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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 232/2012

of 16 March 2012

amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the conditions of use and the use levels for Quinoline Yellow (E 104), Sunset Yellow FCF/Orange Yellow S (E 110) and Ponceau 4R, Cochineal Red A (E 124)

(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 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives [1], and in particular Article 10(3) thereof,

Whereas:

(1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in foods and their conditions of use.

(2) Quinoline Yellow (E 104), Sunset Yellow FCF/Orange Yellow S (E 110) and Ponceau 4R, Cochineal Red A (E 124) are food colours currently approved for use and listed in Annex II to Regulation (EC) No 1333/2008. The current approval takes into account the Acceptable Daily Intakes (ADI) established by the Scientific Committee for Food (SCF) in 1983 [2].

(3) The European Food Safety Authority (hereinafter: 'the Authority') issued an Opinion on 23 September 2009 [3] related to the re-evaluation on the safety of Quinoline Yellow (E 104) as a food additive. In that Opinion, the Authority recommends to lower the ADI of that food colour from 10 mg/kg bw/day to 0,5 mg/kg bw/day. In addition, the Authority considers that the refined exposure estimates (Tier 2 and Tier 3) are generally well over the revised ADI of 0,5 mg/kg bw/day. It is therefore appropriate to amend the conditions of use and use levels for Quinoline Yellow (E 104) to ensure that the new ADI recommended by the Authority is not exceeded.

(4) The Authority issued an Opinion on 27 September 2009 [4] related to the re-evaluation on the safety of Sunset Yellow FCF/Orange Yellow S (E 110) as a food additive. In that Opinion, the Authority recommends to lower the ADI for Sunset Yellow FCF/Orange Yellow S (E 110) from 2,5 to 1 mg/kg bw/day. In addition, the Authority considers that the refined exposure estimates (Tier 3) are generally well over the revised temporary ADI of 1 mg/kg bw/day for high-consumer children. It is therefore appropriate to amend the conditions of use and use levels for Sunset Yellow FCF/Orange Yellow S (E 110) to ensure that the new temporary ADI recommended by the Authority is not exceeded.

(5) The Authority issued an Opinion on 23 September 2009 [5] related to the re-evaluation on the safety of Ponceau 4R, Cochineal Red A (E 124) as a food additive. In that Opinion, the Authority recommends to lower the ADI from 4 mg/kg bw/day to 0,7 mg/kg bw/day. In addition, the Authority considers that the refined exposure estimates (Tier 3) are generally well over the revised ADI of 0,7 mg/kg bw/day for high-consumer children. It is therefore appropriate to amend

[1] OJ L 354, 31.12.2008, p. 16.

[2] Reports of the Scientific Committee for Food, Fourteenth series, 1983.

[3] Scientific opinion of the Panel on Food Additives and Nutrient sources added to Food (ANS) on a request from the Commission related to the re-evaluation on the safety of Quinoline Yellow (E 104) when used as a food additive, The EFSA Journal 2009; 7(11):1329.

[4] Scientific opinion of the Panel on Food Additives and Nutrient sources added to Food (ANS) on a request from the Commission related to the re-evaluation on the safety of Sunset Yellow (E 110) as a food additive, The EFSA Journal 2009; 7(11):1330.

[5] Scientific opinion of the Panel on Food Additives and Nutrient sources added to Food (ANS) on a request from the Commission related to the re-evaluation on the safety of Ponceau 4R as a food additive, The EFSA Journal 2009; 7(11):1328.

the conditions of use and use levels for Ponceau 4R, Cochineal Red A (E 124) to ensure that the new ADI recommended by the authority is not exceeded.

(6) It is necessary to remove these substances from Group III listed in Part C(3) of Annex II. However the combined maximum limit when the substances are used together with the remaining substances belonging to Group III should be maintained.

(7) In order to reduce the exposure below the recommended ADI, maximum limits should be revised. In particular they should be reduced by the same factor as the reduction in daily intake which is aimed at. Certain exceptions with higher levels should be allowed for some traditional products which do not significantly contribute to the exposure. Some provisions have also been deleted.

(8) Annex II to Regulation (EC) No 1333/2008 should therefore be amended accordingly.

(9) In order to allow the necessary time for the food industry to adjust their production to the new conditions of use and the use levels laid down in this Regulation, it is appropriate to provide for transitional arrangements.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health, and neither the European Parliament nor the Council has opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1333/2008 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall apply from 1 June 2013.

Foods containing Quinoline Yellow (E 104), Sunset Yellow FCF/ Orange Yellow S (E 110) and Ponceau 4R, Cochineal Red A (E 124) that have been lawfully placed on the market before 1 June 2013 but that do not comply with the provisions of this Regulation, may continue to be marketed until stocks are exhausted.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 16 March 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

Annex II to Regulation (EC) No 1333/2008 is amended as follows:

(1) in Part C, in point (3), the following entries are deleted:

'E 104	Quinoline Yellow'
'E 110	Sunset Yellow FCF/Orange yellow S'
'E 124	Ponceau 4R, Cochineal red A'

(2) Part E is amended as follows:

(a) in the categories 03, 05.2, 05.3, 05.4, 07.2 and 14.1.4 footnote (25) is replaced by the following:

'(25): The quantities of each of the colours E 122 and E 155 may not exceed 50 mg/kg or mg/l';

(b) in the category 1.7.5 footnote (33) is replaced by the following:

'(33): Maximum individually or for the combination of E 100, E 102, E 120, E 122, E 160e and E 161b';

(c) in the categories 04.2.1, 04.2.2, 04.2.3 and 04.2.4.1 footnote (34) is replaced by the following:

'(34): Maximum individually or for the combination of E 120, E 122, E 129, E 131 and E 133';

(d) in the categories 04.2.5.2 and 04.2.5.3 footnote (31) is replaced by the following:

'(31): Maximum individually or in combination with E 120, E 142, E 160d and E 161b';

(e) in the category 9.2 footnotes (35), (36) and (37) are replaced by the following:

'(35): Maximum individually or for the combination of E 102, E 120, E 122, E 142, E 151, E 160e and E 161b'

'(36): Maximum individually or for the combination of E 102, E 120, E 122, E 129, E 142, E 151, E 160e and E 161b'

'(37): Maximum individually or for the combination of E 102, E 120, E 151 and E 160e';

(f) the following entries for E 104, E 110 and E 124 are inserted in numerical order in the food categories referred to:

Category number	E-Number	Name	Maximum level (mg/l or mg/kg as appropriate)	Footnotes	restrictions/exceptions
'01.4	**Flavoured fermented milk products including heat treated products**				
	E 104	Quinoline Yellow	10	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	5	(61)	
	E 124	Ponceau 4R, Cochineal Red A	5	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
01.6.3	**Other creams**				
	E 104	Quinoline Yellow	10	(61)	Only flavoured creams
	E 110	Sunset Yellow FCF/Orange Yellow S	5	(61)	Only flavoured creams
	E 124	Ponceau 4R, Cochineal Red A	5	(61)	Only flavoured creams
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
01.7.3	**Edible cheese rind**				
	E 104	Quinoline Yellow	10	(62)	
		(62): The total quantity of E 104 and the colours in Group III shall not exceed the maximum listed for Group III			
04.2.4.1	**Fruit and vegetable preparations excluding compote**				
	E 104	Quinoline Yellow	30	(61)	Only *mostarda di frutta*
	E 110	Sunset Yellow FCF/Orange Yellow S	35	(61)	Only *mostarda di frutta*
	E 124	Ponceau 4R, Cochineal Red A	20	(61)	Only *mostarda di frutta*
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
05.2	**Other confectionery including breath refreshening microsweets**				
	E 104	Quinoline Yellow	30	(61)	except candied fruit and vegetables; traditional sugar coated nut- or cocoa-based confectionery of almond shape or host shape, typically longer than 2 cm and typically consumed at celebratory occasions, i.e. weddings, communion, etc.

Category number	E-Number	Name	Maximum level (mg/l or mg/kg as appropriate)	Footnotes	restrictions/exceptions
	E 110	Sunset Yellow FCF/Orange Yellow S	35	(61)	except candied fruit and vegetables; traditional sugar coated nut- or cocoa-based confectionery of almond shape or host shape, typically longer than 2 cm and typically consumed at celebratory occasions, i.e. weddings, communion, etc.
	E 124	Ponceau 4R, Cochineal Red A	20	(61)	except candied fruit and vegetables; traditional sugar coated nut- or cocoa-based confectionery of almond shape or host shape, typically longer than 2 cm and typically consumed at celebratory occasions, i.e. weddings, communion, etc.
	E 104	Quinoline Yellow	30	(61)	only candied fruit and vegetables
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	only candied fruit and vegetables
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	only candied fruit and vegetables
	E 104	Quinoline Yellow	300	(61)	only traditional sugar coated nut- or cocoa-based confectionery of almond shape or host shape, typically longer than 2 cm and typically consumed at celebratory occasions, i.e. weddings, communion, etc.
	E 110	Sunset Yellow FCF/Orange Yellow S	50	(61)	only traditional sugar coated nut- or cocoa-based confectionery of almond shape or host shape, typically longer than 2 cm and typically consumed at celebratory occasions, i.e. weddings, communion, etc.
	E 124	Ponceau 4R, Cochineal Red A	50	(61)	only traditional sugar coated nut- or cocoa-based confectionery of almond shape or host shape, typically longer than 2 cm and typically consumed at celebratory occasions, i.e. weddings, communion, etc.
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
05.3	**Chewing gum**				
	E 104	Quinoline Yellow	30	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
05.4	**Decorations, coatings and fillings, except fruit based fillings covered by category 4.2.4**				
	E 104	Quinoline Yellow	50	(61)	only decorations, coatings and sauces, except fillings
	E 110	Sunset Yellow FCF/Orange Yellow S	35	(61)	only decorations, coatings and sauces, except fillings

Category number	E-Number	Name	Maximum level (mg/l or mg/kg as appropriate)	Footnotes	restrictions/exceptions
	E 124	Ponceau 4R, Cochineal Red A	55	(61)	only decorations, coatings and sauces, except fillings
	E 104	Quinoline Yellow	50	(61)	only fillings
	E 110	Sunset Yellow FCF/Orange Yellow S	35	(61)	only fillings
	E 124	Ponceau 4R, Cochineal Red A	55	(61)	only fillings
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
06.6	**Batters**				
	E 104	Quinoline Yellow	50	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	35	(61)	
	E 124	Ponceau 4R, Cochineal Red A	55	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
08.2.3	**Casings and coatings and decorations for meat**				
	E 104	Quinoline Yellow	50	(61)	only decorations and coatings except edible external coating of *pasturmas*
	E 110	Sunset Yellow FCF/Orange Yellow S	35	(61)	only decorations and coatings except edible external coating of *pasturmas*
	E 124	Ponceau 4R, Cochineal Red A	55	(61)	only decorations and coatings except edible external coating of *pasturmas*
	E 104	Quinoline Yellow	10	(62)	only edible casings
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
		(62): The total quantity of E 104 and the colours in Group III shall not exceed the maximum listed for Group III			
09.2	**Processed fish and fishery products including molluscs and crustaceans**				
	E 110	Sunset Yellow FCF/Orange Yellow S	200	(63)	only in salmon substitutes based on *Theragra chalcogramma* and *Pollachius virens*
	E 124	Ponceau 4R, Cochineal Red A	200	(63)	only in salmon substitutes based on *Theragra chalcogramma* and *Pollachius virens*
		(63): The total quantity of E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			

Category number	E-Number	Name	Maximum level (mg/l or mg/kg as appropriate)	Footnotes	restrictions/exceptions
09.3	**Fish roe**				
	E 104	Quinoline Yellow	200	(61)	except Sturgeons' eggs (Caviar)
	E 110	Sunset Yellow FCF/Orange Yellow S	200	(61)	except Sturgeons' eggs (Caviar)
	E 124	Ponceau 4R, Cochineal Red A	200	(61)	except Sturgeons' eggs (Caviar)
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
12.2.2	**Seasonings and condiments**				
	E 104	Quinoline Yellow	10	(62)	only seasonings, for example curry powder, tandoori
		(62): The total quantity of E 104 and the colours in Group III shall not exceed the maximum listed for Group III			
12.4	**Mustard**				
	E 104	Quinoline Yellow	10	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	50	(61)	
	E 124	Ponceau 4R, Cochineal Red A	35	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
12.6	**Sauces**				
	E 104	Quinoline Yellow	20	(64)	including pickles, relishes, chutney and piccalilli; excluding tomato-based sauces
	E 110	Sunset Yellow FCF/Orange Yellow S	30	(64)	only in pickles and piccalilli
		(64): The total quantity of E 104 and E 110 and the colours in Group III shall not exceed the maximum listed for Group III			
12.9	**Protein products, excluding products covered in category 1.8**				
	E 104	Quinoline Yellow	10	(61)	only meat and fish analogues based on vegetable proteins
	E 110	Sunset Yellow FCF/Orange Yellow S	20	(61)	only meat and fish analogues based on vegetable proteins
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	only meat and fish analogues based on vegetable proteins
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			

Category number	E-Number	Name	Maximum level (mg/l or mg/kg as appropriate)	Footnotes	restrictions/exceptions
13.2	**Dietary foods for special medical purposes defined in Directive 1999/21/EC (excluding products from food category 13.1.5)**				
	E 104	Quinoline Yellow	10	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
13.3	**Dietary foods for weight control diets intended to replace total daily food intake or an individual meal (the whole or part of the total daily diet)**				
	E 104	Quinoline Yellow	10	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
14.1.4	**Flavoured drinks**				
	E 104	Quinoline Yellow	10	(61)	excluding chocolate milk and malt products
	E 110	Sunset Yellow FCF/Orange Yellow S	20	(61)	excluding chocolate milk and malt products
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	excluding chocolate milk and malt products
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
14.2.3	**Cider and perry**				
	E 104	Quinoline Yellow	25	(64)	excluding *cidre bouché*
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(64)	excluding *cidre bouché*
		(64): The total quantity of E 104, E 110 and the colours in Group III shall not exceed the maximum listed for Group III			
14.2.4	**Fruit wine and made wine**				
	E 104	Quinoline Yellow	20	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	
	E 124	Ponceau 4R, Cochineal Red A	1	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			

Category number	E-Number	Name	Maximum level (mg/l or mg/kg as appropriate)	Footnotes	restrictions/exceptions
14.2.7.1	**Aromatised wines**				
	E 104	Quinoline Yellow	50	(61)	Except *americano, bitter vino*
	E 110	Sunset Yellow FCF/Orange Yellow S	50	(61)	Except *americano, bitter vino*
	E 124	Ponceau 4R, Cochineal Red A	50	(61)	Except *americano, bitter vino*
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
14.2.7.2	**Aromatised wine-based drinks**				
	E 104	Quinoline Yellow	50	(61)	except *bitter soda, sangria, claria, zurra*
	E 110	Sunset Yellow FCF/Orange Yellow S	50	(61)	except *bitter soda, sangria, claria, zurra*
	E 124	Ponceau 4R, Cochineal Red A	50	(61)	except *bitter soda, sangria, claria, zurra*
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
14.2.7.3	**Aromatised wine-product cocktails**				
	E 104	Quinoline Yellow	50	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	50	(61)	
	E 124	Ponceau 4R, Cochineal Red A	50	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
14.2.8	**Other alcoholic drinks including mixtures of alcoholic drinks with non-alcoholic drinks and spirits with less than 15 % of alcohol**				
	E 104	Quinoline Yellow	180	(61)	only alcoholic drinks with less than 15 % of alcohol
	E 110	Sunset Yellow FCF/Orange Yellow S	100	(61)	only alcoholic drinks with less than 15 % of alcohol
	E 124	Ponceau 4R, Cochineal Red A	170	(61)	only alcoholic drinks with less than 15 % of alcohol
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
16.	**Desserts excluding products covered in categories 1, 3 and 4**				
	E 104	Quinoline Yellow	10	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	5	(61)	
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			

Category number	E-Number	Name	Maximum level (mg/l or mg/kg as appropriate)	Footnotes	restrictions/exceptions
17.1	**Food supplements supplied in a solid form including capsules and tablets and similar forms, excluding chewable forms**				
	E 104	Quinoline Yellow	35	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	
	E 124	Ponceau 4R, Cochineal Red A	35	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
17.2	**Food supplements supplied in a liquid form**				
	E 104	Quinoline Yellow	10	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III			
17.3	**Food supplements supplied in a syrup-type or chewable form**				
	E 104	Quinoline Yellow	10	(61)	
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	
		(61): The total quantity of E 104, E 110, E 124 and the colours in Group III shall not exceed the maximum listed for Group III'			

(g) category 08.2.1 is amended as follows:

(i) the entry for E 110 is replaced by the following:

	'E 110	Sunset yellow FCF/Orange Yellow S	15		only *sobrasada*'

(ii) the entry for E 124 is replaced by the following:

	'E 124	Ponceau 4R, Cochineal Red A	50		only *chorizo sausage/salchichon*'

(h) category 14.2.7.1 is amended as follows:

(i) the entries for E 104 and E 110 are replaced by the following:

	'E 104	Quinoline Yellow	50	(26) (27)	only *americano, bitter vino*
	E 110	Sunset Yellow FCF/Orange Yellow S	50	(27)	only *bitter vino*'

(ii) the entry for E 124 is replaced by the following:

	'E 124	Ponceau 4R, Cochineal Red A	50	(26) (27)	only *americano, bitter vino*'

(i) category 14.2.7.2 is amended as follows:

(i) the entries for E 104 and E 110 are replaced by the following:

	'E 104	Quinoline Yellow	50	(28)	only *bitter soda*
	E 110	Sunset Yellow FCF/Orange Yellow S	50	(28)	only *bitter soda*'

(ii) the entry for E 124 is replaced by the following:

	'E 124	Ponceau 4R, Cochineal Red A	50	(28)	only *bitter soda*'

(j) the following entries for E 104, E 110 and E 124 are deleted in the food categories referred to:

'**01.7.5**	**Processed cheese**				
	E 104	Quinoline Yellow	100	(33)	only flavoured processed cheese
	E 110	Sunset Yellow FCF/Orange Yellow S	100	(33)	only flavoured processed cheese
	E 124	Ponceau 4R, Cochineal Red A	100	(33)	only flavoured processed cheese
04.2.1	**Dried fruit and vegetables**				
	E 124	Ponceau 4R, Cochineal Red A	200	(34)	only preserves of red fruit
04.2.2	**Fruit and vegetables in vinegar, oil, or brine**				
	E 124	Ponceau 4R, Cochineal Red A	200	(34)	only preserves of red fruit
04.2.3	**Canned or bottled fruit and vegetables**				
	E 124	Ponceau 4R, Cochineal Red A	200	(34)	only preserves of red fruit
04.2.4.1	**Fruit and vegetable preparations excluding compote**				
	E 124	Ponceau 4R, Cochineal Red A	200	(34)	only preserves of red fruit

04.2.5.2	**Jam, jellies and marmalades and sweetened chestnut puree as defined by Directive 2001/113/EC**				
	E 104	Quinoline Yellow	100	(31)	except chestnut puree
	E 110	Sunset Yellow FCF/Orange Yellow S	100	(31)	except chestnut puree
	E 124	Ponceau 4R, Cochineal Red A	100	(31)	except chestnut puree
04.2.5.3	**Other similar fruit or vegetable spreads**				
	E 104	Quinoline Yellow	100	(31)	except *crème de pruneaux*
	E 110	Sunset Yellow FCF/Orange Yellow S	100	(31)	except *crème de pruneaux*
	E 124	Ponceau 4R, Cochineal Red A	100	(31)	except *crème de pruneaux*
08.2.1	**Non heat treated processed meat**				
	E 124	Ponceau 4R, Cochineal Red A	200		only *sobrasada*
09.2	**Processed fish and fishery products including molluscs and crustaceans**				
	E 104	Quinoline Yellow	100	(35)	only fish paste and crustacean paste
	E 110	Sunset Yellow FCF/Orange Yellow S	100	(35)	only fish paste and crustacean paste
	E 124	Ponceau 4R, Cochineal Red A	100	(35)	only fish paste and crustacean paste
	E 110	Sunset Yellow FCF/Orange Yellow S	250	(36)	only precooked crustacean
	E 124	Ponceau 4R, Cochineal Red A	250	(36)	only precooked crustacean
	E 110	Sunset Yellow FCF/Orange Yellow S	100	(37)	only smoked fish
	E 124	Ponceau 4R, Cochineal Red A	100	(37)	only smoked fish’

COMMISSION IMPLEMENTING REGULATION (EU) No 233/2012

of 16 March 2012

implementing Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the approval of the amended national scrapie control programme for Denmark

(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 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies [1], and in particular point (b)(iii) of Section 1 of Chapter A of Annex VIII thereto,

Whereas:

(1) Regulation (EC) No 999/2001 lays down rules for the prevention, control and eradication of transmissible spongiform encephalopathies in animals. It provides for the approval of the national scrapie control programmes of the Member States if they comply with certain criteria laid down in that Regulation.

(2) Commission Regulation (EC) No 546/2006 of 31 March 2006 implementing Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards national scrapie control programmes and additional guarantees and derogating from certain requirements of Decision 2003/100/EC and repealing Regulation (EC) No 1874/2003 [2] approved, inter alia, Denmark's national scrapie control programme and laid down additional guarantees relating to holdings and official movement restrictions under certain conditions for ovine and caprine animals.

(3) On 25 November 2011, Denmark submitted an amended national scrapie control programme to the Commission for approval, which complies with the criteria laid down in Regulation (EC) No 999/2001. Since 2003, all fallen stock of ovine and caprine animals over the age of 18 months have been tested for scrapie in Denmark and no case of classical scrapie has been detected. The objective of the amendment to Denmark's national scrapie control programme is therefore to reduce the number of tests performed annually, from the present extensive testing of all fallen stock of ovine and caprine animals over the age of 18 months to the minimum required in accordance with Regulation (EC) No 999/2001.

(4) Given the current favourable epidemiological situation in Denmark, the amended national scrapie control programme for that Member State should be approved.

(5) The amended national scrapie control programme will have no impact on trade since the additional guarantees and official movement restrictions laid down in Regulation (EC) No 546/2006 remain unchanged. This Regulation should therefore apply without delay.

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

HAS ADOPTED THIS REGULATION:

Article 1

The amended national scrapie control programme submitted by Denmark to the Commission on 25 November 2011 is hereby approved.

Article 2

This Regulation shall enter into force on the day following 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, 16 March 2012.

For the Commission
The President
José Manuel BARROSO

[1] OJ L 147, 31.5.2001, p. 1.
[2] OJ L 94, 1.4.2006, p. 28.

COMMISSION IMPLEMENTING REGULATION (EU) No 234/2012

of 16 March 2012

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 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) [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, 16 March 2012.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[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	51,1
	JO	64,0
	MA	55,9
	TN	72,8
	TR	104,2
	ZZ	69,6
0707 00 05	JO	103,9
	TR	177,4
	ZZ	140,7
0709 91 00	EG	76,0
	ZZ	76,0
0709 93 10	JO	225,1
	MA	64,2
	TR	121,2
	ZZ	136,8
0805 10 20	EG	51,1
	IL	74,2
	MA	62,9
	TN	61,0
	TR	63,2
	ZZ	62,5
0805 50 10	EG	69,0
	TR	48,6
	ZZ	58,8
0808 10 80	AR	89,5
	BR	84,1
	CA	119,9
	CL	105,0
	CN	115,1
	MK	33,9
	US	155,8
	UY	78,9
	ZA	119,9
	ZZ	100,2
0808 30 90	AR	92,0
	CL	134,9
	CN	47,7
	ZA	87,3
	ZZ	90,5

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) No 235/2012

of 16 March 2012

amending the representative prices and additional import duties for certain products in the sugar sector fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year

THE EUROPEAN COMMISSION,

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

Having regard to 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) ([1]),

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ([2]), and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

(1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2011/12 marketing year are fixed by Commission Implementing Regulation (EU) No 971/2011 ([3]). Those prices and duties were last amended by Commission Implementing Regulation (EU) No 230/2012 ([4]).

(2) The data currently available to the Commission indicate that those amounts should be amended in accordance with Article 36 of Regulation (EC) No 951/2006.

(3) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year, are hereby amended as set out in the Annex hereto.

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, 16 March 2012.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

([1]) OJ L 299, 16.11.2007, p. 1.
([2]) OJ L 178, 1.7.2006, p. 24.
([3]) OJ L 254, 30.9.2011, p. 12.
([4]) OJ L 77, 16.3.2012, p. 15.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 17 March 2012

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 12 10 (1)	44,97	0,00
1701 12 90 (1)	44,97	1,12
1701 13 10 (1)	44,97	0,00
1701 13 90 (1)	44,97	1,41
1701 14 10 (1)	44,97	0,00
1701 14 90 (1)	44,97	1,41
1701 91 00 (2)	51,35	2,06
1701 99 10 (2)	51,35	0,00
1701 99 90 (2)	51,35	0,00
1702 90 95 (3)	0,51	0,21

(1) For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.
(2) For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.
(3) Per 1 % sucrose content.

DECISIONS

COUNCIL DECISION

of 9 March 2012

appointing a German member and a German alternate member of the Committee of the Regions

(2012/155/EU)

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 German Government,

Whereas:

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU [1] and 2010/29/EU [2] appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

(2) A member's seat on the Committee of the Regions will become vacant following the end of the term of office of Ms Monika HELBIG on 31 March 2012. An alternate member's seat will become vacant following the appointment of Ms Hella DUNGER-LÖPER 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 with effect from 1 April 2012 for the remainder of the current term of office, which runs until 25 January 2015:

(a) as member:

— Ms Hella DUNGER-LÖPER, *Bevollmächtigte des Landes Berlin beim Bund und Europabeauftragte,*

and

(b) as alternate member:

— Mr Bernd KRÖMER, *Staatssekretär für Inneres bei der Senatsverwaltung für Inneres und Sport des Landes Berlin.*

Article 2

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

Done at Brussels, 9 March 2012.

For the Council
The President
I. AUKEN

[1] OJ L 348, 29.12.2009, p. 22.
[2] OJ L 12, 19.1.2010, p. 11.

COUNCIL IMPLEMENTING DECISION

of 13 March 2012

suspending commitments from the Cohesion Fund for Hungary with effect from 1 January 2013

(2012/156/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94 [1], and in particular Article 4 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 174 of the Treaty on the Functioning of the European Union (TFEU) calls for the Union to develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion in order to promote its overall harmonious development.

(2) In accordance with Article 175 TFEU, Member States are to conduct their economic policies and coordinate them in such a way as to attain the objectives set out in Article 174 TFEU. The formulation and implementation of the Union's policies and actions and the implementation of the internal market also have to take into account the objectives set out in Article 174 TFEU and contribute to their achievement.

(3) Article 121(3) TFEU calls upon the Council to monitor economic developments in each of the Member States and in the Union in order to ensure closer coordination of economic policies and sustained convergence of the economic performances of Member States and to ensure consistency of economic policies with the broad guidelines of the economic policies of the Member States and of the Union.

(4) In accordance with Article 126 TFEU, Member States are to avoid excessive government deficits.

(5) In accordance with Article 177 TFEU, the European Parliament and the Council are to define the tasks, priority objectives and the organisation of the Cohesion Fund which provides a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

(6) In the Protocol (No 28) on economic, social and territorial cohesion, annexed to the Treaty on European Union and to the TFEU, the Member States agreed that the Cohesion Fund will provide Union financial contributions to projects in the fields of environment and trans-European networks in Member States with a per capita GNP of less than 90 % of the Union average which have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article 126 TFEU.

(7) Article 4 of Regulation (EC) No 1084/2006 sets out conditions applicable to Cohesion Fund assistance and makes access to financial assistance from the Cohesion Fund conditional on the avoidance of an excessive government deficit as set out in Article 126 TFEU [2]. Under Article 4(1) of Regulation (EC) No 1084/2006 the Council may decide, on a proposal from the Commission, to suspend either the totality or part of the commitments from the Cohesion Fund for a beneficiary Member State if: (i) the Council has decided in accordance with Article 126(6) TFEU [3] that excessive government deficit exists in the Member State concerned; and (ii) the Council has established in accordance with Article 126(8) TFEU [4] that the Member State concerned has not taken effective action in response to a Council recommendation under Article 126(7) TFEU [5] to correct the excessive government deficit by the established deadline. Such suspension of commitments should be effective from 1 January of the year following the decision to suspend.

(8) On 5 July 2004, by Decision 2004/918/EC [6] the Council decided in accordance with Article 104(6) of the Treaty establishing the European Community (TEC) that an excessive deficit existed in Hungary. The Council adopted a first recommendation on 5 July 2004, a second recommendation on 8 March 2005 and a third recommendation on 10 October 2006 addressed to Hungary in accordance with Article 104(7) TEC. On 7 July 2009 the Council adopted its fourth recommendation to Hungary in accordance with Article 104(7) TEC ('Council Recommendation of 7 July 2009') with a view to bringing an end to the situation of an excessive government deficit by 2011 at the latest. Specifically, Hungary was recommended: (i) to limit the deterioration of the fiscal position in 2009 by ensuring a rigorous implementation of the adopted and announced corrective measures to respect the target of 3,9 % of GDP; (ii) starting from 2010, to implement rigorously the

[1] OJ L 210, 31.7.2006, p. 79.

[2] Replacing Article 104 of the Treaty establishing the European Community (TEC) as referred to in Article 4 of Regulation (EC) No 1084/2006.

[3] Replacing Article 104(6) TEC as referred to in Article 4 of Regulation (EC) No 1084/2006.

[4] Replacing Article 104(8) TEC as referred to in Article 4 of Regulation (EC) No 1084/2006.

[5] Replacing Article 104(7) TEC as referred to in Article 4 of Regulation (EC) No 1084/2006.

[6] OJ L 389, 30.12.2004, p. 27.

necessary consolidation measures to ensure a continued reduction of the structural deficit and a renewed decline of the headline deficit, with an increased reliance on structural measures, in order to guarantee a lasting improvement of public finances; (iii) to spell out and adopt in a timely manner the consolidation measures necessary to achieve the correction of the excessive deficit by 2011; (iv) to ensure a cumulative 0,5 % of GDP fiscal effort over 2010 and 2011; and (v) to ensure that the government gross debt ratio was brought onto a firm downward trajectory.

(9) On 24 January 2012 the Council adopted Decision 2012/139/EU [1] in accordance with Article 126(8) TFEU establishing that Hungary had not taken effective action in response to the Council Recommendation of 7 July 2009. The Decision noted that while Hungary formally respected the 3 % of GDP reference value by 2011, this was not based on a structural and sustainable correction. The budget surplus in 2011 hinged upon substantial one-off revenues of over 10 % of GDP and was accompanied by a cumulative structural deterioration in 2010 and 2011 of 2,75 % of GDP compared to a recommended cumulative fiscal improvement of 0,5 % of GDP. Moreover, while the authorities intend to implement substantial structural measures in 2012 reducing the structural deficit to 2,6 % of GDP, the 3 % of GDP reference value would again be respected only thanks to one-off measures of close to 1 % of GDP. Finally, in 2013, the deficit (at 3,25 % of GDP) was expected to exceed the reference value in the TFEU once more even after taking into account additional measures announced since the Commission services' 2011 autumn forecast. The higher deficit in 2013 would mainly be linked to the fact that temporary one-off revenues were being phased out as planned, while not all planned structural reforms had been sufficiently specified. Overall, the Council concluded that the response by the Hungarian authorities to the Council Recommendation of 7 July 2009 pursuant to Article 126(7) TFEU had been insufficient.

(10) Therefore, in the case of Hungary, the two conditions set out in Article 4(1) of Regulation (EC) No 1084/2006 have been fulfilled. The Council, on a proposal of the Commission, may thus suspend either the totality or part of the commitments from the Cohesion Fund with effect from 1 January 2013. The decision on the amount of commitments to be suspended should ensure that the suspension is both effective and proportionate, whilst taking into account the current overall economic situation in the European Union and the relative importance of the Cohesion Fund for the economy of the Member State concerned. Accordingly, it is appropriate, in case of a first application of Article 4(1) of Regulation (EC) No 1084/2006 to a given Member State, to set the amount at 50 % of the allocation of cohesion funds for 2013, without exceeding a maximum level of 0,5 % of the nominal GDP of the Member State concerned as forecast by the Commission services.

(11) Since the suspension concerns only commitments, the implementation of transport and environment projects or commitments already made at the time of suspension will not be compromised if the necessary corrective actions are promptly implemented. By suspending commitments taking effect as of the following year, the ongoing project implementation will not be affected for an extended period, giving the authorities the necessary time to adopt measures that would restore macro-economic and fiscal conditions conductive to sustainable growth and employment.

(12) In accordance with Article 4(2) of Regulation (EC) No 1084/2006, if by 22 June 2012, or at a later date, the Council establishes that Hungary has taken the necessary corrective action, it will decide, without delay, to lift the suspension of the commitments concerned,

HAS ADOPTED THIS DECISION:

Article 1

The amount of EUR 495 184 000 (in current prices) of commitments from the Cohesion Fund for Hungary shall be suspended with effect from 1 January 2013.

Article 2

This Decision shall take effect on the day of its notification.

Article 3

This Decision is addressed to Hungary.

Done at Brussels, 13 March 2012.

For the Council
The President
M. VESTAGER

[1] OJ L 66, 6.3.2012, p. 6.

COMMISSION DECISION

of 7 December 2011

concerning compensation payments made by the Greek Agricultural Insurance Organisation (ELGA) in 2008 and 2009

(notified under document C(2011) 7260)

(Only the Greek text is authentic)

(Text with EEA relevance)

(2012/157/EU)

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 regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having invited interested parties to submit their comments, in accordance with the first subparagraph of Article 108(2) of the Treaty ([1]),

Whereas:

I. PROCEDURE

(1) Following press reports which came to the Commission's attention that the Greek Agricultural Insurance Organisation ('ELGA') intended to make compensation payments of EUR 425 million after protests by a large number of Greek farmers in January 2009 about their revenue losses in 2008 due to damage caused by adverse weather conditions, a bilateral meeting with the Greek authorities was held on 4 February 2009. Subsequently, the Permanent Representation of Greece to the European Union, by letter of 9 February 2009, supplied information regarding this measure.

(2) The Commission asked for additional information by letter of 23 February 2009. By letter of 20 March 2009, the Greek authorities replied to the Commission that ELGA had taken out a loan for the compensation payments of EUR 425 million in question, as well as another loan of EUR 444 million, mainly to make payments to compensate producers for damage, in 2008, to crop and animal production due to causes covered by ELGA.

(3) The Commission asked for additional information by letter of 4 May 2009. The Greek authorities replied by letter of 16 June 2009. By letter of 13 July 2009, the Commission informed the Greek authorities that the compensation of EUR 425 million for 2009 had been registered as an alleged case under CP 196/2009 and that the compensation of EUR 444 million paid in 2008 had, for the part concerning compensation for damage due to causes covered by ELGA, been considered to be unlawful aid within the meaning of Article 1(f) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (*) of the EC Treaty ([2]) and had been registered under NN 39/09.

(4) Following the reply by the Greek authorities, dated 18 August 2009, the Commission asked for further information by letter of 14 September 2009. In that letter the Commission also informed the Greek authorities that as a result of the information they had supplied, i.e. that the compensation of EUR 425 million for 2009 had been paid to the farmers concerned, those payments had also been registered as unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999, also under NN 39/09.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 20 March 2010 ([3]). The Commission invited interested parties to submit their comments on the measures concerned. The Commission received comments from third parties which were forwarded to the Greek authorities on 6 May 2010. The Greek authorities sent their observations on the comments of the interested third parties on 21 July 2010.

(6) The Greek authorities provided additional information on the aid concerned by letters of 4 June 2010, 10 September 2010 and 14 September 2010. The Commission requested further information in a letter dated 17 November 2010. The Greek authorities replied by letter of 9 March 2011.

([1]) OJ C 72, 20.3.2010, p. 12.

(*) Subsequently Articles 87 and 88 of the EC Treaty. On 1 December 2009 Articles 87 and 88 of the EC Treaty were replaced by Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union.

([2]) OJ L 83, 27.3.1999, p. 1.

([3]) See footnote 1.

(7) At the request of the Greek authorities, a bilateral meeting with the Commission took place on 31 March 2011. Subsequently, the Greek authorities sent additional information on 11 May 2011 and 12 July 2011. At the request of the Greek authorities, a second bilateral meeting with the Commission took place on 11 November 2011.

II. **DESCRIPTION**

(8) Greek Law No 1790/1988 on the organisation and operation of the Greek Agricultural Insurance Organisation [4] ('Law No 1790/1988') created a public service body known as the Greek Agricultural Insurance Organisation (ELGA), a private legal person wholly owned by the State. According to Article 12 of the above Law, ELGA is subject to supervision by the Minister of Agriculture. ELGA administers its budget items in line with the decisions of its Administrative Board, the members of which are appointed by decision of the Minister of Agriculture. ELGA's main task is that of insuring crop and animal production and assets of agricultural holdings against damage due to natural risks.

(9) Pursuant to Article 3(a) [5] of Law No 1790/1988, insurance with ELGA is compulsory and covers natural risks, in particular floods, storms, ice and excessive frost, snow, hail, high temperatures and sunlight, excessive or unseasonal rainfall, drought, plant entomological and phytopathological diseases, epizootic diseases, fire caused by lightning, earthquakes, risks caused by the sea, damage to crops by wild animals and a series of cattle, sheep and goat diseases.

(10) According to Article 5(a) [6] of Law No 1790/1988, farmers who are members of the insurance scheme described in recital 9 must pay a special insurance contribution to ELGA. This contribution is in essence a charge levied by the legislator on the buying and selling of Greek agricultural products, the revenue from which goes to fund ELGA, a body tasked with preventing damage and providing compensation for damage to farms caused by natural risks.

(11) Under Article 5(a) of Law No 1790/1988, the special insurance contribution is set at 3 % for products of plant origin and at 0.5 % for animal products [7]. These contribution rates are set by the competent ministers on the basis of a proposal by ELGA to the Minister of Agriculture. ELGA's income from the special insurance contribution, collected by the tax authorities, is included in the State budget as State revenue and is entered under a special heading. This revenue is paid to ELGA from the budget of the Ministry of Agriculture, now renamed the Ministry of Rural Development and Food, by a transfer of funds in the same amount each year, following a proposal to that Ministry by ELGA. ELGA has no other influence on the level of either the contribution or the compensation.

(12) Natural and legal persons who own or operate agricultural, stock-breeding, poultry, fishing, aquaculture or other related undertakings are subject to insurance by ELGA. ELGA's income mainly comes from the special insurance contribution. In addition, ELGA is, according to Law No 3147/2003, able to make aid payments as part of planning programmes in case of extreme need to compensate for damage to crop and fixed assets due to natural disasters, extraordinary events or adverse climatic conditions. This aid is financed by the State budget or by loans. These programmes concern State aid approved by Commission decisions.

(13) Decree No 262037 issued by the Minister of Economic Affairs and the Minister of Rural Development on 30 January 2009 ('Common Ministerial Decision') envisaged emergency compensation totalling EUR 425 million for damage in 2008. Pursuant to the Common Ministerial Decision, this compensation was to be paid out by ELGA because of the reduction in the production of certain crops during the 2008 growing season due to adverse climatic conditions such as drought, high temperatures and rainfall and to entomological and phytopathological diseases suffered by these crops. This damage concerns almond, cherry, apricot, some peach, plum, pear and apple trees, as well as asparagus, oriental tobacco, potatoes, cotton, olive groves and cereals.

(14) According to information supplied by the Greek authorities, apart from loss of production, deterioration in the quality of some crops (cereals, cotton) had also been taken into account when determining the level of damage. This loss or deterioration in quality resulted from a combination of meteorological phenomena and crop diseases due to the bad climatic conditions affecting these crops during the year in question.

(15) To pay the compensation in question, ELGA took out a bank loan of EUR 425 million to be paid back over 10 years (2010-2019). For the first 3 years (2010-2012) this

[4] FEK A' 134 dated 20 June 1988.
[5] Inserted by Article 5 of Law No 2945/2001 and amended by Article 9 of Law No 3698/2008.
[6] Inserted by Law No 2040/1992 (FEK A' 70).
[7] Amended by Article 53(1) of Law No 2538/1997.

loan is subject to annual interest and a Greek State levy of EUR 28 513 250, and for the following 7 years (2013-2019) the interest, depreciation and levy will amount to EUR 89 227 536 in 2013, EUR 85 087 786 in 2014, EUR 81 025 536 in 2015, EUR 76 963 286 in 2016, EUR 72 901 036 in 2017, EUR 68 838 786 in 2018 and EUR 64 776 536 in 2019. The loan is guaranteed to ELGA by the Greek State.

(16) According to the information provided by the Greek authorities, the payments made by ELGA in 2008 for damage covered by its insurance amounted to EUR 386 986 648. This amount came partly from insurance contributions of EUR 88 353 000 and partly from revenue obtained on the basis of a loan of EUR 444 million.

(17) ELGA took out a bank loan of EUR 444 million on the basis of Article 13 of Law No 3074/2002 and Article 28(17) of Law No 3147/2003. The loan is to be paid back over 10 years (2009-2018). For the first 3 years (2009-2011) this loan is subject to annual interest and a Greek State levy of EUR 23 709 600, and for the following 7 years (2012-2018) the interest, depreciation and levy will amount to EUR 87 138 171 in 2012, EUR 83 789 143 in 2013, EUR 80 395 714 in 2014, EUR 77 002 286 in 2015, EUR 73 608 857 in 2016, EUR 70 215 429 in 2017 and EUR 66 822 000 in 2018. The loan is guaranteed to ELGA by the Greek State.

(18) The other part of the loan, EUR 145 366 352, was for State aid approved by Commission decisions regarding emergency planning programmes for the 2006 and 2007 fires. This part of ELGA's income is not affected by this Decision.

III. DOUBTS RAISED BY THE COMMISSION IN INITIATING THE INVESTIGATION PROCEDURE

1. *The existence of aid within the meaning of Article 107(1) TFEU*

(19) Measures granted through State resources: The Commission took the view that this condition was met in this case, given that the relevant national legislation (see recital 11) clearly states that the services provided by ELGA are financed by State resources and that the former are attributable to the State.

(20) In the information provided prior to the initiation of the procedure the Greek authorities had indicated that they intended to raise the percentage of the special insurance contribution in order to increase ELGA's income. However, the information provided on the increase in ELGA's income did not contain precise figures at this stage of the procedure to allow the conclusion that this increase would be sufficient to repay the loans in question and the granting of compensation to producers during the relevant years. Therefore it was not possible to rule out that these measures would also be financed through other State resources available to ELGA.

(21) Measures which affect trade and distort or threaten to distort competition: The payments made by ELGA in 2008 as part of the compulsory insurance scheme concerned numerous Greek animal products and products of plant origin, while those made in 2009 concerned several crops (see recital 13). At the beginning of the procedure, therefore, the Commission noted that the payments in question gave local farmers an advantage over those elsewhere in the Union who did not receive similar support. The agricultural sector is open to competition at Union level and is consequently sensitive to any measure favouring production in a particular Member State. The payments in question therefore threaten to distort competition in the internal market and to affect trade between Member States.

(22) Measures which favour certain undertakings or the production of certain goods: Regarding the issue of whether the payments made by ELGA in the context of the compulsory insurance scheme against natural risks provided selective advantage, the Commission considered that, a priori, the selective nature of the measure results from the fact that the payments by ELGA were limited to certain agricultural production.

The Commission took the view that it was arguable that the special characteristics of the agricultural sector and its particular dependence on certain climatic conditions, as well as its vulnerability to natural risks in Greece, makes it necessary to set up a State scheme which assures a minimum level of compensation based on the principle of solidarity. In so far as the payments by ELGA as part of the compulsory insurance scheme are financed from the income from the special insurance contribution, the Commission took the view that these could be considered as not giving those benefiting from them an undue advantage.

Nonetheless, this justification based on logic and the nature of the scheme could not cover additional financial interventions by the Greek State for the scheme in question (beyond financing through compulsory contributions). However, the Commission did not have sufficient evidence that this was the case when it initiated the investigation procedure. In particular, the Commission doubted whether the measures in question had been financed without additional State intervention.

(23) For these reasons the Commission concluded, when it opened the procedure, that it could not rule out that

the payments by ELGA in 2008 and 2009 as part of the compulsory insurance scheme fall under Article 107(1) of the Treaty and constitute State aid.

2. *Qualification of the measures as illegal aid*

(24) The Commission considered that, since the aid was granted and paid without prior notification to the Commission, it is illegal aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999.

3. *Preliminary assessment of the compatibility of the aid*

(25) As the Greek authorities had maintained that the measures in question are not State aid, the Commission did not, at the time the procedure was initiated, have the necessary information to determine whether the aid was compatible with the legal texts applicable when it was granted, i.e. in 2008 and 2009. These are the Community Guidelines for State aid in the agriculture and forestry sector 2007-2013 ([8]) ('guidelines'), and in particular Chapter V.B, on aid to compensate for damage to agricultural production or the means of agricultural production.

(26) On the basis of the information provided, the compensation for most of the crops concerned appeared to involve damage of a minimum threshold of 30 %, taking into consideration loss of production or deterioration in quality for certain products suffered during the year concerned due to a combination of more than one negative meteorological phenomenon and, for some crops, also due to plant diseases. The information transmitted by the Greek authorities did not supply any details about the method used to calculate this compensation.

(27) Therefore the Commission has doubts whether the aid could be said to be compatible with Chapter V.B of the guidelines.

IV. **COMMENTS BY THIRD PARTIES**

(28) The interested parties which made comments are the European Liaison Committee for the Agricultural and Agri-Food Trade (CELCAA), the European Association of Cereals, Rice, Feedstuffs, Oilseeds, Olive Oil, Oils and Fats and Agrosupply Trade (COCERAL), and a third interested party which asked for its identity to be treated confidentially.

(29) The interested parties, being independent traders (the third interested party) and, in the case of CELCAA and COCERAL, being charged with protecting the interests of independent traders, feel that this aid, while initially granted to farmers, in reality went to agricultural cooperatives and their associations which, because only they handle agricultural products, compete with the independent traders.

(30) According to the interested parties, Greece failed to provide evidence to show that the payments in question were granted to compensate for losses caused by adverse climatic conditions. The Greek authorities failed to submit an analytic description of the climatic conditions concerned based on appropriate meteorological information, as called for by the guidelines.

(31) In the opinion of the interested parties the Greek authorities had specified neither the method of calculating the payments in question nor the minimum threshold of losses. In addition, these payments were limited to certain agricultural products, while other producers who were excluded from these payments had also suffered production losses.

(32) The interested parties also thought that the granting of these payments has had an impact on the price of the final products since the price of the products fell as result of these payments. This aid therefore gave the producers concerned an economic advantage by allowing them to market those products not affected by adverse weather under conditions which distorted competition. Moreover, the private marketers (such as traders, flour and feedstuff millers, poultry and pig farmers) were forced to pursue a price policy imposed by the agricultural cooperatives and their associations, thus putting these cooperatives into a monopoly position.

(33) Also, the coverage offered by ELGA regarding the risks to which the agricultural sector is exposed had to respect the principles of proportionality and equality. According to the interested parties, it is not acceptable that the payments made by ELGA in 2008 and 2009 were three and four times, respectively, the total insurance contributions for the same years.

(34) According to the interested parties, by taking out the new loan for 2009 ELGA excessively 'mortgaged' its income for the next 10 years, given that it was already obliged to pay back the loan it had taken out for 2008, for which it had 'mortgaged' its insurance contributions in advance for the following years. The interested parties also pointed to the two additional loans ELGA took out in 2009, i.e. a loan of EUR 350 million with the Bank of Piraeus and a loan of EUR 112 million with the Agricultural Bank of Greece and the National Bank of Greece.

(35) The interested parties also thought that the loans of EUR 444 million and EUR 415 million represent income additional to that from the insurance contributions and

([8]) OJ C 319, 27.12.2006, p. 1.

paid under Greek law in the form of loans guaranteed by the Greek State. Those loans should therefore be considered as State resources.

V. **OBSERVATIONS BY GREECE**

1. *Specific observations concerning compensation aid granted in 2008 and 2009*

(36) According to the Greek authorities the compensation aid paid out by ELGA in 2008 and 2009 does not constitute State aid.

The insurance scheme in question is financed from compulsory special contributions paid by the farmers. Since this insurance scheme is governed by the principle of social solidarity, the compulsory special contributions need not be strictly proportionate to the insured risk and the benefits paid need not necessarily be proportionate to the income of the insured person ([9]). Therefore, according to the Greek authorities, these payments are genuine compensation given in order to make good damage to agricultural production due to adverse climatic conditions, in line with Greek law regarding agricultural insurance paid by ELGA.

Moreover, according to the Greek authorities, ELGA is capable of paying its financial obligations at maturity using the system of compulsory insurance. This capability is reinforced by the adoption of the new Law No 3877/2010 concerning the protection and insurance system for agricultural activities, which envisages additional sources of finance for ELGA. This Law therefore, in most cases, increases the special insurance contribution (from 3 % to 4 % for damage to crops and from 0,5 % to 0,75 % for damage to animal production). In addition, it establishes a voluntary insurance for losses not covered by the compulsory insurance, as well as a general insurance to be paid to ELGA by natural persons not practising farming as their main occupation and by legal persons the majority of whose shares do not belong to full-time farmers.

(37) However, even if the compensation aid were to be regarded as State aid, the Greek authorities consider that it is compatible with Article 107(3)(c) of the Treaty and with the guidelines. The Greek authorities have provided the Commission with detailed data concerning all aid granted by ELGA in 2008 and 2009, indicating the name and tax number of each farmer concerned, the department in which the parcel is situated, the type of crop, the unit of measurement of the crop and the number of units used, the amount of aid and the date when it was granted, a description of the damage and its level compared to normal production.

([9]) In this regard see the Opinion of Advocate-General Stix-Hackl presented on 14 November 2002 concerning Case C-355/00 Freskot/Elliniko Dimosio [2003] ECR I-5263, paragraph 68.

(38) With regard to the compensation aid in 2008 and 2009 for damage which led to the destruction of more than 30 % of normal crop production, the Greek authorities take the view that all conditions laid down in paragraphs 124 to 130 of the guidelines as well as in Article 11 of Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products ([10]) ('Exemption Regulation') are met.

(39) In the opinion of the Greek authorities the aid in question was paid to the farmers concerned or to the organisations to which they are affiliated, in line with the guidelines and the abovementioned Exemption Regulation. The Greek authorities confirmed in particular that:

(a) in no case did the aid exceed the real losses suffered by the farmers;

(b) regarding the intensity of the aid, the Greek authorities have confirmed that the conditions laid down in Article 11 of the Exemption Regulation were respected, since the compensation paid by ELGA did not exceed 74,8 % of the reduction in revenue from the sale of the product due to adverse climatic conditions;

(c) the maximum amount of loss eligible for aid was reduced by all amounts paid out by an insurance scheme and costs not incurred because of the adverse climatic event;

(d) the calculation of loss was made at the level of the individual holding;

(e) the decision to grant the aid in question and the payment of that aid took place within the deadlines laid down in Article 11(10) of the Exemption Regulation, i.e. three and 4 years after the loss, respectively; and

(f) the aid in question was not combined with other State aid or with the financial contributions allocated by the Member States or the Union for the same eligible costs. The producers concerned did not receive aid to compensate for the same loss based on more than one legal text; therefore this aid was granted either pursuant to the guidelines or to the Exemption Regulation, or to Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production ([11]) ('*de minimis* Regulation'), or to the Communication of 22 January 2009 for State aid

([10]) OJ L 358, 16.12.2006, p. 3.
([11]) OJ L 337, 21.12.2007, p. 35.

measures to support access to finance in the current financial and economic crisis ('Temporary Community Framework Communication') ([12]).

(40) With regard to the method of calculating normal production, the Greek authorities presented information on the method used and confirmed that the conditions laid down in paragraph 128 of the guidelines, which state that in case an alternative method is used, it should be representative and not based on abnormally high yields, have been met. In particular, the losses resulting from adverse climatic conditions have been evaluated at the level of the individual holding by agronomists, based on estimates made on site, as provided for in the ELGA insurance regulation. During the on-site inspection the evaluating agronomist measures the area of the parcel using all appropriate means (tape measure, parcel identification map, GPS) and, in the case of crop sites with trees, counts the number of trees. The agronomist then estimates the expected production of the parcel, taking account of the growing techniques used (in particular the density of planting, the pruning system for tree crops, early crops using plastic sheeting, irrigation system), the varieties of crops grown, the previous crop in the case of annual crops, crop control (particularly fertilisers, pest control), solar productivity and any special features of the production year (such as drought, setting problems). Lastly, the agronomist evaluates the expected damage to production in the parcel. To do this samples are taken from different parts of the parcel, taking into consideration the expected quantitative loss of production, the deterioration of quality due to the damage, crop control following the damage (such as additional crop protection, weeding or removal of damaged fruit).

2. *Specific observations concerning compensation aid granted in 2008*

(41) Of the aid granted by ELGA in 2008, i.e. EUR 386 986 648, compensation of EUR 373 257 465,71 was paid to producers for loss of crop production due to adverse climatic conditions. Regarding this aid, ELGA applied Article 6 of the Regulation on insurance for crop production concerning compensation to producers of agricultural products for losses due to adverse climatic conditions, as provided for in Greek Law No 1790/1988 establishing the ELGA insurance system.

(42) For the aid in question, Greece has provided meteorological information about the adverse weather conditions in the 2007/2008 marketing year. These adverse climatic events were formally acknowledged by the public authorities. They include, in particular, the heatwave which affected the entire country in late June and late July 2007, heavy rainfall in several areas of the country in October 2007, hot, dry katabatic winds in Crete in October 2007, storms and hail in a number of prefectures in the north-west and centre of mainland Greece in early August 2008, and storms in late August 2008 in the regions of Magnesia, Viotia, and East Attica, and on the islands of Evia and Crete.

In particular, the compensation in question was granted in respect of damage which exceeded the following percentages of normal production ([13]):

Minimum amount of damage as a percentage of normal production	Total amount of compensation (EUR)	Number of agricultural parcels which suffered losses	Percentage of total amount of compensation granted
20–29	26 063 999,19	101 162	6,98
30–100	347 193 466,52	565 244	93,02
Total	373 257 465,71	666 406	100

ELGA also made additional compensation payments totalling EUR 2 472 785,97 to farmers who had suffered further losses of the same crops due to adverse weather conditions. 6,98 % of the total amount of compensation paid was also for damage equivalent to 20-30 % of normal production; 93,02 % of the total amount was for damage which had destroyed more than 30 % of normal production.

(43) Furthermore, aid granted by ELGA to farmers in 2008 included the following:

(a) aid totalling EUR 7 338 119,74 for livestock asset losses. Among these losses, the amount of EUR 1 860 279,67 was paid for livestock asset losses resulting from adverse weather conditions, EUR 3 188 825,78 concerned losses caused by animal illness and disease, and EUR 2 289 014,29 related to other types of damage (such as attacks by wild animals, bears, wolves or stray dogs). The Greek authorities take the view that this aid is genuine compensation in the context of the compulsory insurance scheme and does not constitute State aid within the meaning of Article 107(1) of the Treaty;

([12]) OJ C 16, 22.1.2009, p. 1. The Communication was last amended in October 2009 (OJ C 261, 31.10.2009).

([13]) Article 6 of the Regulation on crop production insurance (Common Ministerial Decision No 15711 of 30 September 1998) provides that the minimum threshold for damage to be covered by ELGA is 20 % of normal production.

(b) aid totalling EUR 114 374,86 for crop losses caused by bears. That aid was granted under the Community 'LIFE' project for the conservation of the brown bear in Greece. The aid intensity was 100 %; and

(c) aid totalling EUR 3 803 901,72 for corrective measures following inadvertent errors made in the evaluation reports in respect of crop and livestock asset losses. These errors, which were not detected until the aid had been paid to farmers, related to ELGA debts vis-à-vis the beneficiaries concerned.

3. *Specific observations regarding compensation aid granted in 2009*

(44) With regard to the compensation paid in 2009 on the basis of the Common Ministerial Decision of 30 January 2009, i.e. EUR 415 019 452, the table below provides details of the products concerned, the weather conditions which caused the damage and a description of the damage caused.

Agricultural product	Total amount of compensation (EUR)	Adverse weather conditions	Description of the damage
1. Almonds Cherries Apricots (bebekou variety) Apples Plums Pears	56 580 555 (for all products)	High temperatures and heatwave; warm, dry winter; prolonged drought; sudden variations in temperature.	The high temperatures and the heatwave in the summer of 2007 had a negative impact on the production of these crops and, in particular, on fruit bud formation. Prolonged drought in 2007 and sudden changes in temperature led to a fall in production. In addition, tree crops did not have sufficient chill time as a result of the warm, dry winter.
2. Peaches	10 970 348	Same weather conditions as in 1.	Same damage as in 1.
3. Asparagus	6 751 747	Warm, dry winter; low temperatures.	The warm, dry winter of 2007-08 increased the level of catabolic (acid-forming) activity in the asparagus, depleting the nutrient content. These conditions led to a sudden drop in the next asparagus yield. Production, which was already reduced, was also affected by the low temperatures in February 2008 which retarded growth. This caused a further fall in the asparagus yield in Greece in 2008.
4. Oriental tobacco	13 817 834	High temperatures and heatwave; drought.	The high temperatures and heatwave in the summer of 2007 combined with the drought made it difficult to treat insect and thrips virus infestations and caused tobacco production to fall throughout Greece.
5. Potatoes	7 220 996	High temperatures.	High temperatures in the summers of 2006 and 2008 made it difficult to treat insect infestations and plant diseases which affected summer potato crops in several Greek prefectures.
6. Cotton	109 564 462	Prolonged drought; hot summer; cold autumn; rain.	The prolonged drought reduced water stores. In 2008, a hot summer followed by a cold autumn combined with excessive rainfall towards the end of September led to a reduction in production and a decline in the quality of the cotton crop throughout Greece.
7. Olives	72 026 112	Drought; frost; rain.	Prolonged drought, the icy weather of February 2008, which followed a mild winter, and the high temperatures and excessive rainfall during the olive flowering period led to a significant reduction in the olive yield throughout Greece.

Agricultural product	Total amount of compensation (EUR)	Adverse weather conditions	Description of the damage
8. Cereals (maize, common wheat, barley, oats, rye, rice)	138 087 394	Rain; variations in temperature.	The rain and variations in temperature in the spring and autumn of 2008 led to a decline in the production of cereals and left the crops more vulnerable to disease. The decline in quality was also due to the absence of essential nutrients (protein, gluten) caused by the adverse weather conditions.
Total	415 019 448		

(45) According to the Greek authorities, out of the compensation of EUR 415 019 452, aid totalling EUR 27 614 905 paid to 871 farmers is considered to be State aid compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty and the guidelines.

(46) The remaining aid, EUR 387 404 547, was paid to 784 408 farmers. According to the Greek authorities, the aid in question is compatible with the internal market under Article 107(3)(c) of the Treaty and the Exemption Regulation.

The Greek authorities take the view that the aid in question satisfied all the conditions laid down in Article 11 of the Exemption Regulation. In particular:

(a) the gross aid intensity did not exceed 80 % of the reduction in income from the sale of the product resulting from the adverse weather conditions;

(b) the losses were calculated at the level of the individual holding;

(c) the amount of the loss did not include expenditure which did not result from the adverse weather conditions and the farmers did not receive compensation from any other insurance institution;

(d) the compensation in question was paid directly to the farmers;

(e) the decision to grant the aid in question and the actual payment of the aid took place within three and 4 years of the losses, respectively;

(f) the standard calculation method used is the same as that described in recital 42 for the aid granted in 2008.

(47) Moreover, the Greek authorities consider that, even if the aid in question cannot be considered to be genuine compensation (see recital 36) or deemed compatible with the Exemption Regulation (see recital 46), it should still be deemed compatible with Article 107(3)(b) of the Treaty and the Communication on the Temporary Framework.

The grant of the aid in question improved access to finance for the farmers concerned. Thus, the abovementioned compensation ensured financial liquidity for the primary production sector in Greece, the only sector on which the Greek State was able to depend during the first few months of the economic crisis in order to avert risks to other sectors of the Greek economy. However, the aid in question was granted according to strict criteria. Indeed, it was only granted where there were genuine economic problems linked exclusively to agricultural production and, more specifically, where this was affected by adverse weather conditions (see recital 44). For the majority of this aid, thresholds had not been set for the intensity or the extent of the problems faced by each farmer, as the aim was to support the Greek agricultural sector in general.

(48) Furthermore, in accordance with point 7(a) of the Communication, in the case of non-notified aid [14] the Commission applies the Communication if the aid was granted after 17 December 2008. The Greek authorities therefore take the view that point 7(a) of the Communication applies in respect of the non-notified aid in question, since it was granted to farmers after 17 December 2008.

(49) The Greek authorities consider that the aid in question, which is provided for in exceptional cases by the Common Ministerial Decision of 30 January 2009, fulfils all the conditions set out in point 4.2.2 of the Temporary Community Framework. More specifically:

(a) the aid was granted within the context of an aid scheme, since it was based on the abovementioned Common Ministerial Decision;

[14] In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid (OJ C 119, 22.5.2002, p. 22).

(b) it was granted to undertakings which were not in difficulty on 1 July 2008 in accordance with the Community guidelines on State aid for rescuing and restructuring firms in difficulty. The Greek authorities have confirmed that the aid was granted exclusively to natural persons, the majority of whom were exempt under Greek legislation from filing a tax return since their annual income did not exceed EUR 12 000. All the farmers who were beneficiaries of the compensation in question had bank accounts which they were using and the aid was paid into their bank accounts. The Greek authorities confirm that the farmers in question were solvent and had access to adequate bank finance. Therefore, these farmers were not in difficulty when the aid in question was paid;

(c) the aid scheme was not applied to undertakings active in the fisheries sector;

(d) the aid in question was not export aid or aid favouring domestic over imported products;

(e) it was granted in 2009, thus prior to 31 December 2010 as stipulated in point 4.2.2(f) of the Communication on the Temporary Community Framework; and

(f) the amount of aid per farmer ranged from EUR 7 501 to EUR 15 000.

(50) In accordance with point 4.2.2(g) of the Communication on the Temporary Community Framework, as amended in October 2009, the aid in question received by each farmer concerned should not raise the total amount of aid received by the farmer concerned during the period from 1 January 2008 to 31 December 2010 to above the ceiling of EUR 15 000. The Greek authorities consider that the fact that ELGA did not obtain a declaration from the farmers concerned, in written or electronic form, about any other *de minimis* aid, or aid received pursuant to the Temporary Community Framework during the current fiscal year, should be regarded as a mere formality. Thus, the failure to observe that formality should not lead to the conclusion that the condition laid down in point 4.2.2(g) of the Communication on the Temporary Community Framework, as amended in 2009, was not satisfied, particularly since, as shown by ELGA's computer records, Greece did not grant *de minimis* aid to farmers in the primary agricultural products sector or aid based on the Communication on the Temporary Community Framework during the period from 1 January 2008 to 31 December 2010.

(51) Nevertheless, in the opinion of the Greek authorities, of the sum of EUR 387 404 547, aid of EUR 75 382 500 falls within the scope of the *de minimis* Regulation.

(52) The Greek authorities consider that the abovementioned aid of EUR 75 382 500 meets all the conditions laid down in Regulation (EC) No 1535/2007 on *de minimis* aid. More specifically:

(a) in accordance with Article 3(2) of Regulation (EC) No 1535/2007, in respect of the abovementioned aid, the farmers concerned did not receive compensation exceeding the sum of EUR 7 500 per farmer during the fiscal years 2008 to 2010;

(b) the cumulative amount of *de minimis* aid granted by Greece to agricultural holdings over a period of three financial years did not exceed EUR 75 382 500, i.e. the maximum cumulative amount of aid laid down for Greece in accordance with Article 3(3) of and the Annex to Regulation (EC) No 1535/2007.

4. *Comments on the observations made by third parties*

(53) Greece argues that the interested parties have not provided any evidence to prove that the compensation in question has affected the position of their members on the internal market.

(54) With regard to the observation that no description of the adverse weather conditions was provided, the Greek authorities emphasise that, under the Common Ministerial Decision on compensation, no such description is required, but that it was necessary to demonstrate the existence of adverse weather conditions and to prove that the damage caused had reached the minimum threshold of 30 % of normal production. Furthermore, Greece did provide, in the context of the observations it submitted to the Commission, analytical data concerning the weather conditions in question, accompanied by the relevant meteorological information.

(55) With regard to the observation that Greece did not specify either the method used for calculating the compensation in question or the minimum threshold of the loss suffered, the Greek authorities reiterate that, in the context of the observations submitted to the Commission, it provided detailed information in respect of both factors.

(56) The Greek authorities claim that the granting of the aid in question did not affect the end-consumer because the fall in the price of the agricultural products concerned did not lead to a fall in retail prices. To support this claim, the Greek authorities submitted articles from the Greek press showing that the retail price of several agricultural products, including those involved in this case, remained high despite the fact that the wholesale price of those agricultural products had fallen.

VI. **ASSESSMENT OF THE AID**

1. *Existence of aid within the meaning of Article 107(1) of the Treaty*

(57) Article 107(1) of the Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the internal market. The Commission considers that, in respect of the measures in question, the abovementioned conditions have been satisfied.

(58) Measures granted through State resources

In accordance with the Court judgment of 22 March 2003 in Case C-355/00 Freskot AE v Elliniko Dimosio ([15]) ('Freskot case'), this condition is satisfied in the present case since the national legislation concerned clearly establishes that the benefits provided by ELGA are granted through State resources and are imputable to the State within the meaning of the Court's case-law ([16]).

In the present case, as in the Freskot case, under Article 5(a) of Law No 1790/1988 (see also recital 11) and other provisions of Greek legislation in force, ELGA's income from the special contribution was collected by the tax authorities, entered in the State budget as State revenue and paid to ELGA from the budget of the Ministry of Agriculture (now the Ministry of Rural Development and Food). Consequently, the fact that the contributions in question are entered into the accounts as State revenue is sufficient to consider that the payments made by ELGA were financed by State resources.

Furthermore, in accordance with Article 2 of Law No 1790/1998 ([17]), by decision of the Minister for Agriculture ELGA may pay aid or compensation to beneficiaries through a transfer of resources from the State budget or by means of loans taken out by ELGA and guaranteed by the Greek State where the Greek State is obliged to repay the loan.

However, it is clear from the case-law of the Court that benefits granted directly by the State and those granted by a public or private body designated or established by the State constitute State resources within the meaning of Article 107(1) of the Treaty ([18]). Therefore, in the case in question, the two loans taken out by ELGA for the compensation paid in 2008 and 2009 and guaranteed by the Greek State (see recitals 15 to 17) constitute State resources within the meaning of Article 107(1) of the Treaty since they are part of the resources of ELGA, a private legal person wholly owned by the State and under the supervision of the Minister for Agriculture (see also recital 8).

(59) Measures which affect trade and distort or threaten to distort competition

The Commission notes that the compensation in question gives national farmers an advantage over those elsewhere in the Union who do not receive the same support. The agricultural sector is open to competition at Union level ([19]) and is consequently sensitive to any measure favouring production in a particular Member State ([20]). The compensation in question therefore threatens to distort competition in the internal market and affects trade between Member States.

(60) Measures which favour certain undertakings or the production of certain goods

Moreover, in accordance with the case-law of the Court ([21]), measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect are also considered to be aid.

In the Freskot judgment, the Court found that the term 'undertaking' within the meaning of Article 102 of the Treaty does not cover a body such as ELGA in respect of its activities under the compulsory insurance scheme against natural risks (see paragraphs 79 and 88 of the judgment).

([15]) [2003] ECR I-05263, paragraph 81.

([16]) See, in particular, Case C-482/99 *France* v *Commission* [2002] ECR I- 4397, paragraph 24.

([17]) As amended by Article 13(1) of Law No 3074/2002.

([18]) See Case C-379/98, *PreussenElektra AG* v *Schleswag AG* [2001] ECR I-2099, paragraph 58. See also Case 290/83, *France* v *Commission* [1985] ECR p. 439, paragraph 14.

([19]) In accordance with the case-law of the Court of Justice, the improvement of the competitive position of an undertaking resulting from a State aid generally constitutes a distortion of competition with other competing undertakings not receiving such aid (judgment in Case C-730/79, *Philip Morris* v *Commission* [1980] ECR 2671, paragraphs 11 and 12).

([20]) In terms of intra-EU trade in the EU-27 in 2008, crop imports amounted to 11 043 000 tonnes and exports to 10 799 000 tonnes; fruit 13 494 000 tonnes (imports) and 13 227 000 tonnes (exports) of which citrus fruits, 4 236 000 tonnes (imports) and 4 322 000 tonnes (exports); potatoes 6 130 000 tonnes (imports) and 5 760 000 tonnes (exports); olive oil 777 000 tonnes (imports) and 724 000 tonnes (exports); milk and other milk products 12 326 000 tonnes (imports) and 13 130 000 tonnes (exports); sheepmeat and goatmeat, including livestock, expressed in carcass weight, 235 000 tonnes (imports) and 275 000 tonnes (exports); poultrymeat, including livestock, expressed in carcass weight, 3 346 000 tonnes (imports) and 3 806 000 tonnes (exports).

([21]) See in particular Ecotrade, Case C-200/97, [1999] ECR I-A-00019, paragraph 37, and *Belgium* v *Commission*, Case C-75/97, [1999] ECR, I-03671, paragraph 23.

In fact, the compulsory insurance scheme in question essentially pursues a social policy objective with a view to ensuring adequate coverage for all agricultural holdings, including those which are at greater risk of damage caused by natural risks (see paragraphs 66 and 67 of the judgment). The insurance contribution applies to all agricultural products at uniform rates which are not related to the actual risk to which the farmer is exposed (based on the solidarity principle). ELGA is audited by the State since the amount of the contribution, on the revenue side, as well as the compensation rate is established by the relevant ministry.

As the Court noted in its judgment of 22 January 2002 in Case C-218/00, Cisal v INAIL ([22]), in the present case the two essential aspects of the ELGA insurance scheme, i.e. the amount of compensation and the level of contributions, are controlled by the State, and the compulsory participation characteristic of the scheme is essential in order to ensure its financial viability and to guarantee that solidarity principle is implemented, which indicates that the compensation paid to the insured party is disproportionate to the contributions made by the latter.

Unlike in the Cisal/INAIL case, however, the recipients of compensation from ELGA are undertakings engaged in economic activity. The fact that ELGA itself is not engaged in any economic activity is therefore not sufficient grounds for establishing that the beneficiaries of compensation paid by this body are not undertakings within the meaning of the Treaty and are not potential beneficiaries of State aid (see the Freskot judgment, paragraph 80).

With regard to the issue of economic advantage, the Court simply states in paragraph 84 of the Freskot judgment: 'Accordingly, it is necessary to answer the question whether, and if so to what extent, in the absence of compulsory cover, Greek agricultural holdings should have and indeed could have obtained insurance cover from private insurers or taken other steps in order adequately to protect themselves against the consequences of natural risks for their farms and, second, to what extent the contribution corresponds to the actual economic cost of the benefits provided by ELGA under the compulsory insurance scheme, if indeed such a cost can be calculated.' In the next paragraph, however, the Court finds that 'the Court is not sufficiently apprised of the relevant points of fact and law needed in order to be able to answer the part of the question concerning the potential classification of the benefits granted by ELGA under the compulsory insurance scheme as State aid.' However, the Court stated in paragraph 87 of the Freskot case that 'it was not sufficiently apprised of the relevant points of fact and law needed in order to be able to answer the part of the question concerning the potential classification of the benefits granted by ELGA under the compulsory insurance scheme against natural risks as State aid'.

([22]) [2002] ECR I-717, paragraph 44.

(61) According to the case-law of the Court, neither the social character of the aid measure ([23]), nor the fact that it is fully or partially financed by the contributions imposed by the public authority and charged to the companies concerned ([24]) is sufficient to prevent the measure being defined as aid within the meaning of Article 107(1) of the Treaty, which does not distinguish between types of State aid according to the aims or objectives of the measure but rather defines it in terms of its effects ([25]).

The payments made by ELGA in 2008 as part of the compulsory insurance scheme concerned certain Greek animal products and products of plant origin, while those made in 2009 concerned certain crops. Accordingly, it follows that the compensation paid by ELGA to local agricultural producers could give a selective financial advantage to those producers as compared with producers elsewhere in the Union not receiving the same aid.

Moreover, where there is a higher risk of damage caused by natural risks, it is unlikely that the agricultural holdings would be able to obtain insurance cover from a private institution under the same terms. The Commission finds, therefore, that in the circumstances the compensation paid by ELGA through the scheme in question represents a selective financial advantage for the recipients.

(62) The judgment of the Court in the Freskot case (see paragraph 86) raises the question of whether the aid measure in question may be justified in the light of the nature or general scheme of the system of benefits, which is a matter for the Member State concerned to prove ([26]). It should be determined whether the special characteristics of the agricultural sector and its particular dependence on certain climatic conditions, as well as its vulnerability to natural risks in Greece, could make it necessary to set up a State scheme which assures a minimum level of compensation based on the principle of solidarity. However, a measure introducing an exception to the application of the general parafiscal/tax system may be justified by the general scheme and nature of the tax system if the Member State concerned can prove that this measure results directly from the founding principles or policy of this system. A distinction should be drawn between the objectives assigned to a particular scheme and which are external to it and the mechanisms inherent to the scheme itself which are necessary for the achievement of such objectives ([27]).

([23]) See, in this regard, Case C-75/97, *Belgium* v *Commission* [1999] ECR I-03671, paragraph 25.

([24]) See, in this regard, Case C-78/76 *Steinike & Weinlig* v *Federal Republic of Germany* [1977] ECR 00595, paragraph 22.

([25]) See, in this regard, Case C-56/93 *Belgium* v *Commission* [1996] ECR I-273, paragraph 79, or Case C-241/94 *France* v *Commission* [1996] I-4551, paragraph 20.

([26]) Case C-159/01, *Netherlands* v *Commission* [2004] ECR I-4461, paragraph 43.

([27]) Case C-88/03 *Portugal* v *Commission* [2006] ECR I-07115, paragraph 81.

Since it appears that ELGA is not solely financed by parafiscal levies but also by direct State contributions, it cannot be justified on the basis of solidarity between farmers, which means that the whole scheme must be regarded as being selective.

Thus, in the case in question, most of the compensation paid to farmers in 2008, i.e. EUR 386 986 648, was not financed by special compulsory contributions, as these amounted to just EUR 88 353 000. In this case, the payments made to insured farmers could not be regarded as being solely financed through contributions ([28]).

(63) With regard to the compensation paid in 2009, i.e. EUR 415 019 452, the Commission finds that this was not financed by special compulsory contributions, which totalled EUR 57 015 388 in 2009. These payments were provided for in the Common Ministerial Decision of 30 January 2009 as insurance cover in exceptional circumstances for losses to crop production and they did not form part of the compensation that ELGA had to pay to farmers in 2009 to make good damage in the context of the compulsory insurance scheme. Consequently, the argument put forward by the Greek authorities that these payments should also be regarded as genuine compensation cannot be accepted by the Commission.

(64) In order to pay these higher sums to producers of agricultural products, ELGA had to take out two loans to be repaid over a 10-year period (see recitals 16 and 17). On the basis of the information provided by the Greek authorities concerning the annual interest and capital repayments on the two loans taken out by ELGA to pay the compensation, ELGA will not be able to repay the loans over a 10-year period by means of the producers' special insurance contributions, particularly since those contributions will have to be used to pay the compensation for the damage incurred during the years in question.

(65) In the additional information they provided, the Greek authorities had stated that the new Law No 3877/2010 concerning the protection and insurance system for agricultural activities was adopted with a view to increasing ELGA's revenue.

The Commission is of the opinion that the abovementioned law could in fact improve the functioning of ELGA in the future. However, increasing ELGA's future revenue does not enable the conclusion to be drawn that it will be sufficient to repay the loans in question and to grant aid to farmers for the years concerned.

Thus, the loan taken out by ELGA for the year 2009 has placed an excessive burden on the revenue it will receive over the next 10 years, since it already had to repay the loan taken out for 2008 for which it had earmarked in advance the insurance contributions for the following years. As pointed out by the interested parties (see recitals 34 and 35), this situation can only be exacerbated by the existence of the two additional loans taken out by ELGA in 2009. It is not possible, therefore, to exclude the possibility that the measures in question will also be financed through other State resources available to ELGA.

(66) However, it does not appear that the distinctions made under the aid scheme between undertakings in a comparable current legal position can be justified on the basis of the solidarity objective of the scheme in question, when considered in the context of the Greek legislation on compensation for damage caused by natural events. First, similar or comparable risks must be borne by the undertakings themselves in sectors other than those covered by the scheme in question and, second, it is clear that even within the agricultural sector which is covered by this scheme some farmers will always be more exposed to certain risks than others (as a result of what they produce or their geographical location) with the result that aid will always be paid disproportionately to certain categories of farmer at the expense of others.

(67) For these reasons the Commission concludes that the compensation paid by ELGA to agricultural producers in 2008 and 2009 under the compulsory insurance scheme is covered by Article 107(1) of the Treaty and constitutes State aid.

(68) Consequently, it should be examined whether a derogation from the general principle of prohibition of State aid under Article 107(1) of the Treaty can apply.

2. *Classification of the measures as unlawful aid*

(69) Given that the aid in question was granted and paid without being notified beforehand, it is unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999.

3. *Assessment of the compatibility of the aid under Article 107(3)(c) TFEU*

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

(71) To qualify for that derogation, the aid in question must comply with the provisions of the legal texts applicable at the time it was granted, i.e. in 2008 and 2009. In this case these are the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 and in particular Chapter V.B on aids to compensate for damage to agricultural production or the means of agricultural production and point V.B.3 on aid to compensate farmers for losses caused by adverse weather conditions, and Article 11 of the Exemption Regulation.

([28]) See, in this regard, the Opinion of Advocate-General Stix-Hackl regarding the Freskot case, paragraph 77.

Chapter V.B.4 of the guidelines on aid for combating animal and plant diseases should apply to certain crops covered by the aid granted to producers in 2009 (oriental tobacco and summer potatoes). However, given that the Greek authorities have shown that the diseases in these crops resulted from adverse weather conditions (see also recital 44), in accordance with footnote 31 in Chapter V.B.4 of the guidelines, the Commission has evaluated the aid measures in accordance with the provisions of sub-chapter V.B.3.

(72) The conditions in the abovementioned provisions of the guidelines of relevance in this case are as follows:

(a) in accordance with point 125 of the guidelines, weather conditions such as frost, hail, rain or drought, i.e. conditions such as those in question which caused the loss of certain crops in Greece in 2008 and 2009, may be regarded as natural disasters once the level of damage reaches a certain threshold of normal production. Compensation for such events contributes to the development of the farm sector and should be authorised on the basis of Article 107(3)(c) of the Treaty.

Thus, to qualify for aid, the losses resulting from adverse weather conditions must reach 30 % of the annual average production of the interested party over the three preceding years or of a 3-year average based on the 5 preceding years, excluding the highest and lowest entry. In accordance with point 128 of the guidelines, the Commission may accept other methods of calculation of normal production, including regional reference values, provided that they are representative methods and are not based on abnormally high yields;

(b) notifications of aid measures should include appropriate supporting meteorological information. In addition, the adverse climatic event that may be regarded as a natural disaster must be formally recognised as such by public authorities;

(c) the gross aid intensity must not exceed 80 % (90 % in less favoured areas or in areas referred to in Article 36(a)(i), (ii) or (iii) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ([29]), as designated by Member States in accordance with Articles 50 and 94 of that Regulation) of the reduction in income from the sale of the product, calculated by subtracting:

(i) the result of multiplying the quantity of product produced in the year of the adverse climatic event by the average selling price obtained during that year

from

(ii) the result of multiplying the average annual quantity produced in the preceding 3-year period (or a 3-year average based on the preceding 5-year period, excluding the highest and lowest entry) by the average selling price obtained.

The amount thus eligible for aid may be increased by other costs specifically incurred by the farmer because of non-harvesting due to the adverse climatic event;

(d) the maximum amount of loss eligible for aid must be reduced by any amount received under insurance schemes and costs not incurred because of the adverse climatic event;

(e) the calculation of loss must be made at the level of the individual holding, but the Commission may accept the use of averages provided that they are representative and do not result in significant over-compensation of any beneficiary;

(f) in any event the beneficiary must always bear part of the costs (point 125(d) of the guidelines);

(g) the aid schemes must be introduced within 3 years and the aid must be paid out within 4 years of the occurrence of the expense or loss.

Compensation aid granted in 2008

(73) As regards the compensation aid of EUR 373 257 465,71 which ELGA granted to producers to make good the loss of their crops as a result of adverse weather conditions, the Commission finds that, for the most part, i.e. up to an amount of EUR 347 193 466,52 (see recital 42), it complies with the guidelines and the Exemption Regulation referred to in recital 72. As regards the aid for further losses of the same crops, amounting to EUR 2 472 785,97, for the most part, i.e. up to an amount of EUR 2 300 185,51, it also complies with the guidelines and the Exemption Regulation referred to in recital 72.

(74) In particular, as the table in recital 42 shows, the condition referred to in point (a) of recital 72 is met, i.e. the level of the damage reached 30 % of normal

([29]) OJ L 277, 21.10.2005, p. 1.

production in the case of the compensation aid of EUR 347 193 466,52. As regards the aid for further losses, as regards 93,02 % of the total amount of this aid, i.e. EUR 2 300 185,51, the level of damage destroyed more than 30 % of normal production and, as a result, the condition referred to in point (a) of recital 72 is also met.

(75) On the basis of the information provided by the Greek authorities (see recital 39), the gross intensity of the compensation aid in question compared with the reduction in income from the sale of the product complies with the ceilings laid down in Article 11 of the Exemption Regulation (see point (c) of recital 72). However, the calculation of the intensity does not refer to the average quantity produced over the preceding 3 years (or to a 3-year average) in accordance with Article 2 of the Exemption Regulation, given that a different method of calculating normal production was applied for the compensation aid in question (see recital 40 regarding the description of the method of calculation).

(76) In accordance with point 128 of the guidelines, the Commission may accept methods of calculation other than those provided for in point 8 of Article 2 of the Exemption Regulation, provided that they are representative and not based on abnormally high yields. After having studied the description of the method of calculation used in this case, the Commission takes the view that it complies with the provision of the guidelines referred to above and, taking account of the intensity of this aid, that there is no risk of overcompensation of the losses suffered.

(77) The Commission also finds that the meteorological data supplied by Greece on the events which occurred in the course of the 2007/2008 marketing year prove that climatic events justifying the grant of the compensation in question occurred.

(78) Also, according to the information supplied regarding the aid in question (see recital 39), the aid was reduced by any amounts received from an insurance company and costs not incurred because of the event responsible for the loss. In addition, the loss was calculated at the level of the individual holding. Lastly, the deadlines for payment of the aid following the loss, as referred to in point (g) of recital 72, were met.

(79) In the light of the foregoing, the Commission is therefore in a position to conclude that the compensation aid of EUR 349 493 652,03 granted by ELGA to producers in 2008 to make good their crop losses, of which EUR 2 300 185,51 relates to aid for further damage to the same crops, complied with the relevant provisions of the guidelines and the Exemption Regulation and may, consequently, be regarded as State aid compatible with the internal market under Article 107(3)(c) of the Treaty.

(80) However, as the table in recital 42 shows, the compensation aid of EUR 26 063 999,19 granted by ELGA to producers of agricultural products in 2008 to make good their crop losses does not comply with point 8 of Article 2 of the Exemption Regulation relating to the damage threshold as compared with normal production. The Commission finds that this compensation aid does not comply with all the relevant conditions in the guidelines and the Exemption Regulation and, consequently, does not qualify for the derogation provided for in Article 107(3)(c) of the Treaty.

(81) As regards the compensation aid of EUR 7 338 119,74 granted by ELGA to farmers in 2008 for livestock asset losses, it follows from recital 43 that, according to the Greek authorities, that aid, having been paid under the specific compulsory insurance scheme, does not constitute State aid. Although those authorities arrive at this conclusion in respect of all the compensation aid granted by ELGA in 2008 and 2009, it is only for the aid in question that it has not provided additional information enabling that aid to be regarded as compatible with the guidelines. For that reason the Commission concludes that that aid does not meet the relevant conditions of the guidelines and the Exemption Regulation and consequently does not qualify for the derogation provided for in Article 107(3)(c) of the Treaty.

In any event the Commission stresses that, in order to fulfil its duty to cooperate with the Commission, the Member State concerned must provide all the information necessary to enable the Commission to verify that the conditions for the derogation from which it seeks to benefit are satisfied ([30]). In this particular case the Greek authorities have never invoked the application of the guidelines, nor have they provided any document enabling the Commission to examine the data in the light of the guidelines, despite the indications made by the Commission in paragraph 21 of the decision to open the formal investigation procedure.

(82) As regards the aid of EUR 114 374,86 for crop losses caused by bears, that aid is not covered by Chapter V of the guidelines on risk and crisis management. In accordance with point 23 of the guidelines, in the case of aid measures not covered by the guidelines, the Commission assesses them on a case-by-case basis and will only approve such measures if the positive contribution to the development of the sector clearly outweighs the risks of distortions of competition that they pose.

([30]) Judgment of the Court of First Instance in Case T-171/02 *Regione autonoma della Sardegna* v *Commission* [2005] ECR II-2123, paragraph 129.

According to point 113 of the guidelines, where State aid for risk management is to be authorised, a minimum contribution from producers to the losses must be provided for to mitigate the risk of distortions of competition and provide an incentive for them to minimise the risks. However, in this case the intensity of the aid granted was 100 % and, in the Commission's opinion, the complete lack of a contribution by producers to the losses incurred could pose a risk of distortions of competition. For that reason the Commission takes the view that a minimum contribution by producers of the order of 20 % should have been required in this case. As a result, this aid is compatible with the internal market up to a level of 80 % of its intensity, i.e. EUR 91 500. However, the remaining amount of the aid, corresponding to 20 % of its intensity, is deemed incompatible with the internal market.

(83) As regards the aid for corrective action following inadvertent administrative errors in the evaluation reports on the aid for crop and livestock asset losses, Greece only submitted details of the total amount of the aid, i.e. EUR 3 803 901,72. However, no further details of the amounts relating to the corrective action in respect of the compensation aid for crop and livestock asset losses and crop losses caused by bears (see recitals 41, 42 and 43) were given in the additional information sent by the Greek authorities to the Commission. Given that the corrective action related to administrative errors constituting ELGA debts vis-à-vis the beneficiaries of the aid in question, the Commission concludes that this corrective aid could form part of the compensation aid concerned. However, since only the compensation aid for crop losses, i.e. EUR 349 666 252,49 (see recital 75), is considered by the Commission to be compatible, the Commission concludes that only the corrective action relating to that compensation aid can be regarded as aid meeting the relevant conditions of the guidelines and the Exemption Regulation and qualifying for the derogation under Article 107(3)(c) of the Treaty.

Compensation aid granted in 2009

(84) Of the compensation aid of EUR 415 019 452 paid by ELGA to farmers in 2009, aid amounting to EUR 27 614 905 complies with the provisions of the guidelines and the Exemption Regulation, as set out in recital 73.

(85) On the basis of the detailed information provided by the Greek authorities for all compensation aid paid by ELGA in 2009 (see recital 37), the Commission finds that the condition referred to in point (a) of recital 73, i.e. that the damage threshold must reach 30 % of normal production, is met as regards the compensation aid amounting to EUR 27 614 905.

(86) Following on from recitals 76 to 79 concerning part of the aid granted by ELGA in 2008, the same conclusions may also be applied as regards the aid amounting to EUR 27 614 905 granted in 2009, i.e. that aid also meets all the other conditions laid down in the relevant provisions of the guidelines and the Exemption Regulation.

(87) In particular, the intensity of the aid in question, the method of calculation used in this case, the meteorological data relating to the events which occurred in the course of the 2008/2009 marketing year (see table in recital 44), the ruling out of overcompensation for the losses incurred and the times at which the aid was paid out after the loss comply with the relevant provisions of the guidelines and the Exemption Regulation.

(88) On the basis of the foregoing, the Commission finds that the aid amounting to EUR 27 614 905 paid by ELGA to farmers in 2009 can be considered to comply with the relevant provisions of the guidelines and the Exemption Regulation. They therefore qualify for the derogation in Article 107(3)(c) of the Treaty.

(89) As regards the remaining amount of that aid, i.e. EUR 387 404 547, the Commission finds, contrary to the opinion of the Greek authorities (see recital 46), that it cannot be regarded as meeting the conditions laid down in Article 11 of the Exemption Regulation.

(90) On the basis of the detailed information supplied by Greece relating to all aid granted in 2009, the adverse climatic events in this case do not fall under the definition of adverse climatic event that can be regarded as a natural disaster provided for in point 8 of Article 2 of the Exemption Regulation, given that the adverse weather conditions in question destroyed less than 30 % of the normal production of the farmers concerned. In addition, in this case normal production was not defined in accordance with point 8 of Article 2 of the Exemption Regulation ([31]) and, as a result, the intensity of the aid in question was not established in accordance with the method of calculation laid down in Article 11(2) of the Exemption Regulation.

(91) The Greek authorities also regard the aid in question as meeting all the conditions to be considered as complying with Article 107(3)(b) of the Treaty and the Communication on the Temporary Community Framework (see recitals 47 to 50).

(92) The Commission takes the view that, as regards the non-notified aid in question, all of which was granted in 2009, Article 107(3)(b) of the Treaty cannot apply directly given that the Commission adopted the Communication on the Temporary Community Framework, which applies from 17 December 2008, on the basis of that provision. Point 4.2.2(h) of the

([31]) The possibility of using a different method of calculating normal production is only provided for in the guidelines (point (128).

Communication explicitly excludes undertakings specialised in primary agricultural production from its scope. As the Court has consistently held, in the specific field of State aid the Commission is bound by the frameworks and communications which it adopts, provided that they do not depart from the rules of the Treaty ([32]). However, by taking the view at the time in point 4.2.2(h) of the Temporary Framework that the aid scheme (aimed, it should be remembered, at supporting access to finance in the context of the financial and economic crisis) did not apply to undertakings active in the primary agricultural production sector, the Commission considered that, in view of the major distortions of competition likely to occur in that sector, such aid was not necessary or proportionate within the meaning of Article 107(3)(b) of the Treaty until the entry into force of specific rules and thresholds adopted for that sector ([33]). In the Commission's view, therefore, in the present case the Communication as in force at the time applies to the aid granted from 17 December 2008 to 27 October 2009.

The guidelines applicable at the time the aid in question was granted are the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013. However, as stated in recital 90, the adverse weather conditions that occurred in this case destroyed less than 30 % of the normal production of the farmers concerned. Consequently, the relevant provisions of the guidelines cannot be regarded as being met in respect of the compensation aid in question.

(93) As set out in recital 48, the Greek authorities take the view that point 7(a) of the Communication applies in respect of the non-notified aid in question since it was granted to producers after 17 December 2008.

However, the Commission considers that the possibility of declaring aid to the agricultural sector to be compatible by virtue of the Communication on the Temporary Framework can only cover aid in the agricultural sector granted from 28 October 2009, the date on which the amendment of the Communication on the Temporary Community Framework providing for a limited amount of aid to be compatible for undertakings active in primary agricultural production became effective.

(94) In the present case, according to the detailed information supplied by the Greek authorities for all aid granted by ELGA in 2009, the result is that almost all the aid in question was granted to producers of agricultural products on dates prior to the abovementioned date of 28 October 2009. The major part of the aid was granted between March 2009 and July 2009 and other aid was granted in September 2009.

(95) The Commission therefore concludes that the aid in question does not comply with the Communication and, as a result, does not qualify for the derogation under Article 107(3)(b) of the Treaty.

(96) However, the Commission recognises that, in the case of the aid granted by ELGA to producers of agricultural products on dates after the abovementioned date of 28 October 2009 (very small amounts of this aid were granted in December 2009 and November 2010), the amendments made to the Communication for the agricultural sector may apply.

(97) The aid in question meets the conditions laid down in point 4.2.2 of the Communication on the Temporary Community Framework. However, the condition laid down in point 4.2.2(g) of that Communication was not met, given that ELGA did not obtain from the farmers concerned a declaration about any other *de minimis* aid and aid pursuant to the measure under the Temporary Community Framework received during the current fiscal year. However, the Commission acknowledges the Greek authorities' argument that, in the present case, that requirement is merely a formality, given that Greece did not grant any *de minimis* aid or aid pursuant to the measure under the Temporary Community Framework to agricultural undertakings in the period 1 January 2008 to 31 December 2010. As a result, the Commission concludes that the aid to which the Communication applies meets the conditions laid down in point 4.2.2 of that Communication and qualifies for the derogation in Article 107(3)(b) of the Treaty.

(98) Also, the Commission takes the view that it is not impossible that some of that aid, amounting to EUR 75 382 500, meets all the conditions laid down in Regulation (EC) No 1535/2007 (see recitals 51 and 52).

VII. **CONCLUSIONS**

(99) The compensation paid by ELGA to producers in 2008, i.e. EUR 386 986 648, was financed only partly out of special compulsory contributions by farmers, given that

([32]) See, in particular, the Court judgment in Case C-288/96 *Germany* v *Commission* [2000] ECR I-8237.

([33]) Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis, OJ C 261, 31.10.2009, p. 2, entry into force on 28 October 2009.

those contributions only amounted to EUR 88 353 000 in 2008. As for the compensation paid in 2009, i.e. EUR 415 019 452, it was not financed out of special compulsory contributions.

(100) As regards the two loans which ELGA had to take out in order to pay the compensation to the producers, ELGA will not be able, by means of the producers' special insurance contributions, to pay the annual interest and make the capital repayments over 10 years, which is the period scheduled for repayment of the loans, particularly since those contributions will have to be used to pay the compensation for the damage incurred during the years in question.

(101) Consequently, in the light of the foregoing, the compensation paid by ELGA in 2008 and 2009 under the compulsory insurance scheme cannot be regarded as being financed solely out of the special insurance contributions paid by producers. For that reason the Commission concludes that the compensation paid by ELGA in 2008 and 2009 under the compulsory insurance scheme falls under Article 107(1) of the Treaty and constitutes State aid.

(102) The Commission finds that the Hellenic Republic implemented this aid in breach of Article 108(3) of the Treaty.

(103) In the case of the compensation aid granted in 2008 under the special compulsory insurance scheme, the Commission:

(a) concludes that the State aid amounting to EUR 349 493 652,03 which ELGA granted to producers to make good their crops losses, including an amount of EUR 2 300 185,51 relating to aid for further losses to the same crop, is compatible. The Commission considers that that aid complied with the relevant provisions of the guidelines and the Exemption Regulation and, as a result, can be regarded as State aid compatible with the internal market under Article 107(3)(c) of the Treaty;

(b) considers that the State aid of EUR 33 402 118,93 which ELGA granted to producers for certain crop and livestock asset losses did not comply with the relevant provisions of the guidelines and the Exemption Regulation and, as a result, is incompatible with the internal market;

(c) considers that the State aid of EUR 114 374,86 which ELGA granted to producers for crop losses caused by bears may represent a risk of distortion of competition and, as a result, is incompatible with the internal market;

(d) considers that, of the State aid of EUR 3 803 901,72 granted for corrective action as a result of errors in the evaluation reports, only the corrective action relating to the compensation aid amounting to EUR 349 493 652,03 for crop losses and the corrective action relating to the compensation aid amounting to EUR 91 500 for crop losses caused by bears meet the relevant conditions of the guidelines and the Exemption Regulation and, as a result, qualify for the derogation under Article 107(3)(c) of the Treaty. By contrast, the other State aid granted for corrective action does not meet the relevant conditions of the guidelines and the Exemption Regulation and, as a result, does not qualify for the derogation under Article 107(3)(c) of the Treaty.

(104) In the case of the compensation aid granted in 2009 under the Common Ministerial Decision, the Commission:

(a) concludes that the State aid of EUR 27 614 905 which ELGA granted to producers to make good their crop losses is compatible. The Commission considers that that aid complied with the relevant provisions of the guidelines and the Exemption Regulation and, as a result, can be regarded as State aid compatible with the internal market under Article 107(3)(c) of the Treaty;

(b) concludes that, in the case of the State aid of EUR 387 404 547 which ELGA granted to producers to make good their crop losses:

— as far as the aid granted on dates prior to 28 October 2009 ([34]) is concerned (the date on which the amendment of the Communication to include agricultural undertakings became effective), it did not comply with the relevant provisions of the guidelines and the Exemption Regulation and, as a result, is incompatible with the internal market. This conclusion is without prejudice to the aid which, at the time it was granted, met all the conditions laid down in the applicable *de minimis* Regulation,

— as far as the aid granted after 28 October 2009 is concerned, the Commission concludes that it meets all the conditions laid down in the Communication and, as a result, can be regarded as State aid compatible with the internal market under Article 107(3)(c) of the Treaty,

([34]) The date on which the amendment of the Communication on the Temporary Community Framework became effective so that undertakings active in primary agricultural production could be covered by that Framework.

HAS ADOPTED THIS DECISION:

Article 1

1. The compensation paid by the Greek Agricultural Insurance Organisation ('ELGA') to producers of agricultural products in 2008 and 2009 constitutes State aid.

2. The compensation aid granted in 2008 under the special compulsory insurance scheme is compatible with the internal market as regards the aid amounting to EUR 349 493 652,03 which ELGA granted to producers to make good their crop losses and as regards the aid relating to crop losses caused by bears amounting to EUR 91 500 and the corrective action taken within the framework of the abovementioned aid. The compensation aid represented by the remaining amount paid in 2008 under the special insurance scheme is incompatible with the internal market.

3. The compensation aid of EUR 27 614 905 granted in 2009 under Common Ministerial Decree No 262037 of the Ministers of Economic Affairs and of Rural Development of 30 January 2009 is compatible with the internal market.

The compensation aid of EUR 387 404 547 granted to producers on dates before 28 October 2009 is incompatible with the internal market. This conclusion shall be without prejudice to aid which, at the time it was granted, met all the conditions laid down in Regulation (EC) No 1535/2007.

Article 2

1. Greece shall take all measures necessary to recover from its beneficiaries the incompatible aid referred to in Article 1, which was granted unlawfully.

2. The aid to be recovered shall include interest calculated from the date on which it was placed at the disposal of the beneficiaries until the date of its recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ([35]).

4. Recovery shall be effected without delay in accordance with the procedures provided for in national law, provided that they allow the immediate and effective execution of this Decision.

Article 3

Recovery of the aid referred to in Article 1(2) and (3) shall be immediate and effective. Greece shall ensure that this Decision is implemented within 4 months of the date of its notification.

Article 4

1. Within 2 months of notification of this Decision, Greece shall submit the following information to the Commission:

(a) the total amount (principal and recovery interest) to be recovered from the beneficiaries;

(b) a detailed description of the measures already taken or planned to comply with this Decision;

(c) documents demonstrating that orders to return the aid have been sent to the beneficiaries.

2. Greece shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1(2) and (3) has been completed.

3. After the 2-month period referred to in paragraph 1, Greece shall submit, at the Commission's request, a report on the measures already taken and those planned to comply with this Decision. That report shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 5

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 7 December 2011.

For the Commission

Dacian CIOLOȘ

Member of the Commission

([35]) OJ L 140, 30.4.2004, p. 1.

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