COMMISSION DECISION

of 25 November 1999

on the measure which Germany is planning to implement for the promotion of agricultural products of Mecklenburg-Vorpommern

(notified under document number C(1999) 4227)

(Only the German version is authentic)

(2000/132/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to those provision(s) [1],

Whereas:

I. PROCEDURE

(1) By letter dated 24 December 1997, Germany notified the Commission of a measure granting aid for the promotion of agricultural products. It provided the Commission with further information by letters dated 20 May 1998, 17 September 1998 and 17 February 1999.

(2) As the aid concerned both aids for fishery products and for agricultural products the dossier was split. State aid N 22/A/98 (now C 23/99) concerned the aid related to agricultural products, State aid N 22/B/98 concerned the aid related to fishery products. State aid N 22/B/98 was approved by the Commission by letter SG (98) D/4799 of 15 June 1998. The present Decision only concerns State aid N 22/A/98 (now C 23/99).

(3) By letter dated 3 May 1999, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the measure.

(4) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission called on interested parties to submit their comments.

(5) The German authorities submitted their comments by letter of 8 September 1999. The Commission received no comments from interested parties.

II. DESCRIPTION

(6) The measure is meant to promote the development towards a market driven production process in the agricultural sector in Mecklenburg-Vorpommern, Germany. Especially small and medium sized enterprises encounter difficulties in adjusting their production process and in organising their marketing activities. Therefore, the State of Mecklenburg-Vorpommern wants to lower the threshold to start marketing activities and wants to promote the development of marketing skills among the agricultural entrepreneurs in the area.

(7) The measure subsidies promotional activities and mesures to improve the marketing possibilities in general. The measure concerns in particular subsidies for:

— the organisation of the restaurant competition 'Essen und Trinken in Mecklenburg-Vorpommern'

— the developement of promotional concepts,

— participation in fairs and trade markets,

— the development of quality labels and trademarks,

— the participation in seminars and workshops concerning sales promotion,

— market research,

— promotional activities and sales supporting activities (advertising),

— the development and maintenance of a regional label,

— the use of brochures and leaflets.

(8) The measure grants support to producer associations, undertakings that are active in the processing and marketing of agricultural products, organisations for the support of sales promotion, and agricultural associations. According to the original notification the beneficiaries had to have a legal seat in Mecklenburg-Vorpommern in order to be eligible for support. The aid is given in the form of direct grants. Maximally 50 % of the eligible costs may be reimbursed (60 % if the beneficiary is a small or medium sized undertaking). However, the maximum amount that may be granted as subsidy is DEM 150 000. The measure will be in force in the period 1999 to 2002.

(9) The aid consists of several measures that can be divided into 'soft aids' and promotional aids. In the decision initiating the procedure under Article 88(2) of the Treaty the Commission stated that she had no objections to the measure in as far as it concerned soft aids as such. This concerned the organisation of the restaurant competition, the participation in fairs and trade markets, the participation in seminars and workshops concerning sales promotion, the development of promotional concepts, the development of quality labels and trademarks, and market research.

[1] OJ C 213, 24.7.1999, p. 19.
[2] See footnote 1.

(10) The promotional aids have to comply with the Commission communication concerning State involvement in the promotion of agricultural and fisheries products [1] and, if the promotion is in the form of advertising, the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products [2].

(11) One of the main conditions for promotional aids is compliance with Article 28 of the Treaty. According to point 2.3.1 of the Annex to the abovementioned Commission communication of 1986 there is a danger of an infringement of Article 28 if '... undue emphasis is placed on the national origin of the product in promotional campaigns. Identification of the producing country in word or symbol may be made providing that a reasonable balance between references, on the one hand, its national origin is kept. The references should be subsidiary to the main message put over to the consumers by the campaign and not constitute the principal reason why consumers are being advised to buy the product'.

(12) In earlier decisions [3] the Commission concluded that the measure did comply with Article 28 of the Treaty. However, the Commission re-examined the material the German authorities sent as an example. The example consists of a picture of agricultural products, a few text lines and two signs 'Mecklenburg-Vorpommern'. The text lines say 'Hier schmeckt's' (Here it tastes well),'Bei uns kommt alles frisch auf den Tisch' (Everything is fresh on our table), and a text saying that a good soil and a temperate climate are the best conditions for a rich harvest of fruits and vegetables and potatoes. It seemed there was hardly any other message than the fact that the products were from Mecklenburg-Vorpommern. Therefore, the Commission had doubts as to the existence of a reasonable balance between references to the qualities and varieties.

(13) Furthermore, the measure would grant aid to undertakings that had a legal seat in Mecklenburg-Vorpommern only. According to Articler 43 of the Treaty restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are prohibited. This prohibition applies as well to restrictions on the freedom of establishing agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

As the Court has held on several occasion [4], the said prohibition is concerned not solely with the specific rules on the pursuit of an occupation but also with the rules relating to the various general facilities which are of assistance in the pursuit of that occupation. Therefore, the Commission had doubts about the compatibility of the measure with Article 43 and Article 48 of the Treaty.

III. COMMENTS FROM GERMANY

(14) In their letter of 8 September 1999, the German authorities stated that the promotion material that was submitted with the notification will not be supported under the measure. New promotion concepts will be designed to make this part of the measure operational. The rules and conditions for such promotion activities as mentioned in the Commission communication concerning State involvement in the promotion of agricultural and fisheries products and the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products will be respected. A report giving information about the way the measure is made operational will be yearly submitted to the Commission.

(15) Furthermore, the German authorities indicated that they have crossed out the condition of having a legal seat in Mecklenburg-Vorpommern in order to become eligible for support under the measure.

(16) Finally, the German authorities mentioned that the budget for the total measure (State aids N 22/A/98 and N 22/B/98) has been increased to DEM 750 000 per year. Of this budget DEM 230 000 per year will be dedicated to measures concerning fisheries as such a budget was approved for fisheries by Commission Decision concerning N 22/B/98, letter SG (98) D/4799.

IV. ASSESSMENT OF THE MEASURE

(17) Under Article 87(1) of the Treaty any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

(18) The measures grants aid for the promotion of agricultural products out of State resources to a restricted group of beneficiaries that are active in the marketing and processing of products that are traded within the Community. Therefore, the measure manifestly concerns State aid in the sense of Article 87(1) of the Treaty. The German authorities have not contested this.

[1] OJ C 272 of 28.10.1986.
[2] OJ C 302 of 12.11.1987.
[3] See NN 27/97, Promotion Directive and N 22/B/98, promotion of fishery products of Mecklenburg-Vorpommern.
[4] See Case 305/87, *Commission* Versus *Hellenic Republic*, ECR 1989, p. 1461.

Article 87(3)(c) of the Treaty

(19) Aid to facilitate the development of certain economic activities or of certain economic areas may be deemed by the Commission to be compatible with the common market under Article 87(3)(c) of the Treaty if the aid does not adversely affect trading conditions to an extent contrary to the common interest.

Soft aid

(20) As stated in the description of the measure the Commission had not objections against the measures that could be considered as soft aids as such. The Commission could not approve this part of the measure because of the objections against the eligibility criteria, namely the requirement to have a legal seat in Mecklenburg-Vorpommern. Since the German authorities have now withdrawn this requirement, the Commission has no objection to the granting of this aid since it meets the conditions of the derogation in Aricle 87(3)(c).

Promotion and advertising aids

(21) The development and maintenance of a regional label has to be evaluated as a promotional activity for which the Commission communication concerning State involvement in the promotion of agricultural and fisheries products and, as the promotion is in the form of advertising as well, the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products apply.

(22) The abovementioned communication and framework are equally applicable when examining the promotional activities, the sales supporting activities, and the use of brochures and leaflets.

(23) Both the communication and the framework stress the fact that aid for promotion cannot be considered compatible with the common market if the promotion material infringes Article 28 of the Treaty. Furthermore, the framework prohibits aid for advertising related to partiuclar firms and sets a condition that the advertising should concern at least one of the following categories:

— surplus agricultural products,

— new products or replacement products not yet in surplus,

— the development of certain regions,

— the development of small and medium-sized undertakings,

— or the advertising of high-quality products and health foods.

Finally, the aid intensity for aids granted under the abovementioned framework should not exceed 50 % of the eligible costs.

(24) The Commission initiated the procedure provided for under Article 88(2) of lthe Treaty because she had doubts about the compatibility of submitted promotional material with Article 28 of the Treaty. However, in their letter of 8 September 1999 the German authorities stated that the promotion material that was submitted with the notification would not be supported under the measure. New promotion concepts will be designed to make this part of the measure operational. The rules and conditions for such promotion activities as mentioned in the Commission communication concerning State involvement in the promotion of agricultural and fisheries products and the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products will be respected. A report giving information about the way the measure is made operational will be yearly submitted to the Commission. Therefore, the Commission now considers the measure to be compliant with Article 28 of the Treaty.

(25) The German authorities have guaranteed that no aid will be given to make promotion for a particular firm.

(26) The abovementioned framework states that the advertising which is subsidised should concern at least one of the following categories:

— surplus agricultural products,

— new products or replacement products not yet in surplus,

— the development of certain regions,

— the development of small and medium-sized undertakings,

— the advertising of high-quality products and health foods.

The measure is aimed at the development of agriculture in Mecklenburg-Vorpommern. Most of its beneficiaries will be small or medium-sized undertakings. The measure is meant to promote the sales of agricultural products of which a considerable number are in surplus. Therefore, the Commission considers this condition to be fulfilled.

(27) The framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products state that the beneficiaries of the aid for advertising should at least contribute 50 % of the costs. However, point 4.3 of the framework allows the possibility to raise the abovementioned maximum rate of direct aid (of 50 %), particularly in the case of products from small and medium-sized undertakings.

(28) The notified draft grants a maximum aid of 50 % but makes an exception for aids to small and medium-sized undertakings (SMEs). SMEs may be granted aids of 60 % of the eligible costs.

(29) The basic aid intensity complies with the abovementioned framework. In similar cases the Commission has approved advertising aids for SMEs with an aid intensity of 60 % or even 75 % (N 703/95, N 624/95 and NN 27/97). Therefore, the Commission considers this condition to be fulfilled.

Compliance with Article 43 and 48

(30) As mentioned above the Commission initiated the procedure provided for by Article 88(2) of the EC Treaty because it seemed the requirement to have a legal seat in Mecklenburg-Vorpommern to become eligible for support would be an infringement of Article 43 and Article 48 of the Treaty.

(31) In their letter of 8 September 1999, the German authorities indicated that they have crossed out the condition of having a legal seat in Mecklenburgh-Vorpommern in order to become eligible for support under the measure. Therefore the Commission considers the measure to be compliant with Articles 43 and 48 of the Treaty.

Increased budget

(32) Finally, in their letter of 8 September 1999, the German authorities indicated that the planned to increase the budget for the measure from DEM 230 000 to DEM 750 000 per year.

(33) The increase of the budget however, does not alter the Commission evaluation of the measure as the aid intensities remain the same.

V. **CONCLUSION**

(34) Following the amendments of the measure by the German authorities the Commission considers the measure to be compliant with the Commission practice regarding soft aids or to be compliant with the Commission communication concerning State involvement in the promotion of agricultural and fisheries products and the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products.

(35) Therefore, the Commission considers the notified drat to be a measure that facilitates the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest as meant in Article 87(3)(c),

HAS ADOPTED THIS DECISION:

Article 1

The measure which Germany is planning to implement concerning the promotion of agricultural, food industry, forestry, and fisheries products — the 'Richtlinien für die Gewährung von Zuwendungen des Landes zur Förderung des Absatzes und zur Verbesserung der Marktposition land-, ernährungs-, forst-, und fischwirtschaftliche Erzeugnisse' originally notified by letter of 24 December 1997 is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Implementation of the measure is accordingly authorised.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 25 November 1999.

For the Commission

Franz FISCHLER

Member of the Commission