competitors, and cross-border transport of animals for slaughtering purposes is allowed. Furthermore, foreign investors may invest into slaughterhouses in Cyprus. Thus, the measure in question constitutes aid within the meaning of Article 107(1) of the TFEU.
- (92) The present decision, apart from the restructuring aid, also covers several other possible aids that might have been granted or will be granted to the CSK. These aids are (i) the continuous state tolerance for delays in the payment of amounts due; (ii) the loan of EUR 512 850 by the Municipalities Union; (iii) the alleged aid in connection with government-backed bonds; and (iv) the takeover of existing employees and the relating pension liabilities by the municipalities.

V.2.1. State tolerance for delays in the payment of amounts due

- (93) The continuous state tolerance for delays in the payment of amounts due could normally fall under the definition of a State aid under Article 107(1) of the TFEU: it is well established case-law that the favourable treatment of a company by the state as regards the recovery of debts can be regarded as State aid. According to EU case-law⁽⁹⁾, a reduction by the state as creditor of payments on indebtedness or its omission to collect outstanding debt may comprise aid so long as a private creditor under the same or comparable circumstances would not have acted in the same manner. Indeed, in the present case it appears that the aid is granted through state resources, since the state forgoes income which would derive from the repayment of CSK's debts. As stated in recital 23 above, CSK had by 31 December 2011 accumulated overdue debt towards the Loan Commissioner of some EUR 11 million, overdue payments towards social security and tax authorities of some EUR 8,7 million and veterinary expenses of some EUR 1,3 million. Further, it would appear that the measure confers a selective advantage on CSK, since it is granted to this undertaking specifically. The same considerations as above in recital 91 are pertinent as to the condition of distortion of competition and effect on trade. The state's tolerance for delays in the payment of amounts due by CSK therefore constitutes aid within the meaning of Article 107(1) of the TFEU.

V.2.2. Loan of EUR 512 850

- (94) Concerning the loan of EUR 512 850 by the Municipalities Union, the Cypriot authorities have indicated that this amount was granted in December 2007. Following a negative opinion by the Cypriot State aid Commissioner, CSK paid back this amount to the Municipalities Union with interest on 15 January 2010, through the transfer of land of a value of EUR 580 000. The evaluation of the land was effected by the Department of Land Register and Surveying, which is considered the official evaluator of the state.
- (95) The Cypriot authorities argue that the interest of EUR 67 150, corresponds to an annual interest rate of 6,12 %, including annual capitalisation. According to the Cypriot authorities, this interest rate is not lower than the market interest rates with immovable collateral during the period in question. The Commission notes that the

⁽⁸⁾ 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, para. 11.

⁽⁹⁾ See for instance CFI Case T-152/99, *HAMSA/Commission*, ECR 2002, II-3049, paras 156 et. seq.

base interest rates for Cyprus in the reference period range from 4,99 % (December 2007) to 1,24 % (January 2010). Under the previous Commission notice on the method for setting the reference and discount rates ⁽¹⁰⁾, 75 basis points had to be added to the base rate in order to determine the relevant reference rate. According to the new Communication from the Commission on the revision of the method for setting the reference and discount rates ⁽¹¹⁾, applicable as of 1 July 2008, on average a margin of 220 basis points has to be added (corresponding to normal collateral and a satisfactory rating or to high collateral and a weak financial rating). The interest of 6,12 % p.a. paid by CSK to the Municipalities Union was on average higher than the applicable reference rate for the period December 2007 to January 2010. Therefore, the Commission could in principle accept that as concerns the loan of EUR 512 850 to CSK by the Municipalities Union, any possible State aid involved has been paid back to the Municipalities Union.

- (96) However, the reference rates stated above, do not apply to companies in difficulty. As already indicated in recital 21, the Commission acknowledged in its decision approving the rescue aid to CSK that the latter was a firm in difficulty. This had been further the argument of the authorities of Cyprus prior to the adoption of that decision, as supported by the accounts of the company for the years 2006-2009. Besides, the fact that the company defaulted on its bonds in July 2007 and consequently the Cypriot state as guarantor had to step in (cf. recital 60), solidifies this finding as well. During 2007, CSK seems to have had the usual signs of a firm in difficulty such as increasing losses, diminishing turnover, excess capacity, declining cash flow and falling net asset value, as described in point 11 of the then applicable Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽¹²⁾. Both, the previous Commission notice on the method for setting the reference and discount rates and the new Communication from the Commission on the revision of the method for setting the reference and discount rates foresee a risk margin of at least 400 bps to be applied to companies in difficulty. Since CSK fulfilled already in December 2007 the conditions to be classified as company in difficulty, the difference between the interest actually paid and the interest it would have had to pay taking into account a risk margin of 400 bps is State aid within the meaning of Article 107(1) of the TFEU.

V.2.3. Bonds with state guarantee

- (97) In 1985, CSK had issued bonds with a guarantee of the state, which were re-issued in 1992 and 1999. Cyprus adopted a law to that effect. Thus, it appears that the aid was granted before the accession of Cyprus to the European Union. In fact, pursuant to point 2.1 of the Commission notice on the application of Articles 87 and 88 of the EC Treaty (now Articles 107 and 108 of the TFEU) to State aid in the form of guarantees ⁽¹³⁾, an aid in the form of a guarantee is granted at the moment when the guarantee is given, not when the guarantee is invoked, nor when payments are made under the terms of the guarantee. The Commission therefore acknowledges that no State aid was granted when the guarantee was invoked in 2007.

V.2.4. Aid related to the transfer of personnel

- (98) Finally, as indicated in the restructuring plan, a part of the personnel will be transferred to municipalities. As explained by the Cypriot authorities in their letter of 20 April 2011, the pension rights of the employees that will be transferred to the municipalities have been included in the restructuring costs, and they amount to EUR 1,4 million. The social costs that have not been included in the restructuring plan relate to the part of the employees' salary above the salary level of a newly hired employee at a municipality, up to the salary that each employee had in CSK. This amount is estimated at EUR 3,4 million.
- (99) Any measure exempting an undertaking from charges which are normally included in its budget constitutes State aid. This includes also costs linked to employee pay. The Court of Justice has in this context considered that the fact that state measures aim to compensate for additional costs cannot constitute grounds for disqualifying them from the definition of aid ⁽¹⁴⁾.

⁽¹⁰⁾ OJ C 273, 9.9.1997, p. 3.

⁽¹¹⁾ OJ C 14, 19.1.2008, p. 6.

⁽¹²⁾ OJ C 244, 1.10.2004, p. 2.

⁽¹³⁾ OJ C 155, 20.6.2008, p. 10.

⁽¹⁴⁾ Case 30/59 *Gezamenlijke Steenkolenmijnen in Limburg v High Authority* [1961] ECR 3, paragraphs 29 and 30; Case C-251/97 *France v Commission* [1999] ECR I-6639, paragraphs 40, 46 and 47; and Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato Venezia vuole vivere v Commission* [2011] ECR I-4727, paragraphs 90 to 96.

- (100) The Commission therefore considers that the EUR 3,4 million salary difference for employees who are being transferred to municipalities constitutes State aid in favour of CSK.

V.3. COMPATIBILITY OF AID

- (101) The ban on State aid under Article 107(1) TFEU does not exclude that some categories of aid can be declared compatible with the internal market on the basis of exceptions provided for in paragraphs 2 and 3 of that Article.
- (102) In application of the derogations in Article 107(3)(c) of the TFEU, the Commission may consider aid to be compatible with the internal market if it is found 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. However, it must be noted that, in principle, State aid to a firm in difficulty can only be declared compatible under the Guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁵⁾, since aid to a firm in difficulty is normally inappropriate for attaining a legitimate objective of compatibility as long as the viability of the firm as such remains doubtful.

V.3.1. State tolerance for delays in the payment of amounts due

- (103) Pursuant to paragraphs 66 and 67 of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020⁽¹⁶⁾, aid measures must contain some incentive element. An incentive effect is present when the aid changes the behaviour of an undertaking in such a way that it engages in additional activity contributing to the development of the sector which it would not have engaged in without the aid or in which it would only have engaged in a restricted or different manner. Unilateral State aid measures which are simply intended to improve the financial situation of an undertaking but which in no way contribute to the development of the sector are considered to constitute operating aids which are incompatible with the internal market.
- (104) The continuous tolerance for delays in the payment of amounts due by CSK was neither linked to investment, training, job creation or any counterpart required from the beneficiary. The aid was simply intended to strengthen the financial position of the beneficiary. The Commission therefore considers that this aid constitutes operating aid, which is incompatible with the internal market.
- (105) In the case at hand it also has to be examined whether this measure could qualify as existing aid.
- (106) Pursuant to Annex IV.4 point 4 of the Cypriot Accession Treaty, aid schemes and individual aid granted to activities linked to the production, processing and marketing of agricultural products, put into effect in a new Member State before the date of accession and still applicable after that date, shall be regarded as existing aid within the meaning of Article 88(1) of the EC Treaty (now Article 108(1) TFEU) if the aid measure is communicated to the Commission within four months of the date of accession. The list communicated by Cyprus after its accession on 1 May 2004 and published by the Commission⁽¹⁷⁾ did not contain any aid granted in favour of CSK. The measure at hand can therefore not be regarded as existing aid within the meaning of Annex IV.4 point 4 of the Accession Treaty.
- (107) The restructuring plan however foresees, amongst others, the transformation of CSK into a company under private law. This transformation will end the current legal status of CSK which will, in the future, also be subject of normal bankruptcy proceedings.
- (108) The restructuring plan furthermore foresees the full payment of the company's debts to the Social Securities Fund and the Section for Internal Income as well as the settlement of mature debts towards the Loan Commissioner

⁽¹⁵⁾ The 2004 Guidelines on State aid for rescuing and restructuring firms in difficulty are applicable as explained in recitals 117-118 below.

⁽¹⁶⁾ OJ C 204, 1.7.2014, p. 1.

⁽¹⁷⁾ Communication from the Commission — State aid — Publication of existing State aid measures in the new Member States in the sector of agriculture (OJ C 147, 17.6.2005, p. 2).

(cf. recital 44). The Cypriot authorities moreover have confirmed that outstanding liabilities towards the Veterinary Service will be paid off gradually after the restructuring. They argue that their decision to grant the restructuring aid to CSK constitutes a proof of the government's intention to implement an arrangement with regard to CSK's debts to government departments.

- (109) Since a firm in difficulty, like CSK, can in principle only enjoy compatible State aid on the basis of an approved rescue and restructuring plan, the settlement of outstanding liabilities will therefore be dealt with directly under the assessment of compatibility of the restructuring aid.

V.3.2. Loan of EUR 512 850

- (110) As was shown in recital 96 above it cannot be excluded that there has been an additional aid element in connection with the loan of EUR 512 850 by the Municipalities Union which has not yet been paid back by CSK. Such additional aid would have neither been linked to investment, training, job creation or any counterpart required from the beneficiary. The aid would have been simply intended to strengthen the financial position of the beneficiary. Such aid would therefore constitute operating aid, which is incompatible with the internal market. Such additional aid element would still need to be paid back to the Municipalities Union and would increase the outstanding liabilities of CSK, the settlement of which will be dealt with under the debt to be settled as part of the restructuring (cf. recital 109 above).

V.3.3. Aid to personnel

- (111) The Commission has constantly held that compensation for so-called stranded costs (i.e. costs arising from commitments entered into prior to the beginning of market opening which can no longer be honoured under the same conditions in a competitive market environment) can, under certain circumstances, be considered compatible with the internal market.
- (112) In this context it has recognised that the gradual transition from a situation of largely restricted competition to one of genuine competition at Union level must take place under acceptable economic conditions. Therefore, it has accepted in a number of decisions that Member States grant State aid to relief the historic operator of a part of its 'legacy' liabilities. The Commission has considered in its decisional practice that the relief has to be limited to what is necessary to equalise the rate of social liabilities that the historic operator bears as a cost with the rate of social liabilities born by its competitors ⁽¹⁸⁾.
- (113) In the instant case it is considered that CSK, due to its nature as a public service organisation, is placed at a structural disadvantage as compared to its competitors since it has to bear high labour costs stemming from the pre-liberalisation period of the Cypriot slaughterhouse market prior to Cyprus' accession to the EU in 2004 (cf. recitals 35 and 36).
- (114) In their reply of 30 March 2012 the Cypriot authorities argue that under the Termination of Employment Law (N.24/1976) the minimum cost for privately owned slaughterhouses to lay off employees is a compulsory notice period of eight weeks (cf. recital 86 above). According to the Cypriot authorities, a private slaughterhouse is not obliged to pay in addition any compensation for the laying-off of workers, unless there are specific collective agreements with Trade Unions which, according to the same authorities, is not the case for the main competitor of CSK.
- (115) The Commission therefore considers that the EUR 3,4 million salary difference for employees who are being transferred to municipalities could be considered compatible with the internal market but, given that CSK is a firm in difficulty, it should have been included by Cyprus in the respective restructuring costs. The compatibility assessment will therefore be dealt with directly under the assessment of compatibility of the restructuring aid.

⁽¹⁸⁾ Commission Decision 2008/204/EC of 10 October 2007 on the State aid implemented by France in connection with the reform of the arrangements for financing the retirement pensions of civil servants working for La Poste (OJ L 63, 7.3.2008, p. 16).

V.3.4. Restructuring aid

- (116) In order to assess whether the aid at hand can be considered compatible on the basis of Article 107(3)(c) TFEU, it has to be examined against the conditions laid down in the applicable Guidelines on State aid for rescuing and restructuring firms in difficulty.
- (117) The Commission adopted on 9 July 2014 new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽¹⁹⁾. According to point 136 of those new Guidelines, notifications registered by the Commission prior to 1 August 2014 will be examined in the light of the criteria in force at the time of notification.
- (118) At the time of notification of the restructuring aid in favour of CSK (3 November 2010), the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ('Guidelines') were in force. The aid at hand has therefore to be examined against the provisions contained in those Guidelines.

V.3.4.1. Eligibility of the beneficiary

- (119) As a starting point, it has to be examined whether the beneficiary is a firm in difficulty within the meaning of points 10 and 11 of the Guidelines. The Cypriot authorities have already demonstrated in the framework of Case N 60/10 that CSK was a firm in difficulty since the usual signs of a firm in difficulty were present (such as increasing losses, diminishing turnover, increasing excess capacity, declining cash flow, increasing debt and decreasing net asset value) and that it could not recover through its own resources or with funds it could obtain from its owners/shareholders or from market resources (cf. recital 21). The negative trend in the economic development of CSK has continued since (cf. recitals 22 and 23). CSK can therefore be regarded as a firm in difficulty within the meaning of point 11 of the Guidelines.
- (120) The condition of point 12 of the Guidelines is also fulfilled since CSK is not a newly created company, having been created in 1981. Finally, the Cypriot authorities confirmed in the framework of Case N 60/10 that CSK does not form part of a larger business group.
- (121) Chapter 5 of the Guidelines contains specific provisions applicable to aid for restructuring in the agricultural sector. Aid measures in favour of enterprises processing and marketing agricultural products are, however, not covered by that Chapter. Since CSK is active in the processing and marketing of agricultural products, the specific provisions of the Guidelines applicable to aid for restructuring in the agricultural sector do not apply.

V.3.4.2. Restoration of long-term viability

- (122) According to point 34 of the Guidelines, the grant of restructuring aid must be conditional on the implementation of a restructuring plan which must be endorsed by the Commission in all cases of individual aid. According to point 35 of the Guidelines, the restructuring plan must restore the long-term viability of the firm within a reasonable timescale.
- (123) In the present case, Cyprus has indeed approved a restructuring plan and it also communicated it to the Commission in the context of the notification submitted on 3 November 2010. As required by the Guidelines, the plan is comprehensive and includes a detailed market survey of the Cypriot slaughterhouse market. On request by the Commission the Cypriot authorities submitted an update to the business plan as regards financial projections and market data on 26 November 2012.
- (124) The original plan describes in detail the problems that CSK faced and that have affected its viability. The main reasons were the lack of flexibility of CSK as a public undertaking, the heavy debts as well as the personnel costs. The restructuring measures as described above in recitals 43 to 45 (change of legal status, reduction of the company's liabilities, and reduction of personnel) could contribute to the company's return to viability. The original restructuring plan is based on the actual results of the year 2009 and the first eight months of 2010 and

⁽¹⁹⁾ OJ C 249, 31.7.2014, p. 1.

an assumed market growth of 2 % p.a. The Cypriot authorities argue that this percentage was the average annual increase of slaughters in Cyprus during the period 1998-2008 and this has also been the prediction made by CSK's management for the 5-year projection period in the original restructuring plan (cf. recital 63). Data and projections for the company's development are presented until 2017.

- (125) The financial results foreseen in the original plan for all three scenarios (expected, best-case and worst-case) and highlighted by the Cypriot authorities are presented in the tables below (figures in thousand euros).

Expected Scenario

Year	2011	2012	2013	2014	2015	2016	2017
Production Costs	3 029	3 006	3 083	3 121	3 196	3 255	3 403
Administration Costs	451	458	466	476	485	495	504
Operational Income	4 867	5 041	5 15	5 341	5 459	5 666	5 791
Non-Operational Sums	3 277	- 1 494	- 1 167	- 1 178	- 1 123	- 962	- 893
Surplus	4 833	275	547	660	687	958	993

Best-case Scenario

Year	2011	2012	2013	2014	2015	2016	2017
Production Costs	3 369	3 343	3 429	3 470	3 555	3 620	3 686
Administration Costs	457	463	472	481	491	500	510
Operational Income	5 426	5 620	5 750	5 955	6 086	6 317	6 456
Non-Operational Sums	3 277	- 1 494	- 1 164	- 1 161	- 1 087	- 925	- 855
Surplus	5 081	604	831	979	1 091	1 417	1 577

Worst-case Scenario

Year	2011	2012	2013	2014	2015	2016	2017
Production Costs	2 734	2 710	2 781	2 813	2 881	2 932	2 986
Administration Costs	444	451	459	469	478	487	497
Operational Income	4 303	4 457	4 560	4 723	4 827	5 011	5 121
Non-Operational Sums	3 277	- 1 494	- 1 279	- 1 332	- 1 322	- 1 205	- 182
Surplus	4 535	- 82	147	215	254	497	568

- (126) All three scenarios show a clear reduction of production and administrative costs (which still amounted to some EUR 4,5 million and EUR 1,5 million respectively in 2009) which would allow CSK to produce a net profit as of 2011 onwards (except for a net loss of some EUR 80 000 in 2012 in the worst-case scenario).

- (127) However, those results have to be seen against the background of the overall financial position of CSK and in connection with the expected cash flows. Accumulated losses had led to a negative equity of CSK of some 28,6 million by the end of 2009. Even under the best-case scenario of the original business plan CSK would not have gotten back to a positive equity base (negative equity of some 3 million still projected for the end of the forecast period in 2017). Furthermore, the expected scenario still projects negative net cash flows for the period 2012-2016. In this context it also has to be noted that no capital expenditure is budgeted until and including 2012 and then is only taken into account at EUR 200 000 for the years 2013 and 2014 and at EUR 100 000 for the period 2015-2017. Given a projected level of depreciation ranging between EUR 595 000 in 2011 and EUR 346 000 in 2017 in all three scenarios this would seem imprudent.
- (128) In November 2012, on request by the Commission the Cypriot authorities submitted updated financial projections for the expected and worst-case scenarios covering the period 2013-2020. Both scenarios use the financial position, personnel numbers and remuneration, market size and market share of CSK as of 31 August 2012 as a starting point. According to the Cypriot authorities it is assumed that CSK will return to the market shares as used in the original restructuring plan (in the respective scenario). Their main argument to underline this assumption is that many clients have stopped working with CSK even though they have stated that they wish to work with CSK, due to the fact that its continued operation is uncertain and they wish to secure a service provider for the slaughtering of their animals.
- (129) The updated business plan shows the following projections:

Updated Expected Scenario

Year	2013	2014	2015	2016	2017	2018	2019	2020
Production Costs	3 058	3 151	3 070	3 117	3 192	3 248	3 305	3 363
Administration Costs	604	470	468	478	486	496	504	514
Operational Income	4 472	4 495	4 495	4 596	4 762	4 868	5 053	5 164
Non-Operational Sums	2 303	- 1 253	- 1 107	- 1 078	- 1 068	- 919	- 764	- 724
Surplus	3 568	76	305	374	432	610	867	950

Updated Worst-case Scenario

Year	2013	2014	2015	2016	2017	2018	2019	2020
Production Costs	2 981	3 015	2 918	2 938	2 993	3 027	3 072	3 123
Administration Costs	604	470	468	478	486	496	504	514
Operational Income	3 922	3 935	3 823	3 852	3 933	3 959	4 110	4 201
Non-Operational Sums	2 303	- 1 291	- 1 207	- 1 240	- 1 307	- 1 243	- 1 185	- 1 251
Surplus	3 095	- 386	- 315	- 340	- 389	- 334	- 168	- 194

- (130) Due to the later entry into profitability the equity situation of CSK is even worse in the updated business plan, showing in the updated expected scenario still a negative equity of some EUR 10,4 million at the end of the projection period (2020) and no positive net cash flow for the period 2015-2020.

- (131) The Commission notes that the original business plan is based on an assumed market growth of 2 % p.a. (cf. recital 124). However, according to the information provided by the Cypriot authorities on 26 November 2012 the Cypriot market for animal slaughter showed a general downward trend with stagnation in 2010, a contraction of 2 % in 2011 and a further contraction of 3,8 % in 2012 (cf. recital 31). Furthermore, Cypra had meanwhile entered the cattle-slaughter segment and overcapacity had in general increased in the market. Against this background, it is surprising that the Cypriot authorities assume in relation to the updated business plan (submitted in November 2012) that CSK would return to the market shares as used in the original restructuring plan (cf. recital 128 above).
- (132) The Commission therefore considers that in view of CSK's general weak financial position (negative equity at the end of the projection period even in the best-case scenario of the original business plan, cf. recital 127 above) and the tight cash flow situation of the company combined with the unfavourable market conditions, the envisaged restructuring plan will not allow the company to regain long term viability.

V.3.4.3. *Avoidance of undue distortions of competition*

- (133) Pursuant to point 38 of the Guidelines, compensatory measures must be taken, in order to ensure that the adverse effects on trading conditions are minimised as much as possible, so that the positive effects pursued outweigh the adverse ones.
- (134) According to point 39 of the Guidelines, such measures may include divestment of assets, reductions in capacity or market presence and reductions of entry barriers on the markets concerned. Such measures must not lead to a deterioration in the structure of the market, for example by having the indirect effect of creating a monopoly or a tight oligopoly situation. According to point 40 of the Guidelines, the measures must be in proportion to the distortive effects of the aid and in particular to the size and the relative importance of the firm on its market or markets. It should be noted that pursuant to point 56 of the Guidelines, the conditions for authorising restructuring aid may be less stringent as regards the implementation of compensatory measures for a company located in an assisted area. As mentioned above, CSK is indeed located in an assisted area within the meaning of Article 107(3)(c) of the TFEU.
- (135) The compensatory measures proposed in the restructuring plan (recital 46 of the decision) are purely of behavioural nature and do not consist in any divestment of assets or reduction in capacity or market presence. The arguments raised by the Cypriot authorities in this respect are the following:
- (136) The restructuring plan argues that CSK's market share in the European market is minimal, and that its market share in Cyprus has steadily dropped during the last years. This was due to strong competition that it faced from other market players, and most notably Cypra. The argument concerning the low market share of CSK at a European scale seems not to be relevant. Although cross-border transport of animals for slaughter purposes is allowed (cf. recital 91) in practice customers of slaughterhouses in Cyprus do not seem to have recourse to slaughter services outside Cyprus. Furthermore, the Commission is of the opinion that, although CSK's share in the Cypriot slaughter market has seen a considerable drop from 68 % back in 2005 to some 31 % in 2010 and 26,5 % in 2012 (cf. recitals 30 to 33), its market share is still important.
- (137) The initial plan argued further that if CSK stopped operating, this would cause serious market disruptions as well as competition problems. For one, seasonal demand for meat would probably not be satisfied because of reduced capacity by other market operators. Further, since CSK was the only undertaking active in cattle slaughtering, no other undertaking would be able to provide relevant services. Also, it was argued that Cypra would have a quasi-monopoly in the market for pig slaughtering and a very high share in the ovine/caprine-slaughter market. Finally, even if there were indications that market entry was being envisaged, the Cypriot authorities invoked that there was no other company active in the cattle-slaughter market at the time of the restructuring notification. More recent data however showed that by the end of 2012 Cypra had actually entered the cattle-slaughter market, with an additional daily slaughter capacity of 104 animals as compared to the existing capacity of CSK of 200 animals (cf. recital 32).
- (138) The Commission therefore cannot accept the arguments put forward by the Cypriot authorities. It is possible that in the absence of the aid CSK would be insolvent, and that another company might acquire its assets, therefore continuing to operate. If this was to happen, overall market capacity would not be reduced, and Cypra would not

reach a situation of quasi-monopoly. Even if Cypra was to acquire CSK's assets, it appears that there is a high degree of buying power in both segments of pig slaughtering and cattle slaughtering that would make the creation of a tight oligopolistic market and rise of prices if not impossible, at least highly improbable. For instance, the Cyprus Pig Farmers Association noted that they have recently created a company controlling 60 % of the country's production. They recognise further that in the future that company could base its choice of slaughterhouse on viability considerations. The same happens with cattle breeders. Their association collectively represents 75 % of the country's production, and it is hard to imagine how the slaughterhouses could impose extra-competitive prices.

- (139) Further, it is clear that the market is suffering from overcapacity. The Cypriot authorities recognise this in their submissions. CSK's exit from the market would not create any shortages in the different slaughtering segments.
- (140) Concerning the proposed compensatory measures, the plan argues that the divestment of production capacity or reduction in market presence is simply not possible in the case of CSK. CSK is a small company that does not have any other activity apart from animal slaughtering. Its production line differs only to a very small degree according to animal type. Every type of slaughter is performed by the same personnel, whereas a number of services (e.g. charging) are common for all production lines. For these reasons, the plan argues that a reduction in capacity would simply make CSK not viable.
- (141) It is true that since CSK is active in an assisted area, the Commission may be able to accept limited compensatory measures. However, they still would have to comply with the rescue and restructuring guidelines, and include divestment of assets, reductions in capacity or market presence and reductions of entry barriers on the markets concerned, and result in a reduction of the market presence of CSK compared to the situation prior to the restructuring. The precise extent of the necessary compensatory measures depends on the market structure and the impact of the aid on competition.
- (142) The Commission concludes that the Cypriot authorities have not provided evidence that undue distortions of competition will be avoided. Therefore, the Commission finds the compensatory measures proposed by Cyprus insufficient.

V.3.4.4. *Aid limited to the minimum: real contribution, free of aid*

- (143) The Guidelines (point 43) provide that the amount and intensity of the aid must be limited to the strict minimum of the restructuring costs necessary to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs.
- (144) Point 44 of the Guidelines stipulates that the Commission will normally consider a contribution to the restructuring in the case of a large enterprise (as CSK in the present case) of at least 50 % to be appropriate. However, according to points 55 and 56 of the Guidelines, the conditions for authorising the aid may be less stringent as regards the size of the beneficiary's contribution, if the beneficiary is located in an assisted area.
- (145) According to the initial restructuring plan the total cost for the restructuring of CSK amounted to approximately EUR 27 million, out of which EUR 15 million were to be granted by the state as restructuring aid and the remaining EUR 12 would have been financed by CSK's own contribution (sale of immovable property worth EUR 7 million and contraction of a new loan of EUR 5 million). According to this initial restructuring plan the company's participation would have represented 44,4 % of the total restructuring costs (cf. recitals 25 and 26). The Cypriot authorities have confirmed that the amount of the aid will be solely used for CSK to pay off its liabilities. Therefore, it will only be used for the implementation of the restructuring plan and it will not provide the company with surplus cash that could be used for activities not linked to the restructuring process.
- (146) In their submission of 14 May 2013, the Cypriot authorities indicated that the restructuring costs had meanwhile increased to some EUR 29,8 million. Moreover, as was shown in recital 115 above, the EUR 3,4 million salary difference for employees who are being transferred to municipalities have also to be included in the restructuring costs, raising their total level to some EUR 33,2 million. CSK's contribution stays the same and would thus

represent just some 36 % taking into account the total increased restructuring costs. Furthermore, the Cypriot authorities acknowledged in the same submission that under the current economic environment, obtaining the envisaged loan must be considered doubtful. Taking only the proceeds from the sale of land worth some EUR 7 million into account, CSK's own contribution would only amount to some 21 % which the Commission considers as far too low, even taking into account the fact that the beneficiary is located in an assisted area ⁽²⁰⁾.

V.3.4.5. Full implementation of the plan

- (147) The grant of restructuring aid is conditional on the implementation of the restructuring plan. In fact, the Cypriot authorities have confirmed that a lack of implementation (fully or partly) of the restructuring plan by the beneficiary, within the specified time frame would lead to the cancellation of the grant of the aid, as well as the obligation for the repayment of the amounts already granted.

V.3.4.6. Monitoring and annual report

- (148) The Cypriot authorities have committed to supply on an annual basis a report containing the information required by point 51 of the Guidelines.

V.3.4.7. 'One time, last time'

- (149) According to the Guidelines, restructuring aid should be granted only once every 10 years.
- (150) The Cypriot authorities confirmed in the context of the rescue aid decision that CSK had not received any rescue or restructuring aid before.

V.3.5. Rescue aid

- (151) The authorities of Cyprus undertook in paragraph 28 of the rescue aid Decision to communicate to the Commission no later than six months after the rescue aid measure had been authorised, of a restructuring plan or a liquidation plan or proof that the loan had been reimbursed in full and/or that the guarantee had been terminated ⁽²¹⁾. To date, the Commission has received no such communication from the authorities of Cyprus.

VI. CONCLUSION

- (152) The Commission finds that, in the light of the considerations in recitals 132, 142 and 146, the restructuring aid notified by Cyprus on 3 November 2010 is incompatible with the internal market.
- (153) The Commission asks Cyprus to submit with regard to the rescue aid of EUR 1,6 million for CSK approved by Commission Decision of 6 May 2010 either evidence that the aid has been paid back or a liquidation plan of CSK, pursuant to point 27 of the Guidelines.
- (154) The Commission orders Cyprus to recover any aid already granted to CSK in relation to the state's tolerance for delays in the payment of amounts due, in connection with the transfer of personnel to municipalities and any possible aid not yet paid back to the Municipalities Union in relation to the loan of EUR 512 850,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Cyprus is planning to grant for the restructuring of the Central Slaughterhouse of Kofinos ('CSK') is incompatible with the internal market.

This aid shall accordingly not be implemented.

⁽²⁰⁾ Should there have been an additional aid element in connection with the loan by the Municipalities Union (cf. recital 112) which would have to be added to the restructuring costs, then CSK's own contribution would account for even less.

⁽²¹⁾ *Supra* footnote No 1.

Article 2

Cyprus shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with Article 1.

Article 3

The rescue aid of EUR 1,6 million for CSK approved by Commission Decision of 6 May 2010, as well as the aid in relation to the state's tolerance for delays in the payment of amounts due, in connection with the transfer of personnel to municipalities and in relation to the loan of EUR 512 850 constitute State aid incompatible with the internal market.

Article 4

1. Cyprus shall recover the aid referred to in Article 3 from the beneficiary, CSK.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽²²⁾ and to Commission Regulation (EC) No 271/2008 ⁽²³⁾ amending Regulation (EC) No 794/2004.
4. Cyprus shall cancel all outstanding payments of the aid referred to in Article 3 with effect from the date of adoption of this decision.

Article 5

1. Recovery of the aid referred to in Article 3 shall be immediate and effective.
2. Cyprus shall ensure that this decision is implemented within four months following the date of notification of this Decision.

Article 6

1. Within two months following notification of this Decision, Cyprus shall submit the following information to the Commission:
 - (a) the total amount (principal and recovery interests) to be recovered from the beneficiary;
 - (b) a detailed description of the measures already taken or planned to comply with this Decision;
 - (c) documents demonstrating that the beneficiary has been ordered to repay the aid.
2. Cyprus 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 3 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

⁽²²⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

⁽²³⁾ Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

Article 7

This Decision is addressed to the Republic of Cyprus.

Done at Brussels, 16 January 2015.

For the Commission
Phil HOGAN
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2016/645
of 22 April 2016
concerning certain protective measures against lumpy skin disease in Bulgaria

(notified under document C(2016) 3261)

(Only the Bulgarian text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease ⁽³⁾, and in particular Article 14(2) thereof,

Having regard to 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 ⁽⁴⁾, and in particular Article 4(3) thereof,

Whereas:

- (1) Lumpy skin disease (LSD) is a primarily vector-transmitted viral disease of bovine animals characterised by severe losses in susceptible animals and with the potential for the disease to spread very quickly, notably through movements of and trade in susceptible live animals and products thereof. LSD is not a disease of public health importance, as the virus is not transmissible to humans.
- (2) Directive 92/119/EEC lays down general measures for the control of certain animal diseases, including LSD. These include measures to be taken in the event of the suspicion and the confirmation of LSD in a holding. The measures to be taken include the establishment of protection and surveillance zones around outbreaks and other additional measures to control the spread of the disease. Those measures also provide for emergency vaccination in the event of an outbreak of LSD.
- (3) Article 14(2) of Directive 92/119/EEC requires that where in a given region, the epizootic in question is exceptionally serious, all the additional measures to be taken by the Member States concerned shall be adopted under the comitology procedure.
- (4) On 12 April 2016, Bulgaria informed the Commission of the suspicion of LSD in two bovine holdings situated respectively in the Voden and Chernogorovo villages in the municipality of Dimitrovgrad, in the region of Haskovo in the central-southern part of Bulgaria, about 80 km from the borders with neighbouring countries. On 13 April 2016, Bulgaria notified the confirmation of the two LSD outbreaks and a further suspicion of LSD

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ OJ L 62, 15.3.1993, p. 69.

⁽⁴⁾ OJ L 18, 23.1.2003, p. 11.

in the neighbouring municipality of Vodenicharovo in the region of Stara Zagora. On 15 April 2016 Bulgaria confirmed further outbreaks in the village Bialo Pole, in the region of Stara Zagora, and the villages Radievo and Marijino in the region of Haskovo.

- (5) Bulgaria has taken measures provided for by Directive 92/119/EEC, and in particular the establishment of protection and surveillance zones around the outbreaks as provided for by Article 10 of that Directive and it has in addition restricted the movement of susceptible animals within the two affected regions and, as a matter of precaution, in neighbouring regions Burgas, Yambol, Sliven, Kardzhali, Plovdiv, Pazardjik, Smolyan, Blagoevgrad, Kjustendil, Pernik, Sofia District and Sofia Town. Surveillance is intensified in the entire country.
- (6) Due to the risk of the spread of the LSD virus to other areas of Bulgaria and to other Member States, particularly through trade in live bovine animals and their germinal products, the movement of certain wild ruminants and the placing on the market of certain products derived from bovine animals, should be controlled.
- (7) This Decision should use definitions laid down in Article 2 of Directive 92/119/EEC, Article 2 of Council Directive 64/432/EEC ⁽¹⁾ and Article 2 of Council Directive 92/65/EEC ⁽²⁾. However, it is also necessary to -lay down some specific definitions in this Decision.
- (8) It is necessary to describe the part of the territory of Bulgaria which is considered to be free of LSD and not subject to the restrictions provided for in Directive 92/119/EEC and in this Decision. It is therefore necessary to describe the restricted zone in the Annex to this Decision, taking into account the level of risk for the spread of LSD. The geographical boundaries of that restricted zone should be based on the risk and the outcome of the tracing of possible contacts to the infected holding, the possible role of vectors and the possibility to implement sufficient controls on the movement of animals of susceptible species and products derived from those animals. The restricted zone should include any protection and surveillance zones established in accordance with Directive 92/119/EEC. Based on information provided by Bulgaria, the whole territory of the regions of Haskovo and Stara Zagora in Bulgaria should be the restricted zone described in the Annex to this Decision.
- (9) It is also necessary to provide for certain restrictions on the dispatch of animals of susceptible species and their germinal products from the restricted zone to be set out in the Annex to this Decision, as well as restrictions for the placing on the market of certain products of animal origin and animal by-products from that restricted zone.
- (10) In terms of the risk of the spread of LSD, different commodities pose different levels of risk. As indicated in the Scientific Opinion of the European Food Safety Authority (the EFSA) on lumpy skin disease ⁽³⁾ the movement of live bovine animals, bovine semen and raw hides and skins from infected bovine animals pose a higher risk in terms of exposure and consequences than other products, such as milk and dairy products, treated hides and skins or fresh meat, meat preparations and meat products originating from bovine animals, where scientific or experimental evidence is lacking on their role of transmission of the disease. Therefore, the measures to be laid down in this Decision should be balanced and proportionate to the risks.
- (11) The movements of live bovine animals from the restricted zone in Bulgaria to be set out in the Annex to this Decision should be prohibited in order to prevent the spread of LSD. According to the Scientific Opinion of the EFSA on lumpy skin disease and the World Organisation for Animal Health (OIE) wild fauna, that is to say, certain exotic wild ruminants may play a potential role in the transmission of LSD, in particular in Africa where that disease is endemic. Therefore some preventive measures should also apply to wild ruminants. In the absence of more precise rules in the Union legislation, the appropriate international standards for such movements provided for in the Terrestrial Animal Health Code of the OIE (OIE Terrestrial Animal Health Code) ⁽⁴⁾ should be used for this purpose.
- (12) As Bulgaria has requested for an exemption from the prohibition on the dispatch of bovine animals for direct slaughter from holdings situated in the restricted zone outside protection and surveillance zones and such an exemption is provided for in Article 11.11.5 of the OIE Terrestrial Animal Health Code, it is appropriate to allow the dispatch of such consignments under certain conditions.

⁽¹⁾ Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (OJ L 121, 29.7.1964, p. 1977/64).

⁽²⁾ 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 (OJ L 268, 14.9.1992, p. 54).

⁽³⁾ EFSA Journal 2015;13(1):3986 [73 pp.].

⁽⁴⁾ 24th Edition, 2015.

- (13) Similarly, the transmission of LSD through semen and embryos of animals of the bovine species cannot be excluded. Therefore, certain protective measures should be provided for in relation to those commodities. In the absence of Union standards, the Scientific Opinion of the EFSA on LSD and the appropriate OIE Animal Health Terrestrial Code recommendations should be used for this purpose.
- (14) According to the Scientific Opinion of the EFSA on lumpy skin disease, the transmission of the LSD virus through semen, natural mating or artificial insemination, has been experimentally demonstrated, and the LSD virus has been isolated from semen of experimentally infected bulls. The collection and use of semen of animals of the bovine species originating in the restricted zone should therefore be prohibited.
- (15) In accordance with Article 4.7.14 of the OIE Terrestrial Animal Health Code, LSD is assigned in accordance with the Manual of the International Embryo Transfer Society to Category 4 diseases or pathogenic agents, which are those 'for which studies have been done, or are in progress, that indicate that no conclusions are yet possible with regard to the level of transmission risk or that the risk of transmission via embryo transfer might not be negligible even if the embryos are properly handled in accordance with that Manual between collection and transfer'. The collection and use of embryos of animals of the bovine species originating in the restricted zone should therefore be prohibited.
- (16) There is no scientific or experimental evidence suggesting that there is transmission of the LSD virus to animals of susceptible species through fresh meat, meat preparations or meat products. Although the Scientific Opinion of the EFSA on LSD indicates that the LSD virus may survive in meat for a non-indicated period of time, the existing Union ban on the feeding of ruminant proteins to ruminants would exclude the possibility of an unlikely oral transmission of the LSD virus. To avoid any risk of the spread of LSD, the placing on the market of fresh meat, meat preparations and meat products produced from bovine animals originating in the restricted zone to be set out in the Annex to this Decision should only be allowed where the fresh meat was produced from bovine animals kept on disease-free holdings situated in the restricted zone outside established protection and surveillance zones. Such meat should only be placed on the market in the territory of Bulgaria.
- (17) In addition, the dispatch of consignments of fresh meat obtained from animals kept and slaughtered outside the restricted zone, as well as meat preparations and meat products, as defined in point 7.1 of Annex I to Regulation (EC) No 853/2004 of the European Parliament and of the Council ⁽¹⁾ and treated stomachs, bladders and intestines, as defined in point 7.9 of Annex I to Regulation (EC) No 853/2004, which have undergone one of the treatments laid down in Part 4 of Annex II to Commission Decision 2007/777/EC ⁽²⁾ produced from such fresh meat and processed in establishments situated in the restricted zone, outside protection and surveillance zones, should be permitted under certain conditions.
- (18) Colostrum, milk and dairy products used as animal feed may play an important role in the spread of LSD, in particular, where the colostrum, milk and dairy products have not been sufficiently heat-treated or acidified to inactivate the LSD virus.
- (19) In its Scientific Opinion on the animal health risks of feeding animals with ready-to-use dairy products without further treatment ⁽³⁾ the EFSA specifies more precisely some methods that can mitigate the risks of the spread of LSD through milk and dairy products. Therefore, the placing on the market and the dispatch of consignments of milk and dairy products for human consumption produced from animals kept in the restricted zone, should be permitted under certain conditions.
- (20) Commission Regulation (EU) No 142/2011 ⁽⁴⁾, lays down implementing rules for Regulation (EC) No 1069/2009 of the European Parliament and of the Council ⁽⁵⁾, including requirements for the safe processing of animal by-products and derived products. In order to prevent the spread of LSD, the placing on the market of

⁽¹⁾ 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 (OJ L 139, 30.4.2004, p. 55).

⁽²⁾ Commission Decision 2007/777/EC of 29 November 2007 laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries and repealing Decision 2005/432/EC (OJ L 312, 30.11.2007, p. 49).

⁽³⁾ *EFSA Journal* (2006) 347, p. 1.

⁽⁴⁾ Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ L 54, 26.2.2011, p. 1).

⁽⁵⁾ Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ L 300, 14.11.2009, p. 1).

unprocessed animal by-products should be prohibited. A reference to processed animal by-products in this Decision should be considered as a reference to the animal health standards set out in Regulation (EU) No 142/2011.

- (21) In the event of an outbreak of LSD, Article 19 of Directive 92/119/EEC provides for the possibility to carry out vaccination against that disease. Bulgaria has not excluded a recourse to emergency vaccination against LSD. The risk of the spread of that disease from vaccinated animals and their products is different from the risks arising from non-vaccinated and possibly incubating animals. Therefore, it is necessary to lay down conditions for the movement of vaccinated bovine animals and for the placing on the market of products derived from such animals.
- (22) Scientific knowledge about LSD is incomplete. Vaccinated bovine animals are protected from clinical signs of that disease but are not necessarily protected from infection and not all vaccinated animals respond with a protective immunity. Therefore, such animals after the period of at least 28 days following the vaccination should be allowed to be sent directly for immediate slaughter to slaughterhouses situated on the territory of Bulgaria.
- (23) Consequently, fresh meat and meat preparations thereof, as well as meat products subjected to a non-specific treatment may constitute a non-negligible risk for the spread of LSD. Therefore, it is justified to limit the placing on the market of the fresh meat of bovine animals and susceptible wild ungulates, and meat preparations and meat products thereof to the territory of Bulgaria, provided that such commodities are subjected to special marking which is not oval and cannot be confused with the health mark for fresh meat as set out in Chapter III of Section I of Annex I to Regulation (EC) No 854/2004 of the European Parliament and of the Council ⁽¹⁾ and the identification mark for meat preparations and meat products consisting of or containing meat of bovine animals, as set out in Section I of Annex II to Regulation (EC) No 853/2004.
- (24) A specific treatment of meat products in hermetically sealed containers to a F_0 value of three or more and a treatment described in points 1.1 to 1.5 of Part A of Annex IX to Council Directive 2003/85/EC ⁽²⁾ of milk and dairy products sufficiently inactivate LSD virus in such products destined for human consumption and therefore such meat products and such milk and dairy products should be allowed to be placed on the market on the whole of the territory of Bulgaria and in other Member States and to be dispatched to third countries.
- (25) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

This Decision lays down protective measures in relation to the outbreak of lumpy skin disease in Bulgaria and the additional measures to be taken by the Member States concerned in accordance with Directive 92/119/EEC.

Article 2

Definitions

For the purposes of this Directive, the definitions laid down in Article 2 of Directives 64/432/EEC, 92/65/EEC and 92/119/EEC respectively apply.

⁽¹⁾ 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 (OJ L 139, 30.4.2004, p. 206).

⁽²⁾ Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC (OJ L 306, 22.11.2003, p. 1).

In addition, the following definitions shall apply:

- (a) 'bovine animal' means ungulates of the species *Bos taurus*, *Bos indicus*, *Bison bison* and *Bubalus bubalis*;
- (b) 'restricted zone' means the part of the territory of a Member State listed in the Annex to this Decision which includes the area where lumpy skin disease was confirmed and any protection and surveillance zones established in accordance with Article 10 of Directive 92/119/EEC;
- (c) 'captive wild ruminant' means an animal of the suborder Ruminantia within the order Artiodactyla that has a phenotype not significantly affected by human selection but that lives under direct human supervision or control, including zoo animals;
- (d) 'wild ruminant' means an animal of the suborder Ruminantia within the order Artiodactyla that has a phenotype unaffected by human selection and lives independent of direct human supervision or control;
- (e) 'meat products' means meat products, as defined in point 7.1 of Annex I to Regulation (EC) No 853/2004, and treated stomachs, bladders and intestines, as defined in point 7.9 of that Annex, which have undergone one of the treatments laid down in Part 4 of Annex II to Decision 2007/777/EC.

Article 3

Prohibition on the movement and dispatch of certain animals and semen and embryos thereof, and placing on the market of certain products of animal origin and animal by-products

1. Bulgaria shall prohibit the dispatch of the following commodities from the restricted zone to other parts of Bulgaria, to other Member States and to third countries:

- (a) bovine animals and captive wild ruminants;
- (b) semen, ova and embryos of bovine animals.

2. Bulgaria shall prohibit the placing on the market outside the restricted zone and the dispatch to other Member States and to third countries of the following commodities produced from bovine animals and wild ruminants kept in or hunted in the restricted zone:

- (a) fresh meat and meat preparations and meat products produced from such fresh meat;
- (b) colostrum, milk and dairy products of bovine animals;
- (c) fresh hides and skins other than those falling within the definitions in points 28 and 29 of Annex I to Regulation (EU) No 142/2011;
- (d) unprocessed animal by-products, unless destined and channelled under official supervision of the competent authority for disposal or processing in an approved plant in accordance with Regulation (EC) No 1069/2009 within the territory of Bulgaria.

Article 4

Derogation from the prohibition on the dispatch of bovine animals and captive wild ruminants for direct slaughter and the dispatch of fresh meat, meat preparations and meat products obtained from such animals

1. By way of derogation from the prohibition provided for in Article 3(1)(a), the competent authority may authorise the dispatch of bovine animals and captive wild ruminants from holdings situated in the restricted zone to a slaughterhouse located in other parts of Bulgaria provided that:

- (a) the animals have been resident since birth, or for the past 28 days, on a holding where no case of lumpy skin disease was officially reported during that period;

- (b) the animals were clinically checked at loading and did not present any clinical signs of lumpy skin disease;
- (c) the animals are transported for immediate slaughter directly, without stopping or unloading;
- (d) the slaughterhouse is designated for this purpose by the competent authority;
- (e) the competent authority of the slaughterhouse must be informed in advance by the dispatching competent authority of the intention to send animals and notifies the dispatching competent authority of their arrival;
- (f) on arrival at the slaughterhouse, the animals are kept and slaughtered separately from other animals within a period of less than 36 hours;
- (g) the animals intended to be moved:
 - (i) were not vaccinated against lumpy skin disease and have been kept on holdings:
 - where vaccination was not carried out and which are situated outside protection and surveillance zones, or
 - where vaccination was carried out and which are situated outside protection and surveillance zones, and a waiting period of at least 7 days after vaccination in the herd has elapsed, or
 - which are situated in a surveillance zone maintained beyond 30 days because of the occurrence of further cases of the disease, as referred to in Article 13 of Directive 92/119/EEC; or
 - (ii) were vaccinated against lumpy skin disease at least 28 days prior to the date of movement and come from a holding on which all susceptible animals had been vaccinated at least 28 days prior to date of the intended movement.

2. Any dispatch of bovine animals and captive wild ruminants in accordance with paragraph 1 shall only take place if the following conditions are fulfilled:

- (a) the means of transport has been properly cleansed and disinfected before and after the loading of such animals in accordance with Article 9;
- (b) before and during the transport, the animals are protected against the attacks of vector insects.

3. The competent authority shall ensure that fresh meat, meat preparations and meat products obtained from the animals referred to in paragraph 1 of this Article are placed on the market in accordance with the requirements provided for in Articles 5 and 6.

Article 5

Derogation from the prohibition on the placing on the market of fresh meat and meat preparations of bovine animals and wild ruminants

1. By way of derogation from the prohibitions provided for in Article 3(2)(a) and (c), the competent authority may authorise the placing on the market in Bulgaria outside the restricted zone of fresh meat, excluding offal other than liver, and meat preparations thereof, as well as fresh hides and skins obtained from bovine animals and wild ruminants:

- (a) kept on holdings in the restricted zone that were not under restrictions in accordance with Directive 92/119/EEC; or
- (b) slaughtered or hunted before 13 April 2016; or
- (c) referred to in Article 4(1).

2. The competent authority shall only authorise the dispatch to other Member States or third countries of consignments of fresh meat obtained from bovine animals kept and slaughtered outside the restricted zone, and meat preparations produced from such fresh meat, provided that such meat and meat preparations were produced, stored and

handled without coming into contact with meat and meat preparations not authorised for dispatch to other Member States in accordance with Article 3(2)(a), and the consignments to other Member States are accompanied by an official health certificate in accordance with the model set out in the Annex to Commission Regulation (EC) No 599/2004 ⁽¹⁾, of which Part II has been completed with the following attestation:

'Fresh meat or meat preparations complying with Commission Implementing Decision (EU) 2016/645 of 22 April 2016 concerning certain protective measures against lumpy skin disease in Bulgaria.'

Article 6

Derogation from the prohibition on the placing on the market of meat products consisting of or containing meat of bovine animals or wild ruminants

1. By way of derogation from the prohibition provided for in Article 3(2)(a), the competent authority may authorise the placing on the market of meat products produced in the restricted zone from fresh meat of bovine animals and wild ruminants:

- (a) kept on holdings in the restricted zone which are not subject to restrictions in accordance with Directive 92/119/EEC;
- (b) slaughtered or hunted before 13 April 2016; or
- (c) referred to in Article 4(1); or
- (d) kept and slaughtered outside the restricted zone.

2. The competent authority shall authorise the placing on the market of meat products referred to in paragraph 1, that comply with the conditions of points (a), (b) or (c) of that paragraph, only on the territory of Bulgaria, provided that the meat products have been subjected to a non-specific treatment which ensures that the cut surface of the meat products shows no longer the characteristics of fresh meat.

The competent authority shall ensure that the meat products referred to in the first subparagraph are not dispatched to other Member States or to third countries.

3. The competent authority shall only authorise the dispatch of consignments of meat products produced from fresh meat obtained from the animals referred to in paragraph 1(a), (b) and (c) to other Member States or to third countries, provided that the meat products have been subjected to a specific treatment, as set out in point B of Part 4 of Annex II to Decision 2007/777/EC, in hermetically sealed containers to an F_0 value of three or more, and the consignments to other Member States are accompanied by an official health certificate in accordance with the model set out in the Annex to Regulation (EC) No 599/2004, of which Part II has been completed with the following attestation:

'Meat products complying with Commission Implementing Decision (EU) 2016/645 of 22 April 2016 concerning certain protective measures against lumpy skin disease in Bulgaria.'

4. The competent authority shall only authorise the dispatch to other Member States or third countries of consignments of meat products produced from fresh meat obtained from the animals referred to in paragraph 1(d), provided that the meat products have been subjected at least to a non-specific treatment, as set out in point A of Part 4 of Annex II to Decision 2007/777/EC, which ensures that the cut surface of the meat products shows no longer the characteristics of fresh meat and the consignments to other Member States are accompanied by an official health certificate in accordance with the model set out in the Annex to Regulation (EC) No 599/2004, of which Part II has been completed with the following attestation:

'Meat products complying with Commission Implementing Decision (EU) 2016/645 of 22 April 2016 concerning certain protective measures against lumpy skin disease in Bulgaria.'

⁽¹⁾ Commission Regulation (EC) No 599/2004 of 30 March 2004 concerning the adoption of a harmonised model certificate and inspection report linked to intra-Community trade in animals and products of animal origin (OJ L 94, 31.3.2004, p. 44).

*Article 7***Derogation from the prohibition on the dispatch and placing on the market of milk and dairy products**

1. By way of derogation from the prohibition provided for in Article 3(2)(b), the competent authority may authorise the placing on the market of milk for human consumption obtained from bovine animals kept on holdings situated in the restricted zone, and dairy products thereof, provided that the milk and dairy products have been subjected to a treatment described in points 1.1 to 1.5 of Part A of Annex IX to Directive 2003/85/EC.
2. The competent authority shall only authorise the dispatch to other Member States or to third countries of consignments of milk obtained from bovine animals kept on holdings situated in the restricted zone, and dairy products thereof, provided that the milk and dairy products are intended for human consumption, have undergone the treatment referred to in paragraph 1 of this Article and the consignments to other Member States are accompanied by an official health certificate in accordance with the model set out in the Annex to Regulation (EC) No 599/2004, of which Part II has been completed with the following attestation:

'Milk or dairy products complying with Commission Implementing Decision (EU) 2016/645 of 22 April 2016 concerning certain protective measures against lumpy skin disease in Bulgaria.'

*Article 8***Special marking of fresh meat, meat preparations and meat products referred to in Articles 5(1) and 6(2) respectively**

Bulgaria shall ensure that the fresh meat, meat preparations and meat products referred to in Article 5(1) and Article 6(2) are marked with a special health mark or identification mark that is not oval and cannot be confused with:

- (a) the health mark for fresh meat as set out in Chapter III of Section I of Annex I to Regulation (EC) No 854/2004;
- (b) the identification mark for meat preparations and meat products consisting of, or containing meat of bovine animals, as set out in Section I of Annex II to Regulation (EC) No 853/2004.

*Article 9***Requirements concerning transport vehicles, cleansing and disinfection**

1. The competent authority shall ensure that, for any vehicle which has been in contact with animals of susceptible species in the restricted zone and intends to leave this same zone, the operator or driver of this vehicle provides evidence showing that, since the last contact with those animals, the vehicle has been cleansed and disinfected in a manner to inactivate the lumpy skin disease virus.
2. The competent authority shall specify the information to be submitted by the operator or driver of the livestock vehicle in order to demonstrate the required cleansing and disinfection has taken place.

*Article 10***Information requirements**

Bulgaria shall inform the Commission and the other Member States, within the framework of the Standing Committee on Plants, Animals, Food and Feed, of the results of the surveillance for lumpy skin disease carried out in the restricted zone.

*Article 11***Application**

This Decision shall apply until 31 December 2016.

Article 12

This Decision is addressed to the Republic of Bulgaria.

Done at Brussels, 22 April 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

*ANNEX***RESTRICTED ZONE REFERRED TO IN POINT (b) OF THE SECOND SUBPARAGRAPH OF ARTICLE 2**

The following regions in Bulgaria:

- Haskovo Region
 - Stara Zagora Region
-

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