COMMISSION DECISION (EU) 2016/1700

of 7 April 2016

on State aid SA. 15836 (2012/C) (ex NN 34/2000 and NN 34A/2000) implemented by Austria (AMA marketing measures)

(notified under document C(2016) 1972)

(Only the German text is authentic)

THE EUROPEAN COMMISSION,

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

Having called on interested parties to submit their comments ([1]),

Whereas:

(1) By judgment of 27 October 2011 ([2]), the Court of Justice of the European Union (hereafter: the Court) upheld the Court of First Instance's ruling ([3]) (now the General Court) by which Commission Decision C(2004) 2037 of 30 June 2004 in State aid case NN 34A/2000 on quality programmes and the quality labels AMA Biosiegel (hereafter: the bio label) and AMA Gütesiegel (hereafter: the quality label) had been annulled.

(2) Following the judgment of the Court, the Commission is required to take the necessary measures to comply with that judgment. It therefore must adopt a new decision.

(3) The judgments cited above are the culmination of a procedure the principal stages of which are set out below.

1. PROCEDURE BEFORE THE COMMISSION

1.1. *INITIATION OF THE PROCEEDINGS — COMPLAINTS*

(4) Following two complaints of 21 September 1999 and of 5 November 1999, registered on 23 September 1999 and 20 January 2000 respectively, the Commission asked, by letter of 15 February 2000, the Austrian authorities to supply appropriate information concerning aid measures relating to the marketing activities of Agrarmarkt Austria Marketing GesmbH (AMA Marketing), a subsidiary of Agrarmarkt Austria (AMA).

(5) The Austrian authorities supplied the requested information by letter of 20 March 2000, registered on 21 March 2000.

(6) By letter of 4 April 2000 registered on 7 April 2000 the second complainant submitted additional information.

(7) Additional information was also received from the second complainant on 18 May 2000 and on 30 May 2001, registered respectively on 26 May 2000 and on 6 June 2001. A third complaint on the same subject was received by the Commission on 22 January 2003.

1.2. *CASE NN 34/2000 AND ADMINISTRATIVE SPLITTING*

(8) On the basis of the information received in the complaints the Commission informed the Austrian authorities by means of a letter of 19 June 2000 that the measures concerned had been registered as non-notified aid

([1]) Invitation to submit comments pursuant to Article 108(2) of the TFEU, concerning State aid case SA.15836, of 12 June 2012, C(2012) 3760 final, OJ C 301, 5.10.2012, p. 22.
([2]) Case C-47/10 P *Republic of Austria* v *Scheucher-Fleisch GmbH and Others*, ECLI:EU:C:2011:698.
([3]) Case T-375/04 *Scheucher-Fleisch GmbH and Others* v *Commission of the European Communities*, ECLI:EU:T:2009:445.

(NN 34/2000) and asked the Austrian authorities to submit further information. The Austrian authorities replied with letter of 29 September 2000, registered on the same day and with letter of 16 October 2000 registered on 17 October 2000. Additional information was requested by letter of 15 October 2001, to which the Austrian authorities replied by letter of 7 November 2001. By letter of 19 December 2002 the Austrian authorities provided additional information and informed the Commission about the modified (internal) AMA directives (AMA Richtlinien) governing the advertising activities for products displaying the AMA quality label and the AMA bio label which entered into force on 26 September 2002.

(9) By this letter, which included a completed notification form, the Austrian authorities claimed to notify the AMA quality and bio label measures implemented under the new internal rules ([4]). The Commission maintained however that this letter could not be regarded as a notification of new aid since the modified AMA directives had already entered into force on 26 September 2002 and were thus put into effect prior to any approval of the aid measures that were based on them ([5]).

(10) Following a request from the Austrian authorities dated and received on 8 March 2004, the Commission decided to split case NN 34/2000. The registration number NN 34A/2000 was given to the examination concerning the provisions on the AMA bio label and the AMA quality label applicable after 26 September 2002, whereas under registration number NN 34/2000 the Commission dealt with the measures concerning the AMA bio label and the AMA quality label before 26 September 2002 as well as with the other marketing measures by AMA.

(11) On 16 March 2004, for internal administrative reasons a new dossier NN 34B/2000 was opened regarding the measures implemented before 26 September 2002. The Commission notes that this case does not have any impact on the substance of the present procedure.

(12) The new AMA internal rules introduced a new design for the labels and made new quality standards applicable to products displaying one of these labels. From the explanations provided by the Austrian authorities and the detailed examination of the new labels and quality standards it appeared that these had been adopted to conform to the new Community rules.

(13) While the new version of the AMA internal rules did not stipulate conditions as to the origin of products, the basic legal act governing AMA, the AMA Act, still referred only to national products. In this regard, by a letter dated 19 December 2002, registered on 23 December 2002, the Austrian authorities confirmed that under the new rules the AMA labels are available to all products regardless of their origin and committed to the subsequent adaptation of the AMA Act. Based on the above grounds, the Commission services considered that the non-notified aid scheme registered as NN 34/2000 had been modified substantially as of 26 September 2002 to conform to the State aid rules and that for this reason a separate assessment of the scheme after that date was justified.

1.3. *NON-NOTIFIED AID NN 34A/2000 AFTER SPLITTING*

(14) Regarding the case NN 34A/2000, additional information was provided by the Austrian authorities by letters of 2 April 2004 (registered on 5 April 2004), 19 April 2004, 29 April 2004, 4 May 2004, 7 May 2004, 13 May 2004, 9 June 2004, 16 June 2004 and 24 June 2004, all registered on the day of their receipt.

(15) By decision C(2004) 2037 the Commission decided not to raise any objections to that measure and considered it as compatible with the common market within the meaning of Article 87(3)(c) EC (now Article 107(3)(c) TFEU), in that it complied with the conditions imposed by points 13 and 14 of the Community Guidelines for State aid in the agricultural sector ([6]) (hereafter: the 2000-2006 Guidelines) and by the Community Guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products ([7]) (hereafter: the Advertising Guidelines). The aid scheme examined in case NN 34A/2000 was limited in time until 31 December 2008 for all quality label (AMA Gütesiegel) measures and the bio label (Biozeichen) quality support measures, whereas the bio label (Biozeichen) advertising measures were limited in time until 31 March 2006.

([4]) The same line of argument is used in a legal opinion attached to the submission of information from 26 February 2015.
([5]) The AMA measures on the quality and the bio label implemented since 26 September 2002 under the modified internal rules were approved on 30 June 2004 by the Commission's decision in case NN 34A/2000 (see recitals 10 to 16).
([6]) OJ C 28, 1.2.2000, p. 2.
([7]) OJ C 252, 12.9.2001, p. 5.

(16) According to the decision, all the measures implemented by AMA and AMA Marketing before 26 September 2002, which remained subject to case NN 34/2000 were expressly excluded from the examination in case NN 34A/2000. In this respect it is however not clear when the new AMA internal rules have been put into effect, i.e. whether the aid measures were granted on the basis of the new rules already as from 26 September 2002, the date on which the rules entered into force or whether there was a transitional period after 26 September 2002 during which aid continued to be granted according to the old rules.

(17) In the answer of 14 September 2012 the Austrian authorities maintained that no transitional period applied and that the new rules had been put into effect on 26 September 2002.

1.4. *NOTIFICATION OF THE AMA MARKETING MEASURES (GENERIC MARKETING, MARKETING OUTSIDE AUSTRIA AND MARKET RESEARCH) — N 239/2004*

(18) On 28 May 2004 the Austrian authorities notified the AMA marketing measures that comprise generic marketing measures, marketing measures outside Austria and market research. The aid scheme registered under State aid number N 239/2004 was approved by Commission decision C(2004) 3945 of 20 October 2004. By decision C(2010) 377 of 21 January 2010 the Commission approved under State aid number N 496/2009 a continuation of the above aid scheme until 31 December 2013. These decisions are not affected by the Court rulings cited above and the approved measures are not subject to the present decision.

1.5. *PROLONGATION OF NN 34A/2000*

(19) By letter of 15 March 2006, registered on the same day, the Austrian authorities notified a prolongation until 31 December 2010 for the measures regarding the bio label ([8]) (State aid scheme N 175/2006 approved by Commission decision C(2006) 2281 of 2 June 2006). By letter of 19 November 2008 Austria notified a prolongation until 31 December 2013 of the aid measure NN 34A/2000 regarding both the quality and the bio label which expired on 31 December 2010. The notified aid which was registered as N 589/2008 and approved by Commission decision C(2009) 1092 of 25 February 2009 at the same time replaced the aid measure N 175/2006.

(20) The present decision does not concern the above described approved aid schemes N 175/2006, N 589/2008, N 239/2004 and N 496/2009.

(21) Subject of the present decision are the non-notified AMA measures under aid scheme NN 34/2000 (covering the period before 26 September 2002) and the AMA measures that had been addressed by the annulled Commission decision NN 34A/2000 (covering the period after 26 September 2002).

2. **PROCEEDINGS BEFORE THE UNION COURTS (GENERAL COURT AND COURT OF JUSTICE) AND OPENING DECISION**

2.1. *PROCEEDINGS BEFORE THE GENERAL COURT — CASE T-375/04*

(22) The Commission Decision in case NN 34A/2000 was challenged before the Court of First Instance (now General Court) by the complainants referred to in recital 4 on 17 September 2004. The case was registered as T-375/04.

(23) In its judgment of 18 November 2009, the General Court concluded that the Commission should have initiated the formal investigation procedure because of the existence of a contradiction between (i) the wording of the AMA Act of 1992, which according to the General Court limits the scheme to national products, and (ii) the internal AMA directives and the assurances of the Austrian authorities, which had maintained that the scheme was open to products from other Member States. The General Court found that this contradiction sufficed to create serious doubts as to the compatibility of the scheme with the Internal Market.

([8]) As indicated at recital 15 above, under aid scheme NN 34A/2000 the bio label advertising measures were limited in time until 31 March 2006 and the bio label quality support measures until 31 December 2008.

(24) The General Court therefore concluded (paragraph 86 of the judgment) that the Commission should have initiated the procedure provided by former Article 88(2) EC (now Article 108(2) TFEU). On this ground, the General Court annulled the Commission Decision in case NN 34A/2000.

2.2. *PROCEEDINGS BEFORE THE COURT OF JUSTICE — CASE C-47/10*

(25) The Republic of Austria on 27 January 2010 appealed the above judgment of the General Court. The appeal was registered as Case C-47/10.

(26) In its judgment of 27 October 2011, the Court of Justice dismissed the appeal brought by the Republic of Austria and fully upheld the ruling of the General Court.

2.3. *OPENING DECISION AND SUBSEQUENT PROCEDURAL STEPS*

(27) Following the Court's judgment, the Commission opened the formal investigation procedure under Article 108(2) TFEU in case NN 34A/2000. Having regard to the grounds of the judgment, in the opening decision of 12 June 2012 ([9]), the Commission invited the Austrian authorities and the parties concerned to submit within a month their comments in order to clarify the doubts regarding the contradiction described in recital 23.

(28) The Commission did not receive any comments from third parties.

(29) Austria replied by letter of 29 June 2012 asking for a prolongation of the deadline for reply. The Commission granted an extension of the deadline for reply on 13 July 2012.

(30) The Austrian authorities provided their comments on 14 September 2012.

(31) Additional information was requested by the Commission by letter of 19 February 2014. The Austrian authorities answered on 14 March 2014 and asked for a prolongation of the deadline to reply. Austria submitted additional information on 7 May 2014.

(32) The Commission sent a new request for information on 17 December 2014. On 23 December 2014 the Austrian authorities asked for a prolongation of the deadline to reply. The Commission granted this extension by letter dated 8 January 2015. The reply of the Austrian authorities was submitted on 26 February 2015 and 3 March 2015.

3. **DESCRIPTION OF THE AID MEASURES**

3.1. *TITLE*

(33) AMA marketing measures

3.2. *DURATION OF THE MEASURE*

(34) The AMA Act which establishes AMA entered into force in 1992. According to the information provided by the Austrian authorities in a letter of 4 July 1997, registered on 7 July 1997, the marketing measures have been in place since 1994, i.e. before 1 January 1995, the date when Austria joined the European Union. Nevertheless, the AMA measures were not communicated by the Austrian authorities to the Commission in accordance with Article 143 or 144 of the Act of Accession of Republic of Austria ([10]).

([9]) See footnote 1.

([10]) Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union, OJ C 241, 29.8.1994, p. 21 as adjusted by OJ L 1, 1.1.1995, p. 1.

(35) In the submission of 14 September 2012 Austria stated that the Commission was 'informed' about the marketing measures by the Österreichische Weinmarketing. However, the information provided in that submission ([11]) refers only to appropriate measures imposed by the Commission according to Article 93(1) EC Treaty (now Article 108(1) TFEU) for the wine sector. These measures are not within the scope of the present decision.

(36) By letter of 7 February 1997, in the context of the OECD monitoring report, the Commission informed Austria that the AMA promotion measures could constitute State aid and consequently requested the Austrian authorities to provide all information necessary to assess those measures under the State aid rules in force and to fill in the relevant notification forms. By letter of 23 June 1997 the Austrian authorities provided the requested information and a completed notification form ([12]).

(37) In their submission of 14 September 2012 the Austrian authorities maintained that the letter of 23 June 1997 constituted a valid notification and that at the expiry of the 2-month period the Member State was entitled to believe that a valid State aid clearance existed for those measures.

(38) Regarding the end date of implementation, the different marketing activities of AMA have to be distinguished.

(39) The Commission notes in this respect that by decision of 20 October 2004 the Commission approved under State aid number N 239/2004 the following AMA marketing measures: generic marketing measures (advertisement and PR-activities), marketing measures outside Austria and market research.

(40) In summary, regarding the AMA bio and quality labels the end date of the measure was 31 December 2008, except for the bio label advertising measures which have expired on 31 December 2006 (see recitals 15 and 19 above). Concerning the other AMA marketing measures, they applied until 20 October 2004, the date on which the notified measure N 239/2004 was approved (see Chapter 1.4 and recital 39 above).

(41) The Commission further notes that a beef promotion campaign measure by AMA was notified and approved under State aid number N 570/1998 by letter of 15 December 1998. The duration of the aid was limited to 2 years.

(42) Except for the measures covered by the Commission's decisions in cases N 570/1998, NN 34A/2000 and N 239/2004, the Commission is not aware of any other approved aid measures related to the AMA marketing activities in the period at issue.

3.3. *AID AMOUNT*

(43) According to the information provided in the detailed budget reports for the years 1995-1999 ([13]) and 2000-2008 ([14]), the following amounts were spent for AMA marketing activities:

1995: EUR 13 084 204,72

1996: EUR 16 241 658,38

1997: EUR 15 306 219,65

1998: EUR 18 217 604,15

1999: EUR 18 158 485,48

2000: EUR 15 867 096,22

2001: EUR 12 092 317,52

2002: EUR 13 538 228,32

([11]) Namely, the reference to Commission decision N 88/98.
([12]) See recital 145 and the following.
([13]) These reports were submitted as Annex to the letter of the Austrian authorities dated 16 October 2000 by which they replied to the Commission request for additional information of 19 June 2000.
([14]) These reports were submitted with the letter of the Austrian authorities dated 14 September 2012.

2003: EUR 9 044 509,01

2004: EUR 10 559 442,86

2005: EUR 8 994 712,20

2006: EUR 12 193 320,12

2007: EUR 12 285 344,67

2008: EUR 15 087 084,71

(44) By letter of 12 June 2012 the Austrian authorities were invited to confirm the above figures and to provide a breakdown of the budget per year for each aid category (advertising for quality labels, advertising for bio labels, generic advertising, advertising outside Austria, quality measures as well as technical support regarding both labels and generic products). The following figures were provided in the submission of 14 September 2012.

(EUR)

	Werbe-maßnahmen für Gütesiegel und Biozeichen	generische Werbung	Werbung außerhalb Öster-reichs	Qualitäts-maßnahmen	technische Hilfe für beide Siegel und generische Erzeugnisse	Sonstiges nicht zuordenbar	Summe
1995	1 299 346,00	6 362 489,86	3 571 312,11	371 139,09	582 771,80	897 145,82	13 084 204,68
1996	2 233 341,97	8 643 529,94	2 888 555,25	394 070,06	779 226,09	1 302 935,06	16 241 658,37
1997	1 711 790,25	8 550 846,55	2 679 179,98	362 098,72	752 833,66	1 249 471,22	15 306 220,38
1998	1 347 618,61	9 607 372,32	3 555 154,59	689 570,37	1 078 268,11	1 939 620,16	18 217 604,16
1999	1 950 511,57	9 740 191,85	3 444 902,31	802 776,30	874 229,94	1 345 873,52	18 158 485,49
2000	1 616 472,22	8 148 390,41	2 387 445,85	1 327 850,90	993 697,77	1 393 239,07	15 867 096,22
2001	1 537 390,80	5 448 146,98	2 234 769,81	728 167,14	899 896,37	1 243 946,42	12 092 317,52
2002	1 336 612,09	7 237 058,31	2 092 667,47	381 162,95	825 295,61	1 665 431,89	13 538 228,32
2003	1 628 162,19	3 561 930,45	1 487 154,69	74 665,78	491 988,97	1 800 606,93	9 044 509,01
2004	1 562 732,58	4 934 174,90	1 366 698,52	129 725,39	804 018,00	1 762 093,47	10 559 442,86

(45) The Austrian authorities provided the following figures for the bio label and the quality label measures in the period 2002-2008.

Jahr	Gesamtkosten lt. Jahresbericht	davon AMA-Güte-siegel	in % von Gesamt	davon AMA-Bio-Zeichen	in % von Gesamt
2002	13 538 228,32	1 356 909,27	10,02	320 695,40	2,37
2003	9 044 509,01	2 139 261,31	23,65	829 573,19	9,17
2004	10 559 442,86	1 187 575,61	11,25	994 446,40	9,42

Jahr	Gesamtkosten lt. Jahresbericht	davon AMA-Gütesiegel	in % von Gesamt	davon AMA-Bio-Zeichen	in % von Gesamt
2005	8 994 712,20	1 709 859,07	19,01	714 448,63	7,94
2006	12 193 320,12	2 834 299,23	23,24	327 752,62	2,69
2007	12 285 344,67	3 466 665,92	28,22	641 760,86	5,22
2008	15 087 995,71	3 410 221,60	22,60	1 273 517,59	8,44
Summe	**81 703 552,89**	**16 104 792,01**		**5 102 194,69**	

3.4. *BENEFICIARIES*

(46) From the information available it appears that the beneficiaries of the marketing measures are agricultural producers as well as undertakings active in the processing and marketing of agricultural products, including the food industry.

3.5. *LEGAL BASIS*

(47) The basic legal act for all AMA marketing measures is the AMA Act — Bundesgesetz über die Errichtung der Marktordnungsstelle 'Agrarmarkt Austria' (Federal Law on the establishment of the market-regulating agency 'Agrarmarkt Austria') ([15]).

(48) Following a request for information of 30 April 2014, the Austrian authorities submitted all implementing legal acts (Richtlinien, Verordnungen etc., including internal AMA directives and other internal rules) which govern the quality label and the bio label as well as the respective marketing measures.

3.6. *THE AMA MARKETING AND THE PARAFISCAL FINANCING OF THE MEASURE*

(49) The AMA is a public law body established in 1992 by the AMA Act and controlled by the State. The scheme is administered by AMA Marketing, a wholly owned subsidiary of the AMA.

(50) In case NN 34A/2000 the Austrian authorities have provided the following information about the status and the activities of AMA:

(51) According to the Austrian authorities, AMA and AMA Marketing do not market goods or services. AMA Marketing supervises the use of the quality label and the bio label, plans and coordinates promotion measures (advertising, fairs, exhibitions, PR-events and similar), produces information materials on quality programmes and labels, and commissions research projects on various subjects connected with quality in agricultural production.

(52) AMA Marketing does not conduct advertising campaigns or product controls. Instead AMA Marketing selects private firms in accordance with national legislation transposing Council Directive 92/50/EEC ([16]) and subsequently Directive 2004/18/EC of the European Parliament and of the Council ([17]) to conduct such campaigns or controls.

(53) Austrian agricultural and food industry undertakings pay compulsory levies established by the AMA Act to finance to 100 % those measures. AMA and AMA Marketing themselves are also financed by those levies.

([15]) Bundesgesetzblatt für die Republik Österreich (BGBl.) 376/1992.
([16]) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1).
([17]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

(54) The AMA Act (§ 21c(1)) establishes that the levies have to be paid for the following operations or products:

— milk when delivered to be processed,

— cereals when milled,

— adult bovine animals, calves, pigs, lambs, sheep and fowl when slaughtered,

— keeping poultry for the production of eggs,

— production of vegetables and fruit,

— production of potatoes (except starch potatoes and potatoes used for the production of alcohol),

— production and cultivation of garden produce,

— cultivation of vineyards,

— first commercialisation of wine.

(55) The maximum amount of the contributions is also established in the AMA Act (§ 21d). The concrete level of the contributions is established through a regulation of the administrative board of AMA (Verordnung des Verwaltungsrates).

(56) By letter of 14 September 2012, the Austrian authorities communicated the following amounts of the levies collected in the period 1995-2008 ([18]):

1995 — EUR 13 833 026,19

1996 — EUR 15 260 738,33

1997 — EUR 14 340 815,84

1998 — EUR 15 473 675,13

1999 — EUR 15 260 405,37

2000 — EUR 15 419 046,38

2001 — EUR 15 228 252,40

2002 — EUR 15 461 156,95

2003 — EUR 13 529 199,62

2004 — EUR 17 320 613,38

2005 — EUR 16 003 552,29

2006 — EUR 16 030 054,67

2007 — EUR 15 909 792,32

2008 — EUR 15 880 813,22

(57) By way of example, in the year 2003 a total of EUR 13 529 199,62 was collected in levies as follows:

Milk	7 754 833,88
Adult bovine animals	1 141 663,81

([18]) Annex to points (31) and (47) to the submission of 14 September 2012. The submission contains a main document and annexes thereto.

Pigs	1 976 514,84
Calves	31 926,33
Sheep and lambs	34 046,38
Poultry for slaughter	405 925,74
Laying hens	427 690,62
Fruit	769 823,87
Vegetables	408 448,99
Potatoes	243 896,60
Garden produce	334 428,56

(58) According to § 21c (2) of the AMA Act, goods originating outside Austria are exempt from these charges.

4. **THE AMA MARKETING MEASURES**

(59) By letter of 16 October 2000, in the context of the procedure NN 34/2000, the Austrian authorities provided annual reports for the years 1995, 1996, 1997, 1998 and 1999 in which all AMA marketing measures are listed.

(60) Regarding the quality and bio labels, the Austrian authorities provided a detailed description in the framework of the assessment of the aid scheme NN 34A/2000.

(61) On the basis of this information it appears that the marketing activities can be grouped under the following aid categories:

— advertising, which includes advertising regarding the quality label and the bio label, generic marketing measures and advertising measures outside Austria (section 4.1 below),

— aid for quality assurance systems, quality controls and controls for organic products for products bearing the quality and bio labels (section 4.2 below), and

— technical support measures (section 4.3 below).

(62) A detailed description of the measures per aid category follows in Chapters 4.1 to 4.3 respectively.

4.1. *ADVERTISING MEASURES*

4.1.1. ADVERTISING MEASURES REGARDING THE QUALITY LABEL AND THE BIO LABEL

(63) According to the information provided by the Austrian authorities regarding the aid scheme NN 34A/2000, the bio label may or may not have included an indication of origin. The quality label always included a specific indication of origin and a second field with colours and/or symbols (graphically) indicating the origin, depending on the Member State or the production region.

Logos used and eligibility under the scheme

(64) According to the information provided by the Austrian authorities on the aid scheme NN 34A/2000, the labels had the following appearance after the year 2002:

Appearance of labels as of the year 2002 ([19])

Quality label ([20]) (Austria)	**Quality label** (Bavaria)	**Bio label** (indicated origin)	**Bio label** (origin not indicated)
			

(65) From the examples submitted to the Commission for the period 1995-2002 it appears that the bio label had the same appearance as in the period after 2002, whereas until 31 December 1999 the quality label had a different design (as shown below): instead of the reference 'AMA Gütesiegel' the word 'Austria' (in the same size) was placed in the central field, i.e. the visually dominant part of the label.

Appearance of quality label in the period 1 January 1995 to 31 December 1999



(66) As of January 2000, the original quality label was replaced with the label shown above in recital 65 ([21]). This is reflected in the annual reports from that period onwards.

(67) According to the information provided relating to the aid scheme NN 34A/2000, the bio label and quality label were granted only with regard to products satisfying certain quality criteria regarding production methods, product characteristics and, in certain cases, requirements relating to the geographical origin of a product.

(68) The Austrian authorities have given assurances that the provisions of Directive 2000/13/EC of the European Parliament and of the Council ([22]) have been complied with in the subsidised advertising.

(69) The bio label was only granted with regard to organic products satisfying the criteria laid down in Council Regulation (EEC) No 2092/91 ([23]).

([19]) These labels were shown in recital 13 of Commission decision NN 34A/2000.
([20]) This logo was used as well for the period 1999-2002.
([21]) The label is used in the product directives of the year 2000 (Richtlinien für Frischfleisch, Fleischerbetriebe, Fleischwaren, Frischeier, Putenfleisch, Milch und Milchprodukte, Obst, Gemüse und Speisekartoffeln, Speisefette, Speiseöle, Diverse Lebensmittel).
([22]) Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ L 109, 6.5.2000, p. 29).
([23]) Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ L 198, 22.7.1991, p. 1).

(70) The quality label was awarded only to products that satisfied the quality requirements pursuant to Article 24a (b) of Council Regulation (EC) No 1257/1999 ([24]). The products fulfilling the quality criteria required for the use of the quality label met the following higher standards within the meaning of point 47 of the 2000-2006 Guidelines ([25]).

Product	Criterion
Beef, veal	pH 36 value < 5,8 within at least 36 hrs.
Pigmeat	PSE-pigmeat: pH1 value at least 30 min. after slaughter: 6,0 or greater.
	Only class S and E meat allowed
	DFE-pigmeat: pH12 value at least 12 hrs after slaughter: max. 5,8.
Turkey	Bacteriological requirements: maximum total bacteria L 50 000 KbE/cm² and maximum enterobacteriaceae L 500 KbE/cm² before cutting, corresponding values L 100 000 KbE/cm² and L 1 000 KbE/cm² after cutting.
Eggs	Only floor and free-range keeping.
	Participation in a salmonella prevention and control program.
Milk and milk products	Lipopolysaccharide content ≤ 400 EU/ml
	Only 1 quality class of 4 existing classes.
	In the microbiological tolerance range the lower limits according to the Austrian law *Milchhygieneverordnung* constitute the upper limits accepted for quality label products. If the tolerance range is e.g. 1-3 according to the law, the quality label allows only values up to 1.
	The content of yeast and moulds in fermented milk products ≤ 10/ml, butter ≤ 100/g, cottage cheese ≤ 1 000/g.
Honey	Water content max 19 %, HMF content ≤ 20 ppm.
Cereals, cereal products	Wheat: hl- weight 80 kg, gluten content 30 %, protein content 14 %, sedimentation value 50 Eh, fall rates 250 sec; rye hl- weight 72 kg, amylogramma 500AE; brewing rye: protein content max. 12 %, whole rye content 90 %.
Oil plants and cooking oils	Acid figure (SZ) 0,2 mg/kg.
	Peroxide figure(POZ) (fresh samples) 1,5.
Ice cream	Only raw milk of highest quality category (S) of three categories.
	Number of bacteria ≤ 50 000 (tolerance range + 30 000)

([24]) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ L 160, 26.6.1999, p. 80).
([25]) These standards are described in recital 59 of Commission Decision NN 34A/2000.

Product	Criterion
	All microbiological highest allowed values lower than those in the Austrian law *Speiseeisverordnung*.
Fruit, vegetables, table potatoes	Use of pesticides and herbicides only according to the Integrated Production positive list e.g. only ca. 160 of the ca. 300 plant protection chemicals listed in the Austrian law *Pflanzenschutzmittelgesetz* are allowed for the quality label products.
	In nitrogen fertilisation of potatoes only 100 kg pure No/hectare allowed (good agricultural practice in Austria: 175 kg)
	No sludge waste allowed.
	No fertilisation without soil analysis nor beyond nutrient level C (optimal nutrient supply).

(71) The region of origin presented in the labels was considered to be the region where the processing of the product took place and from which the determining raw materials (wertbestimmende Rohstoffe) originated. One third of such raw materials may come from other regions if they could not be grown or obtained in the region of origin.

(72) In the production of fresh eggs the laying hens had to be born and fattened in the region concerned. In beef, veal, pork, turkey and lamb production the animals had to be born in the region concerned.

(73) Regarding the logo used for the quality label, in their submission of information of 14 September 2012 the Austrian authorities attached the applicable rules for the period until 1999. This information shows that both the regulatory acts (AMA-Gütesiegel Richtlinien ([26]), Regulativ für die Verleihung des Rechts zur Führung der Urspungs- und Gütezeichen für Lebensmittel ([27])) and the application forms (Antrag auf Verleihung des Herkunfts- und Gütezeichens für Lebensmittel ([28])) used the logo shown above at recital 65.

(74) After the year 1999 the logo used for the quality label was identical with the logo shown in recital 64 above.

Eligible costs under the scheme

(75) As regards the quality label, on the basis of the information provided in the annual reports for the years 1995 to 1999 and that relating to the aid scheme NN 34A/2000, it can be concluded that aid was granted for the costs of advertising campaigns to improve the quality consciousness of consumers and to promote the quality label. The aim was to create an image of the quality label as a guide for making purchases (Orientierungshilfe beim Einkauf).

(76) As regards the bio label, aid was granted for the costs of advertising campaigns to inform the consumers about the products bearing the bio label as well as about the requirements for the use of the label and about organic farming in general.

(77) The campaigns consisted of advertisements in printed and electronic media, at points of sale (POS) and public events, at information stands with brochures concerning the products bearing the quality label or the bio label, in information leaflets, as part of product tasting at fairs and other public occasions as well as other means to get

([26]) AMA-Gütesiegel Richtlinie Frischfleisch of April 1999, Richtlinien Frischfleisch of April 1997, Richtlinien Frischfleisch of April 1997 (Anpassung entsprechend Beiratsbeschluss vom 22.1.1998), Richtlinien Frischfleisch vom Februar 1996, Richtlinien diverse Lebensmittel.
([27]) Of February 1997.
([28]) According to the Austrian authorities this form was used until 31 December 2000.

the consumers' attention, such as floor stickers (placed in supermarkets) with symbols and information relating to the quality label and the bio label. The campaigns concentrated on different product groups at a time depending on the local and market situation.

(78) According to the information provided by the Austrian authorities in relation to the measure NN 34A/2000 the advertisements or activities at POS and public events for the period 2002-2008 did not make reference to any named producers or brands. Instead they only contained information on the product quality requirements and quality controls connected with the quality label so that the consumers could recognise the special quality of the products bearing the label. Support for POS activities was available to all interested undertakings that wished to organise such campaigns on their premises. These undertakings themselves did not receive any direct aid under the notified aid scheme.

(79) Furthermore, according to the Austrian authorities, the origin of the product, where mentioned, had to be the secondary message in the subsidised advertising. The Austrian authorities have submitted representative examples of printed and audiovisual advertising to illustrate how the advertisements were designed in order to ensure that the message concerning origin always stayed secondary.

(80) From the information relating to the measure NN 34A/2000 it appears that part of the bio label measures concern EU co-financed promotion activities.

4.1.2. GENERIC ADVERTISING MEASURES

(81) The information provided in the annual reports 1995-1999 shows that the advertising campaigns concerned milk and milk products, meat and meat products, eggs, fruits, vegetables and potatoes as well as products processed from these raw materials and flowers.

(82) The advertising campaigns consisted of advertisements in printed and electronic media and sales promotion at points of sale (POS), fairs and public events. Sales promotion made use of information stands with product samples and brochures concerning the advertised products and other means to get the consumers' attention, such as product testing, prize contests (Gewinnspiele) as well as posters, flags and pavement stickers with information relating to the advertised products. Furthermore, various printed and other materials were produced in order to promote different products or groups of products. Such materials include information leaflets, magazines, cookery books, printed clothes and promotional gifts.

Concrete campaigns carried out under the scheme

(83) In the advertising examples from that period available to the Commission the origin of the product appears in word and symbol not only in the quality label but also elsewhere in the advertising material.

(84) To provide a few examples contained in the **1995** annual report and the samples submitted by Austria to the Commission:

— a campaign of 1995 referred to 'Geflügel aus Österreich'. The main visual field of the logo shows the Austrian flag,

— an advertising campaign of 1995 was run under the title 'Appetite for Austria' ('Appetit auf Österreich'). The main visual field of the logo (with the word 'Österreich') used the Austrian flag as a background. In the descriptive part of the advertisement a clear reference to the origin of the products was made 'Foodstuff from Austria — why?' ('Lebensmittel aus Österreich — warum?'),

— a campaign promoting eggs from Austria was run in the year 1995 as 'Quality eggs fresh from Austria' ('Qualitätseier frisch aus Österreich'),

— promotional material on strawberries submitted to the Commission was run with the logo 'Fruit from Austria' ('Obst aus Österreich'),

— a campaign for veal was run under the motto 'Austrian beef — every piece is a pleasure' ('Österreichisches Rindfleisch, jedes Stück ein Gustostück'),

— a campaign for pig meat was run under the motto 'Pigmeat from Austria — you know what you eat' ('Schweinefleisch aus Österreich, da weiß man was man isst'),

— a campaign for cheese was run under the motto 'Typisch Österreich, Käse mit Charakter'.

(85) The annual report of **1996** summarises the mission of AMA as follows: 'to convince domestic consumers, despite the growing diversity of the European foodstuff, of the benefits of Austrian products' ('die einheimischen Konsumenten, trotz der zunehmenden Vielfalt des europäisch werdender Lebensmittelangebotes, von den Vorzügen österreichischer Produkte zu überzeugen') ([29]). It then goes on: 'The cultivation of a "preference for Austria" is a major contribution to maintaining the market share for our farm products'. ('Diese Kultivierung der "Präferenz für Osterreich" ist ein wesentlicher Beitrag zur Marktanteilsicherung für unsere Agrarprodukte'). The same report states that the cooperation between AMA Marketing and the national producers was so successful that foreign milk and butter producers hardly entered the Austrian market ([30]).

(86) The final chapter of the report called 'Patriotism valued by trade and the consumer' ('Patriotismus bei Handel und Konsument gefragt') states that the high market share of national products as compared to the competition from other EU products had been safeguarded ([31]). The report names the companies (retailers) involved ([32]) in the campaign and underlines that the use of the red-white-red logo was combined with highlighting the advantages of Austrian foodstuffs for consumers.

(87) Regarding the campaigns and actions run in the year 1996 the following are provided as examples:

(a) The report refers to the campaign 'Our butter is irreplaceable' ('Unsere Butter kann durch nichts ersetzt werden') ([33]).

(b) Other examples cited in the yearly report refer to domestic meat: 'Austria's best recipe' ('Österreichs bestes Rezept'), 'Beef and veal from Austria' ('Rindfleisch aus Österreich') ([34]). The coverage of the distributed materials seems to have been significant. The yearly report refers to 400 000 printed copies for the brochure 'Veal from Austria' ('Kalbfleisch aus Österreich') and 800 000 copies for the brochure 'Everything about meat' ('Alles über Fleisch') ([35]).

(88) The report also mentions campaigns with no reference to the origin of the products such as 'Milch — white energy' ([36]) or the school campaign run under the slogan 'The unbeatable apple' ('Der unbesiegbare Apfel') ([37]). The latter contains no reference to brand names or to the origin of the product, but only refers to generic characteristics of the fruit (nutrients, energy, vitamins and minerals etc.).

(89) The annual report of the year **1997** mentions that the AMA measures managed to 'build barriers to entry for other EU products' and cites the case of yoghurt for which the national producers reconquered a 15 % market share back from foreign producers ([38]).

(90) For the year **1999**, in some advertising examples the advertising relates to particular firms (for instance a printed advertisement about Austrian cheese refers to the cheese producer [……] ([39]) and advertising for Austrian eggs to the food retail company [……] ([40])).

(91) In the advertising for yoghurt bearing the AMA quality label the following text was displayed 'Yoghurt from Austria' ([41]).

([29]) AMA activity report (Tätigkeitsbericht) 1996, page 3.
([30]) AMA activity report (Tätigkeitsbericht) 1996, page 12.
([31]) AMA activity report (Tätigkeitsbericht) 1996, page 35.
([32]) [……] — covered by the obligation of professional secrecy.
([33]) AMA activity report (Tätigkeitsbericht) 1996, page 15.
([34]) Both examples are cited in AMA activity report (Tätigkeitsbericht) 1996, page 17.
([35]) AMA activity report (Tätigkeitsbericht) 1996, page 19.
([36]) AMA activity report (Tätigkeitsbericht) 1996, page 13.
([37]) AMA activity report (Tätigkeitsbericht) 1996, page 26.
([38]) AMA activity report (Tätigkeitsbericht) 1997, page 3. 'Die österreichische Naturqualität hat sich mit der Unterstützung der AMA auch 1997 am Heimmarkt eine Position gesichert, mit der es gelungen ist, *Eintrittsbarieren gegenüber EU-Anbietern aufzubauen* und gleichzeitig den heimischen Produkten Unverwechselbarkeit zu garantieren. Dass der "Geschmack der Natur" am Heimmarkt sogar Marktanteile zurückgewonnen hat, ist im Marktsegment Fruchtjoghurt klar abzulesen. So konnten 1997 von den heimischen Herstellern *15 % Marktanteil von ausländischen Anbietern zurückgewonnen werden*'.
([39]) Covered by the obligation of professional secrecy.
([40]) Ibid.
([41]) This advertising example can be found on p. 10 of the AMA activity report (Tätigkeitsbericht) 1999.

(92) The annual reports for the years 1997, 1998 and 1999 contain similar campaigns and slogans as described above.

(93) The annual reports for the year **2000** and **2001** refer to campaigns such as:

(a) Milk advertising ('Frische Milch hat's in sich') ([42])

(b) A school milk campaign ([43])

(c) The campaign Youth 2000 (Jugend 2000) ([44])

(d) A brochure for the generation 50+ ([45])

4.1.3. ADVERTISING MEASURES OUTSIDE AUSTRIA

(94) The purpose of the advertising measures was to inform consumers and professionals about offers of products from Austria — their taste and culinary use — and to encourage them to (for the first time) try such products.

(95) The advertising campaigns consisted of advertisements in the media, brochures and leaflets, promotional gifts, testing of products and direct e-mailing to consumers.

(96) Advertising for Austrian products was done also in the context of Austrian food weeks and of international fairs in EU Member States outside Austria.

(97) According to the Austrian authorities, the levies for the period 2002-2008 referred to above did not result in any discriminatory effect within the meaning of Article 90 of the EC Treaty (now Article 110 TFEU). In particular, they state that there are no indications that products of Austrian origin marketed outside Austria could not benefit from the measure to the same extent as products marketed in Austria.

4.2. *STATE AID FOR QUALITY PRODUCTS*

(98) As regards the AMA quality and bio labels, aid was granted for the development of quality assurance systems (studies on improving the quality of production in general, drafting and distribution of quality assurance documents, development of related informatics systems within AMA Marketing), quality controls and controls for organic products (on-spot controls by external bodies and laboratory analyses). All routine quality controls were paid by the licence bearers themselves.

(99) In addition, a measure consisting in the introduction of a quality assurance scheme ISO 9002 is listed in the annual reports 1995-1999.

4.3. *TECHNICAL SUPPORT MEASURES*

4.3.1. TECHNICAL SUPPORT FOR THE QUALITY AND BIO LABEL

(100) Aid was granted for general information projects, PR-activities to disseminate general knowledge about the labels and for competitions organised to promote the quality labels (Gewinnspiele).

([42]) AMA activity report (Tätigkeitsbericht) 2000, page 9.
([43]) AMA activity report (Tätigkeitsbericht) 2000, page 10.
([44]) AMA activity report (Tätigkeitsbericht) 2000, page 11.
([45]) AMA activity report (Tätigkeitsbericht) 2000, page 12.

(101) Eligible were costs incurred to organise information meetings and to produce leaflets, catalogues, newsletters and internet contributions.

(102) The aim was to give consumers factual information about the AMA quality label and bio label programme in general, such as the quality orientation of the quality label programme, the content of the labels and the control systems.

(103) According to information from the Austrian authorities, the above measures did not concern specific product groups nor did they induce customers to buy a given product.

4.3.2. TECHNICAL SUPPORT FOR GENERIC PRODUCT INFORMATION, INCLUDING MARKET RESEARCH

(104) According to the annual reports, in the period 1995 until 1999 aid was granted for general information and PR activities, the organisation of and participation in fairs, and market research

(105) The general information and PR activities for which aid was granted aimed to present generic characteristics of foodstuffs and dealt with concerns of general interest, such as providing advice and information in case of a food scandal. The PR activities also included the improvement of the communication basis in the media and used channels such as press releases, press conferences, press service, newsletters, open door days and lobbying.

(106) Aid was also granted for the organisation of and participation in events such as competitions, conferences, seminars and workshops in Austria, as well as in 'Austrian weeks' and fairs in other EU Member States.

(107) Aid for market research was granted for the preparation of studies concerning general food market data, the development of the markets, consumer behaviour, trends and analyses of the sales of the relevant agricultural products.

5. **AID INTENSITIES**

(108) The aid covered 100 % of the eligible costs of the AMA marketing measures.

(109) According to the information provided by the Austrian authorities, the aid for quality products and for technical support regarding the quality and the bio label never exceeded EUR 100 000 per beneficiary in a 3-year period.

(110) Concerning control measures regarding the use of the quality label, the Austrian authorities confirmed that the aid was eliminated by 2009.

6. **ASSESSMENT OF THE AID**

6.1. *PRESENCE OF AID*

(111) Article 107(1) TFEU prohibiting State aid applies if an aid is 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 in so far as it affects trade between Member States.

6.1.1. AID GRANTED BY THE STATE OR THROUGH STATE RESOURCES

(112) As regards the classification of funds as State resources, no distinction needs to be drawn between cases where the aid is paid directly by the State or where it is paid by public or private bodies designated or established by the State for that purpose ([46]).

([46]) Judgments of 13 March 2001 in Case C-379/98, *Preussen Elektra*, ECLI:EU:C:2001:160, para. 58, and of 20 November 2003 in Case C-126/01, *GEMO*, ECLI:EU:C:2003:622, para. 23.

(113) The Commission notes that in the present case the aid is granted not directly by the State but by AMA, an intermediate body established by law and controlled by the State (see recital 49). AMA administers and wholly owns AMA Marketing, on the basis of which it can be presumed that it exercises a decisive influence on the latter. For the purpose of this section, AMA and AMA Marketing will therefore be assessed together. Therefore, it has to be examined whether the levies collected by AMA can be regarded as State resources imputable to the State.

(114) AMA and AMA Marketing have been established by law. The State establishes the objectives of these bodies (Article 2 of AMA law), their management structure (Articles 4-17 of AMA law), and the composition of the management board (see also recital 118). These bodies are therefore controlled by the State. Their marketing activities are funded by parafiscal levies (see recital 49 and 53) ([47]). The AMA law (Article 21a(1)) establishes the use of the collected levies. AMA is subject to scrutiny by State institutions, such as the Austrian Court of Auditors ([48]). Furthermore, Article 29 of the AMA law states that, when carrying out administrative procedures, AMA applies the the General Administrative Procedure Act (allgemeines Verwaltungsverfahrensgesetz).

(115) The decisions of the AMA can be challenged at the Bundesverwaltungsgericht (Federal Administrative Court) ([49]). According to the 2004 version of the AMA law, the decisions of AMA can be challenged with the Ministry of Agriculture and Forestry.

(116) The collection of the contribution under the AMA Law is a competence of the AMA. AMA has the competence to inspect premises or agricultural areas and to ask for reports or evidence from the undertakings liable for the levy ([50]). Offences against the AMA law are punishable by the district administrative authority (Bezirksverwaltungsbehörde) with a fine of up to EUR 3 630 ([51]). An attempt to circumvent the AMA rules is punishable as well. In case the fine is not collectible a period of imprisonment of up to 6 weeks can be imposed ([52]).

(117) The Austrian authorities stated that the purpose of the levy, its scope and the maximal level of the levy are established by the AMA Law ([53]). The concrete level of the levy is established by the management board of AMA (Verwaltungsrat der Agrarmarkt Austria). The management board establishes the concrete level of the levy based on the market situation of each product concerned, the development of sales, the income situation of domestic products in Austria and abroad and the need for and appropriateness of implementation of marketing measures ([54]).

(118) The management board of AMA is composed of 4 members representing the Chamber of Agriculture (Landwirtschaftskammer Österreich), the Federal Chamber of Labour (Bundesarbeitskammer), the Chamber of Economy (Wirtschaftskammer Österreich) and the Austrian Federation of Trade Unions (Österreichischer Gewerkschaftsbund) ([55]).

(119) In the opening decision, the Commission has checked the application of the *Pearle* jurisprudence to the case at hand. On 15 July 2004 the Court of Justice pointed out in its judgment in the *Pearle* case ([56]) that compulsory contributions levied by an intermediary body on all undertakings in a commercial sector can be regarded as not constituting State resources when the following four cumulative conditions are met:

— the measure in question is adopted by the professional organisation representing the undertakings and employees in a commercial sector and is not used as an instrument for implementing a policy adopted by the State,

— the objectives thus adopted are fully financed by contributions from the undertakings in the sector,

— the financing method and the percentage/amount of the contributions are adopted in the commercial sector's professional organisation by representatives of the employers and employees without State intervention,

— the contributions must be used to finance the measure without any possibility for the State to intervene.

([47]) Submission of 14 September 2012.
([48]) Ibid.
([49]) Article 21i of AMA law.
([50]) Article 21k of AMA law.
([51]) Article 21l of AMA law.
([52]) Article 21l(2) of AMA law.
([53]) Articles 21a(1), 21c and 21d respectively.
([54]) See footnote 47.
([55]) Article 11(1) of AMA Law.
([56]) Judgment of the Court of 15 July 2004 in Case C-345/02, *Pearle*, ECLI:EU:C:2004:448, paras 35-38.

(120) On the basis of the information available, the Commission considers that the scheme does not fulfil all these conditions.

(121) As regards the first condition, it has to be noted that the financing of the marketing measures is administrated not by a professional organisation representing the sector but by AMA Marketing, a public body established and controlled by the State (see recital 49 and Article 3 of the AMA Act).

(122) Concerning the third condition, the levy and the maximum amount of the contributions is imposed by means of law (i.e. by the AMA Act) and collected by a body controlled by the state and not by a commercial sector's professional organisation Moreover, pursuant to the AMA Act the levy is compulsory (see recital 53). These elements demonstrate the State intervention regarding the aid financing method.

(123) Hence, the Commission considers that the present case differs from the conditions under which the contributions analysed in the judgment of the Court of Justice in the *Pearle* case were considered not to constitute State resources.

(124) On 30 May 2013, in the *Doux Élevage* case, the Court of Justice answered a question referred for a preliminary ruling on the interpretation of the concept of state resources ([57]).

(125) In its judgment, the Court concluded that a national authority's decision extending, to all those working in the agricultural sector, an agreement which, within the framework of an interbranch organisation recognised by the national authority, introduces a contribution with a view to enabling the implementation of measures on communication, promotion, external relations, quality assurance, research and defending the interests of the sector concerned, and thus makes the duty to pay the contribution generally applicable, does not constitute State aid.

(126) In its judgment, the Court considered that the contributions in question came from private economic operators which carry out an activity on the markets concerned, which means that this mechanism did not involve any direct or indirect transfer of State resources. The funds created by the payments did not pass via the State budget or via another public entity and the State did not relinquish any resources in any form whatsoever (such as taxes, charges, contributions or other), which, under national legislation, should have been paid into the State budget.

(127) Unlike this case, the present case does not involve (voluntary) contributions collectively established by an interbranch organisation. As shown in recital 53 above, the Austrian agricultural and food industry undertakings pay compulsory levies established by the AMA Act. The levies are therefore not of a private nature but are mandated by the state through a legislative act.

(128) Furthermore, as opposed to the *Doux Élevage* case, AMA does not concern contributions introduced by private organisations. As shown above in recitals 49 to 54, the contributions are established by the state and administered by AMA, a public law body established by the AMA Act and controlled by the State. AMA Marketing, a wholly owned subsidiary of the AMA, administers the scheme.

(129) In the *Doux Élevage* case, the Court considered that the contributions at issue retained their private character throughout and the national authorities were not in fact allowed to use those resources mainly to support certain businesses. Rather, it was the interbranch organisations concerned which decided on the use of those resources, and those resources were consequently entirely dedicated to the fulfilment of objectives determined by those organisations. Also, the resources were not constantly subject to public monitoring and were not available to the State authorities.

(130) As opposed to the *Doux Élevage* case, in the present case the objectives pursued by AMA are not set by a private organisation deciding on the use of these resources, but in the legislative act governing the public body (i.e. the AMA Act, see recital 54).

(131) Therefore, the conditions of the *Doux Élevage* case for assuming the existence of private resources are not met.

([57]) Judgment of 30 May 2013 in Case C-677/11, *Doux Élevage SNC and Coopérative agricole GBP-ARREE* v *Ministère de l'Agriculture*, ECLI:EU:C:2013:348, paras 32, 35 and 38.

(132) For the above reasons, the Commission considers that the funding of the measures in question carried out by AMA is attributable to the State and that the funds thus constitute State resources.

6.1.2. SELECTIVE ADVANTAGE

(133) According to settled case-law of the Court of Justice, measures which, whatever their form, directly or indirectly favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are regarded as aid ([58]). In addition, measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the strict meaning of the word, are similar in character and have the same effect, are considered to constitute aid ([59]). The Court of Justice also pointed out that a measure adopted by the public authority and favouring certain undertakings or products does not lose the character of a gratuitous advantage by the fact that it is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned ([60]).

(134) The measure benefits companies active in the production, processing and marketing of agricultural products, including the food industry (see recital 46) by the means of advertising, support for quality products and technical support.

(135) In this respect, the Austrian authorities were invited to provide more information about the scope of beneficiaries as well as about the number of beneficiaries for each marketing measure. In their submission of 14 September 2012, the Austrian authorities replied that it is not possible to identify the beneficiaries of each single measure, since not only the producers and the retailers using the logos benefitted from the scheme, but also the producers not directly participating in the scheme and thus the sector as such. Austria argued that the measures increased the awareness of consumers in general so that even producers not participating in the scheme had to increase the quality of their products.

(136) Furthermore, in the opening decision, the Commission requested Austria to clarify to which extent the food industry benefits from the marketing measures. The Austrian authorities used the same argument as above (recital 135).

(137) According to the jurisprudence ([61]), a measure maintains its selective character even if it applies to an entire sector (but not to other sectors). The arguments of the Austrian authorities claiming that the measure is general in nature have to be rejected.

6.1.3. DISTORTION OF COMPETITION AND EFFECT ON TRADE

(138) According to the case-law of the Court of Justice, strengthening the competitive position of an undertaking through the granting of State aid generally distorts competition with other competing undertakings not having benefited from this aid ([62]). Aid for an undertaking that operates in a market open to intra-Union trade is liable to affect trade between Member States ([63]).

(139) There was a substantial intra-Union trade in agricultural products in the period 1995-2008. By way of example, in the year 2004 agricultural products in the EU worth some EUR 183 billion (imports) to some EUR 187 billion (exports) were subject to intra-Union trade, accounting for some 57 % of the total agricultural production of EUR 324 billion ([64]).

(140) Therefore, with a view to the substantial intra-Union trade in agricultural products in the relevant period, it can be considered that the measures object of the present decision distort or threaten to distort competition and affect trade between Member States. This is moreover confirmed by some of AMA's own statements in its annual reports of the relevant period (see recitals 84-90 above), which demonstrate AMA's understanding that the marketing activities were apt to promote domestic production in competition with producers from other Member States.

([58]) Judgment of the Court in Case C-280/00, *Altmark*, ECLI:EU:C:2003:415, para. 84.
([59]) Judgment of the Court in Case C-355/00, *Freskot AE* v *Elliniko Dimosio*, ECLI:EU:C:2003:298, para. 83.
([60]) Judgment of the Court of 22 March 1977 in Case 78/76, *Steinike & Weinlig*, ECLI:EU:C:1977:52, para. 22.
([61]) Judgment of the Court in Case C-75/97, *Belgium* v *Commission*, ECLI:EU:C:1999:311, para. 31.
([62]) Judgment of the Court in Case 730/79, *Philip Morris Holland BV* v *Commission*, ECLI:EU:C:1980:209, paras 11 and 12.
([63]) See, in particular, the judgment of the Court in Case 102/87, *French Republic* v *Commission*, ECLI:EU:C:1988:391.
([64]) Source: Eurostat.

(141) In the light of the foregoing, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the measures object of the present decision constitute State aid within the meaning of that Article.

6.2. *TEMPORAL SCOPE OF THE DECISION AND EXISTING AID*

(142) The non-notified AMA marketing measures under aid scheme NN 34/2000 and the AMA measures of the annulled Commission decision NN 34A/2000 were the subject of the 2012 opening decision.

(143) Taking into consideration that the AMA law and its implementing provisions have been modified several times, that many procedural steps have taken place and that the aid consists of numerous measures with different duration, the exact starting and final date for the implementation of the measures and thus the temporal scope of the decision have to be determined.

(144) According to the information provided by the Austrian authorities, the marketing measures have been in place since 1994, i.e. before 1 January 1995, the date when Austria joined the European Union. Nevertheless, the AMA measures were not communicated by the Austrian authorities to the Commission in accordance with Article 143 or 144 of the Act of Accession of the Republic of Austria (see recital 34) and therefore cannot be regarded as existing aid. Therefore, these measures should be considered as new aid not notified as of the date of accession on 1 January 1995, which therefore should be considered as the starting date for the granting of the aid.

(145) Further, as described in recital 36, the Austrian authorities claim that by letter of 23 June 1997 they provided a completed notification form regarding the AMA marketing measures to which the Commission did not react within the prescribed 2-month period ([65]). In their view, this was a valid notification and, following the 2-month period, the aid should be considered as approved and thus be qualified as existing aid. The same line of argument is used in a legal opinion attached to the submission of information from 25 February 2015.

(146) The Commission disagrees with this argument. Since the measures were implemented already before 1997, the above letter cannot be considered as a valid notification of the measures complying with Article 108(3) TFEU and thus the aid does not qualify as an existing aid. According to the Lorenz judgment, aid would only be considered existing aid if it had not yet been implemented when the measure was notified to the Commission; in case of prior non-implementation, aid could only be considered existing aid if the Member State, following a 2-month period, had given prior notice to the Commission. However, the Austrian authorities have implemented the measure before formal notification and have not given the Commission any prior notice. Therefore, the above letter of 23 June 1997 does not transform the present measure into an existing aid in the meaning of Article 108(1) TFEU.

(147) In the light of the above information and considerations, the Commission concludes regarding the temporal scope of the decision that the start date of all AMA marketing measures is 1 January 1995 (see recital 34 and 144).

(148) Regarding the end date of implementation, by letter of 14 September 2012 the Austrian authorities confirmed that the measures notified as aid scheme N 239/2004 relate to one part of the AMA measures investigated under case number NN 34/2000 (after a substantial modification of the measures in order to comply with the applicable rules (see recital 39).

(149) In the same letter the Austrian authorities confirmed that, in the period after the year 2002, AMA Marketing did not implement aid measures other than those covered by NN 34A/2000 and N 239/2004 (and their subsequent prolongations ([66])).

([65]) According to point (b)(iii) of Article 1 in conjunction with Article 4(6) 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 (OJ L 83, 27.3.1999, p. 1), when the Commission has not taken a decision within 2 months following the notification, the Member State concerned can implement the measure, after giving the Commission prior notice thereof, unless the Commission takes a decision within a period of 15 working days following this notice. Regulation (EC) No 659/1999 entered into force in 1999 and is therefore not applicable to the letter in question which dates back in 1997. Nevertheless, the above provisions of Regulation (EC) No 659/1999 were conceived as codification of the so called Lorenz-jurisprudence (judgment of the Court in Case 120/73, *Lorenz*, ECLI:EU:C:1973:152, paras 4 to 6), pursuant to which an aid is deemed approved and qualified as an existing aid after the passage of 2 months following notification and prior notice without reaction from the Commission.

([66]) N 175/2006, N 589/2008 and N 496/2009.

(150) From the information provided by the Austrian authorities, it results that the approved aid scheme N 570/1998 does not relate to the AMA marketing measures which are the object of this decision.

(151) Concerning the AMA bio and quality labels the end date for the granting of aid was 31 December 2008, except for the bio label advertising measures which ended on 31 December 2006 (see recitals 15 and 19).

(152) The other AMA marketing measures applied until 20 October 2004, the date on which decision N 239/2004 was approved (see Chapter 1.4 and recital 39 above). Therefore the scope of the present decision concerns the period 1 January 1995 to 31 December 2008 for all measures except for the bio label advertising measures where the relevant period is 1 January 1995 to 31 December 2006 and the other marketing measures where the relevant period is 1 January 1995 to 20 October 2004.

7. **UNLAWFULNESS OF THE AID**

(153) According to Article 108(3) TFEU the Commission must be informed of any plans to grant or alter aid. According to Article 1(f) of Regulation (EC) No 659/1999, new aid put into effect in contravention of Article 108(3) TFEU is unlawful. The obligation to notify State aid is set out in Article 2 of that Regulation.

(154) Austria did not inform the Commission, pursuant to Article 108(3) TFEU, of the provisions introducing the measures and the levy financing it before putting them into effect.

(155) As shown above in Chapter 6, the measures implemented by Austria constitute State aid. As stated in recital 34 the marketing measures have been in place since 1994, i.e. before 1 January 1995, the date when Austria joined the European Union. Nevertheless, the AMA measures were never communicated by the Austrian authorities to the Commission in accordance with Article 143 or 144 of the Act of Accession of the Republic of Austria. Therefore the aid constituted new aid at the time of accession and the Austrian authorities should have notified it. In the absence of a proper notification the aid is unlawful under the respective provisions of the TFEU (see in this respect also recital 144).

(156) Furthermore, as described in recitals 9, 36 and 148, neither the letter of 23 June 1997 nor the letter of 19 December 2002 can be considered as a valid notification of this new aid.

8. **ASSESSMENT OF THE COMPATIBILITY OF THE AID**

8.1. *RULES REGARDING THE ORIGIN OF THE PRODUCTS*

(157) The General Court annulled the Commission decision NN 34A/2000 on the ground that a contradiction existed within the AMA Act of 1992. In its paragraph 21a relating to the purpose of the contribution a reference was made to national products. More precisely, point 1 referred to the objective of 'promoting and guaranteeing the sale of national agricultural and forestry products and their derivative products' ([67]). Point 2 referred to 'promoting other marketing measures (in particular the supply of services and staff costs connected therewith)'.

(158) The General Court stated that the restriction to national products in point 1 of paragraph 21a of the AMA Act of 1992 raised doubts as to the compatibility of the aid in question which should have led the Commission to initiate a formal investigation procedure ([68]).

(159) The issue of the national origin of the product is therefore an element which requires a detailed analysis.

(160) The complainants maintained that the labels and the subsidised measures were available only for Austrian producers. They claimed in this respect that under paragraph 21a(1) of the AMA Act of 1992 only Austrian products would benefit from the subsidised advertising measures.

([67]) *Förderung und Sicherung des Absatzes von inlandischen land- und forstwirtschaftlichen Erzeugnissen.*
([68]) Case T-375/04 *Scheucher-Fleisch GmbH and Others* v *Commission of the European Communities,* ECLI:EU:T:2009:445, paras 86 and 87.

(161) In this regard, the Austrian authorities have clarified by letter of 19 December 2002 that the AMA quality and AMA bio labels were available for all products regardless of their origin. With letter of 5 March 2004 the Austrian authorities forwarded the new internal rules, issued by AMA Marketing and authorised by the Austrian Federal Ministry of Agriculture, Forestry, Environmental Protection and Hydrological resources (BMLFUW), that govern the granting of these labels. According to these rules the labels could be granted to all products, whether Austrian or from other Member States, that fulfil the quality requirements. Furthermore, the Austrian authorities undertook to adapt the AMA Act of 1992 which was amended by law with effect from July 2007. Since that date, paragraph 21a(1) of the AMA Act no longer contained a reference to 'national' products ([69]).

(162) Therefore, while the period after 30 June 2007 raises no particular problems regarding the origin of the products and the beneficiaries of these labels or measures, a more detailed analysis is necessary for the period before that date. Due to the specificities of the different measures comprised in this scheme and to the different importance of the reference to the national origin, a separate analysis for each measure is necessary.

(163) As regards the quality label, as of January 2000, the norms implementing the AMA Act (Regulativ zur Verwendung des AMA-Gütesiegels für Lebensmittel) did not contain a reference to national products but covered all products regardless of their provenance. Article 23 on the declaration of origin explicitly refers to a region (e.g. Tirol or Bavaria) or a country (e.g. Austria, France) as the origin of the product, thereby indicating that any region/country could be named as the origin of the products. The claim that the quality label was available only to national (i.e. Austrian) products must be dismissed for the period after this date.

(164) Furthermore, all provisions regarding the origin of the product contain the following definition of 'native/national' (heimisch): 'In these guidelines the term "native/national" refers to the region specified as the origin of the product' ('*Wird in diesen Richtlinien der Begriff "heimisch" verwendet, ist darunter die im Herkunftsanteil des Zeichens angeführte Region zu verstehen.*') ([70]) Again, this indicates that the reference to 'national products' used in the implementing acts does not refer only to Austrian products but any region could be used as origin.

(165) A bio label does *per se* refer primarily to the special quality requirements of a product. The respective labels under the scheme had the reference to BIO as their main message and were open to all products, irrespective of their origin. The latter could only be mentioned as a subsidiary message.

(166) As regards the aid for quality products, this was awarded for the development of quality assurance schemes, quality controls and controls for organic products (recital 98). Such measures are also per se not limited to products of a particular national origin.

(167) Aid for generic advertising does not raise issues regarding the origin of those products, as the campaigns advertised or referred to a product in a purely generic matter making no reference whatsoever to origin.

8.2. *APPLICABLE RULES*

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

(169) According to the Commission notice on the determination of the rules applicable to the assessment of unlawful aid ([71]), any unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999 is to be appraised in accordance with the rules applicable at the time the aid was granted.

(170) Between 1 January 2000 and 31 December 2006 the 2000-2006 Guidelines applied. With effect from 1 January 2007, the Community guidelines for State aid in the agricultural and forestry sector 2007-2013 ([72]) (hereafter: the 2007-2013 Guidelines) were applicable according to their point 194.

([69]) BGBl. Teil I, Nr. 55/2007.
([70]) This reference is contained in all articles on the origin of the products of the rules governing the fresh meat logo since 1995.
([71]) OJ C 119, 22.5.2002, p. 22.
([72]) OJ C 319, 27.12.2006, p. 1.

(171) In this respect it is to be noted that according to point 196 of the 2007-2013 Guidelines, Member States had a transitional period until 31 December 2007 to bring existing aid schemes in line with the provisions of the Guidelines. The definition of existing aid is stipulated in Article 1(b) of Regulation (EC) No 659/1999. According to Article 1(b)(ii), which applies to the case at hand, existing aid shall mean authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council.

(172) Aid scheme NN 34A/2000 was indeed approved by the Commission on 30 June 2004. However, in September 2004 the decision was challenged by the complainants before the Court of First Instance (now General Court) which annulled the Commission decision by judgment of 18 November 2009. This judgment was appealed by Austria and the Court of Justice dismissed the appeal and upheld the judgment of the Court of First Instance on 27 October 2011.

(173) The Austrian authorities claim that the scheme at hand constituted existing aid and had to be assessed under the new 2007-2013 Guidelines only as of 1 January 2008. In its submission of 14 September 2012, Austria also refers to the principle of legitimate expectations and argues that the Commission decision was only annulled in 2011.

(174) According to the jurisprudence ([73]) regarding legitimate expectations, *'where an action for annulment has been brought, the recipient is not entitled to harbour such assurance so long as the Community court has not delivered a definitive ruling'*. Therefore, legitimate expectation cannot be invoked in the case at hand.

(175) As a consequence, the aid scheme NN 34A/2000 could not be qualified as existing aid based on the Commission's decision of 30 June 2004 and therefore the transitional period of point 196 of the 2007-2013 Guidelines does not apply. The aid scheme should have been brought in line with the 2007-2013 Guidelines as of 1 January 2007.

8.3. *AID FOR ADVERTISING MEASURES*

(176) As regards advertising measures, the compatibility of the aid granted in the period 1 January 1995 to 31 December 2001 must be assessed in the light of the Commission communication concerning State involvement in the promotion of agricultural and fisheries products ([74]) (hereafter: the 1986 Communication) and the Framework for national aid for the advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products ([75]) (hereafter: the 1987 Advertising Framework).

(177) Aid granted as from 1 January 2002 is to be assessed in the light of the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products (hereafter: the 2001 Advertising Guidelines) ([76]).

(178) When assessing State aid for the advertising of agricultural products granted after 1 January 2007 the Commission applies Section VI.D of the 2007-2013 Guidelines.

8.3.1. SCOPE OF ADVERTISING

(179) The 1987 Advertising Framework applies to advertising, defined as any operation using the media (such as press, radio, TV or posters) which is designed to induce consumers to buy the relevant product. It excludes from its scope *promotion operations in the broader sense*, such as the dissemination to the general public of scientific knowledge, the organisation of trade fairs or exhibitions, participation in these and similar public relations exercises, including surveys and market research ([77]).

([73]) C-199/06 CELF/SIDE, ECLI:EU:C:2008:79, para. 68.
([74]) OJ C 272, 28.10.1986, p. 3.
([75]) OJ C 302, 12.11.1987, p. 6.
([76]) OJ C 252, 12.9.2001, p. 5.
([77]) Point 1.1 of the 1987 Advertising Framework.

(180) The scope of the 2001 Advertising Guidelines is in principle the same as the one of the 1987 Advertising Framework described above, however with some differences. The first substantive change concerns the fact that economic operators were added as potential addressees of advertising ([78]). The second change concerns the fact that the definition of advertising was enlarged to encompass advertising activities (such as the distribution of material for that purpose) aimed at consumers at the point of sale ([79]).

(181) The scope of Section IV.D of the 2007-2013 Guidelines is identical with the scope of the 2001 Advertising Guidelines ([80]).

(182) Both the 1987 Advertising Framework and the 2001 Advertising Guidelines apply to advertising activities but not to promotion activities. Aid for the latter category is classified as technical aid for which specific rules apply.

(183) In the present case aid was granted towards advertising campaigns using different media and other means of publicity. The advertising campaigns concerned

— the bio and quality labels,

— generic products, and

— advertising outside Austria.

(184) From the information submitted by the Austrian authorities, it can be concluded that the aim of the measures was to induce consumers to buy the relevant product (see recitals 75 and 94). Therefore, the above measures fall under the scope of advertising and have to be analysed in the light of the applicable rules.

8.3.2. ADVERTISING AID IN THE PERIOD 1 JANUARY 1995 TO 31 DECEMBER 2001

Conditions for compatibility

(185) The compatibility of the aid granted prior to 1 January 2002 must be assessed in the light of the 1986 Communication and the 1987 Advertising Framework (recital 176).

General conditions

(186) Point 2.2 of the 1987 Advertising Framework prohibits aid for advertising related to particular firms.

(187) Point 3 stipulates the condition that the advertising should concern at least one of the following categories (**positive criteria**):

— 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.

(188) Finally, according to point 4 of the 1987 Advertising Framework, aid granted under the abovementioned framework must not exceed the amount which the sector itself has committed to a given advertising campaign, which means that a maximum aid intensity of 100 % may be allowed but only if the trade has contributed at

([78]) Point 5(b) of the 2001 Advertising Guidelines.
([79]) Point 7 of the 2001 Advertising Guidelines.
([80]) Point 152(a) of the 2007-2013 Guidelines.

least 50 % of the cost, either through voluntary contributions or through the collection of parafiscal levies or compulsory contributions. Therefore, a maximum aid intensity of 100 % is allowed.

Infringement of Article 30 of the EEC

(189) Both point 2 of the 1986 Communication and point 2.1 of the 1987 Advertising Framework ([81]) stress the fact that aid for advertising cannot be considered compatible with the common market if the promotion material infringes Article 30 of the EEC Treaty (now Article 34 TFEU).

(190) According to point 2.1 of the 1986 Communication, generic promotional campaigns making no reference to the origin of the product, export promotional campaigns organised in other Member States as well as campaigns on the home market promoting specific qualities or varieties of products which make no specific references to the national origin of the product other than which may be evident from the references made to the qualities or varieties concerned or to the normal designation of the product, do not infringe Article 34 TFEU.

(191) By contrast, according to point 2.2 of the 1986 Communication the following campaigns clearly infringe Article 30 of the EEC Treaty (now Article 34 TFEU): promotional campaigns which advise consumers to buy national products solely because of their national origin or promotional campaigns intended to discourage the purchase of products from other Member States or disparage those products in the eyes of the consumer (negative promotion).

(192) Further, point 2.3 of the 1986 Communication stipulates that promotional campaigns on a Member State's home market, because of the references made to the national origin of the products, and unless certain restraints are observed, may be open to objection under Article 30 of the EEC Treaty (now Article 34 TFEU).

(193) Pursuant to point 2.3.1 of the 1986 Communication, promotional campaigns drawing attention to the varieties or qualities of products produced within a Member State are not in practice limited to national or regional specialties and frequently draw attention to the particular qualities of products produced within a Member State and the national origin of the products, even though those products and their qualities are similar to products produced elsewhere. If undue emphasis is placed on the national origin of the product in such promotional campaigns, there is a danger of breach of Article 30 of the EEC Treaty (now Article 34 TFEU).

(194) The 1986 Communication therefore requested Member States to ensure particularly that the following guidelines were strictly respected:

— identification of the producing country by word or symbol might be made providing that a reasonable balance between references, on the one hand, to the qualities and varieties of the product and, on the other hand, its national origin is kept,

— the references to national origin should be subsidiary to the main message conveyed to consumers by the campaign and not constitute the principal reason why consumers are being advised to buy the product,

— qualities of the products which it was permissible to mention included taste, aroma, freshness, maturity, value for money, nutritional value, varieties available, usefulness (recipes, etc.). Conversely, to be avoided were superlatives such as 'the best', 'the tastiest', 'the finest' and expressions such as 'the real thing' or promotional campaigns which, because of the mentioning of the national origin, result in the product promoted being compared with the products of other Member States. References to quality control should only be made where the product was subjected to a genuine and objective system of control of its qualities.

Assessment

(195) In a legal opinion attached to the submission of information from 25 February 2015 the Austrian authorities claim that the infringement of Article 30 of the EEC Treaty (now Article 34 TFEU) needs to be assessed in

([81]) It should be noted that point 2.1.1 (with footnote 1) of the Advertising Framework makes direct reference to the Commission's guidelines in the 1986 Communication.

a 'historical perspective' and that in the period 1995 to 2002 there was no Court case in which the text and the graphic message of a label was deemed to infringe Article 30 of the EEC Treaty. In the Commission's view this argument misses the point. As shown above, both the 1986 Communication ([82]) and the 1987 Advertising Framework contained express and detailed guidelines for Member States on how to design their measures in order to avoid breaches of Article 30 of the EEC Treaty.

(196) Based on the information available to the Commission for the period before 2002, it was not possible to assess the compatibility of the advertising measures with the above rules at the time of the opening decision. Therefore, the Austrian authorities were invited to provide the necessary information in respect of the above conditions.

(197) The reply provided by the Austrian authorities on 14 September 2012 did not contain sufficient information to allow a compatibility assessment (the Austrian authorities just referred to the annual reports for the years 1995 to 2001). A further request for information on these points was therefore sent on 19 February 2014 and Austria provided a reply on 5 May 2014.

(198) In the latter, the Austrian authorities stated that the advertising campaigns concerned surplus agricultural products and/or the advertising of high quality products. Therefore the **positive criteria** set out in point 3 of the 1987 Advertising Framework were complied with.

(199) According to the information provided by the Austrian authorities, the advertising did not make any reference to particular firms.

(200) As regards the **maximum aid intensity**, the levies from the sector constituted more than 50 % of the aid amount (see also recitals 43 and 56). Therefore, the criterion of point 4 of the 1987 Advertising Framework regarding the aid intensity is fulfilled.

(201) In the opening decision the Commission expressed doubts as regards a potential **infringement of Article 30 of the EEC Treaty** (now Article 34 TFEU). In the preliminary view of the Commission the reference to the national origin in the quality label did not appear to be subsidiary (see recital 65). Moreover, the Commission noted that in many advertising materials, the reference to the origin of the product was not limited to the quality label but appeared also elsewhere in the advertisement (see recital 83).

(202) Therefore, in the opening decision, the Austrian authorities were asked to describe the appearance of the quality and the bio labels in the period 1995-2001 and to provide representative examples of promotion material in which the labels were used.

(203) On 14 September 2012, the Austrian authorities replied that the annual reports on State aid provided for the years 1995-2004 already contained this information. By letter of 19 February 2014, the Commission replied that this information was not sufficient for a compatibility analysis and asked for a detailed account (i.e. notification sheets) on the basis of the applicable rules at the time of the measure. This assessment was provided with the reply of 5 May 2014.

(204) The specific compatibility criteria for the different types of advertising are analysed below.

Aid for generic advertising

(205) As regards the reference to particular firms in some advertising campaigns (recital 90, the Commission notes that according to point 2.2 of the 1987 Advertising Framework, aid for advertising related to particular firms is prohibited.

([82]) As can be seen from the text of the 1986 Communication, it sought to provide guidance that should ensure that promotion campaigns by Member States stay within the limits permitted by the case-law of the Court of Justice, in particular in Case 222/82 *Apple & Pear Development Council* v *K.J. Lewis Ltd and others*, EU:C:1983:370.

(206) In their submission of 14 September 2012, the Austrian authorities argued that the firms mentioned had contributed to some of the costs of the campaign (*Druck und Werbeeinschaltung*). Nevertheless, such campaigns referring to particular firms cannot be cleared under the State aid rules (point 2.2 of the 1987 Advertising Framework). The fact that the firms contributed partially to the costs related to the campaign does not change this assessment.

(207) From the available information it appears that **some of the generic advertising campaigns** explicitly referred to the origin of the product (i.e. Austria) (see the examples provided in recitals 84 and 90).

(208) Therefore, the measures did not comply with points 2.1 ([83]), 2.2 of the 1987 Advertising Framework and infringed Article 30 of the EEC Treaty (now Article 34 TFEU). Therefore, the Commission considers the aid for advertising measures in the period 1 January 1995 to 31 December 1999 referring to the origin of the products or to particular companies to be incompatible with the common market ([84]).

(209) As regards the period 1 January 2000 to 31 December 2001 the advertising campaigns referred only to the specific qualities or varieties of products with no specific references to their national origin.

(210) Therefore, for this latter period the campaigns did not infringe Article 30 of the EEC Treaty and thus complied with the 1987 Advertising Framework. Therefore, the Commission considers them to be compatible with the common market.

Aid for the quality label

(211) In their reply of 14 September 2012, the Austrian authorities stated that for the **quality** label, the same labels as the ones approved in the Commission's decision in case N 589/2008 were used. Therefore, the Austrian authorities concluded that the reference to the national origin had a subordinated role.

(212) The Commission does not agree with the comments by the Austrian authorities. As shown above (recital 65), another logo was used for the quality label in the period **1995 to 1999**. In this logo the reference to the origin is not subsidiary to the quality message of the logo. Both the visual message (Austrian flag) and the text used indicate Austria as the main message.

(213) Therefore, point 2.3.1 of the 1986 Communication which required that references to national origin should be subsidiary to the main message conveyed to consumers by the campaign and not constitute the principal reason why consumers are being advised to buy the product was not complied with. Therefore, the Commission considers the aid for the quality label for the period 1 January 1995 to 31 December 1999 to be incompatible with the common market.

(214) As regards the period 1 January 2000 to 31 December 2001, the Commission considers that the new logos, which were the same as those assessed in the Commission's decision in case N 589/2008, comply with the conditions of the 1987 Advertising Framework and thus considers the related aid compatible with the common market.

Aid for the bio label

(215) In the advertising measures for the bio logo, as shown above at recital 65, the same logos were used as in the period after 2002.

(216) As this type of advertising draws the attention to the varieties or qualities of products produced within a Member State, they fall under point 2.3.1 of the 1986 Communication which required that no undue emphasis had to be placed on the national origin of the product.

([83]) With reference to the 1986 Communication.
([84]) See also recital 65 above.

(217) One of two versions of the logo did not make any reference to the origin of the products. The other one indicated the origin of the product as a secondary message. The former did not raise any problems as regards a potential breach of Article 30 of the EEC Treaty (now Article 34 TFEU). As for the latter, the conditions of point 2.3.1 of the 1986 Communication were met because:

— the logo kept a reasonable balance between a reference, on the one hand, to the qualities of the product (i.e. bio) and, on the other hand, to the identification of the producing country by word or symbol,

— the reference to the national origin was subsidiary to the main message conveyed to consumers and did not constitute the principal reason why consumers were being advised to buy the product,

— the qualities of the products referred to objective qualities of the product and no superlatives resulting in the product promoted being compared with the products of other Member States were used,

— references to quality control were made where the product was subjected to a genuine and objective system of control of its qualities through AMA.

(218) Therefore, the advertising aid for the bio logo for the period 1 January 1995 to 31 December 2001 complied with the conditions of the 1986 Communication. Therefore, the Commission considers that aid to be compatible with the common market.

Advertising outside Austria

(219) The advertising campaigns organised outside Austria made no specific references to the national origin of the product other than the one which may be evident from the references made to the qualities or varieties concerned or to the normal designation of the product. These campaigns were thus in line with point 2.1 of the 1986 Communication and did not infringe Article 30 of the EEC Treaty (now Article 34 TFEU).

(220) Therefore, the aid for advertising outside Austria for the period 1 January 1995 to 31 December 2001 complied with the conditions of the 1986 Communication. Therefore, the Commission considers that aid to be compatible with the common market.

8.3.3. ADVERTISING AID IN THE PERIOD 1 JANUARY 2002 TO 31 DECEMBER 2006: QUALITY AND BIO LABELS

(221) For the period 1 January 2002 to 31 December 2006 aid for advertising activities had to comply with the conditions set out in the 2000-2006 Guidelines. According to point 18 of the 2000-2006 Guidelines, measures for the promotion and advertising of agricultural products had to be assessed in accordance with the 1987 Advertising Framework.

(222) From 1 January 2002 onwards the 2001 Advertising Guidelines were applicable and replaced the 1986 Communication and the 1987 Advertising Framework (points 69, 75 of the 2001 Advertising Guidelines). The Commission will therefore base its assessment for the period 1 January 2002 to 31 December 2006 on the 2001 Advertising Guidelines.

(223) According to point 12 of the 2001 Advertising Guidelines, aid granted for the advertising of agricultural and other products, in order to be compatible with the common market, should not interfere with trade to an extent contrary to the common interest (negative criteria), and should facilitate the development of certain economic activities or of certain economic areas (positive criteria).

Negative criteria

(224) Point 18 of the 2001 Advertising Guidelines laid down that no aid could be granted for advertising campaigns that infringed Article 28 EC (now Article 34 TFEU) prohibiting quantitative restrictions on imports and all measures having equivalent effect between Member States.

(225) The aid could not be granted for advertising relating directly to the products of one or more particular firm or firms. If the conduct of publicly financed advertising activities was entrusted to private firms such firms had to be chosen on market principles (points 29 and 30 of the 2001 Advertising Guidelines).

(226) Furthermore, campaigns could not contravene secondary Community legislation and in particular had to comply with the provisions of Directive 2000/13/EC (points 25 to 28 of the 2001 Advertising Guidelines).

Positive criteria

(227) Points 31 and 32 of the 2001 Advertising Guidelines stated that, in order to qualify for a derogation under Article 87(3)(c) EC (now Article 107(3)(c) TFEU), advertising had to concern surplus products or underexploited species, new products or replacement products not yet in surplus, high quality products, the development of certain regions or the development of SMEs.

(228) Chapter 4 of the 2001 Advertising Guidelines detailed the application of the above mentioned positive criteria to particular types of advertising, namely to aid for advertising where origin is part of the message (section 4.1) and advertising aid for quality products (section 4.2).

Advertising where origin is a part of the message

(229) According to point 23 of the 2001 Advertising Guidelines, identification of the producing country by word or by symbol could be made providing that a reasonable balance was struck between references to, on the one hand, qualities and varieties of the product and, on the other hand, its national origin. The references to national origin had to be subsidiary to the main message conveyed to consumers and could not constitute the principal reason why consumers were being advised to buy the product. Advertising which mentioned the (regional) origin of the product as a subsidiary message was deemed not to infringe Article 28 EC (now Article 34 TFEU). In order to assess whether the origin was indeed a subsidiary message, the Commission would take into account the overall importance of text and/or symbol, including pictures and general presentation, referring to origin and the importance of text and/or symbol referring to the unique selling point of the advertisement, i.e. the part of the advertising message which does not focus on origin (points 40 and 41 of the 2001 Advertising Guidelines).

Advertising for quality products

(230) When aid was granted towards products meeting special quality requirements it had to be open to all products produced in the Community irrespective of their origin. Member States were also required to recognise the results of comparable controls carried out in other Member States (point 49 of the 2001 Advertising Guidelines).

Advertising for products of organic farming, in particular

(231) According to point 55 of the 2001 Advertising Guidelines, aid could only be authorised when the products bearing indications referring to organic farming methods satisfied the requirements of Regulation (EEC) No 2092/91. All the producers and processors of products of organic farming had to be subject to the system of controls laid down in the Regulation.

Assessment

(232) In applying the above provisions to the advertising measures for the quality and bio label in the period 1 January 2002 to 31 December 2006 the Commission comes to the following conclusions:

(233) The quality label and one of the two versions of the bio label (see recital 64) contained a reference to the origin of the product, but this message may be considered secondary to the main message concerning the (organic) quality of the product. The reference to the origin of the product had a subordinate position both in the graphic message (background) and in the text of the logo.

(234) Regarding the design of the labels the Commission notices that the central space of the labels was occupied by the field in which the text 'AMA Gütesiegel' or 'BIO' dominated and the origin of the product was indicated in considerably smaller letters. The side fields were presented in national colours (e.g. red and white for Austria) without any additional symbols identifying the production country. The central field not only occupied the visually dominant space in the labels but constituted ca. 65 % of the total width of the label (see recital 64). The Austrian authorities have further specified that in all advertising relating to both labels the product quality was the main message and the origin of the product, where mentioned, was only a secondary message (see recital 79).

(235) According to the Austrian authorities, the bio label was only granted to organic products satisfying the criteria laid down in Regulation (EEC) No 2092/91 (see recital 69).

(236) The Austrian authorities have given assurances that the provisions of Directive 2000/13/EC were complied with in the subsidised advertising (see recital 68).

(237) The advertising did not relate to the products of one or more particular firm or firms. The Austrian authorities have specified that in advertising at a point of sale no named firms or products were advertised and that the owner of the point of sale did not benefit from the aid (see recital 78).

(238) The Austrian authorities have specified that all advertising activities funded by AMA Marketing were carried out by private firms selected by means of a public tender (see recital 52).

(239) Further, according to the Austrian authorities, the use of the quality label was open to all products produced in the Union if they met the special requirements for the use of the label. These special requirements either concerned product quality or were limited to ensuring the indicated geographical origin of the product. In any case the special requirements could be fulfilled irrespective of the geographical origin of the product (see recital 161).

(240) In the opening decision the Commission pointed out that it did not have information regarding the question whether equivalent controls carried out in other Member States were recognised. In their submission of 14 September 2012, the Austrian authorities confirmed that such controls were recognised and provided supporting evidence for this.

(241) Although the Austrian authorities confirmed that as from 2002 the quality and the bio label were open to all products regardless of their origin, in the opening decision the Commission expressed doubts since the reference to national products in the main legal basis for the measures, the AMA Act, was abolished only in 2007 (see recital 161).

(242) In their submissions, the Austrian authorities provided the new internal rules according to which the labels were open to all products as well as data showing that a number of non-Austrian products had indeed obtained the labels after 2001. They also confirmed again that since 2002 the rules were applied to all products irrespective of their origin.

(243) In the opening decision, the Commission noted that it was not clear whether the new AMA internal rules had been put into effect already as from 26 September 2002 or whether there was a transitional period after 26 September 2002 during which aid continued to be granted according to the old rules. In their submission of 14 September 2012, the Austrian authorities declared that there was no such transitional period.

(244) In recital 175 of the opening decision, the Commission stated that it did not have enough information to assess whether the State aid rules are applicable to the co-financed bio-label promotion measures mentioned in recital 80 above. To that end the Austrian authorities were invited to provide more information on the State aid clearance of the measures as well as about the duration of the programming period. In their submission of 14 September 2012, the Austrian authorities indicated that the bio-label promotion measures were part of the Austrian co-financed information and promotion programme for bio products.

(245) In their reply of 14 September 2012 the Austrian authorities also stated the following: In the period 2002-2008 (20 September 2002-15 September 2005) a co-financed information and promotion programme for organic products was run. This programme had been approved by Commission Decision C (2002) 3116 of 22 August 2002 ([85]). Furthermore, Commission Decision C (2007) 3299 of 10 July 2007 approved another 3-year programme for the bio label (1 October 2007-30 September 2010) ([86]).

(246) For the reasons stated above the aid for advertising measures carried out in the period 1 January 2002 to 31 December 2006 complied with the 2001 Advertising Guidelines and thus the 2000-2006 Guidelines. Therefore, the Commission considers that this aid was compatible with the common market.

8.3.4. ADVERTISING CAMPAIGNS OUTSIDE AUSTRIA AND GENERIC ADVERTISING IN AUSTRIA, 2002-2004 ([87])

(247) Advertising campaigns could be authorised if they were organised directly or indirectly by one Member State on the market of another Member State or on the home market of the supporting Member State and advertise the product in a purely generic manner making no reference whatsoever to its national origin (point 19(a)-(b) of the 2001 Advertising Guidelines).

(248) According to the 2001 Advertising Guidelines the Commission took a favourable view of advertising campaigns that were undertaken in order to introduce consumers to the agricultural and other products of a particular Member State or region. The primary focus of such campaigns could be the origin of the product provided the campaign was undertaken outside the Member State or region in which the agricultural and other products were produced. The campaigns had to be limited to presenting the objective characteristics of the products concerned and should in principle not include subjective claims about the quality of the products (points 35-39 of the 2001 Advertising Guidelines).

(249) On the basis of the information available at the time of the opening decision for the period 2002-2004 regarding generic advertising and advertising outside Austria (see sections 2.7.1.2 and 2.7.1.3 of the opening decision) it was not possible to assess the compatibility of the measures with the conditions set out in points 19(b), 29, 30 and 39 of the 2001 Advertising Guidelines.

(250) Therefore, in the opening decision, the Austrian authorities were invited to provide the necessary information in respect of the above provisions.

Positive criteria

(251) Advertising campaigns outside the Member State and generic advertising within the Member State had to comply with the positive criteria of the 2001 Advertising Guidelines (see recitals 227 and 228).

(252) In addition, point 47 of the 2001 Advertising Guidelines provided that for advertising of products meeting particular quality requirements such products should meet standards or specifications which were clearly higher or more specific than those which were laid down in the relevant Community or national legislation.

(253) Point 60 of the 2001 Advertising Guidelines provided that in the case of aid for advertising, the rate of direct aid should, as a general rule, not exceed 50 % and undertakings from the sector had to contribute at least 50 % of the cost, where the direct aid came from a general purpose government budget. The sector contribution could also come from parafiscal levies or compulsory contributions.

([85]) The total budget of the measure was EUR 4 165 399 and was co-financed from EU funds at a share of EUR 2 082 699 and from national means amounting to EUR 709 721,78. The rest was financed from the AMA levy.

([86]) The total budget was EUR 2 659 974. In the years 2007 and 2008 the EU part amounted to EUR 550 047 and the national part amounted to EUR 142 967.

([87]) The period after 2004 is covered by decision N 239/2004. See recital 39 above.

(254) Regarding generic advertising and advertising outside Austria, on the basis of the information available to the Commission at the time of the opening decision for the period 2002-2004 it was not possible to assess the compatibility of the measures with the above rules. Therefore, the Austrian authorities were invited to provide the necessary information in respect of the condition stipulated in point 32 of the 2001 Advertising Guidelines (recital 174 of the opening decision).

(255) In the reply of 14 September 2012 Austria referred to its submission of 13 December 2002. This submission, however, only contains concrete examples and the national legal basis for the measures. Therefore, in its request for information of 19 February 2014 the Commission asked the Austrian authorities to complete the relevant notification forms and to submit them to the Commission. In their reply of 30 April 2014, the Austrian authorities submitted the requested notification forms. However, the information filled in the forms only referred to general descriptions of the conditions of the scheme and was not sufficient for the proper assessment of the measures.

(256) In its request for information of 17 December 2014, the Commission asked for additional information on this measure. In its reply of 25 February 2015, Austria confirmed that:

(a) the advertising campaigns advertised the products in a purely generic manner making no reference whatsoever to their national origin (point 19(a)-(b) of the 2001 Advertising guidelines);

(b) the aid was not granted for advertising relating directly to the products of one or more particular firm or firms (point 29 of the 2001 Advertising Guidelines);

(c) the private firms entrusted with the public financing of advertising activities were chosen on market principles (point 30 of the 2001 Advertising Guidelines);

(d) the campaigns were limited to present the objective characteristics of the products concerned and did not include subjective claims about the quality of the products (points 35-39 of the 2001 Advertising Guidelines);

(e) the advertising in question concerned the promotion of high-quality products (points 31 and 32 of the 2001 Advertising Guidelines). These standards or specifications were clearly higher or more specific than those which are laid down in the relevant Community or national legislation.

(257) For the reasons stated above the aid for advertising campaigns outside Austria and generic advertising in Austria carried out in the period 2002 to 2004 complied with the 2001 Advertising Guidelines and thus the 2000-2006 Guidelines. Therefore, the Commission considers this aid to be compatible with the common market.

8.3.5. ADVERTISING AID IN THE PERIOD 2007-2008

(258) When assessing State aid for advertising of agricultural products granted after 1 January 2007 the Commission applies Section VI.D of the 2007-2013 Guidelines.

Quality advertising

(259) At the stage of the opening decision, the Commission did not have sufficient information to assess whether these measures were in line with the 2007-2013 Guidelines. In this respect the Commission expressed certain doubts regarding the fulfilment of the conditions which differed from the requirements of the 2000-2006 Guidelines.

(260) In particular, the Commission drew the attention of the Austrian authorities to the modifications set out in point 153(c), second half of sentence, point 155, second sentence, and point 158 of the 2007-2013 Guidelines. Therefore, the Austrian authorities were invited to provide the necessary information to show that the quality advertising measures complied with the above mentioned conditions of the Guidelines.

(261) Under point 153 of the 2007-2013 Guidelines, State aid for advertising campaigns within the Community could be declared compatible with the Treaty if the following conditions were fulfilled:

— the advertising campaign was earmarked for quality products, defined as products fulfilling the criteria to be established pursuant to Article 32 of Council Regulation (EC) No 1698/2005 ([88]), for Community-recognised denominations (protected designations of origin (PDOs), protected geographical indications (PGIs) or other designations of origin which are protected under Community legislation) or for national or regional quality labels,

— the advertising campaign was not earmarked for products of a particular company or companies,

— the advertising campaign complied with Article 2 of Directive 2000/13/EC, as well as with the specific labelling rules laid down for various products, such as wine, dairy products, eggs and poultry (see point 152(j) of the 2007-2013 Guidelines).

(262) According to the information provided by the Austrian authorities on 30 April 2014, the conditions of point 153 of the 2007-2013 Guidelines were complied with.

(263) Point 155 of the 2007-2013 Guidelines provided that, in the case of national or regional quality labels, the origin of the products could (only) be mentioned as a subsidiary message. In assessing whether or not the origin was a subsidiary message, the Commission had to take into account the overall importance of the text and/or symbol, including pictures and general presentation, referring to origin and the importance of the text and/or symbol referring to the unique selling point of the advertisement, i.e. the part of the advertising message which did not focus on origin.

(264) In their submission of 30 April 2014, the Austrian authorities confirmed that the labels used in 2007 were identical with those approved in the 2004 Commission decision (see also recital 233). The Commission refers to this assessment and considers therefore that the conditions of point 155 of the 2007-2013 Guidelines are fulfilled.

(265) Point 156 of the 2007-2013 Guidelines stated that the rate of direct aid intensity could not exceed 50 %. If the sector contributed at least 50 % of the costs, whatever the form of the contribution, the rate of aid could go up to 100 % of the eligible costs. As shown above (recital 200), this condition is fulfilled.

(266) Point 158 the 2007-2013 Guidelines provided that advertising activities with an annual budget in excess of EUR 5 million had to be notified separately. From the information provided by the Austrian authorities (recital 45) it can be concluded that this condition is complied with, as the annual budget allocated for the quality label in the years 2007 and 2008 was below EUR 5 million.

(267) For the reasons stated above the advertising measures carried out in the period 2007 to 2008 comply with the 2007-2013 Guidelines and are thus compatible with the internal market.

(268) The Commission notes in this regard that the **bio label advertising measures expired at the end of 2006** and thus are not subject to the assessment under the 2007-2013 Guidelines (see recital 15).

Generic advertising

(269) The provisions about generic advertising and advertising in third countries are not relevant for the period 2007-2008 since the aid measures that concerned those activities expired in 2004 with the adoption of aid scheme N 239/2004, as described in recital 39.

([88]) Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1).

8.4. *TECHNICAL SUPPORT MEASURES AND AID FOR QUALITY PRODUCTS IN THE PERIOD 1995-1999*

(270) Specific State aid guidelines have applied for the agriculture sector only since 1 January 2000. The compatibility of the aid granted prior to this date must thus be assessed based on the Treaty and in the light of the established Commission practice at that time (see recital 169 above).

8.4.1. PROMOTION IN A BROADER SENSE AND TECHNICAL SUPPORT MEASURES IN THE PERIOD 1995-1999

(271) Promotion operations in a broader sense such as the dissemination to the general public of scientific knowledge, the organisation of fairs or exhibitions, participation in these and similar public relations operations, including surveys and market research were excluded from the scope of the 1987 Advertising Framework by virtue of its point 1.1. As far as expenditure for these activities is concerned, it was established Commission practice to consider aid of up to 100 % to be compatible with the common market pursuant to Article 92(3)(c) of the Treaty (now Article 107(3)(c) TFEU) ([89]).

(272) In addition, according to its practice and policy the Commission took a favourable view of soft aid measures which were intended to provide technical support in the agricultural sector. For instance, aid of up to 100 % of the eligible costs of measures to spread new techniques was authorised.

(273) The AMA marketing measures described in Chapter 4.3 above fall into these categories.

(274) The objective of the measures at stake was the dissemination of general knowledge through the organisation of general information projects. They were targeted at presenting to customers factual information and did not induce customers to buy a specific product.

(275) The measures were therefore in line with the Commission practice at that time which considered that the objective pursued was legitimate. The aid intensity of 100 % also complied with the maximum aid intensity considered at that time to be proportionate in light of this objective and the limited negative impact on competition and trade.

(276) The aid for promotion in a broader sense in the period 19951999 was in line with the established practice of the Commission at that time and the Commission considers that these measures were therefore compatible with the common market pursuant to Article 92(3)(c) EC (now Article 107(3)(c) TFEU).

8.4.2. TECHNICAL ASSISTANCE, ADVISORY SERVICES AND CONTROL MEASURES RELATING TO QUALITY PRODUCTS IN THE PERIOD 1995-1999

(277) Concerning aid for technical assistance and advisory services in connection with drawing up quality assurance schemes, the Commission considered such services to constitute a form of 'soft aid' which pursued an objective of common interest and was proportionate (in particular given that it did not affect conditions of competition to any significant extent), and thus to be compatible with the common market.

(278) The measures described in Chapter 4.3 can be considered as such soft aid which, according to the established Commission practice of that time, was deemed to be compatible with the common market.

([89]) See in this respect for example Commission decisions in cases N 570/1998 (quoted already in recital 41 above), N 662/1998 (Commission decision of 30 April 1999, SG(99) D/3095), and C(1999) 4227 (Commission Decision 2000/132/EC of 25 November 1999 on the measure which Germany is planning to implement for the promotion of agricultural products of Mecklenburg-Vorpommern (OJ L 37, 12.2.2000, p. 31). For the purpose of the assessment in this section, the Commission makes reference to the assessment carried out in these decisions.

(279) As regards control measures to ensure compliance with industry-managed quality or traceability standards, the Commission, following the approach communicated to the Member States in the letter on stock-farming ([90]), consistently allowed for aid of up to 100 % of the costs for obligatory controls. This was again based on the idea that such aid pursued an objective of common interest and was proportionate, in particular given the limited negative impact on competition and trade of such indirect support.

(280) Regarding those measures, the Austrian authorities were asked to explain whether the AMA controls were obligatory or not and if the latter is the case, to indicate whether the aid intensity limit was respected.

(281) In their submission of 30 April 2014, the Austrian authorities replied that the controls in question were obligatory according to the AMA implementing legal acts and that the aid intensity limit was respected.

(282) The conditions for the compatibility of the aid are therefore fulfilled.

8.5. *STATE AID FOR QUALITY PRODUCTS IN THE PERIOD 2000-2006*

(283) Activities related to the development of quality systems and quality controls were eligible for aid in relation to both the bio label and the quality label. This constitutes aid for the production and marketing of quality products, which is to be assessed under point 13 of the 2000-2006 Guidelines.

Applicable rules

(284) Point 13 of the 2000-2006 Guidelines sets out the conditions under which aid to encourage the production and marketing of quality agricultural products could be granted.

(285) According to point 13.2 of the 2000-2006 Guidelines support could be granted, among other things, towards the costs of consultancy, technical studies, feasibility and design studies and market research and the introduction of quality assurance schemes. In the case of SMEs, the costs could not exceed EUR 100 000 per beneficiary in a 3-year period or 50 % of the eligible expenses, whichever was greater. For large undertakings the first limit alone applied.

(286) As specified in point 13.3 of the 2000-2006 Guidelines, the Commission considered that no aid should be granted in respect of routine quality controls carried out by the manufacturer. Aid could only be granted in respect of controls undertaken by or on behalf of third parties, such as the regulatory authorities or organisms in charge of supervising labels. Point 13.4 of the 2000-2006 Guidelines provided that aid for controls of organic production methods conducted within the framework of Regulation (EEC) No 2092/91 was allowed at the rate of up to 100 % of the costs incurred.

(287) Point 13.5 of the 2000-2006 Guidelines established that aid could be granted at an initial rate of up to 100 % of the costs of controls carried out by bodies responsible for supervising the use of quality marks and labels under recognised quality assurance schemes. Such aids had to be reduced progressively, so that by the seventh year following their establishment they were eliminated.

Assessment

(288) The aid for the costs of the drafting and distribution of quality assurance documents and development of informatics systems within AMA Marketing was destined to finance the administrative costs of AMA Marketing (a public body, not an economic operator) and therefore does not constitute State aid for the production, distribution or marketing of products listed in Annex I to the Treaty.

([90]) Proposals for appropriate measures relating to aids granted by Member States in the livestock and livestock products sector. No S/75/29416, 29 September 1975.

(289) As described in recital 98, aid for quality controls was available for external controls conducted by bodies selected for that purpose on condition of the use of the bio or quality label. The controls concerning the use of the bio and quality label were subsidised at a rate of 100 %, whereas the costs of routine controls were borne by the licence bearers and thus not subsidised.

(290) In their submission of 14 September 2012, the Austrian authorities confirmed that aid for quality controls never exceeded the EUR 100 000 threshold per beneficiary in a 3-year period. The conditions of point 13.2 of the 2000-2006 Guidelines were therefore met.

(291) In their submissions of 14 September 2012 and of 30 April 2014 the Austrian authorities did not provide sufficient information for an assessment of the conditions of points 13.3, 13.4 and 13.5 of the 2000-2006 Guidelines.

(292) Therefore, in its request for information of 17 December 2014, the Commission asked again for additional information on this measure. In its reply of February 2015 Austria confirmed that:

(a) the aid was not granted in respect of routine quality controls carried out by the manufacturer (point 13.3 of the 2000-2006 Guidelines);

(b) the aid was only granted in respect of controls undertaken by or on behalf of third parties, such as the regulatory authorities or organisms in charge of supervising labels (point 13.3 of the 2000-2006 Guidelines);

(c) the aid was granted for controls of organic production methods conducted within the framework of Regulation (EEC) No 2092/91 up to 100 % of the costs incurred (point 13.4 of the 2000-2006 Guidelines).

(293) In their earlier submissions of 14 September 2012 and 30 April 2014, the Austrian authorities had already confirmed that the aids were progressively reduced and completely eliminated in the year 2009. As the 2000-2006 Guidelines foresee a progressive reduction of the aid, the conditions of point 13.5 of the 2000-2006 Guidelines were therefore met for all measures granted until 31 December 2006.

(294) However, as these aids were also granted after 1 January 2007 (i.e. in the years 2007 and 2008), the 2007-2013 Guidelines apply to this period.

(295) As regards the latter legal instrument, the conditions, as compared to the 2000-2006 Guidelines have changed in two aspects: the list of the types of aid has been refined ([91]) and this type of aid has been available only to primary producers ([92]).

(296) Therefore, those measures benefitting primary producers which have been continued after 2007 comply with the 2007-2013 Guidelines and are compatible with the internal market.

(297) However, aids given to processing and marketing undertakings have to be assessed in accordance with point 99 of the 2007-2013 Guidelines. Reference is therefore made to the assessment in the section 8.6.2 below.

(298) Finally, concerning the introduction of the quality assurance scheme ISO 9002 (see recital 99), in recital 203 of the opening decision, the Austrian authorities were invited to indicate whether this measure was applicable also after 1999. If the question were to be answered in the affirmative, the Austrian authorities were invited to show whether the measure fulfilled the conditions of point 13 of the 2000-2006 Guidelines.

(299) In its reply of February 2015, Austria stated that neither the ISO 9001:1994 standard nor any other certification has ever been compulsory according to the AMA Guidelines (quality label or bio label). Furthermore, the Austrian authorities maintain that the quality assurance scheme ISO 9002 was also neither required nor applicable.

([91]) See recital 304 below.
([92]) See a detailed analysis of the Chapter IV.J of the 2007-2013 Guidelines in section 8.6 below.

(300) For the reasons stated above the aid for quality products granted in the period 2000-2006 complies with the 2001 Advertising Guidelines. Therefore, the Commission considers that the aid was compatible with the common market.

8.6. *STATE AID FOR QUALITY PRODUCTS IN THE PERIOD 1 JANUARY 2007 TO 31 DECEMBER 2008*

(301) Such aid is to be assessed under Chapter IV.J of the 2007-2013 Guidelines.

8.6.1. AID FOR PRIMARY PRODUCERS

(302) Pursuant to point 98 of the 2007-2013 Guidelines, the Commission could declare State aid to encourage the production of quality products granted to primary producers compatible with the common market pursuant to Article 87(3)(c) EC (now: Article 107(3)(c) TFEU) if it fulfilled all the conditions of Article 14 of Commission Regulation (EC) No 1857/2006 ([93]).

(303) Article 14 of Regulation (EC) No 1857/2006 stated that aid was compatible with the common market within the meaning of Article 87(3)(c) EC (now: Article 107(3)(c) TFEU) if it was granted towards the eligible costs listed in Article 14(2) and fulfilled the conditions set out in paragraphs 3 to 6 of Article 14 of Regulation (EC) No 1857/2006.

(304) According to Article 14(2) of Regulation (EC) No 1857/2006, aid to encourage the production of quality agricultural products could cover up to 100 % of eligible costs for, among others:

(a) market research activities, product conception and design (including the preparation of applications for the recognition of geographical indications and designations of origin or certificates of specific character); the charges levied by recognised certifying bodies for the initial certification of quality assurance and similar schemes;

(b) the introduction of quality assurance schemes such as ISO 9000 or 14000 series, systems based on hazard analysis and critical control points (HACCP), traceability systems, systems to assure respect of authenticity and marketing norms or environmental audit systems;

(c) compulsory control measures undertaken pursuant to Community or national legislation by or on behalf of the competent authorities, unless Community legislation required enterprises to bear such costs;

(d) up to the amounts laid down in the Annex to Regulation (EC) No 1698/2005 for support concerning measures referred to in Article 32 of that Regulation.

(305) According to Article 14(3) of Regulation (EC) No 1857/2006, the aid could be granted only in respect of the costs of services provided by third parties and/or controls undertaken by or on behalf of third parties, such as the competent regulatory authorities, or bodies acting on their behalf, or independent organisms responsible for the control and supervision of the use of geographical indications and designations of origin, organic labels, or quality labels, provided these denominations and labels were in conformity with Community legislation. The aid could not be granted towards expenditure for investment.

(306) Pursuant to Article 14(4) of Regulation (EC) No 1857/2006, the aid could not be granted towards the cost of controls undertaken by the farmer or manufacturer himself, or where Community legislation provided that the cost of control was to be met by producers, without specifying the actual level of charges.

(307) Article 14(5) of Regulation (EC) No 1857/2006 laid down that with the exception of the aid referred to in paragraph 2(f) of that Regulation, the aid had to be granted in kind by means of subsidised services and could not involve direct payments of money to producers.

([93]) Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 (OJ L 358, 16.12.2006, p. 3).

(308) The aid had to be accessible to all those eligible in the area concerned, based on objectively defined conditions. If the services were provided by producer groups or agricultural mutual support organisations, membership of such organisations could not be a condition for access to the service and any contribution towards the administrative costs had to be limited to the proportional costs of providing the service (Article 14(6) of Regulation (EC) No 1857/2006).

(309) Pursuant to point 100 of the 2007-2013 Guidelines, the Commission did not authorise State aid towards the costs covered in favour of large undertakings.

(310) Most substantive conditions of the 2007-2013 Guidelines for the compatibility of aid for primary producers have not changed in comparison with the 2000-2006 Guidelines described above. Reference is made to the assessment in section 8.5.

(311) The substantive changes compared to the previous period were related to the fact that the aid had to be in kind (by means of subsidised services) and that the aid had to be accessible to all those eligible in the area concerned, based on objectively defined conditions. The Austrian authorities have confirmed that these conditions were fulfilled.

(312) The aid for quality products for primary producers is therefore in line with the 2007-2013 Guidelines. Therefore, the Commission considers this aid to be compatible with the common market pursuant to Article 87(3)(c) EC (now: Article 107(3)(c) TFEU).

8.6.2. AID FOR UNDERTAKINGS ACTIVE IN PROCESSING AND MARKETING

Applicable rules

(313) Pursuant to point 99 of the 2007-2013 Guidelines, the Commission could declare State aid to encourage the production and marketing of quality agricultural products granted to undertakings active in the processing and marketing of agricultural products compatible with the common market pursuant to Article 87(3)(c) EC (now: Article 107(3)(c) TFEU) if it fulfilled all the conditions set out in Article 5 of Commission Regulation (EC) No 70/2001 ([94]).

(314) Regulation (EC) No 70/2001 was replaced by Commission Regulation (EC) No 800/2008 ([95]) (2008-2013 GBER) which in its Article 43 states that any references to Regulation (EC) No 70/2001 should be construed as references to Regulation (EC) No 800/2008. According to its Article 45, Regulation (EC) No 800/2008 entered into force on the 20th day following its publication in the *Official Journal of the European Union*, i.e. on 29 August 2008. Consequently, between 1 January 2007 and 28 August 2008, Article 5(a) of Regulation (EC) No 70/2001 was applicable to the aid at issue and after that date, Article 26 of Regulation (EC) No 800/2008 became applicable.

(315) Insofar as aid for consultancy services is concerned, those articles stipulate the same conditions: aid could be granted in favour of SMEs, the consultancy costs of services provided by outside consultants were eligible, the aid intensity could not exceed 50 % of the eligible costs of the services and the services concerned could not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

(316) Further, regarding both primary production and processing and marketing, pursuant to point 101 of the Guidelines, aid for investments necessary to upgrade production facilities, including investments necessary to manage the documentation system and perform process and product controls, could be granted only in accordance with the rules set out for investment aid in the 2007-2013 Guidelines.

(317) In this respect, in the opening decision the Commission expressed certain doubts regarding the fulfilment of those conditions which differed from the requirements stipulated in the 2000-2006 Guidelines.

([94]) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33).

([95]) Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (OJ L 214, 9.8.2008, p. 3).

(318) In particular, the Commission drew the attention of the Austrian authorities to the following substantive modifications:

(a) in the 2007-2013 Guidelines, aid for the control of organic production methods conducted within the framework of Regulation (EEC) No 2092/91 and aid for controls carried out by other bodies responsible for supervising the use of quality marks and labels under recognised quality assurance schemes was no longer considered to be compatible with the common market;

(b) special attention was further drawn to the requirements stipulated in Article 14(5) and (6) of Regulation (EC) No 1857/2006. According to these articles, the services had to be provided in kind and based on objectively identified conditions to all undertakings eligible in the area concerned;

(c) another major modification as compared to the 2000-2006 Guidelines concerns the differentiation between primary production and the processing and marketing of agricultural products. As regards processing and marketing, only aid for SMEs could be granted as of 2007, the scope of the eligible costs was reduced to consultancy and other services and the aid intensity was reduced to 50 %. Furthermore, regarding primary production aid to large companies could not be declared compatible.

Assessment

(319) From the information available at the stage of the preliminary examination procedure it was unclear whether in 2007 the Austrian authorities brought the measures under examination in line with the above conditions of the 2007-2013 Guidelines. The Austrian authorities were therefore invited to submit additional information in order to prove that in the period 1 January 2007 to 31 December 2007 the quality support measures complied with the new rules applicable as of 1 January 2007.

(320) In their submission of 14 September 2012 the Austrian authorities argued that the obligation to adapt to the new State aid rules applied as from 1 January 2008 and not from 1 January 2007, as noted by the Commission (see also recitals 172-173). Therefore, the Austrian authorities provided no further information for the compatibility assessment. In the request for information of 19 February 2014, the Commission again invited the Austrian authorities to provide the necessary information on this point. In their reply of 30 April 2014, the Austrian authorities maintained the view expressed in their previous submission and provided no further information for the compatibility assessment.

(321) In the request for information of 17 December 2014, the Commission again asked the Austrian authorities to provide the information for a compatibility assessment of the quality measures. The Austrian authorities reiterated that the obligation to adapt to the new State aid rules applied as from 1 January 2008 and not from 1 January 2007.

(322) The Commission would like to point out that, contrary to what the Austrian authorities maintain, the obligation to adapt the scheme to the new rules applied as of 1 January 2007 and not as of 1 January 2008.

(323) At the time of the entrance into force of the new rules (i.e. 1 January 2007), the Court Case T-375/04 (see recital 22) which led to the annulment of Commission Decision NN 34A/2000 of 30 June 2004 was pending. The subsequent annulment of the Commission decision on 18 November 2009 had a retroactive effect.

(324) Therefore, Austria could not rely on this decision to consider the aid as an existing aid scheme within the meaning of point 196 of the 2007-2013 Guidelines.

(325) Furthermore, according to settled jurisprudence

> 'in essence, (…) a positive decision of the Commission cannot give rise to a legitimate expectation on the part of the aid recipient, first, where that decision has been challenged in due time before the Community judicature, which annulled it, or, secondly, so long as the period for bringing an action has not expired or, where an action has been brought, so long as the Community judicature has not delivered a definitive ruling' ([96]).

([96]) Judgment of the Court in Case C-1/09, *Centre d'exportation du livre français (CELF) and Ministre de la Culture et de la Communication* v *Société internationale de diffusion et d'édition (SIDE)*, ECLI:EU:C:2010:123, para. 45.

(326) Although the measures covered under this section had been declared compatible by Commission Decision NN 34A/2000 of 30 June 2004, no legitimate expectations were created based on this decision, be it at the level of the beneficiaries or at the level of the Member State. Already on 17 September 2004 an action for annulment was launched and this was pending at the date of the entry into force of the new State aid rules. Therefore, due to the pending action for annulment the Austrian authorities should have applied the 2007-2013 Guidelines starting with 1 January 2007.

(327) As shown above, the rules concerning undertakings active in the processing and marketing of agricultural products have changed in substance in the 2007-2013 Guidelines. Since the Austrian authorities made no adaptation, the measures on organic products, large undertakings and the measure other than services in kind (as described in recital 318) were not in line with the 2007-2013 Guidelines. Therefore, the Commission considers these aid measures to be incompatible with the common market. The other measures (i.e. in so far as they do not concern organic products, large undertakings and the measure other than services in kind ([97])) complied with the 2007-2013 Guidelines and therefore compatible with the common market.

8.7. *TECHNICAL SUPPORT IN THE PERIOD 1 JANUARY 2000 TO 31 DECEMBER 2006*

(328) Aid for technical support for the period 1 January 2000 to 31 December 2006 has to be assessed pursuant to point 14 of the 2000-2006 Guidelines. According to point 14.1 of those Guidelines such aids were considered by the Commission as 'soft aids' which contributed to the long term viability of agriculture in the Community while producing only very limited effects on competition. Aid could be granted for up to 100 % of the costs to cover among others the following activities: the organisation of competitions, exhibitions and fairs, including support for the costs incurred by participating in such events; and other activities for the dissemination of knowledge relating to new techniques, such as reasonable small scale pilot projects or demonstration projects.

(329) The total amount of support granted could not exceed EUR 100 000 over any 3-year period per beneficiary or, in the case of SMEs, 50 % of the eligible costs, whichever was greater (point 14.3 of the 2000-2006 Guidelines). Such aid had to be available to all those eligible in the area concerned based on objectively defined conditions (point 14.2 of the 2000-2006 Guidelines).

8.7.1. TECHNICAL AID FOR THE QUALITY AND THE BIO LABEL IN THE PERIOD 1 JANUARY 2000 TO 31 DECEMBER 2006

(330) Regarding the bio and the quality labels, aid was granted for general information projects, PR-activities to disseminate general knowledge about the labels and for quality competitions (see recitals 100-103). These measures do not induce customers to buy a given product. Therefore, rather than being advertising measures they are general promotion measures and soft aids that fall under point 14 of the 2000-2006 Guidelines.

(331) The information measures fall under the dissemination of knowledge relating to new techniques. By definition, such general measures benefit all producers using the labels.

(332) Aid to cover the costs for technical support measures falls under point 14.1 of the 2000-2006 Guidelines. In the information provided relating to the aid scheme NN 34A/2000 the Austrian authorities specified that such aid would never exceed EUR 100 000 per beneficiary in a 3-year period (see recital 109). In the opening decision the Austrian authorities were invited to provide information to prove that the above assurances were indeed complied with. Furthermore, they were asked to indicate whether the requirements laid down in points 14.2 and 14.3 of the 2000-2006 Guidelines were fulfilled also in respect of the period 2000-2001 ([98]).

(333) In their submission of 14 September 2012, the Austrian authorities confirmed that aid for these measures never exceeded the EUR 100 000 threshold per beneficiary in a 3-year period. The condition of point 14.3 of the 2000-2006 Guidelines was therefore met.

([97]) As opposed to the previous legal framework, these categories were no longer eligible under the 2007-2013 Guidelines. See recital 318.
([98]) Regarding the reference period for which information should be provided, the Austrian authorities were invited to take into account the comments made in recital 243 above regarding the existence (or not) of a transitional period..

(334) As regards the conditions of point 14.2 of the 2000-2006 Guidelines, the Commission asked the Austrian authorities, in a new request for information of 17 December 2014, to provide the information necessary for carrying out a compatibility assessment.

(335) In their reply of 25 February 2015 the Austrian authorities confirmed that the scheme was open to all those eligible in the area concerned based on objectively defined conditions. The condition of point 14.2 of the 2000-2006 Guidelines was therefore met.

(336) Therefore, the aid for technical support complied with the conditions stipulated in the 2000-2006 Guidelines and the Commission considers that the aid was compatible with the common market pursuant to Article 87(3)(c) EC (now: Article 107(3)(c) TFEU).

8.7.2. TECHNICAL SUPPORT FOR GENERIC PRODUCTS IN THE PERIOD 1 JANUARY 2000 TO 31 DECEMBER 2004 ([99])

(337) Aid to cover the costs for technical support measures regarding generic products as described in recitals 104-107 fall under point 14.1 (fourth indent) of the 2000-2006 Guidelines. As regards the conditions of points 14.2 and 14.3, at the time of the opening decision the Commission did have no information for this period on the basis of which it could assess whether those conditions were fulfilled. The Austrian authorities were thus invited to submit the necessary information.

(338) In their submission of 14 September 2012, the Austrian authorities confirmed that aid for these measures never exceeded the EUR 100 000 threshold per beneficiary in a 3-year period. The condition of point 14.3 of the 2000-2006 Guidelines was therefore met.

(339) As regards the condition of point 14.2 of the 2000-2006 Guidelines on aid available to all eligible in the area concerned, the Commission notes that this condition is fulfilled since the technical support measures concerned generic information on products. The condition of point 14.2 of the 2000-2006 Guidelines was therefore met.

(340) Therefore, the conditions of the 2000-2006 Guidelines on aid to provide technical support were met. Therefore, the Commission considers that this aid was compatible with the common market pursuant to Article 87(3)(c) EC (now: Article 107(3)(c) TFEU).

8.8. *TECHNICAL SUPPORT IN THE PERIOD 1 JANUARY 2007 TO 31 DECEMBER 2008*

8.8.1. APPLICABLE RULES

Aid for primary agricultural producers

(341) Pursuant to point 103 of the 2007-2013 Guidelines, the Commission could declare State aid for the provision of technical support granted to primary producers compatible with the common market pursuant to Article 87(3)(c) EC (now: Article 107(3)(c) TFEU) if it fulfilled all the conditions of Article 15 of Regulation (EC) No 1857/2006.

(342) Under Article 15 of Regulation (EC) No 1857/2006, aid was deemed compatible with the common market within the meaning of Article 87(3)(c) EC (now: Article 107(3)(c) TFEU) if it was granted towards the eligible costs of the technical support activities listed in Article 15(2) of Regulation (EC) No 1857/2006 and fulfilled the conditions set out in Article 15(3) and (4) of Regulation (EC) No 1857/2006.

(343) According to Article 15(2)(d) of Regulation (EC) No 1857/2006 concerning the organisation of and participation in forums to share knowledge between businesses, competitions, exhibitions and fairs, aid could be granted for the following eligible costs: participation fees, travel costs, costs of publications, the rent of exhibition premises, or symbolic prizes awarded in the framework of competitions, up to a value of EUR 250 per prize and winner.

([99]) Generic measures after the year 2004 were covered by Commission decision N 239/2004 (see also recital 20 above). This decision has not been affected by the Court judgments mentioned at recital 22 and following.

(344) Article 15(2)(e) of Regulation (EC) No 1857/2006 allowed aid for the costs connected to the vulgarisation of scientific knowledge and factual information on quality systems open to products from other countries (without any reference to individual companies, brands or origin).

(345) Article 15(2)(f) of Regulation (EC) No 1857/2006 allowed aid for the costs of publications such as catalogues or websites presenting factual information about producers from a given region or producers of a given product, provided the information and presentation remained neutral and that all producers concerned had equal opportunities to be represented in the publication.

(346) Article 15(3) and (4) of Regulation (EC) No 1857/2006 allowed technical support aid to be granted at a rate of up to 100 % of costs where the following conditions were met: the aid had to be granted in kind by means of subsidised services and could not involve direct payments of money to producers; the aid had to be accessible to all those eligible in the area concerned, based on objectively defined conditions; where technical support was provided by producer groups or other organisations, membership of such groups or organisations could not be a condition for access to the service. Any contribution by non-members towards the administrative costs of the group or organisation concerned had to be limited to the costs of providing the service.

Undertakings active in processing and marketing

(347) Pursuant to point 105 of the 2007-2013 Guidelines, the Commission could declare State aid for the provision of technical support to companies active in the processing and marketing of agricultural products compatible with the common market pursuant to Article 87(3)(c) EC (now: Article 107(3)(c) TFEU) if it fulfilled all the conditions of Article 5 of Regulation (EC) No 70/2001. Article 43 of Commission Regulation (EC) No 800/2008 which replaced Regulation (EC) No 70/2001 stated that any references to Regulation (EC) No 70/2001 should be construed as references to Regulation (EC) No 800/2008 ([100]).

(348) Regarding the conditions of Article 26 of Regulation (EC) No 800/2008 and Article 5(a) of Regulation (EC) No 70/2001 a reference is made to recital 315 above.

(349) Article 27 of Regulation (EC) No 800/2008 and Article 5(b) of Regulation (EC) No 70/2001 stated that, as regards aid for the participation in fairs and exhibitions, the aid intensity could not exceed 50 % of the eligible costs and that 'eligible costs' meant the costs incurred for renting, setting up and running the stand for the first participation by an enterprise in any particular fair or exhibition.

8.8.2. ASSESSMENT OF THE TECHNICAL SUPPORT (PRIMARY PRODUCERS AND PROCESSING AND MARKETING)

Aid for primary agricultural producers

(350) The Commission is of the view that on substance the rules applicable as of 1 January 2007 on technical support for primary agricultural producers were almost identical with the conditions set in the 2000-2006 Guidelines. The eligible costs listed in Article 15(2) of Regulation (EC) No 1857/2006 are in substance identical with the costs enumerated in point 14 of the 2000-2006 Guidelines ([101]). The conditions set out in Article 15(4) of Regulation (EC) No 1857/2006 are identical with the provision of point 14.2 of the 2000-2006 Guidelines. However, as opposed to the 2000-2006 Guidelines, the 2007-2013 Guidelines stated that the aid had to be provided in kind by means of subsidised services. On this point the Austrian authorities pointed out that, even in the period before 2007 the technical support was in the form of subsidised services.

([100]) As explained in recital 314 above, between 1 January 2007 and 28 August 2008, Article 5 (a) and (b) of Regulation (EC) No 70/2001 was applicable to the aid at issue and after that date Articles 26 and 27 of Regulation (EC) No 800/2008. However, since those articles set the same conditions, a differentiation in the assessment between the above time periods is not necessary.

([101]) The 2000-2006 Guidelines provide a non-exhaustive list of activities covered under technical aid.

(351) Reference is made to the compatibility assessment of section 8.7 above. Therefore, the Commission considers that this aid was compatible with the common market.

Undertakings active in processing and marketing

(352) As regards the technical support for undertakings active in processing and marketing, the 2007-2013 Guidelines have introduced substantive changes as compared to the previous rules; therefore, a separate assessment is necessary for this category. From the information available at the stage of the opening decision, it was unclear whether in 2007 the Austrian authorities brought the technical support measures under examination in line with the above conditions of the Guidelines. The Austrian authorities were therefore invited to submit additional information in order to prove that in the period 1 January 2007 to 31 December 2008 the measures complied with the new rules. In this respect, the Commission expressed doubts regarding the fulfilment of those conditions which differed from the requirements stipulated in the 2000-2006 Guidelines. In particular, the Commission drew the attention of the Austrian authorities to the following substantive modifications:

— the differentiation between primary production and processing and marketing of agricultural products,

— as for the latter, solely aid for SMEs could be declared compatible under the 2007-2013 Guidelines, the scope of the eligible costs was reduced to consultancy services and the participation in fairs and exhibitions and the aid intensity was reduced to 50 %.

(353) In their submission of 14 September 2012 the Austrian authorities argued that the obligation to adapt to the new State aid rules applied as from 1 January 2008 and not from 1 January 2007, as noted by the Commission (see also recitals 172-175). Therefore, the Austrian authorities provided no further information for the compatibility assessment. In the request for information of 19 February 2014, the Commission again invited Austria to provide the necessary information on this point. In their reply of 30 April 2014, the Austrian authorities maintained the view expressed in their submission of 2012 and provided no further information for the compatibility assessment.

(354) Reference is made to the reasoning in recitals 322-326 above, which equally applies to the type of aid referred to in this section.

(355) For the reasons stated above, insofar as the technical support aid granted to undertakings active in the processing and marketing of agricultural products in the period 1 January 2007 to 31 December 2008 did not comply with the new conditions stipulated for this category of aid in the 2007-2013 Guidelines (i.e. aid for large undertakings, aid for first participation in fairs, an aid rate over 50 % for any service but consultancy services and participation in fairs over 50 % or compensation in kind) (recital 350, the Commission considers that such aid was incompatible with the common market pursuant to Article 87(3)(c) EC (now: Article 107(3)(c) TFEU).

(356) For measures other than those referred to in the recital above the compatibility criteria have not changed as compared to the 2000-2006 Guidelines. Reference is made to the compatibility assessment in recital 328 and following. These measures are therefore compatible.

8.9. *PARAFISCAL LEVIES AND HYPOTHECATION OF THE AID*

(357) Since the measures object of the present decision are financed by a parafiscal charge, the Commission must examine both the measures financed, i.e. the aid actually awarded, and the way it is financed.

(358) According to a settled jurisprudence of the Court of Justice, where the method of financing the aid, in particular through compulsory contributions, forms an integral part of the aid measure, the Commission must take that method of financing into account when examining the aid ([102]).

([102]) Judgment of the Court of 21 October 2003 in Joined Cases C-261/01 and C-262/01, Van Calster, ECLI:EU:C:2003:571, para. 49.

(359) For a tax or part of a tax to be considered as forming an integral part of an aid measure, it must be hypothecated to the aid measure under the relevant national rules, in the sense that the revenue from the tax must be necessarily allocated for the financing of the aid measure ([103]) and the amount of the tax should have a direct impact on the amount of State aid ([104]).

8.9.1. PERIOD 1995-2001

(360) According to recital 235 of the opening decision, the application of these criteria to the measures under examination led the Commission to the following, preliminary conclusions: the first criterion appeared to be fulfilled since according to the Austrian authorities the collected levies exclusively benefited the aid measures covered by the decision (see recital 53).

(361) As regards the question whether the amount of the levy had a direct impact on the amount of State aid, at the stage of the opening decision the Commission did not possess all the necessary information to assess whether this criterion was fulfilled. To this end the Austrian authorities were invited to explain whether the aid amount at stake was directly linked to the revenue from the levy, i.e. whether it was established up-front or whether it depended on the concrete AMA marketing needs.

(362) The Commission also indicated that, should it conclude after the submission of the necessary information that the levies form an integral part of the aid measure, it would have to examine whether the financing of the scheme discriminates between imported products and products produced in Austria ([105]), or between exported national products and national products marketed on the domestic market ([106]) (recital 236 of the opening decision).

(363) The Austrian authorities were invited to provide information on these points. In particular, they were invited to indicate whether § 21c(2) of the AMA Act, according to which goods originating outside Austria are exempted from the levy (see recital 58, was in force already in 1995 or whether it was inserted by a later amendment of the law. Further, the Member State was invited to explain whether products of Austrian origin marketed outside Austria could benefit from the measure to the same extent as products marketed in Austria.

(364) In recital 237 of the opening decision the Commission underlined that it also had to verify whether charging the levy did not run counter to the objectives of the common market organisation in the agricultural sector. In this respect it had to be assessed whether the levies did not interfere with the price of the end products and thus whether domestic products were not discriminated against compared to imported products.

(365) In this regard, in the opening decision the Austrian authorities were invited to provide data showing the percentage of the respective sales prices to which the levy amounted and to explain to which extent a possible negative impact caused by the levy was compensated by the positive effects of the measures financed by the same levy. In addition, the Austrian authorities were invited to explain whether the prices of the relevant products are largely market driven.

(366) In their submission of 14 September 2012, the Austrian authorities informed the Commission that foreign products were exempted from paying the levy according to Article 2c paragraph 2 of the AMA Act. This exemption applied since 1 January 1994 and therefore for the entire period of assessment.

(367) As regards the relationship with the objectives of the common market organisation in the agricultural sector, in their submission of 14 September 2012, the Austrian authorities stated that due to the fact that the prices were formed by supply and demand on the relevant markets and that there was no intervention from the side of the authorities, it was not possible to calculate the percentage of sales prices to which the levy amounted.

([103]) Judgment of the Court of 13 January 2005 in Case C-174/02, *Streekgewest Westelijk Noord-Brabant*, ECLI:EU:C:2005:10, para. 26, Judgment of the Court of 27 October 2005 in Joined Cases C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04, *Nazairdis SAS e.a./Caisse nationale de l'organisation autonome d'assurance vieillesse des travailleurs non salariés des professions industrielles et commerciales (Organic)*, ECLI:EU:C:2005:657, paras 46 to 49.

([104]) *Streekgewest Westelijk Noord-Brabant*, cited above in footnote 102, para. 28 and Judgment of the Court of 15 June 2006, C-41/05, *Air Liquide*, ECLI:EU:C:2006:403, para. 46.

([105]) With regard to discrimination between domestic and exported products, see, inter alia, the Judgment of the Court of 23 April 2002 in Case C-234/99, *Nygard*, ECLI:EU:C:2002:244, paras 21-22.

([106]) With regard to discrimination between domestic and imported products, see, inter alia, the Judgment of the Court of 11 March 1992 in Joined Cases C-78/90, C-79/90, C-80/90, C-81/90, C-82/90 and C-83/90, *Compagnie Commerciale de l'Ouest*, ECLI:EU:C:1992:118, para. 26.

(368) In the same reply the Austrian authorities argued that the amount of the levy did not have a direct impact on the amount of State aid. In addition to the revenue from the AMA levy, additional sources of financing existed. Namely, aside from the 'net revenue' deriving from the levy, and EU funds (for co-financed actions), other revenues were collected from economic operators by way of licence fees and from the proceeds from the royalties paid in the AMA-shop (cookery books, etc.) to finance the measures.

(369) In fact, the Austrian authorities demonstrated that a part of the financing for the AMA measures was not covered by the levy ([107]) and thus the amount of the aid spent (which in turn influenced the scope of the measures actually carried out) did not exclusively depend on the levy revenue; in addition, the revenue from the levy was not exclusively allocated for the financing of the aid ([108]).

(370) Hence, the Commission considers that the criteria for hypothecation within the meaning of the case-law were not fulfilled for the period 1995 to 2001.

8.9.2. PERIOD 2002-2008

(371) The Austrian authorities were also invited to provide the necessary information to allow the Commission to assess whether the parafiscal financing of the measure (levy) formed an integral part of the aid measures for the period 2002 to 2008 (recital 238 of the opening decision).

(372) For the reasons stated above, and given that the sources of funding remained the same, the Commission considers that no hypothecation between the levy and the State aid measures existed also for the period 2002 to 2008.

9. **CONCLUSION ON THE EXISTENCE OF AID AND COMPATIBILITY**

(373) For the reasons stated above, and notwithstanding recital 378 below, the AMA marketing measures constitute State aid.

(374) For the reasons stated above, and notwithstanding recital 378 below, the aid measures referred to in recitals 208, 213, 327, third sentence and 355 are incompatible with the internal market. The other measures assessed above are compatible with the internal market.

(375) Any compensation which at the time of the granting fulfilled the conditions stipulated in the *de minimis* Regulation ([109]) is deemed not to constitute aid. Any aid which, at the time of the granting fulfilled the conditions of a block exemption or an approved aid scheme is compatible with the internal market, up to the maximum aid intensities applicable to that type of aid.

([107]) According to the submission of 25 February 2015, the sums collected from licenses ranged between 2,01 % and 2,84 % of the annual revenue. The proceeds from the AMA shop ranged between 0,08 % and 0,48 % of the annual revenue.

([108]) See for instance the situation for the year 2001: As can be seen from the tables reproduced above in recitals 43 and 56, the amount of the levy collected was EUR 15 million, whereas only EUR 12 million were paid as aid. While the sums and proportions differ for each year (in some years the aid amount exceeded the amount of the levies collected), it is clear that the amount of the levy did not directly translate into a particular aid level.

([109]) Commission Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5), Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30), Commission notice on the de minimis rule for State aid (OJ C 68, 6.3.1996, p. 9), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9), Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid in the sector of agricultural production (OJ L 337, 21.12.2007, p. 35), 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 (OJ L 325, 28.10.2004, p. 4).

10. **RECOVERY**

(376) In accordance with the Treaty and the Court of Justice's established case-law, the Commission is competent to decide that the Member State concerned must abolish or alter aid ([110]) when it has found that it is incompatible with the internal market. The Court has also consistently held that the obligation on a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ([111]). In this context, the Court has stated that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ([112]).

(377) Following that case-law, Article 16 of Council Regulation (EU) 2015/1589 ([113]) (hereinafter Procedural Regulation) lays down that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary.'

(378) According to Article 17 of the Procedural Regulation, the powers of the Commission to recover incompatible aid are subject to a limitation period of 10 years. The limitation period begins on the day on which the unlawful aid was awarded to the beneficiary. Any action taken by the Commission with regard to the unlawful aid interrupts the limitation period. The limitation period is suspended for as long as the decision of the Commission is the subject of proceedings before the ECJ.

(379) The complaint which triggered the present procedure was received on 21 September 1999 (see recital 4) and the Commission registered the scheme as a non-notified aid in the year 2000 (see recital 8). Furthermore, the 2004 decision acknowledges the fact that the Commission has decided, for administrative reasons, to split the procedure (see recital 10) and assess the measures before and after the year 2003 separately. This splitting of the procedure had been a request of the Austrian authorities dated from 8 March 2004.

(380) The above cited actions (splitting of procedure acknowledged by 2004 decision) and letters (Austrian request of 8 March 2004) are interrupting events in the meaning of Article 17 Council Regulation (EU) 2015/1589.

(381) This means that the Commission has the power to order recovery as of 1 January 1995, the date of Austria's accession to the European Union.

(382) The Commission decision NN 34A/2000 was challenged before the General Court on 30 June 2004 and its ruling was appealed before the Court of Justice on 27 January 2010. The judgment of the Court was pronounced on 27 October 2011 (see above recital 22). According to Article 15 paragraph 2, third sentence of Regulation (EC) No 659/1999, the limitation period was therefore suspended between 30 June 2004 and 27 October 2011.

(383) For the reasons stated above the 10 years limitation period for recovery with regard to the measures assessed in this decision has not expired. The incompatible State aid specified at recital 374 above must therefore be recovered by the Austrian authorities.

(384) Article 16(1) of the Procedural Regulation specifies that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'.

(385) Article 16(3) of the Procedural Regulation specifies that 'recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision.'

(386) The means according to national law established by the Member States, by which they implement recovery decisions, should give full effect to the recovery decision. It is therefore necessary that the national measures taken by Member States lead to an effective and immediate execution of the Commission decision.

([110]) Case C-70/72, *Commission* v *Germany*, ECLI:EU:C:1973:87, para. 13.
([111]) Joined Cases C-278/92, C-279/92 and C-280/92, *Spain* v *Commission*, ECLI:EU:C:1994:325, para. 75.
([112]) Case C-75/97, *Belgium* v *Commission*, ECLI:EU:C:1999:311, paras 64-65.
([113]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

(387) According to a settled jurisprudence, in the case of negative decisions for non-notified aid, particularly where a significant period of time has elapsed, the Commission may resort to approximate evaluations of the sums to be recovered ([114]).

(388) The Commission would like to point out that, according to the jurisprudence 'no provision of Community law requires the Commission, when ordering the recovery of aid declared incompatible with the common market, to fix the exact amount of the aid to be recovered. It is sufficient for the Commission's decision to include information enabling the recipient to work out himself, without overmuch difficulty, that amount.' ([115])

(389) Given the nature of some of the measures concerned (i.e. measures concerning indirect aid to a large number of beneficiaries) the Commission is not in a position to determine in the present decision the exact aid amount per beneficiary for each measure for which recovery has been ordered.

(390) The Commission would therefore point out that the sums communicated by the Austrian authorities during the investigation period (see recitals 43-45) constitute the starting point for the calculation of the aids to be recovered from the respective beneficiaries. The categories of incompatible aid, as well as the relevant periods have been identified in the decision.

(391) Therefore, the Commission considers that, in the framework of the recovery procedure, a reasonable method of calculating the aid per beneficiary needs to be provided by the Austrian authorities, and communicated to the Commission, in a spirit of loyal cooperation with the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Austria has implemented for the following measures and periods is **compatible** with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union:

— aid for generic advertising in the period 1 January 2000 to 31 December 2001,

— advertising aid in the period 1 January 2002 to 31 December 2006,

— aid for/by way of advertising campaigns outside Austria and generic advertising in Austria, in the period 1 January 2002 to 1 January 2004,

— quality advertising aid in the period 1 January 2007 to 31 December 2008,

— aid for/by way of promotion measures in a broader sense and technical support measures in the period 1 January 1995 to 31 December 1999,

— aid in the form of technical assistance, advisory services and control measures relating to quality products in the period 1 January 1995 to 31 December 1999,

— aid for quality products in the period 1 January 2000 to 31 December 2006,

— aid in the form of technical support in the period 1 January 2000 to 31 December 2006,

— aid in the form of technical support for generic products in the period 1 January 2000 to 31 December 2004,

— aid in the form of technical support in the period 1 January 2007 to 31 December 2008 for primary producers.

([114]) Case T-366/00, *Scott SA* v *Commission*, ECLI:EU:T:2007:99, para. 96.
([115]) Case C-480/98, *Spain* v *Commission*, ECLI:EU:C:2000:559, para. 25.

Article 2

The following State aid schemes, unlawfully put into effect by Austria in breach of Article 108(3) of the Treaty on the Functioning of the European Union are **incompatible** with the internal market, for the respective periods indicated:

— aid for generic advertising in the period 1 January 1995 to 31 December 1999,

— aid for the quality label in the period 1 January 1995 to 31 December 1999,

— aid for quality products in the period 1 January 2007 to 31 December 2008,

— technical support for undertakings active in processing and marketing in the period 1 January 2007 to 31 December 2008.

Article 3

Individual aid granted under the scheme referred to in Article 2 does not constitute aid if, at the time it was granted, it fulfilled the conditions laid down by a regulation adopted pursuant to Article 2 of Council Regulation (EC) No 994/98 ([116]) which was applicable at the time the aid was granted.

Article 4

Individual aid granted under the scheme referred to in Article 2 which, at the time it was granted, fulfilled the conditions laid down by a regulation adopted pursuant to Article 1 of Regulation (EC) No 994/98 or by any other approved aid scheme is compatible with the internal market, up to the maximum aid intensities applicable to that type of aid.

Article 5

Austria shall recover the incompatible aid referred to in Article 2 from its beneficiaries.

The sums to be recovered shall bear interest from the date of their disbursement until their actual recovery.

The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ([117]).

Article 6

Recovery of the aid referred to in Article 2 shall be immediate and effective.

Austria shall ensure that this Decision is implemented within 4 months following the date of notification of this Decision.

Article 7

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

(a) the list of beneficiaries that have received aid under the schemes referred to in Article 2 and the total amount of aid received by each of them under the scheme;

(b) the total amount (principal and recovery interests) to be recovered from the beneficiaries;

([116]) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p. 1).

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

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

(d) documents demonstrating that the beneficiary has been ordered to repay the aid.

Austria shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 2 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 8

This Decision is addressed to the Republic of Austria.

Done at Brussels, 7 April 2016.

For the Commission
Phil HOGAN
Member of the Commission