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Contents

II Non-legislative acts

REGULATIONS

- ★ **Commission Implementing Regulation (EU) No 882/2014 of 31 July 2014 entering a name in the register of protected designations of origin and protected geographical indications (Torrone di Bagnara (PGI))** 1
- ★ **Commission Implementing Regulation (EU) No 883/2014 of 5 August 2014 entering a name in the register of protected designations of origin and protected geographical indications (Jamón de Serón (PGI))** 3
- ★ **Commission Implementing Regulation (EU) No 884/2014 of 13 August 2014 imposing special conditions governing the import of certain feed and food from certain third countries due to contamination risk by aflatoxins and repealing Regulation (EC) No 1152/2009 ⁽¹⁾** 4
- ★ **Commission Implementing Regulation (EU) No 885/2014 of 13 August 2014 laying down specific conditions applicable to the import of okra and curry leaves from India and repealing Implementing Regulation (EU) No 91/2013 ⁽¹⁾** 20
- Commission Implementing Regulation (EU) No 886/2014 of 13 August 2014 establishing the standard import values for determining the entry price of certain fruit and vegetables 27

DECISIONS

2014/529/EU:

- ★ **Commission Decision of 12 August 2014 on a measure taken by Belgium according to Article 7 of Council Directive 89/686/EEC recalling from end-users a type of hearing protector earplugs (notified under document C(2014) 5670)** 29

⁽¹⁾ Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

2014/530/EU:

- ★ **Commission Implementing Decision of 13 August 2014 concerning certain interim protective measures relating to African swine fever in Latvia** (*notified under document C(2014) 5915*)⁽¹⁾ 31
-

III Other acts

EUROPEAN ECONOMIC AREA

- ★ **EFTA Surveillance Authority Decision No 305/13/COL of 10 July 2013 on the recapitalisation of Sjóvá Insurance Company (Iceland)** 33

⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 882/2014**of 31 July 2014****entering a name in the register of protected designations of origin and protected geographical indications (Torrone di Bagnara (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Italy's application to register the name 'Torrone di Bagnara' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of objection under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Torrone di Bagnara' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Torrone di Bagnara' (PGI) is hereby entered in the register.

The name referred to in the first paragraph identifies a product in Class 2.3. Bread, pastry, cakes, confectionery, biscuits and other baker's wares in accordance with Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.⁽¹⁾ OJ L 343, 14.12.2012, p. 1.⁽²⁾ OJ C 89, 28.3.2014, p. 62.⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

Article 2

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

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

Done at Brussels, 31 July 2014.

For the Commission
On behalf of the President,
Ferdinando NELLI FEROCI
Member of the Commission

COMMISSION IMPLEMENTING REGULATION (EU) No 883/2014**of 5 August 2014****entering a name in the register of protected designations of origin and protected geographical indications (Jamón de Serón (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Spain's application to register the name 'Jamón de Serón' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Jamón de Serón' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Jamón de Serón' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.2. Meat products (cooked, salted, smoked, etc.) as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.

Article 2

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

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

Done at Brussels, 5 August 2014.

For the Commission,
On behalf of the President,
Martine REICHERTS
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 101, 5.4.2014, p. 10.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) No 884/2014**of 13 August 2014****imposing special conditions governing the import of certain feed and food from certain third countries due to contamination risk by aflatoxins and repealing Regulation (EC) No 1152/2009****(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 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ⁽¹⁾, and in particular Article 53(1)(b)(ii) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1152/2009 ⁽²⁾ has to be amended substantially and the scope has to be extended to feed.
- (2) Commission Regulation (EC) No 1881/2006 ⁽³⁾ lays down permitted maximum levels of aflatoxins in food for the protection of public health. It can be observed that these maximum levels of aflatoxins are frequently exceeded in certain foods from certain countries. Such contamination constitutes a serious threat to public health within the Union and it is therefore appropriate to adopt special conditions at the Union level.
- (3) Directive 2002/32/EC of the European Parliament and of the Council ⁽⁴⁾ lays down maximum permitted levels of aflatoxin B1 in feed for the protection of animal and public health. It can be observed that the maximum levels of aflatoxin B1 are frequently exceeded in certain feed from certain countries. Such contamination constitutes a serious threat to animal and public health within the Union and it is therefore appropriate to adopt special conditions at the Union level.
- (4) For the protection of animal and public health it is important that compound feed and food containing to a significant amount the feed and food covered by this Regulation are also within the scope of this Regulation. To ensure harmonised enforcement of controls across the EU of processed and compound feed and food, it is appropriate to establish a threshold level. It is furthermore appropriate to exclude non-commercial consignments from the application of the provisions of this Regulation. The sampling and the analysis of consignments should be performed in accordance with the relevant Union legislation.
- (5) The provisions on sampling and analysis for the control of aflatoxins in feed are established by Commission Regulation (EC) No 152/2009 ⁽⁵⁾ and in food by Commission Regulation (EC) No 401/2006 ⁽⁶⁾.
- (6) Given that for the application of special conditions governing the import of feed from certain third countries due to contamination risk by aflatoxins the similar provisions are of application as those for the application of the special conditions governing the import of food from certain third countries due to contamination risk by aflatoxins, it is appropriate to include feed and food, for which special conditions are imposed because of the risk of aflatoxin contamination into one Regulation. It is therefore appropriate to include into this Regulation the

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ Commission Regulation (EC) No 1152/2009 of 27 November 2009 imposing special conditions governing the import of certain foodstuffs from certain third countries due to contamination risk by aflatoxins and repealing Decision 2006/504/EC (OJ L 313, 28.11.2009, p. 40).

⁽³⁾ Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5).

⁽⁴⁾ Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed (OJ L 140, 30.5.2002, p. 10).

⁽⁵⁾ Commission Regulation (EC) No 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of feed (OJ L 54, 26.2.2009, p. 1).

⁽⁶⁾ Commission Regulation (EC) No 401/2006 of 23 February 2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs (OJ L 70, 9.3.2006, p. 12).

provisions as regards groundnuts from India and Ghana and the watermelon seeds from Nigeria provided for in Commission Implementing Regulation (EU) No 91/2013 ⁽¹⁾. Implementing Regulation (EU) No 91/2013 should be replaced simultaneously by a new Regulation laying down the provisions as regards okra and curry leaves from India.

- (7) Based on the control results and the outcome of Food and Veterinary Office (FVO) audits, following changes to products to be subject to specific conditions and/or control frequencies are appropriate:
- deletion of special conditions for import of almonds from the US because of favourable control results and favourable outcome of FVO inspection audit,
 - reduction of sampling frequency on hazelnuts from Turkey given the favourable control results and favourable outcome of FVO inspection audit,
 - reduction of sampling frequency for Brazil nuts in shell from Brazil given the absence of non-compliance also related to the very low quantities imported into the EU.
- (8) The control system provided for the feed and food covered by this Regulation has been applied since many years and has continuously been improved based on the gained experiences. A full harmonisation of the controls on the import of food of non-animal origin is not possible because it is impossible to perform all required physical controls on aflatoxins at the designated point of entry. The control on the presence of aflatoxins in accordance with Regulation (EC) No 401/2006 is time consuming and requires an unloading of the consignment. Furthermore, many commodities covered by this Regulation are transported in vacuum packing and destruction of the vacuum packing through the sampling might result in quality loss in case the consignment needs to be transported over a long distance after the physical control. However in order to reduce administrative burden, it is appropriate to harmonise as much as possible the administrative documents related to the controls on feed and food of non-animal origin. Therefore, while the conditions for import for the feed and food covered by this Regulation are not identical for the feed and food covered by Commission Regulation (EC) No 669/2009 ⁽²⁾, it is appropriate to use the same Common Entry Document (CED) in view of administrative simplification for the feed and food business operators. However, it is necessary for the application of that CED for this Regulation, to provide additional explanatory notes in the notes for guidance to address the differences in the control systems.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. Without prejudice to the provisions of Council Regulation (EEC) No 2913/92 ⁽³⁾, this Regulation shall apply to the import of the following feed and food falling within the CN codes and TARIC classifications set out in Annex I:
- (a) Brazil nuts in shell and mixtures of nuts or dried fruits containing Brazil nuts in shell (food) originating in or consigned from Brazil;
 - (b) groundnuts in shell and shelled, peanut butter, groundnuts otherwise prepared or preserved (feed and food) originating in or consigned from China;
 - (c) groundnuts in shell and shelled, peanut butter, groundnuts otherwise prepared or preserved (feed and food) originating in or consigned from Egypt;

⁽¹⁾ Commission Implementing Regulation (EU) No 91/2013 of 31 January 2013 laying down specific conditions applicable to the import of groundnuts from Ghana and India, okra and curry leaves from India and watermelon seeds from Nigeria and amending Regulations (EC) No 669/2009 and (EC) No 1152/2009 (OJ L 33, 2.2.2013, p. 2).

⁽²⁾ Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC (OJ L 194, 25.7.2009, p. 11).

⁽³⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

- (d) pistachios in shell and shelled, pistachios otherwise prepared or preserved (food) originating in or consigned from Iran;
- (e) the following food originating in or consigned from Turkey:
 - (i) dried figs;
 - (ii) hazelnuts (*Corylus* sp.) in shell and shelled;
 - (iii) pistachios in shell and shelled;
 - (iv) mixtures of nuts or dried fruits containing figs, hazelnuts or pistachios;
 - (v) fig paste, pistachio paste and hazelnut paste;
 - (vi) hazelnuts, figs and pistachios, prepared or preserved, including mixtures;
 - (vii) flour, meal and powder of hazelnuts and pistachios;
 - (viii) cut, sliced and broken hazelnuts;
 - (ix) hazelnut oil;
- (f) groundnuts in shell and shelled, peanut butter, groundnuts otherwise prepared or preserved (feed and food) originating in or consigned from Ghana;
- (g) groundnuts in shell and shelled, peanut butter, groundnuts otherwise prepared or preserved (feed and food) originating in or consigned from India;
- (h) watermelon seeds and derived products (food) originating in or consigned from Nigeria.

2. This Regulation shall also apply to feed and food processed from the feed and food referred to in paragraph 1 and to compound feed and food, containing any of the feed or food referred to in paragraph 1 in a quantity above 20 %.

3. This Regulation shall not apply to consignments of feed and food referred to in paragraphs 1 and 2 which are destined to a private person for personal consumption and use only. In case of doubt, the burden of proof lies with the recipient of the consignment.

Article 2

Definitions

For the purposes of this Regulation, the definitions laid down in Articles 2 and 3 of Regulation (EC) No 178/2002 and in Article 2 of Regulation (EC) No 882/2004 of the European Parliament and of the Council ⁽¹⁾ shall apply.

In addition, the following definitions shall apply:

- (a) 'designated points of import (DPI)' means any point designated by the competent authority, through which the feed or food referred to in Article 1 may be imported into the Union;
- (b) 'designated point of entry (DPE)' means the point of entry as defined in Article 3 (b) of Regulation (EC) No 669/2009.

For the purpose of this Regulation, a consignment corresponds to a lot as referred to in Regulations (EC) No 401/2006 and (EC) No 152/2009.

Article 3

Import into the Union

Consignments of feed and food referred to in Article 1(1) and (2) (hereafter referred to as feed and food) may only be imported into the Union in accordance with the procedures laid down in this Regulation.

⁽¹⁾ Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1).

*Article 4***Results of sampling and analysis**

1. Each consignment of feed and food shall be accompanied by the results of sampling and analysis performed by the competent authorities of the country of origin, or of the country where the consignment is consigned from if that country is different from the country of origin, to ascertain compliance with Union legislation on maximum levels of aflatoxins.
2. The sampling and the analysis referred to in paragraph 1 must be performed in accordance with Regulation (EC) No 152/2009 for aflatoxins in feed and with Regulation (EC) No 401/2006 for aflatoxins in food.

*Article 5***Health certificate**

1. Each consignment shall also be accompanied by a health certificate in accordance with the model set out in Annex II.
2. The health certificate shall be completed, signed and verified by an authorised representative of the competent authority of the country of origin or the competent authority of the country where the consignment is consigned from if that country is different from the country of origin.

The competent authority of the country of origin is

- (a) the Ministério da Agricultura, Pecuária e Abastecimento (MAPA) for food from Brazil;
 - (b) the State Administration for Entry-Exit inspection and Quarantine of the People's Republic of China for feed and food from China;
 - (c) the Egyptian Ministry of Agriculture for feed and food from Egypt;
 - (d) the Iranian Ministry of Health for food from Iran;
 - (e) the General Directorate of Protection and Control of the Ministry of Agriculture and Rural Affairs of the Republic of Turkey for food from Turkey;
 - (f) the Ghana Standards Authority for feed and food from Ghana;
 - (g) the Export Inspection Council of India of the Ministry of Commerce and Industry for feed and food from India;
 - (h) the National Agency for Food and Drug Administration and Control (Nafdac) for food from Nigeria.
3. The health certificate shall be drawn up in the official language, or in one of the official languages, of the Member State where the designated point of entry is located. However, a Member State may consent to health certificates being drawn up in another official language of the Union.
 4. The health certificate shall only be valid during four months from the date of issue.

*Article 6***Identification**

Each consignment of food and feed shall be identified with an identification code (consignment code) which corresponds to the identification code on the results of the sampling and analysis referred to in Article 4 and the health certificate referred to in Article 5. Each individual bag, or other packaging form, of the consignment shall be identified with that identification code.

*Article 7***Prior notification of consignments**

1. Feed and food business operators or their representatives shall give prior notification of the estimated date and time of physical arrival of the feed and food to the competent authorities at the DPE and of the nature of the consignment.

2. For the purpose of prior notification, they shall complete Part I of the common entry document (CED) referred to in Article 3 (a) of Regulation (EC) No 669/2009 and transmit that document to the competent authority at the DPE, at least one working day prior to the physical arrival of the consignment.
3. For the completion of the CED in application of this Regulation, feed and food business operators shall take into account the notes for guidance laid down in Annex III.
4. In case the DPI is different from the DPE, the feed and food business operator shall notify the competent authority at the DPI at least one working day prior to the physical arrival of the consignment. The notification shall be done by sending by the feed and food business operator a copy of the CED completed as regards the documentary control by the competent authority at the DPE.
5. CEDs shall be drawn up in the official language, or in one of the official languages, of the Member State where the DPE is located. However, a Member State may consent to CEDs being drawn up in another official language of the Union.

Article 8

Designated points of import (DPI)

The competent authorities in Member States shall ensure that the DPI complies with following requirements:

- (a) the presence of trained staff to perform official controls on consignments of feed and food;
- (b) the availability of detailed instructions regarding sampling and the sending of the samples to the laboratory, in accordance with provisions in Annex I to Regulation (EC) No 152/2009 for feed and in Annex I to Regulation (EC) No 401/2006 for food;
- (c) the possibility to perform the unloading and the sampling in a sheltered place at the designated point of import; it must be possible to place the consignment of the feed and food under the official control of the competent authority from the DPI onwards in cases where, after agreement by the competent authority, the consignment has to be transported to a place in the immediate neighbourhood of the DPI in order to perform the sampling;
- (d) the availability of storage rooms, warehouses to store detained consignments of feed and food in good conditions while awaiting the results of analysis;
- (e) the availability of unloading equipment and appropriate sampling equipment;
- (f) the availability of an official laboratory for aflatoxin analysis, situated at a place to which the samples can be transported within a short period of time and which is able to perform the analysis within a due time-limit.

The Member States shall maintain and make publicly available an up-to-date list of the DPIs. The Member States shall communicate them to the Commission.

The Commission shall display the national links to those lists on the Commission's website, for information purposes.

Feed and food business operators shall ensure the unloading of the consignment of feed and food necessary for representative sampling to take place.

In the case of special transport or specific packaging forms, the operator shall make available to the official inspector the appropriate sampling equipment insofar as the sampling cannot be representatively performed with the usual sampling equipment.

Article 9

Official controls

1. All official controls before the completion of the CED shall be performed within 15 working days from the moment the consignment is offered for import and physically available for sampling at the DPI.
2. Consignments of the feed and food can only enter the Union through the DPE. The competent authority at the DPE shall carry out documentary checks on each consignment of the feed and food intended for import into the Union to ascertain compliance with the requirements laid down in Articles 4 and 5.

For the purpose of this Regulation, Points of Entry can be designated which are only authorised to perform the documentary checks. In that case these DPE have not to comply with the minimum requirements as provided for in Article 4 of Regulation (EC) No 669/2009.

3. Where a consignment of feed and food is not accompanied by the results of sampling and analysis and the health certificate or where the results of sampling and analysis or the health certificate do not comply with the provisions of the Regulation, the consignment may not enter the Union for import into the Union and must be re-dispatched to the country of origin or destroyed.

4. The competent authority at the DPE shall authorise transfer of the consignment to a DPI after favourable completion of the checks referred to in paragraph 2. The original certificate, results of sampling and analysis referred to in article 4 and the CED shall accompany the consignment during transfer. The competent authority of the DPE shall immediately inform the competent authority at the DPI of the sending of the consignment and the business operator has to inform the competent authority at the DPI of the arrival of the consignment at least one working day prior to the physical arrival of the consignment. In case the business operator decides to change the DPI after the consignment has left the DPE, the documents have to be presented again to the competent authority of the DPE to agree and to perform the necessary changes on the CED and the competent authority of the DPE informs consequently the relevant DPIs of these changes.

5. The competent authority at the DPI shall carry out an identity check and a physical check by taking a sample for analysis of aflatoxin B1 for feed or aflatoxin B1 and total aflatoxin contamination for food on certain consignments at a frequency set out in Annex I to this Regulation before acceptance for release for free circulation into the Union. The sampling is carried out for feed in accordance with Annex I to Regulation (EC) No 152/2009 and for food in accordance with Annex I to Regulation (EC) No 401/2006.

6. After completion of the checks, the competent authorities shall, for checks carried out by them,

- (a) complete the relevant entries of Part II of the CED;
- (b) join the results of sampling and analysis carried out;
- (c) provide and fill the CED reference number on the CED;
- (d) stamp and sign the original of the CED;
- (e) make and retain a copy of the signed and stamped CED.

For the completion of the CED in application of this Regulation, the competent authority shall take into account the notes for guidance laid down in Annex III.

7. The original of the health certificate referred to in Article 5, the results of sampling and analysis referred to in Article 4 and the CED shall accompany the consignment during its transfer until it is released for free circulation.

Article 10

Splitting of a consignment

1. Consignments shall not be split until all official controls have been completed, and the CED has been fully completed by the competent authorities as provided for in Article 9.

2. In the case of subsequent splitting of the consignment, an authenticated copy of the CED shall accompany each part of the consignment during its transport until it is released for free circulation.

Article 11

Release for free circulation

The release for free circulation of consignments shall be subject to the presentation (physically or electronically) by the feed and food business operator or their representative to the custom authorities of a CED duly completed by the competent authority once all official controls have been carried out. The custom authorities shall only release the consignment for free circulation if a favourable decision by the competent authority is indicated in box II.14 and signed in box II.21 of the CED.

*Article 12***Non-compliance**

If the official controls establish non-compliance with the relevant Union legislation, the competent authority shall complete Part III of the CED and action shall be taken pursuant to Articles 19, 20 and 21 of Regulation (EC) No 882/2004.

*Article 13***Reports**

Member States shall submit to the Commission every three months a report of all analytical results of official controls on consignments of feed and food pursuant to this Regulation. That report shall be submitted during the month following each quarter.

The report shall include the following information:

- the number of consignments imported,
- the number of consignments subjected to sampling for analysis,
- the results of the checks as provided for in Article 9(5).

*Article 14***Costs**

All costs resulting from the official controls including sampling, analysis, storage and any measures taken following non-compliance, shall be borne by the feed and food business operators.

*Article 15***Repeal**

Regulation (EC) No 1152/2009 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation and should be read with the correlation table in Annex IV.

*Article 16***Entry into force**

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

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

Done at Brussels, 13 August 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Feed and food subject to the measures provided for in this Regulation:

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub- division	Country of origin or country of consignment	Frequency of physical and identity checks (%) at import
— Brazil nuts in shell	— 0801 21 00		Brazil (BR)	Random
— Mixtures of nuts or dried fruits and containing Brazil nuts in shell.	— ex 0813 50			
(Food)				
— Groundnuts (peanuts), in shell	— 1202 41 00		China (CN)	20
— Groundnuts (peanuts), shelled	— 1202 42 00			
— Peanut butter	— 2008 11 10			
— Groundnuts (peanuts), otherwise prepared or preserved	— 2008 11 91; 2008 11 96; 2008 11 98			
(Feed and Food)				
— Groundnuts (peanuts), in shell	— 1202 41 00		Egypt (EG)	20
— Groundnuts (peanuts), shelled	— 1202 42 00			
— Peanut butter	— 2008 11 10			
— Groundnuts (peanuts), otherwise prepared or preserved	— 2008 11 91; 2008 11 96; 2008 11 98			
(Feed and Food)				
— Pistachios, in shell	— 0802 51 00		Iran (IR)	50
— Pistachios, shelled	— 0802 52 00			
— Mixtures of nuts or dried fruits containing pistachios	— ex 0813 50			
— Pistachio paste	— ex 2007 10 or 2007 99			
— Pistachios, prepared or preserved, including mixtures	— 2008 19 13; — 2008 19 93 — ex 2008 97			
— Flour, meal and powder of pista- chios	— ex 1106 30 90			
(Food)				

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub- division	Country of origin or country of consignment	Frequency of physical and identity checks (%) at import
— Dried figs	— 0804 20 90		Turkey (TR)	20
— Mixtures of nuts or dried fruits containing figs	— ex 0813 50			
— Fig paste	— ex 2007 10 or 2007 99			
— Figs, prepared or preserved, including mixtures	— ex 2008 99 — ex 2008 97			
(Food)				
— Hazelnuts (<i>Corylus</i> sp.) in shell	— 0802 21 00		Turkey (TR)	Random
— Hazelnuts (<i>Corylus</i> sp.) shelled	— 0802 22 00			
— Mixtures of nuts or dried fruits containing hazelnuts	— ex 0813 50			
— Hazelnut paste	— ex 2007 10 or 2007 99			
— Hazelnuts, prepared or preserved, including mixtures	— ex 2008 19 — ex 2008 97			
— Flour, meal and powder of hazel- nuts	— ex 1106 30 90			
— Cut, sliced and broken hazelnuts	— ex 0802 22 00; 2008 19			
— Hazelnut oil	— ex 1515 90 99			
(Food)				
— Pistachios, in shell	— 0802 51 00		Turkey (TR)	50
— Pistachios, shelled	— 0802 52 00			
— Mixtures of nuts or dried fruits containing pistachios	— ex 0813 50			
— Pistachio paste	— ex 2007 10 or 2007 99			
— Pistachios, prepared or preserved, including mixtures	— 2008 19 13; — 2008 19 93 — ex 2008 97			
— Flour, meal and powder of pista- chios	— ex 1106 30 90			
(Food)				

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub- division	Country of origin or country of consignment	Frequency of physical and identity checks (%) at import
— Groundnuts (peanuts), in shell	— 1202 41 00		Ghana (GH)	50
— Groundnuts (peanuts), shelled	— 1202 42 00			
— Peanut butter	— 2008 11 10			
— Groundnuts (peanuts), otherwise prepared or preserved	— 2008 11 91; 2008 11 96; 2008 11 98			
(Feed and Food)				
— Groundnuts (peanuts), in shell	— 1202 41 00		India (IN)	20
— Groundnuts (peanuts), shelled	— 1202 42 00			
— Peanut butter	— 2008 11 10			
— Groundnuts (peanuts), otherwise prepared or preserved	— 2008 11 91; 2008 11 96; 2008 11 98			
(Feed and food)				
Watermelon (<i>egusi</i> , <i>Citrullus lanatus</i>) seeds and derived products	ex 1207 70 00; ex 1106 30 90; ex 2008 99 99	10 30 50	Nigeria (NG)	50
(Food)				

ANNEX II

Health Certificate for the importation into the European Union of

..... (*)

Consignment Code **Certificate Number**

According to the provisions of Commission Implementing Regulation (EU) 884/2014 imposing special conditions governing the import of certain feed and food from certain third countries due to contamination risk by aflatoxins and repealing Regulation (EC) No 1152/2009, the

.....

..... (competent authority referred to in Article 5(2) of Regulation)

CERTIFIES that the

..... (insert food referred to in Article 1 of Regulation)

of this consignment composed of:

.....

..... (description of consignment, product, number and type of packages, gross or net weight)

embarked at (embarkation place)

by (identification of transporter)

going to (place and country of destination)

which comes from the establishment

..... (name and address of establishment)

have been produced, sorted, handled, processed, packaged and transported in line with good hygiene practices.

From this consignment, samples were taken in accordance with the Union legislation

☐ Commission Regulation (EC) No 152/2009

☐ Commission Regulation (EC) No 401/2006

on (date), subjected to laboratory analysis on

(date) in the

(name of laboratory), to determine the level of aflatoxin B1 for feed and the level of aflatoxin B1 and level of total aflatoxin contamination for food. The details of sampling, methods of analysis used and all results are attached.

This certificate is valid until

Done at on

Stamp and signature of
authorised representative of competent authority referred to in Article 5(2) of Regulation

(*) Product and country of origin.

ANNEX III

Notes for guidance for the CED in application of this Regulation in case of feed and food imported from certain third countries due to contamination of these products by aflatoxins

- General For the use of the CED in application of this Regulation, whenever 'DPE' is mentioned, this should be read as 'designated point of entry' or 'designated point of import' as stipulated in the specific notes for each box. Whenever 'control point' is mentioned, this should be read as 'designated point of import'.
Complete the document in capital letters. Notes are shown against the relevant box number.
- Part I This section is to be completed by the feed and food business operator or their representative, unless otherwise indicated.**
- Box I.1. Consignor: name and full address of the natural or legal person (feed and food business operator) dispatching the consignment. Information on telephone and fax numbers or e-mail address is recommended.
- Box I.2. All three fields in this box are to be filled in by the authorities of the DPI as defined in Article 2. Attribute a CED reference number in the first box. The CED reference number might be filled in by the authorities of the DPE. Indicate the name of the DPI and its number respectively in the second and third boxes.
- Box I.3. Consignee: indicate name and full address of the natural or legal person (feed and food business operator) to whom the consignment is destined. Information on telephone and fax numbers or e-mail address is recommended.
- Box I.4. Person responsible for the consignment: (also agent, declarant or feed and food business operator) indicate name and full address of the person who is in charge of the consignment when presented to the DPE and makes the necessary declarations to the competent authorities on behalf of the importer. Information on telephone and fax numbers or e-mail address is recommended.
- Box I.5. Country of origin: indicate the country where the commodity is originating from, grown, harvested or produced.
- Box I.6. Country from where consigned: indicate the country where the consignment was placed aboard the means of final transport for the journey to the Union.
- Box I.7. Importer: indicate name and full address. Information on telephone and fax numbers or e-mail address is recommended.
- Box I.8. Place of destination: indicate delivery address in the Union. Information on telephone and fax numbers or e-mail address is recommended.
- Box I.9. Arrival at the DPE (estimated date): give the estimated date on which the consignment is expected to arrive at the DPE.
- Box I.10. Documents: indicate the date of issue and the number of official documents accompanying the consignment, as appropriate.
- Box I.11. Means of transport: tick the box to indicate the means of arrival transport.
Identification: give full details of the means of transport. For aircraft, indicate the flight number. For vessels, indicate the ship's name. For road vehicles: indicate the registration number plate with trailer number if appropriate. For railway transport: indicate the train identity and wagon number.
Documentary references: number of airway bill, bill of lading or commercial number for railway or truck.
- Box I.12. Description of the commodity: provide a detailed description of the commodity using the terminology in Article 1.

- Box I.13. Commodity code: use the code identifying the commodity as listed in Annex I (including the TARIC subdivision, if applicable).
- Box I.14. Gross weight: specify overall weight in kg or tonnes. This is defined as the aggregate mass of the products and of the immediate containers and all their packaging, but excluding transport containers and other transport equipment.
Net weight: specify weight of actual product in kg or tonnes, excluding packaging. This is defined as the mass of the products themselves without immediate containers or any packaging.
- Box I.15. Number of packages: specify the number of packages in the consignment.
- Box I.16. Temperature: tick the appropriate mode of transport/storage temperature.
- Box I.17. Type of packaging: identify the type of packaging of products.
- Box I.18. Commodity intended for: tick the appropriate box depending on whether the commodity is destined for human consumption without prior sorting or other physical treatment (in this case tick 'human consumption') or is intended for human consumption after such treatment (tick 'further process' in this case), or is intended for use as 'feedingstuff' (in this case tick 'feedingstuffs').
- Box I.19. Seal number and container number: give all seal and container identification numbers where relevant.
- Box I.20. For transfer to Control Point: in case the consignment is intended for import (cf. Box I.22) and the operator uses the option to have the identity and physical control performed at a specific DPI, tick the box and identify in detail the DPI.
- Box I.21. Not applicable.
- Box I.22. For import: tick the box in case the consignment is intended for import.
- Box I.23. Not applicable.
- Box I.24. Means of transport to Control Point: tick the appropriate means of transport used for transfer to the DPI.

Part II This section is to be completed by the competent authority.

- General Box II.1 is to be completed by the competent authority of the DPI. Boxes II.2 to II.9 with the exception of II.4 are to be completed by the customs services or the authorities competent for the documentary control. Boxes II.10 to II.21 are to be completed by the competent authorities of the DPI.
- Box II.1. CED Reference number: use the same CED reference number as in Box I.2.
- Box II.2. Customs Document Reference: for use by customs services if necessary.
- Box II.3. Documentary Check: to be completed for all consignments.
- Box II.4. Consignments selected for physical checks: not applicable in the framework of this Regulation.
- Box II.5. ACCEPTABLE for transfer: in case the consignment is acceptable for transfer to a DPI following a satisfactory documentary check, the competent authority at the DPE shall tick the box and indicate to which DPI the consignment shall be transferred for a possible physical check (following information given in Box I.20).
Onward transportation is not applicable for this Regulation.
- Box II.6. NOT ACCEPTABLE: in case the consignment is not acceptable for transfer to a DPI due to the unsatisfactory outcome of the documentary checks, the competent authority at the DPE shall tick the box and indicate clearly the action to be carried out in case of rejection of the consignment. The address of the destination establishment in case of 'Re-dispatching', 'Destruction', 'Transformation' and 'Use for other purpose' should be entered in Box II.7.

- Box II.7. Details of Controlled Destinations (II.6): indicate as appropriate approval number and address (or ship's name and port) for all destinations where further control of the consignment is required, for example for Box II.6, 'Re-dispatching', 'Destruction', 'Transformation' or 'Use for other purpose'.
- Box II.8. Full identification of DPE and official stamp: indicate here the full identification of the DPE and the official stamp of the competent authority at this point.
- Box II.9. Official inspector: signature of the official responsible of the competent authority at the DPE.
- Box II.10. Not applicable.
- Box II.11. Identity Check: tick the boxes to indicate whether the identity checks have been performed and with which results.
- Box II.12. Physical Check: indicate here the results of the physical checks in case the physical check has taken place.
- Box II.13. Laboratory tests: tick the box to indicate whether the consignment has been selected for sampling and analysis.
Tested for: indicate for which (aflatoxin B1 and/or total) and by which analytical method a laboratory test is carried out.
Results: indicate the results of the laboratory test and tick the appropriate box.
- Box II.14. ACCEPTABLE for release for free circulation: tick the box in case the consignment is to be released for free circulation within the Union.
Tick one of the boxes ('Human consumption', 'Further process', 'Feedingstuff' or 'Other') to indicate the further use.
- Box II.15. Not applicable.
- Box II.16. NOT ACCEPTABLE: tick the box in case of rejection of the consignment due to the unsatisfactory outcome of the identity or physical checks.
Indicate clearly the action to be carried out in such case by ticking one of the boxes ('Re-dispatching', 'Destruction', 'Transformation' or 'Use for other purpose'). The address of the establishment of destination shall be entered in Box II.18.
- Box II.17. Reasons for refusal: tick the appropriate box. Use as appropriate to add relevant information.
- Box II.18. Details of controlled destinations (II.16): give as appropriate approval number and address (or ship's name and port) for all destinations where further control of the consignment is required following information indicated in Box II.16.
- Box II.19. Consignment resealed: use this box when the original seal recorded on a consignment is destroyed on opening the container. A consolidated list of all seals that have been used for this purpose must be kept.
- Box II.20. Full identification of DPE/Control Point and official stamp: put here the full identification of the DPI and the official stamp of the competent authority at the DPI.
- Box II.21. Official Inspector: put name (in capital letters), date of issuing and signature of the official responsible of the competent authority at the DPI.

Part III This section is to be completed by the competent authority.

- Box III.1. Details on re-dispatching: the competent authority at the DPE or at the DPI indicates the means of transport used, its identification, the country of destination and the date of re-dispatching, as soon as they are known.

- Box III.2. Follow-up: indicate the local competent authority unit responsible, as appropriate, for the supervision in case of 'Destruction', 'Transformation' or 'Use for other purpose' of the consignment. This competent authority shall report here the result of the arrival of the consignment and the correspondence.
- Box III.3. Official Inspector: signature of the official responsible for the competent authority at the DPI in case of 'Re-dispatching'. Signature of the official responsible for the local competent authority in case of 'Destruction', 'Transformation' or 'Use for other purpose'.
-

ANNEX IV

Correlation table referred to in Article 15

Regulation (EC) No 1152/2009	This Regulation
Article 1	Article 1 and Annex I
Article 2	Article 2
Article 3	Article 3
Article 4(1)	Articles 4(1) and 5(1) and (2)
Article 4(2)	Article 5(3)
Article 4(3)	Article 5(4)
Article 4(4)	Article 4(2)
Article 4(5)	Article 6
Article 5	Article 7
Article 6	Article 8
Article 7(1)	Article 9(1)
Article 7(2)	Article 9(2) and (3)
Article 7(3)	Article 9(4)
Article 7(4)	Article 9(5)
Article 7(5)	Annex I
Article 7(6)	Article 9(6)
Article 7(7)	Article 9(7)
Article 7(8)	Article 11
Article 7(9)	Article 13
Article 8	Article 10
Article 9	—
Article 10	Article 14
Article 11	Article 15
Article 12	—
Article 13	Article 16
Annex I	Annex II
Annex II	Annex III

COMMISSION IMPLEMENTING REGULATION (EU) No 885/2014**of 13 August 2014****laying down specific conditions applicable to the import of okra and curry leaves from India and
repealing Implementing Regulation (EU) No 91/2013****(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 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ⁽¹⁾, and in particular Article 53(1)(b)(ii) thereof,

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽²⁾, and in particular Article 15(5) thereof,

Whereas:

- (1) Article 53 of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Union emergency measures for feed and food imported from a third country in order to protect human health, animal health and the environment, where the risk cannot be contained satisfactorily by means of measures taken by the Member States individually.
- (2) Commission Regulation (EC) No 669/2009 ⁽³⁾ establishes an increased level of official controls on imports of certain feed and food of non-animal origin.
- (3) Amongst other, an increased frequency of official controls on import has been established for more than two years on curry leaves and for nearly two years on okras from India as regards pesticide residues.
- (4) The results from the increased frequency of controls show a continuous high frequency of non-compliance with maximum residue levels of pesticide residues established in Union legislation and several times very high levels were observed. These results provide evidence that the import of these foods constitutes a risk for human health. No improvement of the situation could be observed after this period of increased frequency of controls at Union borders. Furthermore, no concrete and satisfactory action plan to remediate the shortcomings and deficiencies in the production and control systems was received from the Indian authorities, despite the explicit request from the European Commission.
- (5) To protect human health in the Union, it was necessary to provide for additional guarantees in relation to those food from India. Commission Implementing Regulation (EU) No 91/2013 ⁽⁴⁾ therefore provided that all consignments of curry leaves and okra from India should therefore be accompanied by a certificate stating that the products have been sampled and analysed for the presence of pesticide residues and have been found compliant with Union legislation.
- (6) To ensure an efficient organisation and a degree of uniformity at the Union level of the controls at import on the presence of aflatoxins in certain feed and food from certain third countries, it is appropriate to have all feed and food from third countries subject to specific conditions because of the presence of aflatoxins into one Regulation.

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ OJ L 165, 30.4.2004, p. 1.

⁽³⁾ Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC (OJ L 194, 25.7.2009, p. 11).

⁽⁴⁾ Commission Implementing Regulation (EU) No 91/2013 of 31 January 2013 laying down specific conditions applicable to the import of groundnuts from Ghana and India, okra and curry leaves from India and watermelon seeds from Nigeria and amending Regulations (EC) No 669/2009 and (EC) No 1152/2009 (OJ L 33, 2.2.2013, p. 2).

Therefore the provisions as regards groundnuts from India and Ghana and watermelon seeds from Nigeria should be integrated into one Regulation with the provisions foreseen in Commission Regulation (EC) No 1152/2009 ⁽¹⁾.

- (7) In order to ensure an efficient organisation and a degree of uniformity at the Union level of the controls at import, it is appropriate to provide in this Regulation for control procedures for the physical control on pesticide residues on curry leaves and okra from India which are equivalent to the existing measures as provided for in Commission Regulation (EC) No 669/2009.
- (8) The sampling and the analysis of consignments should be performed in accordance with the relevant Union legislation. The maximum residue levels for pesticide residues are established by Regulation (EC) No 396/2005 of the European Parliament and of the Council ⁽²⁾. The provisions on sampling for the official control of pesticide residues are established by Commission Directive 2002/63/EC ⁽³⁾.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation shall apply to consignments of the following food falling within the CN codes and TARIC classifications set out in Annex I:
 - (a) Okra (food, fresh and frozen) originating in or consigned from India;
 - (b) Curry leaves (food, herbs) originating in or consigned from India.
2. This Regulation shall also apply to compound food, containing any of the food referred to in paragraph 1 in a quantity above 20 %.
3. This Regulation shall not apply to consignments of food referred to in paragraphs 1 and 2 which are destined to a private person for personal consumption and use only. In case of doubt, the burden of proof lies with the recipient of the consignment.

Article 2

Definitions

For the purposes of this Regulation, the definitions laid down in Articles 2 and 3 of Regulation (EC) No 178/2002, Article 2 of Regulation (EC) No 882/2004 and Article 3 of Regulation (EC) No 669/2009 shall apply.

For the purpose of this Regulation, a consignment corresponds to a lot as referred to in Directive 2002/63/EC.

Article 3

Import into the Union

Consignments of food referred to in Article 1(1) and (2) may only be imported into the Union in accordance with the procedures laid down in this Regulation.

Consignments of such food can only enter the Union through the Designated Point of Entry (DPE).

⁽¹⁾ Commission Regulation (EC) No 1152/2009 of 27 November 2009 imposing special conditions governing the import of certain foodstuffs from certain third countries due to contamination risk by aflatoxins and repealing Decision 2006/504/EC (OJ L 313, 28.11.2009, p. 40).

⁽²⁾ Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1).

⁽³⁾ Commission Directive 2002/63/EC of 11 July 2002 establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin and repealing Directive 79/700/EEC (OJ L 187, 16.7.2002, p. 30).

*Article 4***Results of sampling and analysis**

1. Consignments of the food referred to in Article 1(1) and (2) shall be accompanied by the results of sampling and analysis performed by the competent authorities of the country of origin, or of the country where the consignment is consigned from if that country is different from the country of origin, to ascertain compliance with Union legislation on maximum residue levels of pesticides, for the food referred to in Article 1(1)(a) and (b) including compound food containing such food in a quantity above 20 %.
2. The sampling referred to in paragraph 1 must be performed in accordance with Directive 2002/63/EC for pesticide residues.

*Article 5***Health certificate**

1. The consignments shall also be accompanied by a health certificate in accordance with the model set out in Annex II.
2. The health certificate shall be completed, signed and verified by an authorised representative of the competent authority of the country of origin or the competent authority of the country where the consignment is consigned from if that country is different from the country of origin.
3. The health certificate shall be drawn up in the official language, or in one of the official languages, of the Member State where the DPE is located. However, a Member State may consent to health certificates being drawn up in another official language of the Union.
4. The health certificate shall only be valid during four months from the date of issue.

*Article 6***Identification**

Each consignment of the food referred to in Article 1(1) and (2) shall be identified with an identification code which corresponds to the identification code mentioned on the results of the sampling and analysis referred to in Article 4 and the health certificate referred to in Article 5. Each individual bag, or other packaging form, of the consignment shall be identified with that identification code.

*Article 7***Prior notification of consignments**

1. Food business operators or their representatives shall give prior notification of the estimated date and time of physical arrival of consignments of the food referred to in Article 1(1) and (2) to the competent authorities at the DPE and of the nature of the consignment.
2. For the purpose of prior notification, they shall complete Part I of the common entry document (CED) and transmit that document to the competent authority at the DPE, at least one working day prior to the physical arrival of the consignment.
3. For the completion of the CED in application of this Regulation, food business operators shall take into account for the food referred to in Article 1(1)(a) and (b) of this Regulation including compound food containing such food in a quantity above 20 %, the notes for guidance for the CED laid down in Annex II to Regulation (EC) No 669/2009.

*Article 8***Official controls**

1. The competent authority at the DPE shall carry out documentary checks on each consignment of the food referred to in Article 1(1) and (2) to ascertain compliance with the requirements laid down in Articles 4 and 5.

2. The identity and physical checks on the food referred to in Article 1(1)(a) and (b) and the related compound food referred to in Article 1(2) of this Regulation shall be carried out in accordance with Articles 8, 9 and 19 of Regulation (EC) No 669/2009 at the frequency set out in Annex I to this Regulation.

3. After completion of the checks, the competent authorities shall

- (a) complete the relevant entries of Part II of the CED;
- (b) join the results of sampling and analysis carried out in accordance with paragraph 2 of this Article;
- (c) provide and fill the CED reference number on the CED;
- (d) stamp and sign the original of the CED;
- (e) make and retain a copy of the signed and stamped CED.

4. The original of the CED and of the health certificate with the accompanying results of sampling and analysis referred to in Article 4 shall accompany the consignment during its transport until it is released for free circulation. For food referred to in Article 1(1) and (2), in case of authorisation of onward transportation of the consignments pending the results of the physical checks, a certified copy of the original CED shall be issued for that purpose.

Article 9

Splitting of a consignment

1. Consignments shall not be split until all official controls have been completed, and the CED has been fully completed by the competent authorities as provided for in Article 8.

2. In the case of subsequent splitting of the consignment, an authenticated copy of the CED shall accompany each part of the consignment during its transport until it is released for free circulation.

Article 10

Release for free circulation

The release for free circulation of consignments shall be subject to the presentation (physically or electronically) by the food business operators or their representative to the custom authorities of a CED duly completed by the competent authority once all official controls have been carried out. The custom authorities shall only release the consignment for free circulation if a favourable decision by the competent authority is indicated in box II.14 and signed in box II.21 of the CED.

Article 11

Non-compliance

If the official controls establish non-compliance with the relevant Union legislation, the competent authority shall complete Part III of the CED and action shall be taken pursuant to Articles 19, 20 and 21 of Regulation (EC) No 882/2004.

Article 12

Reports

Member States shall submit to the Commission every three months a report of all analytical results of official controls on consignments of food pursuant to this Regulation. That report shall be submitted during the month following each quarter.

The report shall include the following information:

- the number of consignments imported,
- the number of consignments subjected to sampling for analysis,
- the results of the checks as provided for in Article 8(2).

*Article 13***Costs**

All costs resulting from the official controls including sampling, analysis, storage and any measures taken following non-compliance, shall be borne by the food business operators.

*Article 14***Repeal**

Implementing Regulation (EU) No 91/2013 is hereby repealed.

*Article 15***Entry into force**

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

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

Done at Brussels, 13 August 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Food of non-animal origin subject to the measures provided for in this Regulation:

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub- division	Country of origin	Hazard	Frequency of physical and identity checks (%) at import
Okra (Food — fresh and frozen)	ex 0709 99 90	20	India (IN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods ⁽²⁾	20
Curry leaves (<i>Bergera/Murraya koenigii</i>) (Food — herbs — fresh dried and frozen)	ex 1211 90 86	10	India (IN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single residue methods ⁽³⁾	20

⁽¹⁾ Where only certain products under any CN code are required to be examined and no specific subdivision under that code exists in the goods nomenclature, the CN code is marked 'ex'.

⁽²⁾ Certification by the country of origin and control at import by the Member States to ensure compliance with Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1), in particular residues of: Acephate, Methamidophos, Triazophos, Endosulfan, Monocrotophos, Methomyl, Thiodicarb, Diafenthiuron, Thiamethoxam, Fipronil, Oxamyl, Acetamiprid, Indoxacarb, Mandipropamid.

⁽³⁾ Certification by the country of origin and control at import by the Member States to ensure compliance with Regulation (EC) No 396/2005 in particular residues of: Triazophos, Oxydemeton-methyl, Chlorpyrifos, Acetamiprid, Thiamethoxam, Clothianidin, Methamidophos, Acephate, Propargite, Monocrotophos.

ANNEX II

Health Certificate for the importation into the European Union of

..... (*)

Consignment Code **Certificate Number**

According to the provisions of Commission Implementing Regulation (EU) No 885/2014 laying down specific conditions applicable to the import of okra and curry leaves from India and repealing Commission Implementing Regulation (EU) No 91/2013, the

.....
 (competent authority referred to in Article 5(2) of Regulation)

CERTIFIES that the

..... (insert food referred to in Article 1 of Regulation)

of this consignment composed of:

.....
 (description of consignment, product, number and type of packages, gross or net weight)

embarked at (embarkation place)

by (identification of transporter)

going to (place and country of destination)

which comes from the establishment

..... (name and address of establishment)

have been produced, sorted, handled, processed, packaged and transported in line with good hygiene practices.

From this consignment, samples were taken in accordance with the Union legislation Commission Directive 2002/63/EC

On (date), subjected to laboratory analysis on

(date) in the

(name of laboratory). The details of sampling, methods of analysis used and all results are attached.

This certificate is valid until

Done at on

Stamp and signature of
 authorised representative of competent authority referred to in Article 5(2) of Regulation

 (*) Product and country of origin.

COMMISSION IMPLEMENTING REGULATION (EU) No 886/2014**of 13 August 2014****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, 13 August 2014.

For the Commission,

On behalf of the President,

Jerzy PLEWA

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
0707 00 05	TR	81,4
	ZZ	81,4
0709 93 10	TR	99,6
	ZZ	99,6
0805 50 10	AR	158,9
	CL	209,1
	TR	74,0
	UY	129,8
	ZA	144,7
0806 10 10	ZZ	143,3
	BR	184,0
	EG	209,1
	MA	171,3
	MX	246,5
	TR	156,9
	ZZ	193,9
0808 10 80	AR	89,3
	BR	96,2
	CL	107,3
	CN	120,6
	NZ	117,6
	US	142,8
	ZA	113,5
	ZZ	112,5
0808 30 90	AR	217,5
	CL	84,2
	TR	142,5
	ZA	84,6
	ZZ	132,2
0809 30	MK	67,3
	TR	134,9
	ZZ	101,1
0809 40 05	BA	43,4
	MK	49,3
	TR	127,6
	ZA	204,6
	ZZ	106,7

⁽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'.

DECISIONS

COMMISSION DECISION

of 12 August 2014

on a measure taken by Belgium according to Article 7 of Council Directive 89/686/EEC recalling from end-users a type of hearing protector earplugs

(notified under document C(2014) 5670)

(2014/529/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment ⁽¹⁾, and in particular Article 7 thereof,

Whereas:

- (1) In June 2013, the Belgian authorities notified to the European Commission a measure ordering the recall of the product from end-users of hearing protector earplugs, of the type Climax 13 (reusable model), manufactured by Productos Climax SA, Polígono Industrial Sector Mollet, c/ Llobregat nº 1, 08150 Parets del Valles (Barcelona), Spain. According to the documents submitted to the Commission, this personal protective equipment was subject to the conformity assessment procedure set out in Article 11A of the Directive, attested by the EC type-approval certificate issued by the Spanish Notified Body 'Centro Nacional de Medios de Protección — Instituto Nacional de Seguridad e Higiene en el Trabajo' (NB No 0159), making reference to the relevant clauses of the harmonised standard EN 352-2:1993.
- (2) The product was notified by Belgian authorities in RAPEX in January 2013 (notification No A12/0039/13).
- (3) The reason given by the Belgian authorities for the measure is the non-conformity of the product with clauses § 4.1.1, 4.2.2, 4.3.6, 5 and 6 of the harmonised standard EN 352-2:1993 *Hearing protectors — Safety requirements and testing — Part 2: Earplugs*, referring to the following basic health and safety requirements (BHSR) set out in Annex II to Directive 89/686/EEC:
 - 1.4. *Information supplied by the manufacturer*: the instructions are not in the national languages of Belgium,
 - 3.5. *Protection against the harmful effects of noise*: the laboratory which tested the product for the Belgian authorities was not able to validate the testing on the level of protection claimed owing to the lack of homogeneity of production (differences in the diameter of the plugs). This variation is very significant and affects the protection of the user.
- (4) The Belgian authorities concluded that, since the level of protection cannot be determined, the products were considered to be hazardous because they could cause injury when being used, which is inconsistent with personal protective equipment requirements (risk category: damage to hearing).
- (5) The Commission wrote to the manufacturer and to the distributor in Belgium inviting them to communicate their observations on the measure taken by the Belgian authorities. In his reply, the manufacturer indicated that, after receiving the report from the Belgian authorities and a visit of an inspector from the 'Agència Catalana del Consum' (public body attached to the Regional Government of Catalonia, Spain) who impounded the remaining stock of the concerned product, the product had been withdrawn from the national and international market. The clients had been subsequently instructed accordingly. Once this action had been taken, the remaining stock of the product was destroyed.

⁽¹⁾ OJ L 399, 30.12.1989, p. 18.

- (6) In response to the notification of the Belgian authorities, the Spanish authorities communicated that a measure of withdrawal of the product from the market was taken, and that the company Productos Climax, SA announced the withdrawal of the product from the market.
- (7) In light of the documentation available, the comments expressed and the action taken by the parties concerned, the Commission considers that the hearing protector earplugs of the type Climax 13 (reusable model) fails to comply with clauses § 4.1.1, 4.2.2, 4.3.6, 5 and 6 of the harmonised standard EN 352-2:1993 referring to the basic health and safety requirements (BHSR) 1.4 and 3.5 set out in Annex II to Directive 89/686/EEC, since it could cause injury when being inserted into the ear,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by the Belgian authorities, ordering the recall of the product from end user of a type of hearing protector earplugs, of the type Climax 13 (reusable model), manufactured by Productos Climax SA, is justified.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 12 August 2014.

For the Commission
Ferdinando NELLI FEROCI
Member of the Commission

COMMISSION IMPLEMENTING DECISION**of 13 August 2014****concerning certain interim protective measures relating to African swine fever in Latvia***(notified under document C(2014) 5915)***(Only the Latvian text is authentic)****(Text with EEA relevance)**

(2014/530/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(3) thereof,Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(3) thereof,

Whereas:

- (1) African swine fever is an infectious viral disease affecting domestic and feral pig populations and can have a severe impact on the profitability of pig farming causing disturbance to trade within the Union and exports to third countries.
- (2) In the event of an outbreak of African swine fever, there is a risk that the disease agent might spread to other pig holdings and to feral pigs. As a result, it may spread from one Member State to another Member State and to third countries through trade in live pigs or their products.
- (3) Council Directive 2002/60/EC ⁽³⁾ lays down minimum measures to be applied within the Union for the control of African swine fever. Article 15 of Directive 2002/60/EC provides for the establishment of an infected area following the confirmation of one or more cases of African swine fever in feral pigs.
- (4) Latvia has informed the Commission of the current African swine fever situation on its territory, and in accordance with Article 15 of Directive 2002/60/EC, it has established an infected area where the measures referred to in Article 15 of that Directive are applied.
- (5) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade by third countries, it is necessary to identify at Union level the infected area for African swine fever in Latvia in collaboration with that Member State.
- (6) Accordingly, pending the meeting of the Standing Committee on Plants, Animals, Food and Feed, the area identified as infected area in Latvia should be set out in the Annex to this Decision and the duration of that regionalisation fixed.
- (7) This Decision is to be reviewed at the next meeting of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Latvia shall ensure that the infected area established in accordance with Article 15 of Directive 2002/60/EC comprises at least the area listed as infected area in the Annex to this Decision.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.⁽²⁾ OJ L 224, 18.8.1990, p. 29.⁽³⁾ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (OJ L 192, 20.7.2002, p. 27).

Article 2

This Decision shall apply until 15 September 2014.

Article 3

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 13 August 2014.

For the Commission
Tonio Borg
Member of the Commission

ANNEX

Area established as infected area in Latvia referred to in Article 1	Date until applicable
— In the novads of Krustpils the pagasts of Varieši	15 September 2014
— In the novads of Pļaviņas the pagasts of Aiviekste	
— In the novads Madona the pagasti of Kalsnava and Ļaudona	

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 305/13/COL

of 10 July 2013

on the recapitalisation of Sjóvá Insurance Company (Iceland)

THE EFTA SURVEILLANCE AUTHORITY ('THE AUTHORITY'),

HAVING REGARD to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Article 61(3)(b) and Protocol 26,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Articles 1(2) and 1(3) of Part I and Articles 7(3) and 13 of Part II,

Whereas:

I. FACTS

1. PROCEDURE

- (1) The Authority became aware of the Icelandic state's intervention in the insurance company Sjóvá-Almennar tryggingar hf. (Sjóvá) in the summer of 2009 through the Icelandic media. Subsequently, the Authority included this case in the agenda of an annual meeting on pending cases in the field of state aid between the Authority and the Icelandic authorities that was held in Reykjavik on 5 November 2009. At this meeting, the Icelandic authorities provided brief information concerning the background and history of the case. At the same meeting, due to the complexity of the intervention and the circumstances surrounding it, the Authority asked the Icelandic authorities to provide detailed written information.
- (2) On 7 June 2010, the Authority received a complaint (Event No 559496) against alleged state aid granted when the Icelandic state intervened in Sjóvá.
- (3) After having sent written requests for information and adopted an information injunction decision requesting information on the state intervention in Sjóvá, as well as subsequent correspondence, by letter dated 22 September 2010 the Authority informed the Icelandic authorities that it had decided to initiate the procedure laid down in Article 1(2) of Part I of Protocol 3 in respect of the recapitalisation of Sjóvá.
- (4) The Authority's Decision No 373/10/COL to initiate the formal investigation procedure (Opening Decision) of 22 September 2010 was published in the *Official Journal of the European Union* and the EEA Supplement thereto ⁽¹⁾. The Authority called on interested parties to submit their comments thereon.

⁽¹⁾ Decision No 373/10/COL of 22 September 2010 on State aid issues concerning the recapitalisation of Sjóvá insurance company in Iceland, OJ C 341, 16.12.2010, p. 15 and EEA Supplement to the Official Journal No 69, 16.12.2010, p. 2.

- (5) The Icelandic authorities, Sjóvá and Íslandsbanki submitted comments by letter dated 14 January 2011 (Event No 583507). The Authority also received comments from two competitors of Sjóvá. By letter dated 31 January 2011 (Event No 584930) the Authority forwarded these comments to the Icelandic authorities, which were given the opportunity to respond. The response was received by letter dated 25 February 2011 (Event No 588606).
- (6) On 3 October 2011, the Icelandic authorities submitted a first restructuring plan for Sjóvá (Event No 610472), which was updated on 13 April 2012 (Event No 631003) and 28 May 2013 (Event No 673746), as well as supplementary information on 6 March 2013 (Event No 665021). Additional commitment proposals were received on 25 June 2012 (Event No 641330), 4 October 2012 (Event No 648708), 3 May 2013 (Event No 671655), 28 May 2013 (Event No 673746) and 2 July 2013 (Event No 677440).

2. DESCRIPTION OF THE CASE

2.1. Background

- (7) In 2005, the financial group Moderna/Milestone Finance (Milestone) ⁽¹⁾ bought 66,6 % of Sjóvá's shares from Glitnir and acquired full ownership as from 2006. In the following, Milestone decided in particular to change the focus of Sjóvá's investments towards highly leveraged foreign real estate projects, and enabled assets swaps and unsecured loans to shareholders to the detriment of Sjóvá's financial situation. According to a report ⁽²⁾ by the Icelandic Financial Supervisory Authority (FME), these investments led to major financial difficulties, and did not comply with the prescriptions of Article 34(2) of Act on Insurance Activities No 60/1994.
- (8) From October 2008 to September 2009, Sjóvá was subjected to special supervision by the FME under Article 90 of the Act on Insurance Activities No 60/1994. From thereon, Sjóvá's creditors started managing the company, culminating in Glitnir — its biggest creditor — taking it over in March 2009. Glitnir also acquired control over Askar Capital, an Icelandic investment bank formerly controlled by Milestone, as well as its subsidiary, Avant hf. (Avant), which was active on the car financing market.
- (9) In April 2009, Glitnir and Íslandsbanki, which was also a major creditor of Sjóvá, approached the Icelandic state requesting its assistance in refinancing and restructuring Sjóvá, having exhausted all alternative market solutions to rescue the company.
- (10) On 20 June 2009, Sjóvá on the one hand and Glitnir, Íslandsbanki, and SAT Eignarhaldsfélag hf. (a holding company wholly owned by Glitnir, hereinafter referred to as SAT Holding) on behalf of SA tryggingar hf. on the other hand signed an Asset Transfer Agreement, according to which all assets and liabilities of Sjóvá related to the company's insurance operations, including the insurance portfolio, were transferred to SA tryggingar hf., in accordance with Article 86 of the Act on Insurance Activities No 60/1994. The remaining assets of Sjóvá were placed in SJ Eignarhaldsfélag (SJE), a holding company. SJE would then be wound down in a regular insolvency process.
- (11) Following the transaction the new company, SA tryggingar hf., was renamed Sjóvá. According to its Articles of Association, dated 20 June 2009, the shareholders of the new company (Glitnir, Íslandsbanki and SAT Holding) were to contribute new equity of about ISK 16 billion, required to continue insurance operations, as follows ⁽³⁾:

Company	Amount	Form of payment	Share-holding
Glitnir	ISK 2,8 billion	Bond issued by Avant with interest of REIBOR plus 3,75 % with the following collaterals: — 4 th priority (later changed to 3 rd priority in parallel with a bond issued by Askar Capital, see below) in Avant's portfolio — 1 st priority in Glitnir's claim against Milestone, equivalent of 54,9 % of total claims against Milestone	17,67 %

⁽¹⁾ Moderna Finance AB was a Swedish holding company owned by the Icelandic company Milestone hf. Further information on Sjóvá and Milestone and their ties with Glitnir Bank are contained in the report of the Icelandic Parliament's Special Investigation Commission (SIC), available at <http://rna.althingi.is/> (Icelandic version) and <http://sic.althingi.is/> (excerpts in English).

⁽²⁾ Response from the FME regarding the state intervention in the recapitalisation of Sjóvá Almennar tryggingar hf., dated 23 November 2010.

⁽³⁾ Subject to the FME's approval, which was granted on 22 September 2009.

Company	Amount	Form of payment	Share-holding
Íslandsbanki	ISK 1,5 billion	Various bonds issued by 10 different companies and municipalities	9,30 %
SAT Holding	ISK 11,6 billion	Bond issued by Askar Capital and bond issued by Landsvirkjun (the National Power Company) obtained from the Icelandic state (see below)	73,03 %

- (12) On the same date, the shareholders of Sjóvá also made an agreement to sell their shares in the company within 18 months. The proceeds would be used to transfer the assets set forth as share capital back to the shareholders. Accordingly, an open sales process was launched for Sjóvá in the beginning of 2010, with plans to sign a Sales and Purchase Agreement at the end of March 2010. However, the sales efforts ended in November 2010 when the highest bidder withdrew its offer.
- (13) The Authority provided a more detailed description of the events, facts and economic and political developments relating to the collapse and the reconstruction of Sjóvá in the Opening Decision.

3. DESCRIPTION OF THE INTERVENTION BY THE STATE

3.1. The beneficiary

- (14) Sjóvá was founded in 1918 and has been a key player in the Icelandic insurance market ever since. It services individuals as well as organisations of all sizes and offers a wide product range through a large service network around the country. Sjóvá is one of the three leading insurance companies in Iceland providing its customers with the full range of both non-life and life products.
- (15) Sjóvá has defined six product classes: property, motor, accident & sickness, marine, aviation & cargo, liability and life. However, the company focuses on providing comprehensive insurance services instead of product-specific services.
- (16) Sjóvá owns one subsidiary, Sjóvá Life. According to Art. 12 of the Act on Insurance Activities No 56/2010, life insurance business cannot be run in the same company as non-life primary insurance operations. Although Sjóvá Life is a separate legal entity from Sjóvá, with separate accounting and balance sheet, Sjóvá Life purchases through an agreement with Sjóvá all day-to-day operations and access to IT systems and support. Sjóvá Life products are integrated into Sjóvá's product range.
- (17) As set out above, Sjóvá is active both on the Icelandic non-life and life insurance markets. In the non-life insurance segment, Sjóvá has a market share of around 28 %, whilst its main competitors have the following approximate market shares: Vátryggingafélag Íslands hf. (VIS) 35 %, Tryggingamiðstöðin hf. (TM) 26 % and Vörður tryggingar hf. 11 %. In the life insurance segment, the approximate market shares are as follows: Sjóvá Life 35 %, Okkar (Arion Bank) 27 %, LÍS (part of VIS) 24 %, LM (part of TM) 10 % and Vörður Lif 4 % ⁽¹⁾.

3.2. The recapitalisation of Sjóvá

- (18) The Icelandic state undertook two measures to recapitalise Sjóvá: it contributed directly to the initial recapitalisation of Sjóvá in 2009 by transferring two bonds to SAT Holding (see paragraphs 19 to 22 below) and contributed a further ISK 683 to 739 million to the stabilisation of Sjóvá in 2010 (see paragraphs 24 and 29 to 31 below).
- (19) The state aid for the initial recapitalisation of Sjóvá was put in place by way of an agreement dated 8 July 2009 on the transfer of bonds ⁽²⁾ ('Samningur um kröfukaup') owned by the Icelandic state to SAT Holding.

⁽¹⁾ The market share estimates are based on share of total premium income in 2012. Prior to the financial crisis, Sjóvá had a market share of over 40 % in the non-life insurance segment.

⁽²⁾ For the purpose of this decision, the assets transferred to SAT Holding by the state will be referred to as bonds.

- (20) At this point, Sjóvá's equity was ISK 13,5 billion in the negative. A minimum positive equity of ISK 2 billion was required according to law. In order to fulfil the minimum equity requirements, a capital injection of at least ISK 15,5 billion was therefore required.
- (21) The agreement between the state and SAT Holding covers the following two bonds that were in the possession of the state, valued by an external expert on 16 June 2009:

Asset	Estimated value	Description and securities
Claim against Askar Capital	ISK 6 071 443 539	An indexed loan agreement with 3 % interest. The loan had come into the possession of the state when it took over Central Bank collateral in 2008. The loan is secured by: — 3rd priority collateral in Avant's portfolio (in parallel with a bond issued by Avant to Glitnir, book value of the portfolio was ISK 26 billion and Landsbanki Íslands' 1st priority lien of ISK 16 billion), and — 1st priority collateral in indexed bonds issued by Landsvirkjun (the National Power Company) of nominal value ISK 4,7 billion.
Bond issued by Landsvirkjun (the National Power Company)	ISK 5 558 479 575	Issued in 2005 payable in 2020, with state guarantee, indexed and 3 % interest. The bond came into the possession of the state as collateral against lending made by the Central Bank to Landsbanki Íslands.

- (22) The purchase price was ISK 11,6 billion and SAT Holding was to pay for the bonds within 18 months, i.e. before year-end 2010, without any interest being charged during that period. As a security for the payment of the purchase price of the bonds, the state was granted 1st priority collateral in SAT Holding's shares in Sjóvá.
- (23) The agreement provided for the option of payment by the delivery of SAT Holding's original 73,03 % shareholding in Sjóvá to the state, which would be considered payment in full. SAT Holding could exercise this option without prior consent of the state.
- (24) Besides, prior to the creation of SA tryggingar hf. (later named Sjóvá) on 20 June 2009, the Icelandic state accepted to upgrade Glitnir's security in the bond issued by Avant from 4th to 3rd priority, in line with the priority of the collateral in Avant's portfolio held by the state itself. This was considered necessary for the FME to accept Glitnir's contribution to Sjóvá's equity. In exchange, Glitnir ceded 12,5 % of its claims against SJE, which held the former investment portfolio of Sjóvá, to the Icelandic state.

3.2.1. Glitnir sells its shares in Sjóvá to its subsidiary SAT Holding

- (25) The FME considered that Glitnir, in moratorium and undergoing winding-up proceedings, was not eligible to own a qualifying holding in Sjóvá. Subsequently, on 16 September 2009, Glitnir sold its 17,67 % shareholding in Sjóvá to SAT Holding. Following the above transaction, shareholders in Sjóvá were:

Company	Ownership (%)
Íslandsbanki	9,30
SAT Holding	90,70

- (26) On 22 September 2009, the FME finally issued an insurance operation licence to Sjóvá and lifted the special supervision Sjóvá had been under since October 2008. The portfolio transfer took place on 1 October 2009 ⁽¹⁾.

⁽¹⁾ At the same time, a public notice was issued by the FME under Articles 86 and 87 of the then-applicable Act on Insurance Activities 60/1994 to all policyholders to remind them that they can cancel their policies, irrespective of the renewal date, within a 30-day 'transfer window'.

3.2.2. The state becomes Sjóvá's biggest shareholder through an option exercised by SAT Holding

- (27) At year-end 2009, the management of claims owned by the Ministry of Finance and the Central Bank of Iceland (CBI) was merged, and transferred to a new entity; CBI asset management (ESI). From that time, ESI — which is fully controlled by the Icelandic state — took over the management of the claims against SAT Holding.
- (28) On 3 May 2010, SAT Holding exercised the option to transfer 73,03 % of shares in Sjóvá to the state in lieu of repaying the debt. From that point in time, the shareholders in Sjóvá were:

Company	Ownership (%)
Íslandsbanki	9,30
SAT Holding	17,67
ESI (the state)	73,03

- (29) On 16 June 2010, the Icelandic Supreme Court ruled that loans granted in ISK but linked to a basket of foreign currencies were illegal. This affected the value of the bonds issued by both Avant and Askar Capital that had been used for the recapitalisation of Sjóvá. In order to maintain the capital of Sjóvá, an asset transfer agreement was signed on 28 July 2010 between Sjóvá on the one hand and SAT Holding, ESI and Íslandsbanki on the other hand. This agreement resulted in (i) SAT Holding acquiring the Avant bond for ISK 2,1 billion (the difference to the original valuation of ISK 2,8 billion being covered by Sjóvá) and (ii) ESI transferring the Landsvirkjun bond, which had been used to collateralise the bond issued by Askar Capital, to Sjóvá.
- (30) ESI subsequently acquired the Avant bond from SAT Holding for ISK 880 million. This bond had a nominal value of ISK 2 813 million but was of uncertain value as the bondholders of Avant expected to recover only 5-7 % of the bond's value after the liquidation of Avant. This would correspond to a value of the bond acquired by ESI of between ISK 141 million and ISK 197 million. As a result, ESI contributed a further ISK 683 to 739 million to the stabilisation of Sjóvá.
- (31) In December 2010, Avant's creditors approved a composition agreement with the company. At that point, Avant's portfolio was valued at ca. ISK 13 billion. The 1st priority claim on the portfolio amounted to ca. ISK 15 billion. The 3rd priority security in the portfolio, which was jointly held by Glitnir and ESI, was therefore worthless.

3.2.3. Sale to SF1

- (32) On 18 January 2011, SF1 slhf (SF1), a fund managed by Stefmir hf., agreed to acquire 52,4 % of Sjóvá from ESI for ISK 4,9 billion. Following regulatory approval, the transaction took place on 1 July 2011.
- (33) In addition, SF1 was granted an option to purchase the remaining 20,63 % stake from ESI for ISK 2,4 billion. This option was exercised in July 2012.
- (34) Following that transaction, the shareholding in Sjóvá is as follows:

Company	Ownership (%)
Íslandsbanki	9,30
SAT Holding	17,67
SF1	73,03

- (35) The Icelandic authorities thus managed to sell their holding in Sjóvá for a total amount of ISK 7,3 billion. This compares to an initial value of ISK 11,6 billion of the bonds Iceland used in its contribution to the recapitalisation of Sjóvá.

4. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (36) In its Opening Decision, the Authority came to the preliminary conclusion that the Icelandic State's participation in the recapitalisation of Sjóvá constitutes aid within the meaning of Article 61(1) of the EEA Agreement. Furthermore, the Authority expressed doubts as to whether these measures comply with Article 61(3) of the EEA Agreement, in conjunction with the requirements laid down in the Authority's financial crisis guidelines.
- (37) In particular, the Authority stated that the Icelandic authorities had not submitted information to demonstrate that the systemic effects that might have resulted from a bankruptcy of Sjóvá could have reached a size constituting 'a serious disturbance in the economy' of Iceland within the meaning of Article 61(3)(b) of the EEA Agreement. It also stated that only limited information had been submitted regarding the operations of Sjóvá, on the causes of the difficulties and on the restructuring itself. This information was insufficient to enable the Authority to assess the measure under Article 61(3)(b) as well as in particular the chapter on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the state aid rules (Restructuring Guidelines) of the Authority's state aid guidelines ⁽¹⁾.

5. COMMENTS FROM INTERESTED PARTIES

- (38) The Authority received submissions from the following interested parties.

5.1. Comments from Sjóvá and Íslandsbanki

- (39) The beneficiary, Sjóvá, as well as Íslandsbanki, one of its shareholders, submitted comments to the Authority.
- (40) Sjóvá's submission provides mainly information on the restructuring measures undertaken by the company's new management as well as financial data on its operations.
- (41) Íslandsbanki argues in its comments that the Icelandic state acted as a market economy investor in participating in the recapitalisation of Sjóvá. If, however, the Authority came to the view that the transaction involved state aid, Íslandsbanki states that the aid should be considered compatible under Article 61(3)(b) of the EEA Agreement. The comments highlight in particular the importance of the measures for the Icelandic financial market, the contribution of private parties (Glitnir and Íslandsbanki) to the recapitalisation and the success of the restructuring of Sjóvá so far.

5.2. Comments from competitors

- (42) The Authority also received comments from VIS and TM. Both are Icelandic insurance companies and in direct competition with Sjóvá.
- (43) VIS argues in its comments that the state intervention to enable the recapitalisation of Sjóvá should be considered as state aid. In particular, VIS notes that the market economy investor principle does not apply to the intervention given the economic situation of Sjóvá and more generally in Iceland at the time, as well as due to the terms of the intervention. No private investor would have participated in the recapitalisation under these circumstances. Furthermore, VIS argues that the aid should not be declared compatible. In particular, Article 61(3)(b) of the EEA Agreement is not applicable as the failure of Sjóvá would not have caused a serious disturbance in the Icelandic economy. The aid was therefore not necessary. In any event, VIS argues that the aid does not comply with the Restructuring Guidelines, both due to the absence of a restructuring plan and because of the distortive effect on competition, including the potential for aggressive pricing behaviour by Sjóvá.
- (44) TM notes in its comments that the intervention of the Icelandic authorities in the recapitalisation of Sjóvá did not take place on market terms and therefore should be considered as state aid. Concerning the compatibility of the measure, TM argues that the exceptions in neither Article 61(3)(b) nor Article 61(3)(c) of the EEA Agreement are applicable to the case at hand. In relation to Article 61(3)(b) of the EEA Agreement, TM argues that it needs to be applied restrictively and cannot be used to resolve the problems of a single company. In addition, TM submits that an insurance company should not be considered as systemically relevant, and therefore could be wound-up

⁽¹⁾ Available on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines>.

safely within the existing regulatory framework. In any event, TM argues that the aid to Sjóvá was neither necessary, well-targeted nor proportionate. It also lacks a restructuring plan that provides for sufficient burden sharing and measures to limit distortions of competition, in particular in relation to Sjóvá's pricing behaviour.

6. COMMENTS FROM THE ICELANDIC AUTHORITIES

- (45) The Icelandic authorities do not contest the preliminary findings of the Authority that the participation of the Icelandic state in the capitalisation of Sjóvá constitutes state aid within the meaning of Article 61(1) of the EEA Agreement. In particular, they do not dispute the preliminary conclusion of the Authority that the market economy investor principle is not applicable. Neither does Iceland contest that the repurchase of the Avant bond by ESI — via SAT Holding — might have involved an element of state aid to Sjóvá.
- (46) The Icelandic authorities argue that the state aid is, however, compatible with the functioning of the EEA Agreement on the basis of Article 61(3)(b) of the EEA Agreement, as the intervention was required to remedy a serious disturbance in the economy of a Contracting Party. They explain the difficult economic situation Iceland was in at the time of the measure. After a severe depreciation of the Icelandic króna starting in September 2008 and the collapse of all three major banks in October 2008, Iceland faced the worst economic crisis in its recent history. The Icelandic government had to take bold steps to preserve the country's financial system from a complete breakdown with unforeseeable consequences for Iceland's society. At the time of the measure, Iceland's financial system was in a state of turmoil and suffered from a general lack of confidence in financial institutions.
- (47) Sjóvá, as one of the three major insurance companies in Iceland, is systematically important for Iceland's financial system. A collapse of Sjóvá would not only have left a large portion of Iceland's population without insurance cover and with a loss of their claims in a situation where Iceland's society already faced severe social hardship. It would also have further undermined the trust in the financial system's institutions and spread the contagion of the financial crisis to the insurance sector. Public trust in Iceland's insurance sector had already severely diminished at the beginning of 2009 since not only Sjóvá but also the owners of the other two major insurance companies were taken over by the creditors of their respective parent companies. Therefore, a failure of Sjóvá most likely would have resulted in the financial market crisis spreading from the banking to the insurance sector.
- (48) This analysis is shared by the FME, which notes that a bankruptcy of Sjóvá would have had severe consequences on the country's economy. The credibility of the financial market and the economy in general was heavily damaged during the collapse of the Icelandic banks in October 2008. The remaining institutions were fragile, as was the confidence in financial institutions. Sjóvá's continued existence was important to the functioning of the Icelandic financial market. Bankruptcy would have had spill-over effects on the non-life and the life insurance markets in general. It would have set back the on-going work of the Icelandic authorities to reconstruct the financial markets.
- (49) Regarding the scope of the necessary restructuring, the Icelandic authorities argue that the Authority should take into account that Sjóvá's financial difficulties were caused exclusively by its irregular investment activities and by transactions with its former owner Milestone. These have been possible due to a lack of proper risk control and corporate governance. They have no connection to the day-to-day insurance business continued by Sjóvá today. The viability of Sjóvá's insurance business is not only shown in the financial projections of the restructuring plan, but also confirmed by the FME. In addition, the willingness of a private third-party investor to acquire a majority stake in the company from the state evidences that the market considers Sjóvá to be viable. This transaction also resulted in the majority of the aid being recovered by Iceland.
- (50) The Icelandic authorities highlight that the historic owners of Sjóvá lost their entire investment, and that both Glitnir and Íslandsbanki took part in the recapitalisation. Besides, Sjóvá is contributing to the restructuring by cutting cost and rebuilding its capital from retained profits. There is therefore substantial burden sharing by both the shareholders in Sjóvá and the company itself.
- (51) Regarding the need for compensatory measures, the Icelandic authorities argue that further structural measures should not be required as the restructuring has already led to a reduction of Sjóvá's balance sheet by about 70 %, and any divestments in the core business segments would endanger viability. The Icelandic authorities also note that Sjóvá qualifies as an SME, which further reduces the need for compensatory measures. Finally, they argue that the proposed commitments, both regarding the behaviour of Sjóvá and regulatory change, are appropriate to minimise any distortions of competition.

- (52) In response to the third-party comments from VIS and TM, the Icelandic authorities mainly refer to previous submissions and provide further economic data.

7. THE RESTRUCTURING PLAN

- (53) On 3 October 2011, the Icelandic authorities submitted a first restructuring plan for Sjóvá. This plan was further updated on 13 April 2012 and 28 May 2013.
- (54) The restructuring plan addresses the substantive issues of viability, burden-sharing and limiting distortion of competition. According to the restructuring plan, Sjóvá will reduce the overall risk profile of its investment portfolio, improve its investment and risk management procedures, improve its corporate governance and increase profitability.

7.1. Financial projections

- (55) The Icelandic authorities have submitted detailed financial information and financial projections for Sjóvá until 2016, including a base case and three stress case scenarios. Even though the restructuring period only lasts until the end of 2014, the Icelandic authorities have submitted additional planning data for 2015 and 2016. This assists the Authority in particular in its assessment of the stress cases, which take into account stress events specific to the Icelandic market with effects beyond the restructuring period.
- (56) In all four scenarios, assumptions were presented for the period 2013-2016 in terms of Gross Domestic Product (GDP) growth, inflation, market share development, the return on index-linked government bonds, cash yield, equity premium and allocation as well as claims/premiums and cost/premiums ratios of Sjóvá.

7.1.1. Base case

- (57) In the base case scenario, the financial projections are based on the five-year prognosis for GDP growth and inflation of the Icelandic economy published by Statistics Iceland on 30 March 2012, and updated on the basis of the actual results of Sjóvá and the actual data on the Icelandic economy in 2012 on 28 May 2013. The base case assumes in particular moderate economic growth, a reduction in inflation and flat development of interest rates, as well as constant market shares for Sjóvá.

Base case: assumptions

	2012	2013	2014	2015	2016
GDP growth	1,6 %	2,5 %	2,8 %	2,8 %	2,7 %
Inflation	4,2 %	3,4 %	2,5 %	2,5 %	2,5 %
Sjóvá's market share	[...]	[...]	[...]	[...]	[...]
Index-link gvt bonds	2,5 %	2,5 %	2,5 %	2,5 %	2,5 %
Yield cash real rate	1 %	1 %	1 %	1 %	1 %
Equity premium	5 %	5 %	5 %	5 %	5 %
Equity allocation	[...]	[...]	[...]	[...]	[...]
Claims/premiums net of reinsurance	[...]	[...]	[...]	[...]	[...]
Cost/premiums net of reinsurance	[...]	[...]	[...]	[...]	[...]

(58) The projected profit and loss statement as well as the balance sheet in the base case are set out in the table below.

Base case: profit and loss statement (in ISK million)

	2012	2013	2014	2015	2016
Premium earned	[...]	[...]	[...]	[...]	[...]
Claims incurred	[...]	[...]	[...]	[...]	[...]
Other income	[...]	[...]	[...]	[...]	[...]
	[...]	[...]	[...]	[...]	[...]
Operational expenses	[...]	[...]	[...]	[...]	[...]
P/L of insurance operations	[...]	[...]	[...]	[...]	[...]
Investment income	[...]	[...]	[...]	[...]	[...]
Income before tax and depreciation	[...]	[...]	[...]	[...]	[...]
Amortisation of goodwill	[...]	[...]	[...]	[...]	[...]
Profit before tax	[...]	[...]	[...]	[...]	[...]
Income taxes	[...]	[...]	[...]	[...]	[...]
Profit	[...]	[...]	[...]	[...]	[...]

Base case: balance sheet (in ISK million)

	2012	2013	2014	2015	2016
Assets:	[...]	[...]	[...]	[...]	[...]
Operating assets	[...]	[...]	[...]	[...]	[...]
Goodwill	[...]	[...]	[...]	[...]	[...]
Other intangibles	[...]	[...]	[...]	[...]	[...]
Tax deduction	[...]	[...]	[...]	[...]	[...]
Securities	[...]	[...]	[...]	[...]	[...]
Reinsurance assets	[...]	[...]	[...]	[...]	[...]
Account receivables	[...]	[...]	[...]	[...]	[...]
Cash and cash equivalents	[...]	[...]	[...]	[...]	[...]
Total assets	[...]	[...]	[...]	[...]	[...]
	[...]	[...]	[...]	[...]	[...]

	2012	2013	2014	2015	2016
Equity:	[...]	[...]	[...]	[...]	[...]
Equity at beginning of period	[...]	[...]	[...]	[...]	[...]
Profit of the year	[...]	[...]	[...]	[...]	[...]
Dividend	[...]	[...]	[...]	[...]	[...]
Total equity	[...]	[...]	[...]	[...]	[...]
	[...]	[...]	[...]	[...]	[...]
Liabilities:	[...]	[...]	[...]	[...]	[...]
Technical provisions	[...]	[...]	[...]	[...]	[...]
Tech. provisions for life insurance	[...]	[...]	[...]	[...]	[...]
Accounts payable	[...]	[...]	[...]	[...]	[...]
Total liabilities	[...]	[...]	[...]	[...]	[...]
	[...]	[...]	[...]	[...]	[...]
Equity and liabilities	[...]	[...]	[...]	[...]	[...]

- (59) The main financial ratios as projected in the base case are presented in the table below.

Base case: key financial ratios

	2012	2013	2014	2015	2016
Adjusted solvency	[...]	[...]	[...]	[...]	[...]
Return on Equity	[...]	[...]	[...]	[...]	[...]

- (60) At the end of the restructuring period, the projected return on equity of Sjóvá will reach about [...] % in the base case scenario.

7.1.2. *Stress case: 'double dip'*

- (61) The Icelandic authorities have submitted a simulation of a 'double dip' stress scenario. Its GDP assumptions for 2013 to 2016 simulate a further recession and higher inflation. As a further stress, it is also assumed that interest rates are unchanged and that the equity premium turns negative. The 'double dip' scenario thus simulates a deep recession combined with further stress elements.

'Double dip' stress case: assumptions

	2012	2013	2014	2015	2016
GDP growth	1,6 %	1,2 %	– 6,6 %	– 4,0 %	2,6 %

	2012	2013	2014	2015	2016
Inflation	4,2 %	12,4 %	12,0 %	5,4 %	4,0 %
Sjóvá's market share	[...]	[...]	[...]	[...]	[...]
Index-link gvt bonds	2,5 %	2,5 %	2,5 %	2,5 %	2,5 %
Yield cash real rate	1 %	1 %	1 %	1 %	1 %
Equity premium	5 %	5 %	– 70 %	– 7,9 %	5 %
Equity allocation	[...]	[...]	[...]	[...]	[...]
Claims/premiums net of reinsurance	[...]	[...]	[...]	[...]	[...]
Cost/premiums net of reinsurance	[...]	[...]	[...]	[...]	[...]

‘Double dip’ stress case: financials (in ISK million unless specified otherwise)

	2012	2013	2014	2015	2016
P/L of insurance operations	[...]	[...]	[...]	[...]	[...]
Total profit	[...]	[...]	[...]	[...]	[...]
Adjusted solvency	[...]	[...]	[...]	[...]	[...]
Return on Equity	[...]	[...]	[...]	[...]	[...]

7.1.3. Stress case: ‘capital controls’

- (62) The Icelandic authorities have submitted a simulation of a ‘capital controls’ stress scenario. In this stress test, it is assumed that capital controls will be lifted in Iceland in 2014. As a consequence, the ISK devalues to its current offshore value, which is about 30 % below the official exchange rate. This translates into an increase in the inflation rate. In turn, the higher inflation rate increases the loss ratio. Real interest rates are assumed to increase to 6,5 %, and the equity risk premium to reach -50 % due to capital flight.

‘Capital controls’ stress case: assumptions

	2012	2013	2014	2015	2016
GDP growth	1,6 %	2,5 %	2,8 %	2,8 %	2,7 %
Inflation	4,2 %	3,4 %	2,5 %	10,5 %	5 %
Sjóvá's market share	[...]	[...]	[...]	[...]	[...]
Index-link gvt bonds	2,5 %	2,5 %	6,5 %	6,5 %	6,5 %
Yield cash real rate	1 %	1 %	1 %	1 %	1 %
Equity premium	5 %	5 %	– 50 %	5 %	5 %
Equity allocation	[...]	[...]	[...]	[...]	[...]

	2012	2013	2014	2015	2016
Claims/premiums net of reinsurance	[...]	[...]	[...]	[...]	[...]
Cost/premiums net of reinsurance	[...]	[...]	[...]	[...]	[...]

‘Capital controls’ stress case: financials (in ISK million unless specified otherwise)

	2012	2013	2014	2015	2016
P/L of insurance operations	[...]	[...]	[...]	[...]	[...]
Total profit	[...]	[...]	[...]	[...]	[...]
Adjusted solvency	[...]	[...]	[...]	[...]	[...]
Return on Equity	[...]	[...]	[...]	[...]	[...]

7.1.4. Stress case: ‘cold winter II’

- (63) The Icelandic authorities have submitted a simulation of a ‘cold winter II’ stress scenario. This stress case modifies the base case by the occurrence of two exceptionally cold winters. This results in a significant increase of the number of losses (in particular car accidents) that are relatively small and therefore not covered by reinsurance. The amount of losses is assumed at 100 % of premiums.

‘Cold winter II’ stress case: assumptions

	2012	2013	2014	2015	2016
GDP growth	1,6 %	2,5 %	2,8 %	2,8 %	2,7 %
Inflation	4,2 %	3,4 %	2,5 %	2,5 %	2,5 %
Sjóvá’s market share	[...]	[...]	[...]	[...]	[...]
Index-link gvt bonds	2,5 %	2,5 %	2,5 %	2,5 %	2,5 %
Yield cash real rate	1 %	1 %	1 %	1 %	1 %
Equity premium	5 %	5 %	5 %	5 %	5 %
Equity allocation	[...]	[...]	[...]	[...]	[...]
Claims/premiums net of reinsurance	[...]	[...]	[...]	[...]	[...]
Cost/premiums net of reinsurance	[...]	[...]	[...]	[...]	[...]

‘Cold winter II’ stress case: financials (in ISK million unless specified otherwise)

	2012	2013	2014	2015	2016
P/L of insurance operations	[...]	[...]	[...]	[...]	[...]
Total profit	[...]	[...]	[...]	[...]	[...]

	2012	2013	2014	2015	2016
Adjusted solvency	[...]	[...]	[...]	[...]	[...]
Return on Equity	[...]	[...]	[...]	[...]	[...]

7.1.5. *Stress cases: conclusion*

- (64) In all three stress scenarios, the solvency ratio remains strong during the entire restructuring period, and Sjóvá would be profitable with the exception of specific stress events in certain years. However, according to the additional planning data for 2015 and 2016, Sjóvá would recover its profitability rapidly thereafter even in these circumstances.

7.2. **Description of the restructuring measures**

- (65) The restructuring of Sjóvá is composed of several structural and behavioural measures, which are described below.

7.2.1. *Separation of insurance activities and winding-down of investments*

- (66) As set out above, the main problems leading to Sjóvá's financial difficulties resulted from the investment decisions and the inter-group lending caused by its former owner, Milestone. As a result, Sjóvá experienced serious difficulties in relation to its investment portfolio. A key step in the restructuring of Sjóvá was therefore the transfer in the summer of 2009 of its insurance activities into a new company (later renamed Sjóvá) and the winding down of the legacy investment portfolio.

7.2.2. *Change in corporate governance and control structures*

- (67) A new Icelandic Act on Insurance Activities came into force in 2010. It includes stricter rules on corporate governance and other control mechanisms within insurance companies.
- (68) The relevant changes are the following:
- A director of an insurance company cannot be a director of any other financial institution or insurance company. The FME can grant exemptions in the case of subsidiaries.
 - Any CEO or director must attend examinations carried out by the FME to assess the qualification and the knowledge of these individuals. The FME may refuse to accept individuals not passing this assessment as a director or CEO of an insurance company.
 - The board of directors must establish management rules, internal inspection rules, internal auditing rules, rules on financial activity and procedure, rules and procedures on any kind of lending activity as well as rules and procedures on business dealings with related parties.
 - The board of directors must establish rules on trading of financial instruments by the company itself and personally by the directors, the CEO and defined key personnel within the company.
 - The FME establishes rules applicable to any kind of bonus scheme forming part of the salary packages within insurance companies.
 - The board of directors must establish binding special rules on the investment procedures and on the conduct of investment activities where the company intends to invest in any financial instruments not listed on a registered stock exchange.
 - The board of directors must establish binding rules on real estate intended solely as investment and not for the company's own use.
 - All the internal rules required by the regulation as set out above must be submitted to the FME for review and confirmation.

- (69) Sjóvá has implemented the relevant changes to the legislation. In line with the new regulatory requirements, Sjóvá's board of directors has decided on rules regarding investments; any amendment of these rules must be approved by the FME. The board of directors of Sjóvá established and signed the rules on corporate governance on 4 April 2011 and submitted them to the FME. The CEO has also established and signed rules defining and determining the minimum qualification for key employees.
- (70) In addition, a new division 'Risk & Analysis' was formed by Sjóvá in April 2010. This division answers directly to the CEO and is headed by a qualified actuary and comprises six further employees. The purpose of this division is:
- to be responsible for writing and enforcing regulatory and prudent risk management procedure within the life and non-life insurance business segments of Sjóvá;
 - to analyse underwriting results from all classes of insurance conducted within Sjóvá;
 - to give reports and to propose amendments to the rating of tariffs;
 - to be responsible for accurate rating tariffs for all classes of insurance business;
 - to enforce all the procedures within Sjóvá related to risk management;
 - to analyse technical provisions at regular intervals and be responsible for accurate claims reserving;
 - to conduct stress tests and Own Risk and Solvency Assessment (ORSA);
 - to be responsible for the implementation of Solvency II and the enforcement of the Solvency II requirements within Sjóvá;
 - to give regular reports on any issues relating to risk management to CEO and board of directors; and
 - to communicate and report to the Financial Supervisory Authority on all matters regarding risk management and technical results and reports as statutorily required.
- (71) Finally, an internal audit committee has been set up by the board of directors in accordance with the statutory requirements.

7.2.3. *Other viability measures*

- (72) Sjóvá has implemented measures to increase margin in its insurance business and to reduce cost. These measures include salary cuts, reductions in marketing and other operational costs as well as the implementation of strict rules for quoting insurance offers. Furthermore, there are currently no compensatory bonus schemes for employees. Finally, Sjóvá discontinued its reinsurance activities, through which it had in the past acquired an international insurance risk portfolio.
- (73) These measures aim in particular at ensuring that the combined ratio is below 100 %, i.e. that the insurance business is sustainable by itself, without taking undue risks in investment activities. As a result of these measures, Sjóvá was able to improve its combined ratio from 114,4 % in 2005 to 95,6 % in 2010. According to the base case projections, the ratio will stay below 100 % until 2016.

7.3. **Commitments**

- (74) As set out in the Annex, the Icelandic government and Sjóvá have committed to restrictions on the pricing of insurance quotes for certain corporate customers as well as bans on certain acquisitions and advertisement activities.
- (75) The Icelandic authorities have also committed to introduce certain regulatory changes to the functioning of the insurance market as set out in the Annex.

II. ASSESSMENT

1. THE PRESENCE OF STATE AID

(76) Article 61(1) of the EEA Agreement reads as follows:

‘Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.’

(77) The Authority will assess the following measures as set out in paragraph 18 above:

1. The Icelandic state contributed to the recapitalisation of Sjóvá by transferring to SAT Holding two bonds in its possession, valued by an external expert at ISK 11,6 billion (approx. EUR 76 million) to be used as equity in Sjóvá.
2. The Icelandic state also agreed to upgrade Glitnir's security in the bond issued by Avant from 4th to 3rd priority in order to enable Glitnir's contribution to the capital of Sjóvá. As the Avant bond lost most of its value after the Icelandic Supreme Court's ruling of 16 June 2010, the Icelandic state (through ESI) entered into the asset transfer agreement dated 28 July 2010. This agreement resulted in ESI contributing a further ISK 683 to 739 million to the stabilisation of Sjóvá through its acquisition of the Avant bond from SAT Holding for ISK 88 million.

(78) These measures will be referred to as the ‘recapitalisation measures’ below.

1.1. Presence of state resources

- (79) As the Authority had already preliminarily concluded in the Opening Decision, it is clear that the first of the recapitalisation measures was financed through state resources provided by the Icelandic state.
- (80) Regarding the second recapitalisation measure, the payment for the later acquisition of the Avant bond from SAT Holding was also carried out by the Icelandic state from state resources. Furthermore, the enhancement of Glitnir's security in the Avant bond reduced the likelihood of the state receiving repayment under the bond, and therefore reduced the value of its claim. This reduction thus also affected state resources.
- (81) The Authority therefore concludes that state resources were involved in both recapitalisation measures in favour of Sjóvá.

1.2. Favouring certain undertakings or the production of certain goods

- (82) In order to constitute state aid, a measure must confer a selective advantages on certain undertakings or the production of certain goods.
- (83) The aim of the recapitalisation measures was to ensure that Sjóvá could meet the regulatory minimum capital requirements, thereby enabling the company to remain active in the insurance business.
- (84) The Icelandic authorities have confirmed that the state took part in the recapitalisation of Sjóvá's insurance business because Glitnir and Íslandsbanki did not have the funds to provide the required capital themselves and no other private investor willing to do so could be found. This confirms the position of the Authority in the Opening Decision that the Icelandic state did not act as a market investor when participating in the recapitalisation of Sjóvá.
- (85) The Authority therefore concludes that the recapitalisation measures conferred an advantage on Sjóvá. This advantage is clearly selective, as the measures were designed to only benefit Sjóvá.

- (86) The state aid element corresponds to the equity that Sjóvá would not have received without the state's participation, i.e. the initial ISK 11,6 billion contributed by the Icelandic state as well as the further contribution by ESI of between ISK 683 and 739 million under the asset transfer agreement dated 28 July 2010. The Authority thus assesses the aid element to amount to about ISK 12,3 billion.

1.3. Distortion of competition and effect on trade between Contracting Parties

- (87) The recapitalisation measures strengthen the position of Sjóvá in comparison to competitors (or potential competitors) in Iceland and other EEA States. Sjóvá is an undertaking active, as described above, in the insurance market, which is open for international competition in the EEA. Whilst the Icelandic financial markets are currently rather isolated, particularly due to capital controls, cross-border trade in insurance services still exists, which will increase when the capital controls are lifted. The recapitalisation measures therefore distort or threaten to distort competition in a way that affects trade between Contracting Parties within the meaning of Article 61(1) of the EEA.

1.4. Conclusion on the presence of state aid

- (88) Based on the above, the Authority concludes that the recapitalisation measures involve state aid within the meaning of Article 61(1) of the EEA Agreement.

2. PROCEDURAL REQUIREMENTS

- (89) Pursuant to Article 1(3) of Part I of Protocol 3, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.
- (90) The Icelandic authorities did not notify the recapitalisation measures to the Authority in advance of their implementation. The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. The granting of these aid measures was therefore unlawful.

3. COMPATIBILITY OF THE AID

- (91) As a preliminary remark, the Authority notes that it is uncontested that Sjóvá would have faced bankruptcy without the state's intervention as it would not have been able to fulfil the regulatory capital requirements. Sjóvá was therefore an undertaking in difficulties at the time of the first recapitalisation measure.
- (92) The Authority also notes that the Icelandic authorities argue that the recapitalisation measures in favour of Sjóvá fall under the exception set out in Article 61(3)(b) of the EEA Agreement and fulfil the requirements of the Authority's Restructuring Guidelines.

3.1. Legal basis for the assessment of compatibility: Article 61(3)(b) of the EEA Agreement and the Authority's Restructuring Guidelines

- (93) While state aid to undertakings in difficulties such as Sjóvá is normally assessed under Article 61(3)(c) of the EEA Agreement, Article 61(3)(b) of the EEA Agreement allows state aid to 'remedy serious disturbance in the economy of an EC Member State or an EFTA State'.

3.1.1. Applicability of Article 61(3)(b) of the EEA Agreement

- (94) As set out above, the Icelandic authorities provided the initial funds required for the recapitalisation of Sjóvá by way of an agreement on the transfer of bonds dated 8 July 2009.

- (95) At that date, the Icelandic economy was still acutely affected by the financial crisis. In particular, the major commercial banks were in receivership, the government had introduced capital controls, inflation increased dramatically and Iceland had to undergo a programme of austerity as part of the conditions of its stand-by arrangement and loan from the IMF. Against this specific background, the FME warned of the grave consequences for the Icelandic economy and society of letting Sjóvá fail, including the risk of a systemic effect on the financial markets ⁽¹⁾.
- (96) The Authority notes that the failure of a single company in the insurance sector is ordinarily less likely to have a systemic effect than in the banking sector. However, in the present case, the impact of a failure of Sjóvá has to be assessed against the background of a severe financial and economic crisis as experienced in Iceland in 2008-2009.
- (97) The Authority shares the Icelandic authorities' analysis according to which, until such time as confidence in the financial system is restored, the potential impact of such a crisis might not be confined only to Sjóvá, nor even to the financial system.
- (98) The Authority therefore considers that the state participation in the recapitalisation in July 2009 may be considered as being intended to remedy a serious disturbance in the Icelandic economy.

3.1.2. *Application of the Restructuring Guidelines*

- (99) The Authority's Restructuring Guidelines set out the state aid rules applicable to the restructuring of financial institutions in the financial crisis.
- (100) According to the Restructuring Guidelines, in order to be compatible with Article 61(3)(b) of the EEA Agreement, the restructuring of a financial institution in the context of the financial crisis has to:
- lead to the restoration of the viability of the company;
 - include sufficient own contribution by the beneficiary (burden sharing); and
 - contain sufficient measures limiting the distortion of competition.
- (101) The Authority will thus assess below, based on the restructuring plan submitted for Sjóvá whether these criteria are met and if the aid measures described above constitute compatible restructuring aid.

3.2. **Restoration of viability**

- (102) The Authority has identified the following causes for the difficulties of Sjóvá, which led to the state intervention: (i) inappropriate investment practices; (ii) insufficient corporate governance and risk management; and (iii) insufficient profitability of insurance products.
- (103) The restructuring plan addresses these causes of difficulties as well as other risk factors of the company.

3.2.1. *Assessment of the restructuring measures — separation of insurance activities and winding-down of investments*

- (104) The transfer of Sjóvá's insurance activities into a new company freed the insurance business from the risks stemming from the legacy investment portfolio. This measure enabled Sjóvá, once recapitalised, to focus once again on its insurance operations.
- (105) The Authority considers that following this transfer, Sjóvá does no longer face any excessive risk from its legacy investment portfolio, which is being wound down in a separate entity.

⁽¹⁾ See Memorandum of the FME dated 29 June 2009.

3.2.2. *Assessment of the restructuring measures — improvement of corporate governance and risk management*

- (106) The Authority notes that Sjóvá has implemented the requirements of the Icelandic Act on Insurance Activities that came into force in 2010, which include stricter rules on corporate governance and other control mechanisms. These changes enhance Sjóvá's corporate governance and foresee comprehensive supervision by the FME, including over investment policies.
- (107) Furthermore, Sjóvá has set up a 'Risk & Analysis' division with substantial resources to improve risk management and operational oversight, as well as an internal audit committee. It has also formalised essential policies e.g. on pricing of insurance quotes and investment policy. The adherence by employees to these policies is regularly monitored to ensure compliance.
- (108) Finally, the Authority notes that the CEO and the board members appointed by the former shareholder Milestone were replaced in 2009.
- (109) The Authority considers that the measures outlined above are appropriate to address the failures in corporate governance and risk management that contributed to the financial difficulties of Sjóvá.

3.2.3. *Assessment of the restructuring measures — profitability measures*

- (110) The Authority notes the measures undertaken by Sjóvá to increase its profitability, with regards both to improving margins and to reducing costs. As a result of these measures, Sjóvá has been able to substantially improve its combined ratio and to run its insurance activities profitably. The restructuring plan foresees further improvements in profitability.
- (111) The Authority considers that these measures should enable Sjóvá's insurance business to be run profitably and reduce the reliance on investment returns, thereby enabling Sjóvá to sustain a more prudent investment policy. At the same time, the measures should assist Sjóvá in strengthening its equity, in particular in case of adverse developments, including those simulated in the submitted stress cases.

3.2.4. *Assessment of the financial projections*

- (112) As required in point 13 of the Restructuring Guidelines, the Icelandic authorities have provided financial projections covering both a base case scenario and three stress case scenarios.
- (113) The financial projections provided in the restructuring plan rely in the base case on assumptions that are sufficiently prudent and conservative. In the base case, Sjóvá would generate profits and consolidate its capital base throughout the planning period. In the base case, the projected return on equity of Sjóvá is around [...] % at the end of the restructuring period, which appears in line with the current market requirements for the industry. Furthermore, the projected combined ratio of Sjóvá will remain below 100 %, which shows that the operative insurance business will stay profitable and Sjóvá does not need to rely on an unduly risky investment strategy to create sufficient returns.
- (114) The Authority does not contest that the stress case assumptions contain a sufficient level of stress to assess Sjóvá's ability to remain solvent. According to the resulting financial projections, Sjóvá would remain solvent during the entire planning period under all three stress scenarios. The Authority considers that having provided three different stress scenarios, which even go beyond the restructuring period, strengthens the robustness of the stress testing. In particular, the scenarios cover the case of a protracted economic recession, as well as other stress factors specifically addressing the situation in Iceland (e.g. capital controls). The regulatory solvency requirements would not be breached at any time during the planning period under any of the three stress scenarios.
- (115) In view of the above, the Authority concludes that the financial projections of Sjóvá demonstrate a return to viability of the company as required by the Restructuring Guidelines. The Authority also notes that SF1, a private investor, agreed to purchase a controlling interest in Sjóvá from the Icelandic state. The willingness of a private market participant to make a significant investment in the company further comforts this finding.

3.3. Own contribution — burden sharing

- (116) The Restructuring Guidelines indicate that an appropriate contribution by the beneficiary is necessary in order to limit the aid to the minimum and to address distortions of competition and moral hazard. To that end, firstly, the restructuring costs should be limited while, secondly, the aid amount should be limited thanks to a significant own contribution.
- (117) As regards the limitation of the restructuring costs, the Restructuring Guidelines indicate in point 23 that the restructuring aid should be limited to cover the costs that are necessary for the restoration of viability. Furthermore, in order to keep the aid limited to a minimum, financial institutions should first use their own resources to finance the restructuring. Accordingly, the costs associated with the restructuring should not only be borne by the state but also by those who invested in the institution, by absorbing losses with available capital and by paying an adequate remuneration for state interventions.

3.3.1. Limitation of restructuring costs

- (118) The recapitalisation of Sjóvá was limited to what was required to meet the regulatory minimum equity requirements, of which the Icelandic state only contributed the amount that Sjóvá's main creditors Glitnir and Íslandsbanki were unable to provide.
- (119) The transfer of the insurance activities to a new entity ensured that the recapitalisation was limited to what was required for the operative insurance business, and did not cover losses from the legacy investment portfolio.
- (120) Limiting the recapitalisation to the minimum necessary constrained Sjóvá's ability to compete in the market. Furthermore, none of the costs in the restructuring plan aim at entering new markets or expanding Sjóvá's business in any manner.
- (121) For these reasons, the Authority considers that appropriate steps have been undertaken to limit the amount of restructuring aid.

3.3.2. Burden sharing/own contribution

- (122) As set out in point 24 of the Restructuring Guidelines, companies should use their own resources to finance restructuring. In addition, the Authority examines whether the financial position of existing shareholders has been totally or partially diluted as a result of the capital injection.
- (123) The Authority observes that the historic owners of Sjóvá have contributed to the costs of restructuring. In particular, Milestone lost its entire stake in the company without receiving any compensation when Glitnir took over Sjóvá. The winding-down of the legacy investment portfolio now held by SJE will impose further losses on investors. These measures contribute to the burden sharing and reduce the moral hazard resulting from the aid.
- (124) In respect of the contribution to restructuring costs through internal resources generated by Sjóvá, the Authority notes that Sjóvá has implemented both profitability as well as cost-cutting measures. These measures ensure that Sjóvá will create sufficient profits to strengthen the equity base over time. The Authority notes that the restructuring plan does not foresee any dividend payments until 2014.
- (125) Finally, the Icelandic state has been able to sell all its shares in Sjóvá to a private investor within a period of only three years and thereby recover almost two thirds of the funds granted as state aid.
- (126) In view of the measures above, the Authority considers that the restructuring plan provides for sufficient burden sharing and own contribution to the restructuring.

3.4. Measure to mitigate distortions of competition

- (127) Point 31 of the Restructuring Guidelines states that when assessing the amount of aid and the resulting distortions of competition, the Authority has to take into account both the absolute and relative amount of the state aid received.

- (128) As set out above, Sjóvá received in total about ISK 12,3 billion (approx. EUR 77 million) in state aid. This represented almost 80 % of the shortfall in equity at the time of the initial recapitalisation. This shows that the amount of aid received by Sjóvá was relatively high. Furthermore, Sjóvá would have exited the market without the state intervention.
- (129) Based on these elements, the Authority first considered structural measures to mitigate distortions of competition. In particular, the Authority assessed the potential divestment of Sjóvá's life insurance business carried out by the subsidiary Sjóvá Life.
- (130) The Icelandic authorities have presented detailed information on the importance of the life insurance business for the viability of Sjóvá. In particular, they highlighted the integration of this business line into the product offering of Sjóvá, customer demand for insurance packages including both non-life and life insurance products, and the ability of the major competitors in the non-life field to meet this demand. On this basis, the Icelandic authorities submitted that the Authority should apply the principle that measures limiting distortions of competition should not compromise the prospects of a return to viability, in line with point 32 of the Restructuring Guidelines.
- (131) Given the above, the Authority concludes that it would not be appropriate to require Sjóvá to divest its life insurance business.
- (132) In the absence of structural measures, the Authority needs to assess behavioural measures.
- (133) The Authority notes that Sjóvá's market share has fallen significantly since the beginning of the financial crisis. The Icelandic authorities have highlighted in particular the effect on market shares of the 30-day 'transfer window' in September 2009, which enabled competitors to approach all Sjóvá customers in the non-life segment with competing offers. The Icelandic authorities argue that this regulatory measure addressed some of the distortions of competition.
- (134) The Authority further notes that the restructuring plan does not foresee any aggressive growth in Sjóvá's market share, and that the new pricing and risk management policies are designed to ensure that Sjóvá only quotes for sufficiently profitable business.
- (135) In addition, the Icelandic authorities and Sjóvá have committed to a pricing restriction in relation to quotes for certain corporate customers for the duration of the restructuring period, reproduced in the Annex. This commitment provides a further safeguard against potential aggressive market behaviour by Sjóvá, and any loss in insurance business due to the commitment will benefit Sjóvá's competitors.
- (136) The Authority notes that this commitment only covers certain types of insurance business. However, given the high concentration levels in the Icelandic insurance market, the Authority considers that a more comprehensive pricing restriction could result in a reduction of effective competition and would therefore be inappropriate.
- (137) The Authority welcomes the Icelandic authorities' commitment to introduce certain regulatory changes to the functioning of the insurance market, as set out in the Annex. In line with points 44-45 of the Restructuring Guidelines, the proposed changes would increase effective competition as well as favour market opening and new entry. In particular, they would facilitate switching by customers and thereby contributing to more competition between the existing players on the market.
- (138) As required in point 40 of the Restructuring Guidelines, Sjóvá commits to an acquisition ban for the duration of the restructuring period, as set out in the Annex. The acquisition ban prevents Sjóvá from acquiring any significant interest in other financial undertakings, whilst allowing Sjóvá to make small-scale investments if required.
- (139) Finally, Sjóvá will not use the received aid or any advantages arising from it for advertising purposes.
- (140) The Authority concludes that the restructuring foresees sufficient measures to mitigate distortions of competition and to ensure that the state aid is not used to the detriment of unaided competitors, in line with point 39 of the Restructuring Guidelines.

4. CONCLUSION

- (141) The Authority concludes that the recapitalisation measures in favour of Sjóvá are compatible with the functioning of the EEA Agreement pursuant to Article 61(3)(b) of the EEA Agreement.
- (142) The Authority also concludes that the Icelandic authorities have unlawfully implemented the state aid in question in breach of Article 1(3) of Part I to Protocol 3,

HAS ADOPTED THIS DECISION:

Article 1

The recapitalisation measures granted to Sjóvá constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

Article 2

The state aid granted to Sjóvá is compatible with the functioning of the EEA Agreement pursuant to Article 61(3)(b) of the EEA Agreement subject to adhering to the commitments as set out in the Annex to this Decision.

Article 3

This Decision is addressed to Iceland.

Article 4

Only the English language version of this Decision is authentic.

Done at Brussels, 10 July 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES

President

Sverrir Haukur GUNNLAUGSSON

College Member

ANNEX

Behavioural commitments regarding Sjóvá

The Icelandic authorities provide the following commitments concerning Sjóvá:

1. Sjóvá commits to restrict its commercial offers by quoting insurance risks in such a way that it will not quote below [...]. Commercial offers are defined as quotations which cover the customer's total insurance account ('Commercial Offers').
 - This commitment applies to Commercial Offers for commercial entities with annual premium turnover exceeding ISK [...].
 - This commitment applies to Commercial Offers where tender documents or other underwriting information include historical loss data showing paid and outstanding losses over a period of no less than [...] years.
 - In evaluation of past loss experience Sjóvá may remove individual losses exceeding [...] the proposed premium bid from its calculation in order to arrive to a more even and more stable statistical loss conclusion.
2. Sjóvá commits to keep the same or higher premium levels at renewal for individual insurance accounts if historical loss experience (calculated technical loss ratio) exceeds [...] % of premiums.
 - This commitment applies to the renewal of corporate accounts, but loss history must exceed [...] years.
 - In evaluation of past loss experience Sjóvá may cap individual losses at [...]. This is to arrive at more even and more stable statistical loss conclusion.
3. Sjóvá will not acquire more than [...] % of the shares of credit institutions, investment firms (as defined in Directive 2004/39/EC of 21 April 2004 on markets in financial instruments), insurance or reinsurance companies. Sjóvá may, after obtaining the Authority's approval, acquire further businesses, in particular where the acquisition is necessary in order to safeguard financial stability or to ensure effective competition.
4. Sjóvá will not use the recapitalisation or any competitive advantages arising in any way from the recapitalisation for advertising purposes.

These commitments shall last until 31 December 2014.

Regulatory commitment

In order to improve the mobility of consumers in the Icelandic insurance market, the Icelandic authorities undertake the following commitment:

- The Icelandic Ministry of Finance and Economic Affairs will appoint an expert group with the mandate to review the provisions of Act No 30/2004 on Insurance Contracts that concern customers' mobility, in particular with regard to recent amendments to the Norwegian Act on Insurance Contracts — on which the Icelandic legislation was based — and the Danish Financial Business Act. The expert group shall present its findings no later than 31 December 2013 and shall examine the potential implications of amending the provisions relating to cancellation by individuals of insurance contracts, when transferring their business between insurance companies, in order to facilitate customers' switching and promote competition in the insurance market.
 - Should the expert group's findings be that such provisions would be beneficial to the functioning of the Icelandic insurance market, it shall submit to the Minister of Finance and Economic Affairs an amendment to the Act on Insurance Contracts by way of a draft bill of law. The Ministry is favourably disposed towards promoting a change which would further accommodate customer mobility in the insurance market. Upon receiving the expert group's findings the Minister will, unless otherwise duly justified, present a draft bill to the Icelandic Parliament in the course of 2014 based on the findings of the expert group.
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