COMMISSION DECISION

of 7 June 2006

on State aid granted by Germany for the acquisition of shares in winegrowers' cooperatives

(notified under document number C(2006) 2070)

(Only the German text is authentic)

(2007/57/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given interested parties notice to submit their comments pursuant to that Article ([1]), and having regard to those comments,

Whereas:

I. PROCEDURE

(1) The measure was notified by letter of 19 April 2001 in response to a written inquiry from the Commission. Since the measure had already been implemented, the record of the aid was transferred to the register of non-notified state aid (aid No NN 32/01).

(2) Additional information was submitted by letters of: 13 February 2002, registered as received on 18 February 2002; 5 July 2002, registered as received on 9 July 2002; and 5 December 2002, registered as received on 10 December 2002. A meeting to discuss the aid took place at the Directorate-General for Agriculture on 25 June 2002.

(3) By letter SG (2003) D/232035 of 2 October 2003 the Commission informed Germany of its decision to initiate the procedure under Article 88(2) of the EC Treaty in respect of this state aid measure (aid No C 60/2003).

(4) On 6 November 2003 the Commission decision to initiate the procedure was published in *the Official Journal of the European Union* ([2]) and interested parties were invited to submit their comments.

(5) The Commission received comments from interested parties and from the regional authorities granting the aid by letters of 18 November 2003, registered as received on 25 November 2003; 23 December 2003, registered as received on 5 January 2004; and 12 February 2004, registered as received on 17 February 2004.

(6) Germany submitted comments to the Commission by letter of 5 November 2003, registered as received on 6 November 2003.

(7) By letter of 7 March 2005, registered as received on 9 March 2005, Germany submitted further comments to the Commission and requested an assessment of the measure pursuant to Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors ([3]).

II. DETAILED DESCRIPTION OF THE AID

II.1 Title of the measure

(8) Aid for the acquisition of shares by winegrowers in Rhineland-Palatinate

II.2 Legal basis

(9) The scheme is based on the following:

the Guideline on granting assistance from funds of the rural district of *Bernkastel-Wittlich* to support winegrowers who join a winegrowers' cooperative;

the Guideline on granting assistance from funds of the rural district of *Cochem-Zell* to support winegrowers who join a winegrowers' cooperative/producer organisation;

the Guideline on granting assistance from funds of the rural district of *Trier-Saarburg* to support winegrowers who join a winegrowers' cooperative/producer organisation;

the Notice issued by the local authority association of *Schweich* to increase the assistance granted by the rural district of *Trier-Saarburg* to support winegrowers who join a winegrowers' cooperative/producer organisation.

([1]) OJ C 267, 6.11.2003, p. 2.
([2]) See footnote 1.
([3]) OJ L 325, 28.10.2004, p. 4.

(10) The Guideline issued by the district administration of Bernkastel-Wittlich specifically provides for aid to purchase shares in the *Moselland* cooperative. The Guidelines issued by the district administration of Cochem-Zell contain similar provisions, and this has led in practice to support being granted only for shares in the *Moselland* cooperative. The Guidelines issued by the district administration of Trier Saarburg and the local authority association of Schweich are not specifically targeted at a particular company, but generally at cooperatives and producer organisations approved under the German Market Structure Act.

II.3 **Aim of the measure**

(11) The aim of the scheme was to increase the proportion of grapes collected by producer organisations and to reduce the proportion of cask wine freely saleable, i.e. not sold via producer organisations. The objective was to help stabilise prices on the cask-wine market. At the same time the long-term objective was to close down production capacity in the form of vinification facilities on individual holdings, especially at small winegrowing enterprises in the Mosel-Saar-Ruwer winegrowing area.

(12) The aid was designed to cover part of winegrowing enterprises' costs when acquiring shares in winegrowers' cooperatives/producer organisations (hereinafter: producer organisations). The aid was granted on condition that the winegrower undertook to keep the shares for five years from the date on which the application was filed. Each enterprise also had to bring into the producer organisation its total cultivated area and deliver all its grapes, must and wine to the producer organisation. Each enterprise was also required to shut down its corresponding vinification facilities.

II.4. **Budgetary appropriations of the aid**

(13) The aid was granted in the form of direct grants and in the form of interest relief on capital-market loans.

(14) The cost of acquiring shares was normally EUR 293,99. Where the cost was less, the grant was reduced proportionately.

(15) The following grants per share were granted:

Rural district/ municipality	For the acquisition of 1 to 5 shares	For each additional share	Maximum grant per enterprise newly joining a producer organisation
Bernkastel-Wittlich	EUR 76,69	EUR 38,35	EUR 766,94
Cochem-Zell	EUR 76,69	EUR 76,69	No upper limit
Trier-Saarburg	EUR 76,69	EUR 38,35	EUR 766,94
Schweich	EUR 51,13	—	EUR 255,65

(16) The assistance paid by the local authority association of Schweich was additional (cumulative) to payments in the rural district of Trier-Saarburg.

(17) In the rural district of Cochem-Zell, interest relief of up to 4,95 % was granted on any loans taken out for the purchase of shares during a maximum period of four years.

(18) In 2000, the following payments were made to producer organisations:

Rural district/ municipality	Winegrowers' cooperative Moselland	Producer organisation Moselherz	Producer organisation Mosel Gate
Bernkastel-Wittlich	EUR 44 022	EUR -	EUR -
Cochem-Zell	EUR 20 171	EUR -	EUR -
Trier-Saarburg	EUR 51 270	EUR 6 990	EUR 7 631
Schweich	EUR 16 975	EUR 3 390	EUR 5 011
Total	EUR 132 438	EUR 10 380	EUR 12 642

(19) In 2000, a total of EUR 155 460 was paid out. The scheme was financed from funds of the district administrations and of the Schweich local authority.

II.5. **Duration of the measure**

(20) The duration of the scheme in the rural district of Cochem-Zell was four years (2000 to 2003). The other measures were limited to 2000.

II.6. **Beneficiaries**

(21) The aid was paid direct to the producer organisations which sold shares at reduced prices to newly-joining winegrowers and winegrowing enterprises.

(22) Winegrowers and winegrowing enterprises in each rural district were thereby able to acquire shares in producer organisations at reduced cost.

(23) The measure enabled producer organisations to increase their own capital and secure the purchase of raw materials.

II.7 **Reasons for initiating the procedure**

(24) After provisional examination, the measure was classified as operating aid to winegrowing enterprises and producer organisations — which is incompatible with the common market. The Commission therefore initiated a formal investigation procedure.

III. COMMENTS BY INTERESTED PARTIES

III.1. Complaints against the measure

(25) The Commission received a complaint concerning the introduction of the aid scheme. The complainant pointed out that the aid enabled winegrowers to acquire shares in local producer organisations at reduced prices. Besides the advantage of increased capital, the producer organisations were then also able to secure the purchase of raw materials in the form of must and raw wines. The complainant argued that this placed competitors at a disadvantage regarding the procurement of must and raw wines.

III.2. Comments by interested parties as part of the formal investigation procedure

(26) The comments by interested parties/the German regional authorities granting the aid stressed the support given to necessary structural change in a 2 000-year-old steep-slope winegrowing area whose conservation was hugely important for tourism and gastronomy. They argued that the measure contributed towards closing down production capacity. Application of Regulation (EC) No 1860/2004 was also requested.

IV. COMMENTS BY GERMANY

(27) In its comments, Germany emphasised the need for support for necessary structural change in a 2 000-year-old steep-slope winegrowing area whose conservation was hugely important for tourism and gastronomy. The aid was intended to offset the disadvantages of winegrowers and winegrowing enterprises whose own vinification facilities had to be closed down in order to fulfil the five-year delivery obligation to the producer organisation, and was therefore justified as a capacity-reduction scheme.

(28) In additional comments, Germany requested the application of Regulation (EC) No 1860/2004.

V. ASSESSMENT OF THE AID

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(29) Article 36 the EC Treaty applies to winegrowing and wine processing, which are covered by Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ([4]).

(30) According to the comments by Germany and the interested parties, the winegrowers' and winegrowing enterprises' economic difficulties were due to structural change in market outlets. The usual marketing of cask wine with own vinification facilities had become increasingly difficult. The market now required either raw materials (grapes or freshly-pressed must) or quality, market-oriented wines. Private companies could have entered into similar contracts with the winegrowing enterprises and could have taken over their marketing risks.

(31) In this context, as described in paragraph 12 above, the regional authorities bore part of the cost of buying shares in winegrowers' producer organisations. Buyers of shares in the producer organisations concerned were required to bring into the producer organisation their total cultivated area and deliver all their grapes, must and wine to the producer organisation. The winegrowers had to undertake to keep the shares for five years, which in practice meant shutting down their vinification facilities. The producer organisations were better able — compared with other wine-production and wine-marketing companies — to secure the purchase of raw materials by requiring their winegrowers and winegrowing enterprises to deliver to them all the grapes, must and wine which they produced during a five-year period (see section II.2 above).

(32) Favouring the producer organisations by securing the commitment of winegrowers to deliver all their grapes, must and wine and to close down their own vinification facilities constitutes a structural measure strengthening the position of the producer organisations. The producer organisations' advantage of secured procurement, taken in isolation, can be justified as an effect of a market restructuring measure corresponding to the goals stipulated in Article 39 of Regulation (EC) No 1493/1999.

State Aid

(33) Under Article 71(1) of Regulation (EC) No 1493/1999,

'Save as otherwise provided in this Regulation, Articles 87, 88 and 89 of the Treaty shall apply to the production of and trade in the products covered by this Regulation.'

(34) Article 71(2) stipulates that

'Chapter II of Title II [abandonment premiums] shall not impede the granting of national aid designated to achieve objectives similar to those sought by that Chapter. Paragraph 1 shall nevertheless apply to such aids.'

(35) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competi-

([4]) OJ L 179, 14.7.1999, p. H1.Regulation as last amended by Regulation (EC) No 2165/2005 (OJ L 345, 28.12.2005, p.,).

tion by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, is prohibited.

(36) The aid scheme in question was financed from public funds of the districts concerned and of one municipality in the German *Land* Rhineland-Palatinate. The aid is liable to distort competition ([5]) and to affect trade between Member States ([6]).

V.1. Economic advantage derived by winegrowers and winegrowing enterprises from grants for acquiring shares and from interest relief

(37) Certain winegrowers and winegrowing enterprises in Rhineland-Palatinate have acquired shares in producer organisations with support from the German regional authorities, thus paying a reduced price for the shares (see paragraph 15 above). The amount deducted from the usual price of the shares should normally be borne by the purchasers. The price reduction therefore constitutes a direct economic advantage for the undertakings concerned, financed from public resources.

(38) Interest relief of up to 4,95 % granted to some winegrowers and winegrowing enterprises for such a purchase (see paragraph 17 above) also constitutes an economic advantage for those growers, financed from public resources.

(39) Article 87(1) of the EC Treaty is therefore applicable.

(40) Section V.3 below will examine whether point 9 — aid for capacity reduction — of the Community guidelines for State aid in the agricultural sector (hereinafter: the Agricultural guidelines) ([7]) is applicable to the above-mentioned advantages.

V.2. Economic advantage derived by producer organisations

(41) The Commission confirms the view expressed in its letter initiating the formal investigation procedure, namely that the producer organisations derived advantage from the aid given to winegrowers and winegrowing enterprises for purchasing their shares. The aid for the acquisition of shares was restricted to certain recognised producer organisations (see paragraph 10 above). The winegrowers and winegrowing enterprises had to keep the shares for five years.

(42) According to the German authorities, a restructuring of the wine market was unavoidable. Although winegrowers could have acquired shares in producer organisations as the price of the shares was not very high, this structural change did not take place until the regional and municipal authorities' aid scheme was launched.

(43) Those producer organisations were able — compared with other wine-production and wine-marketing firms — to increase their capital and liquidity and earn extra income through the additional entry of shareholders that were able to acquire shares at reduced prices or with the help of interest assistance. A further advantage to the producer organisations comprised the winegrowers' undertaking, linked to the assisted purchase of shares, to deliver all their grapes, must and wine and to close down their vinification facilities.

(44) In this connection, it is appropriate to cite paragraph 26 of the ECJ judgment in case C-156/98 *Germany v Commission* ([8]):

'In the present case it must be observed that the origin of the advantage indirectly conferred on the undertakings referred to by Paragraph 52(8) of the EStG is the renunciation by the Member State of tax revenue which it would normally have received, inasmuch as it is this renunciation which has enabled investors to take up holdings in those undertakings on conditions which are in tax terms more advantageous.'

(45) That judgment was confirmed in paragraph 95 of CFI case T-93/02, *Confédération nationale du Crédit Mutuel v Commission*, ([9])

'…[I]t is not necessary, in order to found a finding of the existence of intervention by means of State resources in favour of an undertaking, that the undertaking must be the direct recipient. It follows from Article 87(2)(a) EC that aid having a social character granted to individual consumers is capable of coming within the scope of Article 87(1) EC. Likewise, the fact that a Member State renounces tax revenue may involve an indirect transfer of State resources, capable of being treated as aid to economic operators other than those to which the tax advantage is accorded directly (Case C-156/98 Germany v Commission [2000] ECR I-6857, paragraphs 24 to 28).'

(46) In the light of the case law cited above, the Commission concludes that the aid for winegrowers and winegrowing enterprises to buy shares in certain producer organisations and to retain them for at least five years resulted in an increase in those producer organisations' capital which would not otherwise have occurred. Purchase of such shares with state support constitutes an indirect transfer of state resources to producer organisations. The resulting increase in the producer organisation's capital constitutes

([5]) According to the case law of the European Court of Justice, an improvement in the competitive position of an enterprise as a result of state aid is generally speaking a distortion of competition in relation to competing enterprises which do not receive such support (Case C-730/79, *Philip Morris* ECR [1980] 2671, paragraphs 11 and 12).

([6]) Germany's intra-Community trade in wine comprised 10 364 600 million hectolitres in imports and 1 881 900 million hectolitres in exports in 1999. No separate data are available for Rhineland-Palatinate. (Source: German Federal Statistics Office).

([7]) OJ C 232, 12.8.2000, p. 19.

([8]) Case C-156/98, *Germany v Commission* ECR [2000] I-6857, paragraph 26.

([9]) Case T-93.02, *Confédération nationale du Crédit Mutuel v Commission* ECR [2005] (not yet published) paragraph 95.

an indirect economic advantage which is to be treated as state aid other than the advantage granted to the winegrowers and winegrowing enterprises.

(47) Article 87(1) of the EC Treaty is therefore applicable.

V.3. Exemptions under Article 87(2) and (3) of the EC Treaty

(48) An examination therefore needs to be made of whether one of the exceptions/exemptions from the basic ban on state aid under Article 87(1) of the EC Treaty applies.

(49) According to the information available, the exemptions under Article 87(2) and Article 87(3) (a), (b) and (d) of the EC Treaty are not applicable since the aid cannot be regarded as

— aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, nor as

— aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, nor as

— aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest.

(50) Article 87(3)(c) of the EC Treaty is therefore the only exemption which might possibly apply.

Compatibility of the aid to winegrowers and winegrowing enterprises

(51) By letter of 13 February 2002, the German authorities proposed assessing the measure on the basis of point 9 of the Agricultural guidelines.

(52) Under point 9, aid may be granted for shutting down production capacity provided that the aid is consistent with other Community schemes for reducing production capacity and meets the following conditions:

a) The aid must be in the general interest of the sector concerned and limited in time.

b) There must be a sufficient counterpart from the beneficiaries, normally consisting of a definitive and irrevocable decision to scrap or irrevocably close the production facility concerned.

c) The possibility must be excluded that the aid could serve to rescue and restructure enterprises in difficulty.

d) There must be no overcompensation for value of production lost or future losses of income. At least half of the costs should be met by a contribution from the sector, either through voluntary contributions or by means of compulsory levies.

e) No aid may be granted which would interfere with the mechanisms of the common market organisations.

Re a) The general interest of the sector

(53) The scheme seems to have had a positive effect in concentrating agricultural production and to have led to some stabilisation of the price situation in the cask-wine market. The aid was limited to three rural districts and one municipality in Rhineland-Palatinate. The Rule issued by the district administration of Bernkastel-Wittlich specifically provided for aid to purchase shares in the *Moselland* cooperative. The Rules issued by the district administration of Cochem-Zell contained similar provisions, leading in practice to support being granted only for the purchase of shares in the *Moselland* cooperative. The Rules issued by the district administration of Trier-Saarburg and the local authority association of Schweich were not specifically targeted at a particular enterprise, but designed to assist cooperatives/producer organisations approved under the German Market Structure Act (*Marktstrukturgesetz*). Other private-sector enterprises which were involved in wine production or wine trading but which did not meet the conditions referred to above were therefore not eligible to take part in the measure. The scheme was limited to a maximum duration of four years.

(54) Under point 9.6 of the Agricultural guidelines, aid schemes for closing capacity should be available to all market participants in the sector concerned. As set out above, this condition cannot be regarded as fulfilled. The Commission also received a letter of complaint from an economic operator in the wine sector who pointed out that assisting certain cooperatives through this measure was by no means in the general interest of the wine sector, because private-sector enterprises involved in wine production or wine trading were not able to take part in the scheme.

Re b) Counterpart

(55) The German authorities stated that the aid scheme was designed to shut down production capacity in winegrowing enterprises. The justification given was that the wine-growers undertook to deliver all their grapes, must and wine to the producer organisation and that, in the long term, their own vinification capacity would be shut down.

(56) Under point 9.2 of the Agricultural guidelines, aid for dismantling capacity may be approved only if it forms part of a programme for restructuring the sector which has

clearly-defined goals and a set timescale. The scheme in question here was implemented without an underlying restructuring programme.

(57) Under point 9.4 of the Agricultural guidelines, beneficiaries must make an adequate contribution in return — normally consisting of a definitive and irrevocable decision to scrap or irreversibly close down the production capacity concerned. Beneficiaries must give a legally-binding undertaking that the closure is definitive and irrevocable. The German authorities stated that no legally-binding undertakings were given by the winegrowers regarding the closure of their own capacity. As regards wine production, the obligation to deliver grapes, must and wine is tantamount to shutting down such capacity, but only for the five-year period covered by that obligation. The Commission concludes that this condition has not been met.

Re c) No aid to enterprises in difficulty

(58) This condition is not expressly stipulated in the aid scheme.

Re d) No overcompensation and contribution of the sector

(59) Point 9.6 of the Agricultural guidelines specifies that the amount of aid must be strictly limited to compensation for losses in asset value, plus an incentive payment which may not exceed 20 % of the value of the assets concerned. In addition, point 9.7 provides that at least half of the cost of such aid schemes should be met by contributions from the relevant sector, either through voluntary contributions or compulsory levies.

(60) The German authorities have not submitted precise calculations for any losses in asset value by the winegrowing enterprises. At present, it cannot therefore be ruled out that losses have been overcompensated and/or that the aid exceeds 50 % of the actual costs of the aid scheme. The Commission therefore considers that these conditions have not been met.

Re 5) Common market organisation

(61) The measure is not contrary to the objectives of the common market organisation for wine.

(62) Since, for the reasons stated above, the aid granted to the winegrowers and winegrowing enterprises does not comply with point 9 of the Agricultural guidelines, it constitutes operating aid incompatible with the common market.

(63) No other justifications under Article 87(3)(c) of the EC Treaty are applicable.

Compatibility of the aid to the producer organisations

(64) In the agricultural sector the Commission favours the formation of producer organisations in which farmers are grouped together in order to concentrate supply and to adapt production to market requirements. State aid may be granted for starting up such an organisation (point 10.5 of the Agricultural guidelines) or for significantly extending its activities to cover new products or new sectors (point 10.6 of the Agricultural guidelines). In the present case none of these conditions are met.

(65) Under point 10.8 of the Agricultural guidelines, aid granted to producer organisations to cover expenses which are not linked to setting-up costs, such as investments, is to be assessed in accordance with the rules governing such aid. Since the measure in question here comprises only an increase in the producer organisations' capital, there is no investment involved and this point cannot apply as the basis for assessing compatibility.

(66) For the reasons stated above, the aid granted to the producer groups does not comply with point 10 of the Agricultural guidelines. It therefore constitutes operating aid incompatible with the common market.

(67) No other justifications under Article 87(3)(c) of the EC Treaty are applicable.

V.4. **De minimis aid to producer organisations and winegrowing enterprises**

(68) The Commission's experience has shown that very small amounts of aid granted subject to certain conditions do not fall under Article 87(1) of the Treaty.

(69) Under Regulation (EC) No 1860/2004, aid not exceeding EUR 3 000 per beneficiary over three years, where the total amount of such aid is restricted to approximately 0,3 % of annual agricultural output, does not affect trade between Member States and does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty.

(70) Under Article 5 of Regulation (EC) No 1860/2004 the same applies to aid granted before entry into force, provided that the requirements of Articles 1 and 3 thereof are fulfilled.

(71) Article 1 limits the application to the agricultural sector. This aid concerns marketing of wine. The restrictions of Article 1 (a) to (c) are not applicable.

(72) Therefore, up to a maximum amount of EUR 3 000 the measures do not constitute aid because not all the criteria of Article 87(1) of the EC Treaty have been fulfilled. In order to avoid double counting, this limit is to be applied only at the level of the winegrowing enterprises.

(73) For the reasons stated above, the Commission considers that granting assistance for the acquisition of shares up to the maximum amount of EUR 3 000 does not constitute aid, provided that the conditions of Regulation (EC) No 1860/2004 have been met. Any amount exceeding that threshold at the level of the beneficiary winegrowers and winegrowing enterprises constitutes aid in its entirety.

VI. CONCLUSIONS

(74) The Commission concludes that the assistance and interest support granted under this measure constitute operating aid which is not covered by any of the derogations to the general prohibition on such aid and which is therefore incompatible with the common market. The Commission also finds that Germany implemented the measure unlawfully.

(75) Where illegally-granted state aid is found to be incompatible with the common market, the natural consequence is that the aid should be recovered in order — as far as possible — to restore the competitive position that existed before the aid was granted.

(76) This decision concerns the scheme in question and must be implemented immediately, including as regards recovery in accordance with Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([10]).

(77) In order to eliminate the direct and indirect advantage derived by the winegrowers, winegrowing enterprises and producer groups, but at the same time avoid double counting of the aid, Germany is to recover the aid from the undertakings to which the state resources were paid. The obligation to recover the aid from producer groups is, however, without prejudice to the possibility that support of up to EUR 3 000 granted to winegrowers and winegrowing enterprises does not constitute aid within the meaning of Article 87(1) of the EC Treaty provided that the conditions of Regulation (EC) No 1860/2004 have been met. Any amount exceeding that threshold at the level of the beneficiary winegrower or winegrowing enterprise constitutes aid in its entirety and is to be recovered from the producer group whose shares the final beneficiary has acquired.

([10]) OJ L 83, 27.3.1999, p. 1 Regulation as amended by the2003 Act of Accession.

(78) This decision is without prejudice to the possibility for the producer groups concerned to claim a corresponding amount from the winegrowers and winegrowing enterprises or to avail themselves of other legal remedies if such a possibility exists under national law.

(79) In the district of Cochem-Zell, the aid to be recovered from the winegrowers and winegrowing enterprises is to correspond to the interest relief received by them. The obligation to recover the aid from the winegrowers and winegrowing enterprises is, however, without prejudice to the possibility that support of up to EUR 3 000 does not constitute aid within the meaning of Article 87(1) of the EC Treaty provided that the conditions of Regulation (EC) No 1860/2004 have been met. Any amount exceeding that threshold at the level of the beneficiary winegrower or winegrowing enterprise constitutes aid within the meaning of Article 87 (1) of the EC Treaty in its entirety and is to be recovered in full.

(80) This decision is without prejudice to the possibility for the winegrowers and winegrowing enterprises concerned to avail themselves of other legal remedies vis-à-vis the producer groups, if such a possibility exists under national law.

HAS ADOPTED THIS DECISION:

Article 1

The state aid scheme in the form of direct assistance or interest relief to winegrowers and winegrowing enterprises for investing in shares in producer organisations and in the form of direct assistance for producer organisations, which was unlawfully implemented by the Federal Republic of Germany in breach of Article 88(3) of the EC Treaty, shall — without prejudice to Article 2 — be deemed incompatible with the common market.

Article 2

The scheme referred to in Article 1 shall be deemed not to constitute aid insofar as it complies with the conditions of Regulation (EC) No 1860/2004.

Article 3

1. Within two months from the date of notification of the present decision, the Federal Republic of Germany shall inform all winegrowers and producer organisations concerned with the application of the state aid scheme of the Commission's decision that the state aid scheme referred to in Article 1 is incompatible with the common market.

2. The Federal Republic of Germany shall take all necessary measures to ensure that the aid referred to in Article 1 and unlawfully granted is recovered from the beneficiary winegrowers and/or producer organisations, without prejudice to Article 2 or any subsequent claims under national law. Within

two months from the date of notification of the present decision, the Federal Republic of Germany shall inform the Commission of the identity of those beneficiaries, the aid amounts individually granted and the methods used to determine those amounts.

3. Recovery shall be effected without delay and in accordance with the procedures of national law permitting the immediate and effective implementation of this Decision.

4. The aid to be recovered shall bear interest throughout the period, from the date on which it was first placed at the beneficiaries' disposal until its actual recovery.

5. The interest shall be calculated in accordance with the provisions laid down in Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

Article 4

The Federal Republic of Germany shall inform the Commission, within two months of the date of notification of this Decision, of the measures already taken and planned to comply with it. Germany shall submit, within the same period, all documents which demonstrate that recovery proceedings have been initiated against the beneficiaries of the unlawful aid.

Article 5

This decision is addressed to the Federal Republic of Germany.

Done at Brussels, 07 June 2006.

For the Commission
Mariann FISCHER BOEL
Member of the Commission