COMMISSION DECISION (EU) 2017/1088

of 24 March 2017

on State aid SA. 35484 (2013/C) (ex SA. 35484 (2012/NN)) regarding certain research sub-measures financed pursuant to the Milk and Fat Law

(notified under document C(2017) 1863)

(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 observations pursuant to the provision cited above ([1]) and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letters dated 28 November 2011 and 27 February 2012, the Commission asked Germany for additional information concerning the 2010 Annual Report on State aid in the agricultural sector which Germany had submitted in accordance with Article 26 of Council Regulation (EU) 2015/1589 ([2]). Germany answered the Commission's questions by letters dated 16 January 2012 and 27 April 2012. In the light of Germany's answers, it emerged that Germany had granted financial support to the German dairy sector pursuant to the 1952 Milk and Fat Law (Gesetz über den Verkehr mit Milch, Milcherzeugnissen und Fetten, hereinafter: 'the MFG').

(2) By letter dated 2 October 2012, the Commission informed Germany that the measures in question had been registered as non-notified aid under the number SA.35484 (2012/NN). By letters dated 16 November 2012, 7, 8, 11, 13, 14, 15 and 19 February, 21 March, 8 April, 28 May, 10 and 25 June and 2 July 2013, Germany submitted further information.

(3) By letter of 17 July 2013 ([3]) the Commission informed Germany that it had decided to initiate with regard to certain sub-measures under the MFG the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) (hereinafter: 'the opening Decision'). In the same letter, the Commission came to the conclusion that other sub-measures were compatible with the internal market, either during the period from 28 November 2001 to 31 December 2006 or in the period starting 1 January 2007 or in both periods, or that further sub-measures did not constitute State aid within the meaning of Article 107(1) TFEU or that they fell outside the scope of State aid rules.

(4) As regards the sub-measures that are subject to this Decision, namely the research sub-measures referred to in the opening Decision as sub-measures BY2, BY11, BY12 and BY13 (hereinafter 'the sub-measures') the Commission stated that those sub-measures appeared to have all the characteristics of State aid and that the eligible costs corresponded to the eligible costs allowed under the applicable State aid rules (see recitals 203 and 209 of the opening Decision).

(5) However, the Commission had not received sufficient information from Germany on the aid intensity, in particular whether the aid intensity corresponded to the rates allowed pursuant to the applicable State aid rules (see recitals 204, 205, 210 and 211 of the opening Decision) and consequently expressed doubts on the compatibility of the sub-measures with the internal market (see recitals 206 and 212 of the opening Decision). Therefore, the Commission requested Germany to submit its comments and to provide all information which may be helpful for the assessment of the aid concerning the period as from 28 November 2001 (see recital 276 of the opening Decision.

([1]) OJ C 7, 10.1.2014, p. 8.
([2]) 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).
([3]) C(2013) 4457 final, corrected by letter of 16 December 2013 (C(2013) 9021 final).

(6) By letter dated 20 September 2013, Germany submitted comments concerning the opening Decision. By letters dated 22 September 2016 and 25 October 2016 the Bavarian Ministry of Agriculture submitted additional explanations.

(7) The opening Decision was published in the *Official Journal of the European Union* ([4]). The Commission invited interested parties to submit their comments within one month. The Commission did not received specific comments from interested parties on the sub-measures.

2. **DESCRIPTION OF THE SUB-MEASURES**

(8) The MFG is a German Federal law which entered into force in 1952. It is a framework law and its validity is unlimited in time.

(9) Section 22(1) of the MFG authorises the German Federal States (hereinafter: 'Länder') to impose a milk levy on dairies based on the quantities of delivered milk.

(10) Section 22(2) of the MFG provides that the revenues obtained from the milk levy may be used solely for:

(a) improving and sustaining quality on the basis of certain implementing provisions;

(b) improving hygiene during milking and the delivery, processing and distribution of milk and milk products;

(c) milk yield recording;

(d) advice to operators on matters relating to the dairy industry and ongoing training of young employees;

(e) advertising aimed at increasing the consumption of milk and milk products;

(f) performance of the tasks conferred by the MFG.

(11) Section 22(2a) of the MFG provides that, by derogation from paragraph 2, the revenues obtained from the milk levy may also be used for:

(a) reducing increased structural collection costs in respect of the supply of milk and cream from the producer to the dairy,]

(b) reducing increased transport costs in respect of the supply of milk between dairies where such supply is necessary to ensure the supply of drinking milk to the recipient dairy's sales area, and

(c) improving quality regarding the central distribution of milk products.

(12) In Bavaria the collection and use of the milk levy was regulated in the Bavarian Regulation on a milk levy (Bayerische Milchumlageverordnung).

(13) In Bavaria the milk levy was used to finance the research sub-measures referred to in recital 4, namely:

BY 2 — 'Die Erhöhung des Milchproteingehaltes durch Management und Züchtung: Eine Perspektive für Milcherzeuger, Verbraucher und Industrie' (The increase in milk protein content by Management and Breeding: A perspective for dairy farmers, consumers and industry;

BY 11 — 'Förderung der Anpassung von Untersuchungsmethoden zur Bearbeitung spezifischer Fragestellungen sowie der Methodenentwicklung in Kooperation mit Forschungseinrichtungen und der Nutzbarmachung und des Transfers wissenschaftlicher Erkenntnisse für die bayerische Milchwirtschaft' (Promoting the adaptation of investigative methods to process specific issues and the development of methods in cooperation with research institutions and transfer of scientific knowledge for the Bavarian dairy industry)

([4]) See reference in footnote 1.

BY 12 — Entwicklung einer anti-listeriellen, frühen Oberflächenreifungskultur für geschmierte Käse (Development of an anti-listerial maturation substance for cheese);

BY 13 — 'Überwachung von antimikrobiellen Rückständen der Milch — Etablierung des neuen Biosensor-Systems MCR3 für Routineuntersuchungen in der Praxis' (Monitoring of antimicrobial residues in milk — establishment of the new biosensor system MCR3 for routine testing in practice).

The last sub-measure was also financed from the Bavarian State budget.

(14) The specific legal basis for the implementation of the sub-measures included also:

— the Budget Rules of Bavaria (Bayerische Haushaltsordnung), in particular Articles 23 and 44 as well as the relevant administrative provisions (Verwaltungsvorschriften);

— the biannual budget plan of the Bavarian Ministry of Agriculture, including the chapter for the expenditure from the 'Special Fund Milk and Fat' (Sondervermögen Milch und Fett);

— the administrative legal acts of the Bavarian Ministry of Agriculture to authorise the research projects and the expenditures (Ausgabeermächtigung).

(15) The decisions as to what kind of research projects are to be performed and financed with the milk levy were adopted by a special decision-making procedure involving different decision making levels: The board of the State Association of the Bavarian Dairy Industry (Vorstand der Landesvereinigung der bayerischen Milchwirtschaft) issues a list of pre-selected projects and submits it to the vote of the general assembly (Mitgliederversammlung) of that association. The general assembly votes also on the planned project's budget. Based on that vote and on the biannual Budget plan of the Bavarian Ministry of Agriculture the Ministry issues administrative legal acts to authorise the expenditures for the selected research projects (Ausgabeermächtigung). A separate decision is taken for each project.

3. **COMMENTS FROM GERMANY**

(16) Germany provided the following information as regards the compatibility conditions requested in the opening Decision:

BY 2 — 'Die Erhöhung des Milchproteingehaltes durch Management und Züchtung: Eine Perspektive für Milcherzeuger, Verbraucher und Industrie' (The increase in milk protein content by Management and Breeding: A perspective for dairy farmers, consumers and industry):

(17) The project was carried out between 2008 and 2012. The beneficiary was the Technische Universität München.

(18) The overall budget of the project was 600 000 EUR. The financial means are broken down as follows:

Table 1

Source	EUR per year	EUR overall	% of the total
Own recourses of the beneficiary	20 000	100 000	16,67
Group of undertakings Theo Müller	75 000	350 000	58,33
Milk Levy (MFG)	35 000	150 000	25

(19) The aid amount coming from the milk levy was EUR 150 000 and represented 25 % of the overall budget for the research project.

BY 11 — 'Förderung der Anpassung von Untersuchungsmethoden zur Bearbeitung spezifischer Fragestellungen sowie der Methodenentwicklung in Kooperation mit Forschungseinrichtungen und der Nutzbarmachung und des Transfers wissenschaftlicher Erkenntnisse für die bayerische Milchwirtschaft' (Promoting the adaptation of investigative methods to process specific issues and the development of methods in cooperation with research institutions and transfer of scientific knowledge for the Bavarian dairy industry):

(20) The aim of the project was to modernise the existing milk analysis methods and questionnaires for specific milk related questions. The results of the research project were meant to be used by the milk undertakings in Bavaria in the milk production and processing of milk products.

(21) The project was carried out between 2002 and 2011. The aid was granted annually.

(22) The budget of the project and the aid amount were as follows:

Table 2

Period 2002-2006

Year	2002	2003	2004	2005	2006
Project budget (EUR)	332 505,30	416 945,14	616 483,19	812 433,90	587 072,90
Aid amount(EUR)	222 261,52	288 240,39	423 429,64	564 887,80	391 124,32
Aid intensity (%)	66,84	69,13	68,68	69,53	66,62

Table 3

Period 2007-2012

Year	2007	2008	2009	2010	2011	2012
Project budget (EUR)	378 169,60	324 134,53	376 916,07	369 009,52	409 803,32	343 753,57
Aid amount(EUR)	273 898,60	240 292,53	274 014,01	268 866,52	301 076,32	257 259,72
Aid intensity (%)	72,43	74,13	72,70	72,86	73,47	74,84

(23) The beneficiary was Milchwirtschaftlicher Verein Allgäu-Schwaben e. V., a medium-sized enterprise ([5]) (hereinafter: 'SME'). The results of the research were presented on various national and international events as well as in numerous national and international scientific journals ([6]).

([5]) According to the information submitted by Germany the beneficiary employed in 2011 154 employees and had an annual turnover of EUR 9,05 Mio.

([6]) The list with publications submitted by the Bavarian Ministry of Agriculture is registered with the Commission under Ref. Ares(2016)5503557 — 22 September 2016.

BY 12 — Entwicklung einer anti-listeriellen, frühen Oberflächenreifungskultur für geschmierte Käse (Development of an anti-listerial maturation substance for cheese):

(24) In its letter dated 20 September 2013 Germany explained that initially it made wrong description of the project which was considered for the purposes of the opening Decision. This mistake resulted from confusion with another project with similar title that was entirely privately financed. Germany provided new information on the project that was financed from the milk levy as follows:

(25) The aim of the project was to search for interlinks between listeria monocytogens and red lubrication maturation bacteria. The project served basic microbial research. As a result, an extraordinary inhibitory potential of some strains of Pichia norvegensis against Listeria monocytogenes was demonstrated — a finding that had not been previously described scientifically. The result could not be immediately used in the production of cheese as the underlying molecular nature of the inhibitory principle had to be further clarified.

(26) The project was carried out between 2006 and 2008. The budget of the project was 30 000 EUR. It was financed entirely from the milk levy.

(27) The beneficiary was Technische Universität München, a public non-profit making higher education entity.

BY 13 — 'Überwachung von antimikrobiellen Rückständen der Milch — Etablierung des neuen Biosensor-Systems MCR3 für Routineuntersuchungen in der Praxis' (Monitoring of antimicrobial residues in milk — establishment of the new biosensor system MCR3 for routine testing in practice):

(28) The project was carried out in years 2010 and 2011. The eligible costs amounted to 73 234,58 EUR. The aid was granted in 2010 and originated from two sources: from the milk levy and from the Bavarian State budget (Cluster Ernährung). The aid amount paid from the milk levy was 26 500 EUR, and the aid amount paid from Cluster Ernährung was 26 500 EUR. Thus, the aid intensity was 72,4 %.

(29) The beneficiary was Milchprüfring Bayern e. V., an SME ([7]). The results of the research were presented on various national and international events as well as in numerous national and international scientific journals ([8]).

4. ASSESSMENT OF THE EXISTENCE OF STATE AID

(30) In the opening Decision the Commission has taken the view that the sub-measures appeared to have all the characteristics of State aid.

(31) Article 107(1) TFEU lays down that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between Member States is incompatible with the internal market.

4.1. Aid granted by the State or through State resources

(32) The aid was granted predominantly from the milk levy. In the case of sub-measure BY13 aid was also granted from the State budget of Bavaria.

(33) The financial resources coming from the State budget of Bavaria constitute State resources. The financial resources coming from the milk levy are also considered State resources within the meaning of Article 107(1) TFEU for the following reasons:

([7]) According to the information submitted by Germany the beneficiary employed in 2011 158 employees and had a turnover of EUR 14,6 Mio.

([8]) The list with publications submitted by the Bavarian Ministry of Agriculture is registered with the Commission under Ref. Ares(2016)5503557 — 22 September 2016.

(34) According to settled case-law, it is not appropriate to distinguish between cases in which aid is granted directly by the State and those in which it is granted by a public or private body designated or established by that State. However, for advantages to be capable of being categorised as State aid within the meaning of Article 107(1) TFEU, they must, first, be granted directly or indirectly through State resources and, second, be imputable to the State.

(35) With regard to the measures described above, it is apparent that the levy is collected on the basis of a Federal law, the MFG, in conjunction with the Bavarian regulation on a milk levy.

(36) Specifically, the first sentence of Section 22(1) of the MFG provides that the governments of the Länder, acting in consultation with the Land association or professional organisations, may collect levies jointly from dairies, milk collection centres and creameries in order to promote the dairy industry.

(37) Under the second sentence of Section 22(1) of the MFG, the governments of the Länder may, if requested to do so by association or professional organisations, collect joint levies of up to 0,2 cents per kilogram of delivered milk. Therefore, the sovereignty over the levy lies clearly with the governments of the Länder.

(38) The legal basis for the collection of a milk levy in Bavaria is provided by the Bavarian regulation on a milk levy which governs the detailed arrangements, including the amount of the levy. As a consequence, the collection of a milk levy is regulated by the Bavarian government, ergo by the State. That conclusion is not altered by the fact that the regulation in question is issued in consultation with the respective Land association representing the dairy industry.

(39) In the case at hand, a levy is collected from private undertakings — dairies. The revenue from this levy flows into the Bavarian budget before being used for financing the research sub-measures. Therefore, it is considered as being under public control.

(40) The Commission concludes that the measures financed by the milk levy fund are granted by State resources and are imputable to the State.

4.2. **Undertakings/Selective advantage**

(41) The beneficiaries were the following: Technische Universität München (sub-measure BY 2 and BY 12), Milchwirtschaftlicher Verein Allgäu-Schwaben e. V. (sub-measure BY 11) and Milchprüfring Bayern e. V. (sub-measure BY 13).

(42) The Technische Universität München is a public research organisation. In case of sub-measure BY 2 it has to be considered as an undertaking because it performed an economic activity, namely contract research in the agricultural field with the objective to deliver practical results to be used in the milk production by milk farmers and the dairies. The economic nature of the activity is underlined by the fact that private undertakings (group of undertakings Theo Miller, see recital 18) were also involved in the financing of the research project. It can be concluded that the research organisation performed contract research and supplied research results to business undertakings.

(43) In case of sub-measure BY 12 the Technische Universität München has to be considered as not being an undertaking because it performed a non-economic activity, namely the conduct of independent research for more fundamental knowledge in the microbial field. As pointed out in recital 24 Germany submitted new information on this sub-measure that was not evaluated in the opening Decision. According to the new information the research project under sub-measure BY 12 relates to independent research, namely basic microbial research with no direct practical implementation.

(44) Milchwirtschaftlicher Verein Allgäu-Schwaben e. V. (sub-measure BY 11) and Milchprüfring Bayern e. V. (sub-measure BY 13) are forms of organisations of the representatives of the milk production and industry in Bavaria having a private legal nature that perform different economic activities and services under contact of interest for the Bavarian milk producers, milk processors and other business operators in the dairy sector. In the context of sub-measures BY 11 and BY 13 they performed contract research in the agricultural field with the objective to deliver practical results to be used in the milk production by the milk farmers and the dairies. They are qualified as SMEs by Germany.

(45) The three selected beneficiaries in their capacity as undertakings received a selective advantage as project costs that form part of their economic activity and that normally had to be borne by their own budget were covered by means originating from the state budget and the milk levy.

4.3. **Distortion of competition and effect on trade**

(46) The Court of Justice has consistently held that 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 ([9]). Aid for an undertaking that operates in a market open to intra-Union trade is likely to affect trade between Member States ([10]). There was substantial intra-Union trade in agricultural products in the period 2001-2012. For example, imports and exports of products falling under heading 0401 of the Combined Nomenclature (milk and cream, not concentrated nor containing added sugar or other sweeteners) ([11]) were worth EUR 1,2 billion and EUR 957 million respectively in 2011 ([12]).

(47) The sub-measures assessed in this Decision are aimed at supporting industrial contract research activities in the agricultural sector, in particular the dairy sector. In view of the substantial level of trade in dairy products, it can therefore be assumed that the sub-measures in question distort or threaten to distort competition and affect trade between Member States.

4.4. **Conclusion on the existence of aid**

(48) It can be concluded therefore that sub-measures BY2, BY11 and BY13 qualify as State aid within the meaning of Article 107(1) TFEU, whereas sub-measure BY12 does not qualify as State aid because the beneficiary did not perform an economic activity.

5. **ASSESSMENT OF THE LAWFULNESS OF AID**

(49) Pursuant to Article 108(3) TFEU Member States have the obligation to inform the Commission about any plan to grant aid and shall not put such aid into effect until the Commission authorise it as compatible (stand still obligation). Germany has not notified sub-measures BY2, BY11 and BY13 to the Commission prior to their implementation.

(50) Sub-measures BY2, BY11 and BY13 constitute new aid within the meaning of point (c) of Article 1 of Regulation (EU) 2015/1589. None of the criteria of existing aid are fulfilled. In particular, the aid is not existing within the meaning of point (b)(i) of Article 1 of Regulation (EU) 2015/1589 because it was put into effect after the entry into the force of the TFEU (sub-measure BY 2 was put into effect in 2008, sub-measure BY 11 was put into effect in 2002 and sub-measure BY 13 was put into effect in 2010) and the limitation period of 10 years has not expired (the limitation period was interrupted on 28 November 2011, see recital 152 of the opening Decision).

(51) Consequently, as these new aids were not notified to the Commission prior to their implementation they are unlawful.

6. **ASSESSMENT OF THE COMPATIBILITY OF THE SUB-MEASURES**

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

(53) In accordance with the Commission notice on the determination of the rules applicable to the assessment of unlawful aid ([13]), any unlawful aid, i.e. aid put into effect in contravention of Article 108(3) TFEU, is to be assessed in accordance with the rules applicable at the time the aid was granted.

([9]) Judgment of 17 September 1980, Philip Morris Holland BV v Commission, 730/79, EU:C:1980:209, paragraphs 11 and 12.
([10]) See, in particular, Judgment of 13 July 1988, French Republic v Commission, 102/87, EU:C:1988:391.
([11]) Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff; OJ L 304, 31.10.2012, p. 1.
([12]) *Source:* Eurostat.
([13]) Commission notice on the determination of the applicable rules for the assessment of unlawful State aid (OJ C 119, 22.5.2002, p. 22).

(54) Specific guidelines have been adopted for research aid. Aid granted during the period between 28 November 2001 and 31 December 2006 is to be assessed in the light of the Community framework for state aid for research and development ([14]) (hereinafter: 'Community Framework 1996'). Aid granted after 1 January 2007 is to be assessed in the light of the Community framework for state aid for research and development and innovation ([15]) (hereinafter: 'Community Framework 2007-2013').

(55) The sub-measures BY2, BY11 and BY13 qualify as industrial research as defined under the second indent of Annex I to the Community Framework 1996 and in point 2.2(f) of the Community Framework 2007-2013 as those sub-measures were aimed at significant improvements and acquisition of knowledge on dairy products and production processes and had practical implications for the dairy sector The results of these research projects were directly useable by the undertakings in the dairy sector in their production cycles as they aimed to achieve better quality of the produced milk products. For example the research project under sub-measure BY 2 related to increase in milk protein content and private undertakings were directly involved in this project; the research project under sub-measure BY 11 related to modern milk quality analysis and the research project under sub-measure BY 13 related to establishment of the new biosensor system for routine testing in practice.

(56) The compatibility of the eligible costs has already been positively assessed in the opening Decision (see recitals 203 and 209 of the opening Decision). Therefore, the aid intensity remains to be assessed (see recitals 204, 205, 210 and 211 of the opening Decision) (see recital 5 of this decision).

Sub-measure BY 2

(57) Sub-measure BY 2 has to be assessed in the light of the Community Framework 2007-2013 since the aid was granted for the period 2008-2012.

(58) Pursuant to point 5.1.2(b) of the Community Framework 2007-2013, an aid intensity of up to 50 % is allowed for industrial research. The aid intensity for sub-measure BY 2 was 25 % (see recital 19 of this Decision) and thus within the allowed legal limit.

(59) It can therefore be concluded that the sub-measure BY 2 is compatible with the internal market as the aid intensity specified in point 5.1.2(b) of the Community Framework 2007-2013 is complied with.

Sub-measure BY 11

(60) Since sub-measure BY 11 was granted between the year 2002 and the year 2011, that aid has to be assessed in the light of both guidelines for research aid: the Community Framework 1996 for the period of implementation from 28 November 2001 to 31 December 2006 and the Community Framework 2007-2013 for the period of implementation from 1 January 2007 to 31 December 2011.

(61) Over the period of implementation from 28 November 2001 to 31 December 2006 the aid intensity allowed for industrial research was 50 % (point 5.3 of the Community Framework 1996). Additional 10 percentage points were allowed where the aid was given to a SME (point 5.10.1 of the Community Framework 1996). Another increase of 10 percentage points was allowed where the project results were widely disseminated and published (point 5.10.4(c) of the Community Framework 1996. The aid granted under sub-measure BY 11 complies with those aid intensity rules as that aid was granted to SMEs and the results were presented at different international and national scientific events and publications and amounted to less than 70 % of the eligible costs (see recital 22 and table 2 of this Decision).

(62) Over the period of implementation from 1 January 2007 to 31 December 2011 the aid intensity allowed for industrial research was 50 % (point 5.1.2(b) of the Community Framework 2007-2013). Additional 10 percentage points were allowed where the aid was given to an SME (point 5.1.3(a) of the Community Framework 2007-2013). Another increase of 15 percentage points up to a maximum aid intensity of 80 % was allowed where the project results were widely disseminated and published (point 5.1.3(c) of the Community Framework 2007-2013). The aid granted under sub-measure BY 11 complies with those aid intensity rules as that aid was granted to SMEs and the results were presented at different international and national scientific events and publications and amounted to less than 75 % of the eligible costs (see recital 21 and table 3 of this Decision).

([14]) Community framework for state aid for research and development (OJ C 45, 17.2.1996, p. 5).
([15]) Community framework for state aid for research and development and innovation (OJ C 323, 30.12.2006, p. 1).

(63) The beneficiary, Milchwirtschaftlicher Verein Allgäu-Schwaben e. V, qualifies as SME as its number of employees and annual turnover are below the thresholds established in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ([16]) (see recital 23). The list of different international and national scientific events and publications referred to in the same recital mentions about 38 public lectures and 29 publications.

Sub-measure BY13

(64) Sub-measure BY 13 has to be assessed in the light of the Community Framework 2007-2013 since the aid was granted in 2010.

(65) The aid intensity allowed for industrial research was 50 % (point 5.1.2(b) of the Community Framework 2007-2013). Additional 10 percentage points were allowed where the aid was given to an SME (point 5.1.3(a) of the Community Framework 2007-2013). Another increase of 15 percentage points up to a maximum aid intensity of 80 % was allowed where the project results were widely disseminated and published (point 5.1.3(c) of the Community Framework 2007-2013). The aid granted under sub-measure BY 13 complies with those aid intensity rules as that aid was granted to SMEs and the results were presented at different international and national scientific events and publications and amounted to less than 75 % of the eligible costs (see recitals 26 and 27 of this Decision).

(66) The beneficiary, Milchprüfring Bayern e. V, qualifies as SME as its number of employees and annual turnover are below the thresholds established in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ([17]) (see recital 29). The list of different international and national scientific events and publications referred to in the same recital mentions about 12 public lectures and 12 publications.

Conclusion on the compatibility of the aid sub-measures

(67) It can be concluded therefore that sub-measures BY 2, BY 11 and BY 13 are compatible with the internal market,

HAS ADOPTED THIS DECISION:

Article 1

Sub-measure BY 12 does not constitute State aid within the meaning of Article 107(1) TFEU.

Article 2

State aid granted unlawfully by Germany for the period between 28 November 2001 and 31 December 2012 for sub-measures BY 2, BY 11, and BY 13 in breach of Article 108(3) TFEU is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 24 March 2017.

For the Commission
Phil HOGAN
Member of the Commission

([16]) OJ L 124, 20.5.2003, p. 36.
([17]) OJ L 124, 20.5.2003, p. 36.