COMMISSION DECISION (EU) 2017/2337

of 29 May 2017

on the amounts allocated to the provision of technical support in the agricultural sector as well as to the production and marketing of quality agricultural products pursuant to the Milk and Fat Law under State aid SA.35484 (2013/C) (ex SA.35484 (2012/NN))

(notified under document C(2017) 3487)

(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 ([1]),

Having called on interested parties to submit their comments pursuant to the provision cited above and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letters dated 28 November 2011 and 27 February 2012, the European Commission (hereinafter: '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 21(1) of Council Regulation (EC) No 659/1999 ([2]), now Article 26(1) of Council Regulation (EU) 2015/1589 ([3]). 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 registration 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 (C(2013) 4457 final) (hereinafter 'the opening decision'), the Commission informed Germany that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of this aid. For the purposes of investigating the sub-measures in question as regards their compatibility with the internal market, the Commission distinguished between two separate periods:

1. period from 28 November 2001 to 31 December 2006;

2. period from 1 January 2007.

(4) In its opening decision, the Commission found for several of the sub-measures under the MFG either that they did not constitute State aid within the meaning of Article 107(1) TFEU or that they did constitute State aid but fell outside the scope of State aid rules.

(5) For other sub-measures, the Commission found that they were compatible with the internal market either for the period from 28 November 2001 to 31 December 2006 or for the period from 1 January 2007 or for both periods.

([1]) With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of Articles are in substance identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

([2]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

([3]) 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). With effect from 14 November 2015, this Council Regulation repeals Regulation (EC) No 659/1999 and replaces these rules. In accordance with Article 35 of Regulation (EU) 2015/1589, references to the repealed Regulation are regarded as references to Regulation (EU) 2015/1589 and must be read in accordance with the correlation table in Annex II to that Regulation.

(6) For all other sub-measures, including sub-measures underlying this decision on the provision of technical support in the agricultural sector as well as State aid granted for the production and marketing of quality agricultural products, the Commission raised doubts in the opening decision as to their compatibility with the internal market.

(7) After a number of mistakes in the opening decision were discovered, a correction was sent to the German authorities by letter dated 16 December 2013.

(8) The corrected 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.

(9) By letter dated 20 September 2013, Germany submitted comments concerning the Opening Decision.

(10) The Commission received 19 sets of comments from interested parties. One of these parties asked the Commission not to disclose its identity and gave sound reasons for this. A total of ten sets of comments, but not the ones referred to in the previous sentence, referred to the sub-measures at issue for the provision of technical support in the agricultural sector as well as State aid granted for the production and marketing of quality agricultural products.

(11) These comments were transmitted to Germany by letters of 27 February, 3 March and 3 October 2014.

(12) By a letter dated 21 March 2014, Germany informed the Commission that it would not be responding to the aforementioned comments submitted by interested parties.

(13) By letter dated 31 March 2014, Germany submitted to the Commission a comment made by Bavaria regarding the comments made by the party whose identity was not disclosed (see recital 10).

(14) Germany did not initially respond to the comments submitted by interested parties in February 2014. Germany responded to an additional opinion dated 8 July 2014 by letter dated 3 December 2014.

(15) The Commission requested further information from Germany by letter of 13 November 2014. Germany answered the Commission's questions by letter dated 27 February 2015.

(16) On 30 June 2016, the Federal Ministry of Food and Agriculture submitted additional information on sub-measure RP 2.

(17) The Commission again requested further information from Germany by letter of 15 November 2016. After requesting an extension of the deadline set by the Commission to reply to the letter, Germany answered the Commission's questions by letter dated 13 January 2017.

2. **DESCRIPTION OF THE MEASURES AND COMMENTS BY THE GERMAN AUTHORITIES**

(18) In the following description, we will discuss the sub-measures under the aid granted for the provision of technical support in the agricultural sector as well as State aid earmarked for the production and marketing of quality agricultural products pursuant to the MFG, about which the Commission expressed doubts as to their compatibility with the internal market. Specifically, the following sub-measures are discussed (in the following text, the specific sub-measures will be referred to according to the classification in the Annex of the Opening Decision): BY 3, BY 10, BW 4, BB 1, BB 3, HE 2, HE 3, HE 9, NI 5, NI 6, NI 7, NW 4, NW 5, NW 6, RP 1, RP 5, SL 2, SL 5, TH 3, TH 4, TH 9, TH 10 (technical support for the period 2001-2006); RP 2 (technical support for the period from 2007); BW 10, BW 11, NI 1 and TH5 (quality products for the period 2001-2006).

Legal basis

(19) The MFG is a federal law which entered into force in 1952 and has since been amended several times ([5]). It is the law underlying the aid measures at issue, and its validity is unlimited in time.

([4]) See footnote 3.
([5]) Most recently by Article 397 of the Regulation of 31 August 2015 (BGBl. I, p. 1474).

(20) 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. According to the information made available by Germany, nine (out of sixteen) German Länder made use of this authorisation, i.e. Baden-Württemberg, Bavaria, Brandenburg, Hessen, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland and Thuringia. The levies imposed by the Länder amount to up to EUR 0,0015 per kg of milk.

(21) Germany has demonstrated that the milk levy is not applicable to imports. By contrast, exports may be subject to the milk levy.

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

1. improving and sustaining quality on the basis of certain implementing provisions;
2. improving hygiene during milking and the delivery, processing and distribution of milk and milk products;
3. milk yield recording;
4. advice to operators on matters relating to the dairy industry and ongoing training of young employees;
5. advertising aimed at increasing the consumption of milk and milk products;
6. performance of the tasks conferred by the MFG.

(23) Section 22(2a) of the MFG provides that, by derogation from paragraph 2, the revenues generated pursuant to paragraph 1 may also be used to:

1. reduce increased structural collection costs in respect of the supply of milk and cream from the producer to the dairy.
2. reduce 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
3. improve quality regarding the central distribution of milk products.

(24) Section 22(4) of the MFG provides that contributions and fees paid by dairies or their associations to establishments in the dairy industry for the purposes set out in paragraph 2 may be offset in full or in part by the revenues generated by the milk levy.

(25) Whilst the MFG sets the framework, it is the implementing regulations issued by the Länder on the basis of the MFG that provide the actual legal basis for the measures in question.

Financing

(26) By letter of 13 January 2017, the German authorities confirmed that the measures referred to in this decision were financed exclusively from the milk levy and that no additional funds from Länder budgets were used.

2.1. **Provision of technical support in the agricultural sector**

(27) Between 2001 and 2006, Baden-Wuerttemberg, Bavaria, Brandenburg, Hessen, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland and Thuringia granted financial support for measures aimed at the provision of technical support in the agricultural sector (sub-measures BY 3, BY 10, BW 4, BB 1, BB 3, HE 2, HE 3, HE 9, NI 5, NI 6, NI 7, NW 4, NW 5, NW 6, RP 1, RP 5, SL 2, SL 5, TH 3, TH 4, TH 9 and TH 10).

(28) From 2007, Rhineland-Palatinate granted financial support for one measure aimed at the provision of technical support in the agricultural sector (RP 2).

(29) Between 2001 and 2011, the total budgetary resources provided (all Länder combined) amounted to a total of EUR 23,7 million.

(30) The financial assistance is provided for general information measures which benefit all operators in the dairy sector. These measures are aimed at the use of milk and dairy products in general, are limited to providing information about the objective characteristics of milk, do not include subjective claims about the benefits of certain products of one or more companies and do not constitute advertising. Only general measures that equally benefit all producers in the milk sector are financed. Individual producers or the origin of the milk are not named. No direct payments are made to processing and marketing companies (with the exception of measure RP 2).

(31) Aid intensity of the measures is up to 100 % of eligible costs, except where otherwise indicated.

Technical support in the period 2001-2006

BY 3

(32) Bavaria granted financial support for the collection of general factual and technical information regarding milk production as well as for the publication and provision of general information on dairy topics (for example, milk production on farms). Costs associated with the dissemination of scientific knowledge in a generally comprehensible manner (through publications and presentations) and the preparation of factual information on quality systems, which are made available to dairy farmers in Bavaria and the interested public, were also subsidised. The measures were carried out by the Association of Dairy Producers (Verband der Milcherzeuger e.V. — VMB).

(33) In its communication of 20 September 2013 ([6]), Germany argued that, upon further review, the measure BY 3 did not constitute State aid, since it contained no specific benefits for individual companies. Even if it were considered a form of aid, the existing aid is protected under grandfathering. In the alternative, it was argued that the aid was compatible with the internal market.

(34) Moreover, the measures concerned were compatible with the internal market regardless of the evidence that the funds were used for the dissemination of new methods. Article 15(2)(e) of Commission Regulation (EC) No 1857/2006 ([7]) and the 2007-2013 Guidelines ([8]) waive this requirement (dissemination of new methodologies). Instead, the decisive factor is disseminating scientific findings. This is also applicable to the 2000-2006 period, since no circumstances that would have warranted more stringent criteria existed at that time.

(35) Germany argued that the measure was not confined to a particular group, but that the whole dairy sector was supported in a general way and no more than EUR 100 000 was spent per beneficiary within three years.

(36) According to the German authorities, the beneficiaries of this measure were 'farmers, producer groups, the general public and SMEs'.

(37) According to the communication issued by German authorities on 27 February 2015, the annual expenditure on operations for measures BY 3 and BY 10 for the period 2001-2006 was in the range of EUR 471 986-EUR 518 057. Considering the number of milk producers and dairy plants (47 287-56 755) over the same period, a yearly amount of between EUR 9,13 and EUR 10,46 was spent per beneficiary (milk suppliers and dairies).

BY 10

(38) Bavaria granted the Milchwirtschaftliche Untersuchungs- und Versuchsanstalt (MUVA) Kempten financial support for the exchange between different actors (research institutes and authorities) of information related to milk as a raw material.

(39) In its communication of 20 September 2013, Germany argued ([9]) that measure BY 10 did not constitute State aid, since it was not aimed at a transfer of information from MUVA to milk producers or dairy plants. However, even if it were considered a form of aid, the existing aid was protected under grandfathering. In the alternative, it was argued that the aid was compatible with the internal market.

([6]) pp. 34-36
([7]) 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).
([8]) Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 (OJ C 319, 27.12.2006, p. 1).
([9]) pp. 37-39

(40) In the same communication ([10]), Germany argued that the 'beneficiaries' of the measure were predominantly the authorities.

(41) In its comments dated 27 February 2015, Germany estimated the total annual expenditure related to measures BY 3 and BY 10 at EUR 471 986-518 057 (see paragraph 37).

BW 4

(42) Baden-Württemberg granted financial support for general public relations activities and consumer information related to milk and milk products. This measure referred to the following, among others:

(a) consumer information on the nutritional value and the general properties of dairy products;

(b) general information on labelling rules or quality criteria of milk and milk products;

(c) provision of speakers or information stands with regard to the above mentioned topics for consumer events (e.g. International Day of Milk);

(d) running or participating in training and scientific conferences on the subject of dietary milk and dairy products;

(e) organisation of events and the comprehensive presentation of the dairy industry at fairs (Landwirtschaftliches Hauptfest).

(43) The measure was coordinated by the Milchwirtschaftlicher Verein Baden-Württemberg (MVBW). The technical implementation of the measure was carried out by the MVBW itself or by third parties commissioned by it.

(44) In its comments dated 20 September 2013 ([11]), Germany upheld its view that the measure did not constitute State aid because no individual undertakings or branches of production were favoured.

(45) In the alternative, it was argued ([12]) that the measures materially complied with the requirements of the Community Guidelines applicable at the time, and could be considered fundamentally as a form of provision of technical assistance in accordance with point 14.1 of the Community Guidelines for State aid in the agriculture sector ([13]) (hereinafter: the '2000-2006 Guidelines'). The measures serve the general and wide dissemination of current scientific knowledge of the properties of milk and dairy products.

(46) According to Germany, the 'Allgemeine Öffentlichkeitsarbeit' (general public relations activities) measures were not limited to a particular group, but supported the entire dairy sector in a general manner. Thus the conditions indicated in point 14.2 of the Guidelines have been observed. Point 14.3 of the 2000-2006 Guidelines stated that State aid may cover up to 100 % of the costs. The level of aid was lower than the limit of EUR 100 000 per beneficiary for a three-year period laid down in point 14.3.

BB 1

(47) Brandenburg sponsored training and education costs under the measure 'Improving Hygiene'. Areas of focus included animal health, improvement of milk hygiene and the quality of raw milk as well as analysis of performance issues. The measure was implemented by the Landeskontrollverband Brandenburg (LKVB). The maximum support rate did not exceed 60 % of eligible costs.

(48) In its communication of 20 September 2013, Germany argued ([14]) that the measure 'Verbesserung der Hygiene' (Improving Hygiene) for the period 2001-2006 was compatible with the internal market. The consultancy services on offer were not limited to a particular group, but were made available to all milk producers in Brandenburg. Individual businesses were not favoured. The measure, it was argued, corresponded to the third indent of point 13.2 of the 2000-2006 Guidelines, i.e. the costs of training personnel to apply quality assurance systems.

([10]) p. 38
([11]) p. 43
([12]) p. 47
([13]) OJ C 28, 1.2.2000, p. 2.
([14]) pp. 39-40

(49) In their communication of 27 February 2015, the German authorities confirmed that, in principle, all milk producers in the federal state had access to the consultancy services (complex and special consultancy) in question. Germany argued that the grants provided for part funding were fixed amounts of EUR 161,19 per farm in case of complex consultancy or EUR 144,62 per farm in case of special consultancy. Thus the upper limit of EUR 100 000 per company per three-year period could not be exceeded. According to the German authorities, the specified values were calculated for the year 2006, but other years' values were of a similar order. Germany also claimed that the final beneficiaries (dairy plants & milk producers) were SMEs.

BB 3

(50) By the end of 2007, Brandenburg had funded the provision of information on economic issues and the dissemination of newly acquired information and knowledge in industry issues related to the Milk Law, dairy policy, milk production and milk quality, animal feeding and husbandry, promotion, protection from animal diseases, etc. No advice or training was provided to individual persons. The measure was delegated to the Landesvereinigung der Milchwirtschaft Brandenburg-Berlin e. V. (LVMB) and the Landesbauernverband Brandenburg e.V. (LBV).

(51) In its comments dated 20 September 2013 ([15]), Germany claimed that the abovementioned measure was compatible with the internal market. The measure was carried out in accordance with the 2000-2006 Guidelines, as a form of technical assistance pursuant to point 14.1. The purpose of the measure was to improve the efficiency and professionalism of agriculture in the Community, thus contributing to the long-term economic viability of the sector.

(52) State-wide milking and quality competitions organised by the LVMB were carried out in accordance with the fourth indent of point 14.1 as 'Veranstaltung von Wettbewerben' (organisation of competitions).

(53) In its comments dated 27 February 2015, Germany argued that the Brandenburg companies that won competitions at the International Green Week (IGW) were distinguished and thus became known to a larger share of the general public. For this purpose, around EUR 463 provided to LVMB from milk levies was spent in 2006 ([16]).

(54) LBV organised consulting services through their milk consultants, available for all stakeholders of the dairy industry, within the framework of the project 'Milcherzeugerberatung' (Milk producer consultancy). Funding was provided as co-financing from the milk levies, as part of the project funding. According to the documents submitted, LBV received a grant from the regional government amounting to EUR 20 000 for this purpose in 2006. According to the German authorities, the procedures in previous years were similar.

(55) State aid was not restricted to selected groups. All persons concerned in the relevant sector of the milk industry had an equal opportunity to participate in the professional competitions. Therefore, the conditions laid down in point 14.2 of the 2000-2006 Guidelines were satisfied.

HE 2

(56) Hessen granted financial support to the Landesvereinigung für Milch und Milcherzeugnisse Hessen e.V. (LVMH) for the measure 'Fortbildung für Erzeuger durch das Innovationsteam' (Training for Producers by the Innovation Team). Under this measure, the innovation team of LVMH prepared scientific information in the context of specialist articles and training. These included the collection and bundling of information and sharing of knowledge through scientific articles as well as training for farmers and farm workers.

(57) Germany claimed that the effects on competition were low ([17]). Therefore, the aid could be granted up to a maximum rate of 100 % to cover the cost of accurately described activities, in particular training and education. The eligible costs could include the actual cost of organising the training programme, travel and subsistence expenses together with the cost of the provision of replacement services during the absence of the farmer or the farm worker. This case relates to training for farmers on the abovementioned subjects and thus the requirements laid down in point 14.1 of the 2000-2006 Guidelines were satisfied.

([15]) pp. 40-41
([16]) Communication dated 27 February 2015, p. 47.
([17]) Communication of September 2013, pp. 41-42.

(58) The requirements laid down in point 14.2 were also satisfied as all natural and legal persons in the area concerned had, in principle, an opportunity to participate in the training, based on objectively defined criteria. The maximum allowable limit of EUR 100 000 was not exceeded as around EUR 125 was paid in aid per beneficiary over three years, in accordance with the criteria laid down in point 14.3.

HE 3

(59) Hessen granted financial support for public relations activities aimed at educating consumers on milk and milk products, including their nutritional values and uses. The nutrition team of LVMH disseminated scientific knowledge in a generally understandable form, organised information events and campaigns (not directed to specific businesses), and conducted PR activities in the form of flyers, brochures, handouts, recipes or posters related to the production, treatment and processing of milk and dairy products.

(60) In its comments dated 20 September 2013 ([18]), Germany claimed that measure HE 3 did not constitute a State aid because no individual undertakings or branches of production were favoured. The measure constituted 'pure consumer education'. In the alternative, Germany argued that the aid was compatible with the internal market.

(61) If the measure were classified as State aid, contrary to the view expressed by Germany, it would, in any event, have been in accordance with the decision-making practice prevailing at the time and therefore be regarded as materially legitimate. The measure was not limited to a particular group, but supported the entire dairy sector in a general manner. Thus the conditions indicated in point 14.2 of the 2000-2006 Guidelines were observed. Point 14.3 of the 2000-2006 Guidelines stated that State aid may cover up to 100 % of the costs. The actual amount of the grants was well below the applicable threshold of EUR 100 000 per beneficiary within three years (point 14.3 of the 2000-2006 Guidelines). In the period 2001-2006, there were about 6 000 active dairy farmers in Hessen, giving rise to an average grant amount of about EUR 170 per beneficiary in the period in question.

HE 9

(62) Hessen granted financial assistance to the LVMH for the measure 'Training of young dairy farmers'. The purpose of this measure was to improve the skills of young dairy farmers. The eligible costs included the actual cost of organising the training programme, travel and subsistence expenses together with the cost of the provision of a replacement during the absence of the farmer or the farm worker.

(63) In its comments dated 20 September 2013 ([19]), Germany claimed that the impact on competition was low. Therefore, such aid could be granted up to a maximum rate of 100 % to cover the cost of accurately described activities, in particular training and education. The described measure could be classified under point 14.1 of the 2000-2006 Guidelines, as it ultimately constituted the education and training assistance described therein.

(64) The measure included classical training in the dairy sector which was in principle open to all producers, thus satisfying the requirements laid down in point 14.2 of the 2000-2006 Guidelines. Aid covering up to 100 % of the costs is therefore permitted in those cases. The total amount of aid granted in the period 2001-2006 was about EUR 35 000, not exceeding the upper threshold of EUR 100 000 per beneficiary per three-year period (see point 14.3 of the 2000-2006 Guidelines).

NI 5

(65) Lower Saxony granted the Landesvereinigung der Milchwirtschaft Niedersachsen e.V. (LVMN) financial support for participation in fairs and exhibitions and for the preparation of scientific information in a readily comprehensible form. In this context, subsidised costs included rent and equipment for exhibition premises as well as the cost of publication of factual information (brochures, recipes etc.) on milk and dairy products, including their nutritional values and uses, and on milk production in Lower Saxony. The measure was coordinated by the LVMN. The technical implementation of the measure was carried out by the association itself or by third parties commissioned by it.

([18]) pp. 43-47
([19]) pp. 43-47

(66) In its comments dated 20 September 2013 ([20]), Germany argued that the measure was governed by the fourth indent (organisation of competitions, exhibitions and fairs) of point 14.1. of the 2000-2006 Guidelines. The main component of the measure was subsidising the exhibition stand of the LVMN. In this respect, the aid measure was considered acceptable and compatible with EU law, in Germany's opinion, if it additionally fulfilled the requirements contained in points 14.2 and 14.3.

(67) Lower Saxony expressed the view that the relevant requirements were satisfied, since all dairy farms had benefited from the measure (2001-2006 average: around 17 500 farms). This was achieved, on the one hand, by ensuring that all dairy farms had access to the measure (point 14.2 of the 2000-2006 Guidelines) and by ensuring that the aid did not exceed EUR 100 000 per beneficiary within 3 years (point 14.3 of the 2000-2006 Guidelines).

NI 6 (2001-2003)

(68) Lower Saxony also granted financial support for the participation of processing undertakings in fairs. Germany claimed that the aid granted in the period between 2001-2006 was in accordance with the requirements contained in point 14.1 of the 2000-2006 Guidelines. From 26 November 2003, the measure was based on approved State aid No 200/2003, which was in force until 31 December 2008, with a maximum aid intensity of 50 % or a maximum aid amount of EUR 70 000 per beneficiary over a three-year period.

(69) In its comments of 20 September 2013 ([21]), Germany argued that the measure provided aid only to enterprises active in processing and marketing (dairy plants) for their participation in fairs and exhibitions. That being the case, the evaluation of this measure was not governed by the fifth indent of point 14.1 (as assumed in the Opening Decision of the Commission), but by the fourth indent of point 14.1. Based on this, aid granted in the period 2001-2003 was regarded as compatible with the internal market.

(70) In their comments dated 27 February 2015, the German authorities warrant that measure NI 6 was open to all companies active in the area of processing and marketing of dairy products in the relevant period (1 January 2002-26 November 2003 ([22])) and was awarded according to objective criteria. Moreover, the measure was independent from membership in producer or other agricultural organisations.

(71) According to the same comments, the maximum aid intensity for this measure was 48 %. Only one company (Nordmilch eG) received a total amount of aid in excess of EUR 100 000 under the measure in the period in question. According to the German authorities, Nordmilch eG did not fall within the definition of an SME. They were therefore looking into recovering this individual aid.

NI 7

(72) Lower Saxony granted financial support for general consumer information campaigns on the use of milk as a foodstuff. The beneficiary was the LVMN, on whose behalf the information material was created.

(73) In its comments dated 20 September 2013 ([23]), Germany claimed that the measure 'general public relations activities' did not constitute a State aid because no individual undertakings or branches of production were favoured.

(74) Germany argued ([24]) that the measure materially complied with the requirements of the Guidelines applicable at the time and could essentially be considered as provision of technical assistance in accordance with point 14.1 of the 2000-2006 Guidelines, as its purpose was the general dissemination of scientific knowledge and information about the properties of milk and dairy products.

(75) According to Germany, the measure was not limited to a particular group, but supported the entire dairy sector in a general manner. As a consequence, the conditions laid down in point 14.2 of the 2000-2006 Guidelines were met.

([20]) p. 55
([21]) p. 56
([22]) In this regard, German authorities gave assurances that no legally binding commitments had been made towards beneficiaries in 2001 (in the period relevant for the examination).
([23]) p. 43
([24]) pp. 58-59

(76) According to Germany, the amount of aid granted was well below the upper threshold of EUR 100 000 per beneficiary within three years, laid down in point 14.3. Considering an average of about 17 500 milk producers in Lower Saxony in the period indicated above and a total amount of approximately EUR 6,9 million earmarked for measure NI 7 in the entire period, around EUR 395 of aid was paid per beneficiary.

NW 4 and NW 5

(77) North Rhine-Westphalia granted financial support for informative events and measures to raise general awareness amongst consumers and measures regarding the use of milk and dairy products and their general characteristics (sub-measure NW 4). The grant recipients were Landesvereinigung der Milchwirtschaft Nordrhein-Westfalen e.V. (LVMNRW) and Landwirtschaftsverbände Rheinland und Westfalen-Lippe.

(78) North Rhine-Westphalia granted further financial support for events related to the exchange of knowledge between milk producers on dairy industry issues (sub-measure NW 5).

(79) The costs of event organisation and management, consultation, education and training related to issues of the dairy industry were subsidised. Aid intensity amounted to up to 30 %.

(80) In its comments dated 20 September 2013 ([25]), Germany argued that no favouring of individual companies or sectors occurred under measures NW 4 and NW 5 since they were aimed at the general public. As a consequence, these measures cannot be considered as a form of technical assistance. In addition to that, the potential benefits of both measures lacked substantive and geographic selectivity.

(81) In their comments of 27 February 2015, the German authorities estimate the range of total annual expenditure under measure NW 4 in the period 2001-2006 to be between EUR 335 200 and EUR 497 800. With some 10 000 businesses holding dairy cattle over the same period, an annual amount between EUR 33,52 and EUR 49,78 was earmarked per beneficiary. Under measure NW 5, annual expenditure of EUR 14 000 works out at around EUR 1,40 per beneficiary per year.

NW 6

(82) North Rhine-Westphalia granted financial support for the collection of relevant data that contributed to market transparency. Costs incurred by the Vereinigung der Milchindustrie LVMNRW during the collection, analysis and publication of relevant data related to the dairy market were eligible for funding. The results were made public in the form of notices and market reports and were available free of charge to everyone. They contributed to the transparency of the market and promoted the sharing of factual and scientific information and knowledge between different businesses in the dairy sector.

(83) In its comments of 20 September 2013 ([26]), Germany claimed that the measure was not substantively or geographically selective. In the alternative, Germany argued that the compatibility requirements of the Guidelines had been met.

(84) The beneficiaries were farmers, producer groups and all stakeholders in the dairy sector ([27]).

(85) In its comments of 27 February 2015, Germany estimates the range of total annual expenditure under measure NW 6 in the period 2001-2006 to be between EUR 139 400 and EUR 155 900. With some 10 000 businesses holding dairy cattle over the same period, an annual amount between EUR 13,94 and 15,59 was earmarked per beneficiary.

RP 1 and SL 2

(86) Rhineland-Palatinate and Saarland granted financial support for the dissemination of consumer information, including scientific knowledge in a generally understandable form, generic factual information on products, their nutritional benefits and suggested uses. Costs of participation in fairs and exhibitions, travel expenses, publication costs, rent paid for exhibition spaces, symbolic prizes worth up to EUR 250 per prize and winner were eligible for funding.

([25]) pp. 70-74
([26]) p. 76
([27]) Communication of February 2013.

(87) Promotional activities ([28]) or measures aimed at the products of particular companies were excluded from funding. The coordination and technical implementation of the measure was carried out by Milchwirtschaftliche Arbeitsgemeinschaft Rheinland-Pfalz e.V. (MILAG) and the Landesvereinigung der Milchwirtschaft des Saarlandes e.V. (LVMS).

(88) In its comments dated 20 September 2013 ([29]), Germany claimed that these measures did not constitute State aid because no individual undertakings or branches of production were favoured. According to the German position, these measures constitute 'pure consumer education'. In the alternative, Germany argued that the aid was compatible with the internal market. Point 8 of the Community Guidelines on state aid for advertising of agricultural produce specified the measures which were considered a form of technical aid in the agricultural sector within the meaning of point 14 of the 2000-2006 Guidelines.

(89) The decision-making practice of the Commission in the period 2000-2006 across several product areas and Member States indicated that the introduction of measures which were comparable with the measures at issue here was considered to be materially legal and approvable by the Commission in the abovementioned period.

(90) Germany added that even if they were classified as State aid contrary to the opinion of Germany, measures RP 1 and SL 2 were at least in accordance with the former decision-making practice and could therefore be regarded as materially legitimate. According to Germany, the 'general public relations activities' measures were not limited to a particular group, but supported the entire dairy sector in a general manner. As a consequence, the conditions laid down in point 14.2 of the 2000-2006 Guidelines were met. In accordance with point 14.3, the subsidies could cover up to 100 % of the costs.

(91) In its communication of 27 February 2015, Germany argued that State aid granted over a period of three years under the ceiling of EUR 100 000 per beneficiary amounted to a sum between EUR 46 and EUR 73 per year per beneficiary ([30]).

RP 5 and SL 5

(92) Rhineland-Palatinate and Saarland granted financial support for consulting and training programmes for milk producers to improve the hygiene of milking equipment and the quality of the delivered milk (sub-measures RP 5 and SL 5). Proven consultancy costs were subsidised up to a maximum of EUR 75 000 per year in Rhineland-Palatinate and up to EUR 15 000 per year in the Saarland. Ongoing advisory services were excluded from the subsidy. The coordination and the technical implementation of these measures was carried out by the Landeskontrollverband Rheinland-Pfalz e.V. (LKVRP) and the LVMS.

(93) In its comments of 20 September 2013 ([31]), Germany claimed that the special consultancy on milking technology and the measures for the improvement of the quality of raw milk in Rhineland-Palatinate and Saarland were compatible with the internal market in the period of 2001-2006.

(94) The aim of the measures was to offer specialist consulting in the field of milk technology and provide related advice and training for milk producers chosen on an ad hoc basis after problems (such as increased somatic cells) have been identified in the context of quality inspections of the delivered milk, with the involvement of veterinarians to improve udder health and thus the quality of raw milk. Any milk producer in Rhineland-Palatinate or Saarland could have benefited from this offer. Membership in LKVRP or LVMS was not necessary. Consulting services that were ongoing or were called upon at regular intervals (such as tax and legal advice or advertising) were not eligible for funding.

(95) Germany argues that it thus constitutes a subsidised service. No direct payments were made to farmers.

([28]) The legal basis for promotional activities in Rhineland-Palatinate is set in Decision No 381/2009 on State aid entitled 'Agrarmarketingmaßnahmen in Rheinland-Pfalz'.
([29]) p. 43
([30]) Communication of 27 February 2015, p. 48.
([31]) p. 80

(96) According to the views expressed by Rhineland-Palatinate, consulting assistance pursuant to the third indent of point 14.1 of the 2000-2006 Guidelines is not dependent on the dissemination of new methodologies. Such an obligation unquestionably applies to the promotion of 'other activities for the dissemination of new methods', in accordance with the fifth indent of point 14.1 of the 2000-2006 Guidelines. In addition, consulting services that were ongoing or were called upon at regular intervals were expressly excluded from funding under this measure.

(97) The conditions laid down in points 14.2 and 14.3 of the 2000-2006 Guidelines are fulfilled, according to the views expressed by Germany, since membership of LKVRP or the service provider is not necessary.

(98) Germany gave assurances that the total aid amount of EUR 100 000 per beneficiary over a period of three years was not exceeded. About 300 milk producers were advised in Rhineland-Palatinate per year and about 100 in Saarland. Given an annual appropriation of about EUR 59 000 in Rhineland-Palatinate and about EUR 13 000 in Saarland, the average funding per beneficiary is around EUR 197 in Rhineland-Palatinate and EUR 130 in Saarland.

(99) The beneficiaries were farmers (SMEs) and producer associations.

TH 3 and TH 4

(100) Thuringia granted financial support for Landesvereinigung Thüringer Milch e.V. (LVTM) for the participation at trade and consumer exhibitions (Grüne Tage Thüringen) and the organisation of conferences with the purpose of disseminating scientific information (Thüringer Milchtag) (sub-measure TH 3).

(101) In addition, the publication of factual information about producers from the region was also subsidised (general public relations, International Day of Milk and Thüringer Milchkönigin) (sub-measure TH 4).

(102) Material and personnel costs were both eligible for aid. The beneficiary was LVTM.

(103) In its comments of 20 September 2013 ([32]), Germany argued that measure TH 3 should be considered compatible with the internal market (point 14.1 of the 2000-2006 Guidelines). Its purpose was to improve the efficiency and professionalism of agriculture in the Community, thus contributing to the long-term economic viability of the sector.

(104) The organisation of conferences for the dissemination of scientific information (e.g. Thüringer Milchtag) is governed by the third indent, 'Consulting Fees', of point 14.1 of the 2000-2006 Guidelines. Participation in trade shows and consumer exhibitions representing the Thuringian dairy industry (e.g. Grüne Tage Thüringen) was governed by the fourth indent of point 14.1, 'Organisation of Competitions, Exhibitions and Fairs'.

(105) Germany argued that the measure was not limited to a particular group, but served to support the entire dairy sector in a general manner (see point 14.2 of the 2000-2006 Guidelines). Earmarked aid did not exceed EUR 100 000 per beneficiary over a three-year period.

(106) In its comments dated 20 September 2013 ([33]), Germany also argued that measure TH 4 focused on 'general public relations'. Its purpose was the broad dissemination of up-to-date scientific findings related to the properties of milk and dairy products and therefore constituted a form of technical assistance within the meaning of point 14.1 of the 2000-2006 Guidelines. The activities of the Landesvereinigung Thüringer Milch e.V. could be classified as consulting fees under the scope of the third indent of point 14.1 of the 2000-2006 Guidelines.

(107) Spending on stands and consumer campaigns at trade fairs could be assigned under the fourth indent of point 14.1 of the 2000-2006 Guidelines (organisation of competitions, exhibitions and fairs). Multiplier events disseminating new methods and findings could be assigned under the fifth indent (other activities for the dissemination of new methods).

(108) The measure as a whole was not limited to a particular group, but benefited the entire dairy sector in a general manner (point 14.2 of the 2000-2006 Guidelines).

([32]) p. 82
([33]) p. 83

(109) The amount of aid granted per beneficiary did not exceed EUR 100 000 over a period of three years.

TH 9 and TH 10

(110) Thuringia granted financial support for the training of employees in dairy farms (sub-measure TH 9) and for the promotion of professional competitions (sub-measure TH 10).

(111) The training courses were aimed at workers on dairy farms and aimed at improving the skills of agricultural workers (certificate of competence in 'milking'). The measure was coordinated by the Verein Landvolksbildung Thüringen (VLT).

(112) The second measure funded the organisation of professional competitions in the fields of breeding and milking. The competitions were organised by Thüringer Landjugendverband e.V. (TLJV) and Thüringer Melkergemeinschaft e.V. (TMG). As part of the measure, the preparation and running of competitions and participation in transregional competitions were subsidised.

(113) In its comments of 20 September 2013 ([34]), Germany claimed that training under sub-measure TH 9 was aimed at employees working at dairy cow farms. Training was carried out by Verein Landvolkbildung Thüringen. Payments were to be classified as a service fee paid to the association in return for services actually provided, calculated and reimbursed at market rates.

(114) Germany thus maintained its view that the State aid conditions pursuant to Article 107 TFEU are not met. State aid conditions pursuant to Article 107 TFEU were similarly not met with regard to the training offer to employees either, since the payments were not company-specific.

(115) In the alternative, it was argued that the requirements laid down in point 14 of the 2000-2006 Guidelines for this measure were satisfied. This case relates to training for farmers on the abovementioned subjects and thus the requirements laid down in the first indent of point 14.1 were satisfied. All persons who were active in the area concerned had the opportunity to participate in further training of the type described above, on the basis of objectively defined criteria. Therefore, the conditions laid down in point 14.2 of the 2000-2006 Guidelines were satisfied. The maximum allowable limit of EUR 100 000 per beneficiary per three-year period was not exceeded (point 14.3). Rather, the cumulative amount of aid under this sub-measure did not exceed EUR 100 000 over three years.

(116) In its comments of 20 September 2013 ([35]), Germany also argued in connection with sub-measure TH 10 that the organisation and running of professional competitions in the fields of animal breeding and milk production had been financed under this measure. The competitions were organised by TLJV and TMG. The organisers received standard market-calculated fees for the organisation and execution of, or participation in, transregional events.

(117) As the payments are considered service fees to be offset against equivalent expenses, there was no favourable treatment and hence no legal relevance with respect to State aid.

(118) In the alternative, it was argued that the requirements laid down in the fourth indent of point 14 of the 2000-2006 Guidelines for this measure were satisfied. State aid was not restricted to selected groups. All persons who were active in the area concerned had the opportunity to participate in professional competitions of the type described above, on the basis of objectively defined criteria. Therefore, the conditions laid down in point 14.2 of the 2000-2006 Guidelines were satisfied. The maximum allowable limit of EUR 100 000 per beneficiary per three-year period laid down in point 14.3 of the Guidelines was not exceeded. Rather, the cumulative amount of aid under this sub-measure did not exceed EUR 100 000 over three years.

Technical assistance from 2007 onwards

RP 2

(119) Rhineland-Palatinate granted financial support to processing and marketing companies for their participation in events to share knowledge between businesses, competitions, exhibitions and fairs (sub-measure RP 2). This support was not limited to the first participation of an undertaking in a particular fair or exhibition. Aid intensity was limited to 10 % of proven costs, but not more than EUR 5 200 per business and event.

([34]) p. 84
([35]) p. 85

(120) According to point 105 of the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ([36]) (hereinafter 'the 2007-2013 Guidelines'), State aid for the provision of technical support granted to companies active in the processing and marketing of agricultural products must fulfil all the conditions of Article 5 of Commission Regulation (EC) No 70/2001 ([37]), subsequently replaced by Article 27(3) of Commission Regulation (EC) No 800/2008 ([38]). According to those rules, the aid intensity must not exceed 50 % of the eligible costs. The eligible costs shall be the costs incurred for renting, setting up and running the stand for the *first* participation of an undertaking in any particular fair or exhibition. Point 106 of the 2007-2013 Guidelines provides that state aid towards the cost covered by points 104 and 105 may not be granted to large companies.

(121) Since Germany did not prove that any of the above conditions laid down for technical assistance had been satisfied in relation to this measure, the Commission expressed doubts in the Opening Decision as to its compatibility with the internal market. The Opening Decision invited Germany to provide a full assessment of the respective measures in the light of the above criteria and to provide appropriate documentation substantiating its answers ([39]).

(122) In its comments dated 20 September 2013 ([40]), Germany explained that Rhineland-Palatinate would address the concerns of the Commission and amend the eligibility rules for future subsidies such that only the *first* participation of an undertaking in a particular fair or exhibition could be subsidised. Germany argued that the requirements laid down in Section IV.K of the 2007-2013 Guidelines in connection with Article 15(2) of Regulation (EC) No 1857/2006 ([41]) were thus fulfilled.

(123) The funded projects were re-evaluated by the German authorities having regard to this additional requirement. In individual years, the following payments were made in relation to the repeated participation of an enterprise in a particular fair or exhibition.

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number	2	2	1	1	2	1	2	3	3	6
Amount in EUR	5 113	5 113	10 226	5 113	10 226	5 113	10 226	5 113	2 500	1 764

(124) On 30 June 2016, the Federal Ministry of Food and Agriculture informed the Commission (see paragraph 16) that measure RP 2 was not limited to SMEs in the period from 2007 onwards. The two undertakings Hochwald Foods GmbH and MUH Arla eG had also received aid under this measure.

(125) In its comments dated 13 January 2017, Germany stated that the eligible costs for the sub-measure in question in the period from 2007 onwards had related exclusively to setting up an exhibition stand. No additional costs had been subsidised during this period.

([36]) OJ C 319, 27.12.2006, p. 1.
([37]) 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).
([38]) On 1 July 2014, 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 (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3) was repealed by Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 187, 26.6.2014, p. 1).
([39]) Paragraph 244 of the Opening Decision.
([40]) p. 77
([41]) This Regulation was repealed on 1 July 2014 by Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

2.2. **State aid for improving the quality of delivered milk (2001-2006)**

(126) Baden-Württemberg, Lower Saxony and Thuringia (sub-measures BW 10, BW 11, NI 1 and TH 5) granted financial support for improving the quality of the delivered milk through advice and training of dairy producers, the compilation and updating of databases and checks of dairy producers, parallel with the introduction of the 'Quality Management QM Milk' quality assurance systems ([42]). The aim of the measures was to improve the quality of delivered milk. Neither the training of inspectors with the purpose of obtaining specialised knowledge nor the accreditation of approved laboratories were subsidised.

(127) The final beneficiaries of these sub-measures were milk-producing agricultural SMEs in the primary sector. According to Germany, the aid was available to all the farmers in the area concerned who were eligible based on objectively defined conditions ([43]).

(128) Between 2001 and 2011, the expended budget (all Länder combined) amounted to EUR 3,3 million.

(129) According to information provided by the German authorities, aid intensity was a maximum of 100 % of eligible costs in the years 2001-2011. The German authorities stated that the financing of the measure had expired on 31 December 2012 in Baden-Württemberg and was limited until 31 December 2014 in Lower Saxony and Thuringia.

(130) In the Opening Decision, Germany was requested to provide a detailed assessment according to the 2000-2006 Guidelines (in particular point 13.2: maximum 50 % of eligible costs or EUR 100 000 per beneficiary over a period of three years, whichever is the greater) ([44]).

BW 10 and BW 11

(131) In its comments of 20 September 2013 ([45]), Germany stated that these measures were implemented by Milchprüfring Baden-Württemberg (BW 10) and Milchwirtschaftlichen Verein Baden-Württemberg (BW 11).

(132) According to Germany, the beneficiaries of the activity were milk-producing farms (milk producers) who participated in the QM Milch quality assurance system.

(133) In the case of measure BW 10, the performance of audits at dairy farms ([46]) and the cost of initial certification (introductory farm audit and possibly a follow-up audit) by a recognised certification body were subsidised.

(134) In the case of measure BW 11, informational and advisory functions were funded in connection with the introduction of quality assurance systems ([47]). According to Germany, these payments are proportionally dependent on the number of milk producers entering the quality management system (QM-Milch).

(135) According to Germany, total expenses amounted to EUR 478 575. 4 500 milk producers were financed in connection with initial certification with a view to entry into the quality assurance system. The expenses thus amounted to EUR 106 per beneficiary.

NI 1

(136) Lower Saxony granted financial support for the implementation of a quality assurance system for milk producers (not for processing and marketing firms). The measure was delegated to LVMN.

([42]) The QM-Milch milk quality management system is a nationwide business-to-business standard for milk production set for milk producers and dairy plants, which was recognised as a basis for certification testing.
([43]) Paragraph 66 of the Opening Decision.
([44]) Paragraph 253 of the Opening Decision.
([45]) p. 11
([46]) Comments of 20 September 2013, p. 12.
([47]) Comments of 20 September 2013, p. 12.

(137) According to the comments by Germany on 20 September 2013 ([48]), preparatory actions for the implementation of the QM-Milch quality assurance system (mainly advisory services to farmers who wanted to introduce the QM-Milch system) were financed in the period 2001-2005 and then farm audits conducted within the framework of that quality assurance system were financed from 2003. Since 2003, the costs for the coordination of the quality assurance system and the creation of a database have also been financed.

(138) In its comments of 20 September 2013 ([49]), Germany argued that the aid granted for consulting services amounted to 50 % of the cost and an amount of EUR 12,78 per case for each farmer, not exceeding the upper threshold indicated in point 13.2 of the 2000-2006 Guidelines. For farm audits carried out from 2003, aid intensity was 50 % of the costs and amounted to EUR 35 per farmer for a three-year period.

(139) Germany has confirmed that the checks on the farm audits were carried out by or on behalf of third parties. The Landeskontrollverband Niedersachsen was commissioned as an independent audit institution.

TH 5

(140) The measure was introduced in 2004 ([50]). The measure was carried out by Thüringer Verband für Leistungs- und Qualitätsprüfungen in der Tierzucht (TVLEV).

(141) According to Germany, expenses for the initial certification, a necessary revision audit after three years and the construction and maintenance of databases were funded from the levy. In the period 2004-2006, producers were only subsidised with respect to initial certification. The average aid granted to individual producers amounted to approximately EUR 83.

(142) The beneficiaries of this measure were milk producers.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(143) In the Opening Decision, the Commission found that all the conditions were met for the existence of State aid ([51]).

(144) The Commission initiated the procedure under Article 108(2) TFEU, as the Commission had doubts, based on the information available at that time, as to whether certain sub-measures were compatible with the internal market (see paragraph 18).

4. COMMENTS FROM GERMANY ON THE OPENING OF THE FORMAL INVESTIGATION PROCEDURE

(145) The German authorities transmitted their comments to the Commission on 20 September 2013, 27 February 2015 and 13 January 2017. A summary of the German authorities' comments on the individual measures can be found in the above descriptions of the measures (see point 2: Description of the measures and comments by the German authorities).

5. COMMENTS FROM INTERESTED PARTIES ON THE OPENING OF THE FORMAL INVESTIGATION PROCEDURE

(146) Between 6 and 18 February 2014, the Commission received ten sets of comments from interested parties relating to the measures underlying this Decision ([52]).

([48]) Comments of September 2013, p. 50.
([49]) p. 50
([50]) Comments of 20 September 2013, pp. 83-84.
([51]) Section 3.3.
([52]) The Commission received comments from the Landesvereinigung der Milchwirtschaft Niedersachsen e.V. on all measures financed via the milk levy in general and not only on the sub-measures at stake here. The association argued that there was no aid. A full description of these comments is given in Commission Decision (EU) 2015/2432 of 18 September 2015 concerning State aid SA.35484 (2013/C) (ex SA.35484 (2012/NN)) granted by Germany in respect of milk quality tests pursuant to the Milk and Fat Law (OJ L 334, 22.12.2015, p. 23).

(147) In its comments of 6 February 2014 received on 13 February 2014, Verband der Milcherzeuger Bayern e.V. (VMB) expressed its surprise with respect to measure BY 3 regarding the fact that the Opening Decision called in question the measures implemented by VMB until 2006 from a State aid point of view, whereas no complaint was put forward regarding the measures implemented from 2007. In this respect, VMB recalled that the task priorities and the manner of its activities had not changed since 1954 and the VMB had been receiving funds from 'milk levies' since 1957. In its comments, the VMB further noted that the services it offered do not constitute concrete 'technical assistance' for individual establishments, but rather provision of technical and factual information in a general manner, equally accessible to all interested parties.

(148) In its comments of 4 February 2014, received by the Commission on 6 February, the Milchwirtschaftliche Verein Allgäu-Schwaben e.V (MV) claimed with respect to measure BY 10 that the objective of this measure is the dissemination of know-how and knowledge about dairy-related issues (e.g. food laws) to governments and other institutions. To this end, MUVA employees receive access to industry-relevant information, and then process and pass it on (in the form of opinions, lectures and publications, in particular to the authorities concerned). As well as the MUVA newsletters that are enclosed with the *Deutsche Molkereizeitung* (German Dairy Newspaper), significant contributions to the dissemination of information on quality assurance (hygiene, production safety) are disseminated. According to the MV, this constitutes an overarching activity whose results do not benefit individual farms, but rather are brought to the attention of particular authorities for the purposes of further training.

(149) In their letter dated 4 February 2014 and received by the Commission on 11 February 2014, the Landesvereinigung für Milch und Milcherzeugnisse Hessen e.V. (LVMH) commented on measures HE 2, HE 3 and HE 9, executed by them. First, they noted that, contrary to the statement annexed to the Opening Decision of the Commission, the measures in question did not benefit only dairy plants, but rather the entire dairy industry. With regard to the content, the LVMH ensured under measure HE3 that consumer information and education were the focus of the general public relations activities, with consumer education carried out on a neutral level independent from dairy plants.

With regard to measure HE 2, 'Fortbildung für Erzeuger durch das Innovationsteam' (Training for Producers by the Innovation Team), LVMH remarked that the focus was on the transfer of knowledge. Current information and study results had been pooled, processed for use by farmers and disclosed, among others, in the form of lecture events, conferences and training courses.

HE2 and HE9 promoted special educational and training events for young professionals, farmers and agricultural workers where all farmers or agricultural workers had the opportunity to participate in the training on equal terms.

(150) In their letter dated 6 February 2014, received by the Commission on 10 February 2014 and 11 February 2014, the Landeskontrollverband Nordrhein-Westfalen e.V. and the Landesvereinigung der Milchwirtschaft Nordrhein-Westfalen e.V., respectively, fully endorsed the comments made by Germany on 20 September 2013 in relation to the measures carried out in North Rhine-Westphalia.

(151) Similarly, in their joint letter dated 6 February 2014, received by the Commission on 11 February 2014, the Rheinische Landwirtschafts-Verband e.V. and the Westfälisch-Lippische Landwirtschaftsverband e.V. supported the comments made by Germany on 20 September 2013 in relation to measure NW 5.

(152) In its letter dated 6 February 2014, received by the Commission on 11 February 2014, the Landesvereinigung Thüringer Milch e.V. fully endorsed the comments made by Germany on 20 September 2013 in relation to the measures carried out in Thuringia.

(153) In its comments of 10 February 2014, received by the Commission on 14 February 2014, Milchwirtschaftliche Arbeitsgemeinschaft Rheinland-Pfalz e.V. (MILAG) indicated with respect to measure RP 1 that it had a general nature. It related to general information about milk as foodstuff; the objective was not to discourage consumers from buying milk products from other Member States. Moreover, there was no promotion of individual brands or products of selected companies/individual producers. MILAG therefore did not consider this measure to

constitute a form of State aid. In the alternative, in its comments, MILAG stated about the same measure that it in any event materially complied with the requirements of the then applicable Guidelines and can be considered provision of technical assistance pursuant to point 14.1 of the 2000-2006 Guidelines. In particular, the measure was in principle available to all consumers, and therefore to market participants in the dairy sector as well. It consisted purely of consumer education and the measure did not constitute any support for milk processing undertakings, but rather provided general consumer information.

Regarding measure RP 2, MILAG considers that the additional funding requirement whereby only the first participation of a business in a particular fair or exhibition can be subsidised satisfies the relevant conditions of State aid regulations.

With regard to measure RP 5, MILAG indicated that the measure was centred on offering special advice related to milking technology to interested milk producers on an ad hoc basis. This offer was open to all milk producers in Rhineland-Palatinate as membership in the Landeskontrollverband, i.e. the body offering advice, was not necessary. Consulting services that were ongoing or were called upon at regular intervals were not eligible for funding and no direct payment was made to farmers. Therefore, the measure was also compatible with the requirements for State aid for the period 28 November 2001-31 December 2006. Moreover, MILAG considered that consulting assistance pursuant to the third indent of point 14.1 of the 2000-2006 Guidelines was not dependent on the dissemination of new methodologies. MILAG also gave assurances that the total amount of aid granted did not exceed EUR 100 000 per beneficiary over a three-year period. The average funding per beneficiary per year was EUR 197.

(154) In its comments of 6 February 2014, registered by the Commission as received on 18 February 2014, the Milchprüfring Baden-Württemberg eV (MPBW) considered that measure BW 10 did not constitute State aid, or at least did not constitute an advantage.

(155) The Milchwirtschaftliche Verein Baden Württemberg e.V. (MVBW) endorsed in its letter of 6 February 2014, received by the Commission on 7 February 2014, the remarks made by Milchprüfring Baden-Württemberg e.V. in relation to measures BW 4 and BW 11, considering that these two measures did not constitute State aid, or at least did not constitute an advantage.

6. **ASSESSMENT OF THE MEASURES**

6.1. **Existence of State aid — Application of Article 107(1) TFEU**

(156) Article 107(1) TFEU lays down that any aid granted by a Member State or through State resources in any form 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.

6.1.1. *Aid granted by the State or through State resources*

(157) The German authorities have confirmed that the measures referred to in this decision were financed exclusively from the milk levy (see paragraph 26).

(158) Milk levy resources are considered State resources within the meaning of Article 107(1) TFEU.

(159) According to settled case-law, it is not permitted to make a distinction as to whether aid is granted directly by the State or by a public or private body designated or established by that State ([53]). 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 ([54]).

(160) With regard to the measures described above, it is apparent that support is granted on the basis of a Federal law, the MFG, in conjunction with the application of the legal provisions of the Länder.

([53]) Judgment of the Court of 20 November 2003, Ministère de l'Économie, des Finances et de l'Industrie v GEMO, C-126/01, EU:C:2003:622, paragraph 23.

([54]) Judgment of the Court of 20 November 2003, Case C-126/01, Ministère de l'Économie, des Finances et de l'Industrie v GEMO, C-126/01, EU:C:2003:622, I-13769, paragraph 24.

(161) Specifically, Section 22(1) of the MFG provides that the Land Governments, 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.

(162) Under the second sentence of Section 22(1) of the MFG, the governments of the Länder may, if requested to do so by the association or professional organisations, collect joint levies of up to 0,2 cents per kilogram of delivered milk. Therefore, the collection of levies is clearly the responsibility of the Land Governments.

(163) The legal basis for collecting a milk levy in the individual German Länder is provided by corresponding Land regulations on the detailed arrangements for collecting the levy, including the amount of the levy. As a consequence, the collection of a milk levy is regulated by the Land Governments, i.e. by the State. This is not altered by the fact that the regulations in question are issued in consultation with the respective Land association representing the dairy industry ([55]).

(164) In the case in hand, a levy is collected from private undertakings (dairies, milk collection centres, creameries). Revenue from this levy flows into the respective state budgets before being used for financing various support measures. Therefore, it is considered as being under State control ([56]).

(165) It follows that the measures financed by milk levy funds are granted by State resources and are imputable to the State.

6.1.2. *Selective advantage/Undertakings*

(166) Costs such as those for training, consultancy, information materials for the purposes of public relations, or fees for taking part in trade fairs and competitions are costs that a business has to pay in the context of its usual business activities. The same applies to expenses relating to the production and marketing of high quality products. If certain businesses are relieved of these costs in whole or in part, they are put at an advantage.

(167) The Commission takes the view that the sub-measures under consideration confer an advantage upon milk producers and dairies.

(168) In its comments dated 20 September 2013, Germany initially argued that some of the measures contained in the Opening Decision did not constitute aid because they either did not bring any concrete advantage to a single company (see paragraph 33 with respect to measure BY 3), or were not aimed at the transfer of knowledge to milk producers or dairy plants (see paragraph 39 with respect to measure BY 10), or did not favour certain businesses or sectors (see paragraphs 44, 60, 73, 80 and 88 with respect to measures BW 4, HE 3, NI 7, NW 4 and NW 5, RP 1 and SL 2), or there was no substantive or geographic selectivity to potential benefits (see paragraphs 80 and 83 with respect to measures NW 4, NW 5 and NW 6, respectively).

(169) In addition, the MPBW and the MVBW, in their comments dated 6 February 2014, argued that there was no selective advantage from measures BW 10, BW 4 or BW 11 (see paragraphs 154 and 155 respectively).

(170) However, the Commission is of the opinion that the above-listed measures ultimately benefit the dairy sector as well and as such confer an advantage upon milk producers and dairy plants that are to be considered as businesses.

(171) In the case of measure BY 3, the Commission assumes that, even if this measure was aimed at the general public, it ultimately conferred an advantage on the milk sector, as it could be presumed that it would have a positive effect on milk consumption.

(172) In relation to measure BY 10, the Milchwirtschaftliche Verein Allgäu-Schwaben mentioned in its comments dated 4 February 2014 that the MUVA Newsletter was enclosed with the '*Deutsche Molkerei Zeitung*', and that, in addition, appropriate articles sharing information regarding quality assurance would be disseminated (see paragraph 148). Therefore, the Commission considers that the entire dairy sector (milk producers and dairy plants) should also be regarded as a beneficiary of measure BY 10.

([55]) For example, in Lower Saxony: Ordinance on the collection of a levy within the dairy industry of 26 November 2004 (Official Gazette of Lower Saxony No 36/2004, p. 519), amended by Article 6 of the Ordinance of 22 December 2005 (Official Gazette of Lower Saxony No 31/2005, p. 475).

([56]) Judgment of the Court of 30 May 2013 in Case C-677/11 Doux Élevage SNC and Coopérative agricole UKL-ARREE v Ministère de l'Agriculture, C-677/11, EU:C:2013:348, Paragraphs 32, 35 and 38.

(173) With regard to measures BW 4, HE 3, NI 7, NW 4 and NW 5, RP 1, and SL 2, the Commission takes the view that the dissemination of current scientific knowledge about the properties of milk and dairy products, the organisation of campaigns, informative events and measures to raise general awareness amongst consumers, events for the exchange of knowledge between producers, and general consumer information campaigns about milk are also to be considered as technical assistance that benefited the entire dairy sector.

(174) In relation to measures BW 10 and BW 11, the Commission also takes the view that these benefited dairy farms that took part in the QM Milch quality assurance scheme.

(175) Moreover, the measures in question were selective as it benefited a single economic sector (i.e. the dairy industry).

6.1.3. *Distortion of competition and effect on trade*

(176) 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 ([57]). Aid for an undertaking that operates in a market open to intra-Union trade appears to affect trade between Member States ([58]). There was substantial intra-Union trade in agricultural products in the period 2001-2012. For example, intra-Community imports to and exports from Germany of products falling within heading 0401 of the Combined Nomenclature (milk and cream, not concentrated nor containing added sugar or other sweetening matter) ([59]) were worth EUR 1,2 billion and EUR 957 million respectively in 2011 ([60]).

(177) The measures being assessed in this Decision benefit milk producers and dairy farms and thus strengthen their competitive position. As described in paragraph 176 above, trade in the products of dairies and milk producers does take place within the Union. The Commission therefore takes the view that the measures at issue were such as to distort or risk distorting competition or to affect trade between the Member States.

(178) In the light of the foregoing, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the schemes under consideration constitute State aid within the meaning of that Article.

6.2. **Legality of the aid**

(179) According to Article 108(1) TFEU, the Commission must, in cooperation with Member States, keep under constant review all existing systems of aid. To that end, the Commission can obtain from Member States all information necessary for the review of existing aid schemes and, if necessary, issue a recommendation on appropriate measures.

(180) Article 1(b)(i) of Regulation (EU) 2015/1589 defines existing aid as all aid which existed prior to the entry into force of the TFEU in the respective Member State and is still applicable after the entry into force of that Treaty.

(181) However, according to Article 1(c) of Regulation (EU) 2015/1589, any alteration to existing aid makes it 'new aid'. Article 4 of Commission Regulation (EC) No 794/2004 ([61]) defines an alteration to existing aid as 'any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market'.

(182) According to case-law ([62]), the original scheme is transformed into a new aid scheme only if the change affects the essence of the provision; there can be no question of such a substantive alteration where the new element is clearly severable from the initial scheme.

(183) According to Article 108(3) TFEU, all new aid has to be notified to the Commission and it cannot be put into effect before it has been approved by the Commission (standstill obligation).

([57]) Judgment of the Court of 17 September 1980, Philip Morris Holland BV v Commission, C-730/79, EU:C:1980:209, paragraphs 11 and 12.
([58]) See in particular judgment of 13 July 1988, French Republic v Commission, ECLI:EU:C:1988:391, paragraph 19.
([59]) 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).
([60]) *Source:* Eurostat.
([61]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).
([62]) Judgment of the Court of 30 April 2002, Gibraltar v Commission, T-195/01 and T-207/01, ECLI:EU:T:2002:111, paragraph 111.

(184) According to Article 1(f) of Regulation (EU) 2015/1589, new aid put into effect in contravention of Article 108(3) TFEU is unlawful.

(185) On the basis of the MFG and in the context of the powers conferred on them, the German Länder have adopted implementing measures which constitute the legal bases for the measures being assessed in this Decision. Although the Milk and Fat Law, which provides the framework for the aid schemes in question, entered into force in 1952 ([63]), the individual schemes were introduced through corresponding implementing provisions of the corresponding Länder only after 1958 ([64]).

(186) The measures to which this Decision relates therefore constitute new aid within the meaning of Article 1(c) of Regulation (EU) 2015/1589.

(187) Germany did not at any time notify the aid schemes at issue in accordance with Article 108(3) of the TFEU. These schemes are therefore unlawful.

6.3. **Compatibility of the aid with the internal market**

(188) 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 Union interest.

(189) Pursuant to the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ([65]), the measures must be assessed in accordance with the guidelines in force at the time when the aid was granted.

(190) Specific guidelines have applied for the agriculture sector since 1 January 2000. Aid granted during the period between 28 November 2001 and 31 December 2006 (hereinafter: 'the period 2001-2006') is to be assessed in the light of the 2000-2006 Guidelines.

(191) Aid granted since 1 January 2007 (hereinafter: 'the period from 2007') will be assessed in the light of the 2007-2013 Guidelines.

(192) The period since 28 November 2001 is hereinafter referred to as the 'period of investigation'.

(193) Based on the suspensive effect of the formal procedure under Article 108(3) TFEU, the Commission is examining the measures which underlie this decision up to 17 July 2013, the date on which the Commission notified Germany of its decision to initiate proceedings under Article 108(2) TFEU (see paragraph 3).

6.3.1. *Provision of technical support in the agricultural sector in the period 2001-2006*

(194) The measures carried out between 2001 and 2006 with the objective of providing technical support in the agricultural sector have to comply with the conditions set out in point 14 of the 2000-2006 Guidelines.

([63]) See recital 17.

([64]) Bavaria: Verordnung über eine Umlage für Milch (Ordinance on a levy for milk) of 30 June 1983 (GVBL p. 547); Baden-Württemberg: Verordnung über die Erhebung von milchwirtschaftlichen Umlagen (Ordinance on the charging of levies in respect of the dairy industry) of 18 May 2004 (GBl. pp. 350, 355); North Rhine-Westphalia: Verordnung über Umlagen zur Förderung der Milchwirtschaft (Ordinance on Levies to Support the Dairy Industry) of 30 November 1965 (GV. NW. 1965, p. 349); E.g. Rhineland Palatinate: Landesverordnung zur Durchführung des Milch- und Fettgesetzes (Land Ordinance implementing the Milk and Fat Law) of 16 August 1960 (GVBl. p. 218, BS 7842-2); Brandenburg — Verordnung zur Übertragung der Ermächtigungen zum Erlass von Rechtsverordnungen nach dem Milch- und Fettgesetz (Ordinance Implementing the Delegated Powers pursuant to the Milk and Fat Law — ÜErmVO) of 5 December 1992 (GVBl.II/92, [No 72], p. 764); Hessen — Verordnung über die Erhebung einer Umlage zur Förderung der Milchwirtschaft (Ordinance on the collection of a levy to promote the dairy industry) of 1 December 1981 (GVBl. I 1981 p. 427); Saarland: Verordnung über die Erhebung einer Umlage auf dem Gebiet der Milchwirtschaft (Ordinance on the collection of a levy within the dairy industry) of 9 December 1982 (Official Gazette 1982, p. 1007); Thuringia: Thüringer Verordnung über die Erhebung einer Umlage zur Förderung der Milchwirtschaft (Thuringian Ordinance on the collection of a levy to promote the dairy industry) of 27 November 2001 (GVBl. 2000, 20). In Lower Saxony, the milk levy was introduced by the Order on the collection of a levy within the dairy industry of 6 July 1951, in the version of the Order of 25 March 1952 (Official Gazette of Lower Saxony, Sb. I p. 689). However, the collection of the levy during the relevant period for State aid purposes was based on the Ordinance on the collection of a levy within the dairy industry of 22 May 1973 (Official Gazette of Lower Saxony, p. 179), and the use of the funds raised by the levy was regulated by the Land guidelines on the awarding of grants to support the dairy industry in Lower Saxony pursuant to Section 22(2) of the Milk and Fat Law of 8 November 1985 (Ministerial Gazette of Lower Saxony No 43/1985).

([65]) OJ C 119, 22.5.2002, p. 22.

(195) Under point 14.1 the eligible costs included those incurred by education and training programmes, the provision of farm management services, consultancy fees, the organisation of (or participation in) competitions, exhibitions and trade fairs and other activities for the dissemination of knowledge relating to new techniques ([66]). According to point 14.1 of the 2000-2006 Guidelines, such aid may be granted at a rate of 100 % of the costs.

(196) According to point 14.2, the aid is to be accessible to all eligible natural and legal persons in the area concerned on the basis of objectively defined criteria.

(197) Pursuant to point 14.3, the total amount of support granted should not exceed EUR 100 000 per beneficiary over any three year period or, in the case of aid granted to SMEs, 50 % of eligible costs, whichever is greater. For the purpose of calculating the amount of aid, the beneficiary is considered to be the person receiving the services.

(198) The Commission takes the view that, for the measures mentioned below, the provisions of point 14 of the 2000-2006 Guidelines equally apply to aid granted in connection with activities relating to the [primary] production and to the processing and marketing of agricultural products. This follows from the wording of point 2.1 of the 2000-2006 Guidelines and from the fact that point 14 does not itself provide for any restriction in this respect.

(199) The Commission assumes that such measures contribute to the long-term viability of the sector while producing only very limited effects on competition (second sentence of point 14.1 of the 2000-2006 Guidelines).

(200) In the Opening Decision, the Commission expressed doubts regarding the compatibility of certain measures with the internal market in the relevant period ([67]).

BY 3

(201) The Verband der Milcherzeuger e.V. (VMB) received funding for the collection of material and technical information of a general nature as well as for the publication and provision of general information on topics related to the dairy industry. The rules about the provision of technical assistance apply to the aid granted.

(202) The subsidised costs (dissemination of scientific knowledge and the provision of factual information on quality systems — paragraph 32 of this Decision) correspond to the eligible costs laid down in point 14.1.

(203) The measure was open to all eligible natural and legal persons in the area concerned and the grants were below EUR 100 000 per beneficiary in a three-year period (paragraph 35 in conjunction with paragraph 37 of this Decision). The requirements laid down in points 14.2 and 14.3 are satisfied.

(204) The conditions set out in point 14 of the 2000-2006 Guidelines are therefore met.

BY 10

(205) The rules about the provision of technical assistance apply to the aid granted for the exchange of expertise and knowledge about milk-related topics.

(206) The subsidised costs incurred by provision of information in the form of comments, lectures and publications (see paragraph 148) correspond to the eligible costs laid down in point 14.1 of the 2000-2006 Guidelines.

(207) This is a general information measure aimed at the dairy industry, which was open to all eligible natural and legal persons in the area concerned. Total annual expenditure provided by the German authorities for measures BY 3 and BY 10 (see paragraph 41) indicate that the subsidies in any case did not exceed EUR 100 000 per beneficiary per three-year period. The conditions set out in points 14.2 and 14.3 are therefore met.

(208) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled.

([66]) The German language version of the 2000-2006 Guidelines contains an exhaustive list of eligible costs. However, the English version, in which the Guidelines were originally drafted, cites the same eligible costs as examples and not as an exhaustive list. The same is true of the French language version.

([67]) Opening Decision, paragraphs 235-236: For this purpose, the Commission referred in paragraph 236 of the Opening Decision to the German version of the 2000-2006 Guidelines and considered that, pursuant to point 14.1, aid may be granted only for the dissemination of new methodologies (see footnote 72).

BW 4

(209) The measures serve the general and wide dissemination of current scientific knowledge of the properties of milk and dairy products. They are to be considered as technical assistance that benefited the entire dairy sector. The subsidised costs (see paragraph 42) correspond to the eligible costs pursuant to point 14.1.

(210) The measures were not limited to a particular group, but were made available to all eligible natural and legal persons in the area concerned, based on objectively defined criteria (paragraph 46). The conditions set out in point 14.2 of the 2000-2006 Guidelines are thus fulfilled. The level of aid was lower than the limit of EUR 100 000 per beneficiary for a three-year period laid down in point 14.3 (paragraph 46). The conditions laid down in point 14.3 are fulfilled.

(211) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled.

BB 1

(212) Over the period 2001-2006, Brandenburg funded consulting fees under the measure known as 'Improving Hygiene'. Areas of focus included animal health, improvement of milk hygiene and the quality of raw milk as well as analysis of performance issues.

(213) The measure in question thus falls within the scope of point 14 (Provision of technical assistance) of the 2000-2006 Guidelines. The subsidised costs (consulting fees) correspond to the eligible costs pursuant to point 14.1.

(214) In their communication of 27 February 2015, the German authorities confirmed that, in principle, all milk producers in the federal state had access to the consulting services (complex and special consulting) in question (see paragraph 49). Furthermore, Germany explained in the same communication that the threshold of EUR 100 000 per company for a three-year period was not exceeded under measure BB 1 (see paragraph 49). Therefore, the measure complies with the conditions laid down in points 14.2 and 14.3.

(215) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled.

BB 3

(216) The Landesvereinigung der Milchwirtschaft Brandenburg-Berlin e. V. (LVMB) and the Landesbauernverband Brandenburg e.V. (LBV) carried out measures related to the provision of information on economic issues and the dissemination of newly acquired information and knowledge regarding dairy production issues. In addition, competitions were organised. These measures constitute technical assistance.

(217) The subsidised costs (providing information and organising competitions — paragraph 50) correspond to the eligible costs laid down in point 14.1 of the 2000-2006 Guidelines.

(218) The aid was not restricted to selected groups. Point 14.2 of the 2000-2006 Guidelines is therefore fulfilled.

(219) In 2006, LVMB awarded EUR 463, collected from the milk levy, to businesses from Brandenburg which distinguished themselves (see paragraph 53). Furthermore, LBV received a grant of EUR 20 000 from state funds in 2006 for the provision of consultancy to milk producers (see paragraph 54). According to Germany, the procedures in other, earlier years were similar (see paragraph 54). The Commission concludes from the above facts that under these two measures the upper threshold of EUR 100 000 per beneficiary over a three-year period cannot have been exceeded in the period 2001-2006. Point 14.3 of the Guidelines is therefore fulfilled.

(220) Measure BB 3 thus meets the requirements set out in point 14 of the 2000-2006 Guidelines.

HE 2

(221) Hessen granted financial support to the Landesvereinigung für Milch und Milcherzeugnisse Hessen e.V. (LVMH) for the measure 'Fortbildung für Erzeuger durch das Innovationsteam' (Training for Producers by the Innovation Team). Under this measure, LVMH provided information in the form of articles and organised training for farmers and farm workers. These activities are to be qualified as technical assistance.

(222) The eligible costs (paragraph 57) correspond to the eligible costs laid down in the first indent of point 14.1 of the 2000-2006 Guidelines.

(223) The aid was not restricted to selected groups (paragraph 57). This was also confirmed by LVMH in its comments of 4 February 2014, according to which each farmer or agricultural worker had the opportunity to participate in the training on the same terms (see paragraph 149). Therefore, the requirements laid down in point 14.2 of the Guidelines is satisfied.

(224) The amount of aid granted was below EUR 100 000 per beneficiary in a three-year period (see paragraph 57). Point 14.3 of the Guidelines is thus also fulfilled.

(225) Measure HE 2 thus meets the requirements set out in point 14 of the 2000-2006 Guidelines.

HE 3

(226) The nutrition team of LVMH disseminated scientific knowledge in a generally understandable form, organised information events and campaigns and conducted PR activities (not targeted at certain businesses) related to the production, treatment and processing of milk and dairy products.

(227) In its comments dated 4 February 2014, LVMH remarked that the provision of consumer information and education were the focus of these measures and consumer education was carried out on a neutral level independent from dairy plants. The Commission nonetheless takes the view that measures to promote the dissemination of scientific knowledge and the organisation of campaigns should be considered as technical assistance that benefits the entire dairy sector (see paragraph 173).

(228) The subsidised costs (paragraph 59) correspond to the eligible costs pursuant to point 14.1.

(229) Measures were not restricted to a selected group (paragraph 61). The conditions laid down in point 14.2 are fulfilled.

(230) Grant amounts were below the upper threshold laid down in point 14.3 (see paragraph 61).

(231) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled in the case of measure HE 3.

HE 9

(232) Hessen granted financial assistance to LVMH for the measure 'Training of young dairy farmers' (see paragraph 62). Training of young dairy farmers should be considered as technical assistance.

(233) The eligible costs (paragraph 62) correspond to the eligible costs laid down in the first indent of point 14.1 of the 2000-2006 Guidelines.

(234) Training courses are open to all producers (paragraph 64). This was also confirmed by LVMH in its comments dated 4 February 2014, according to which each farmer or agricultural worker had the opportunity to participate in the training on the same terms (see paragraph 149). Therefore, the measure is also consistent with the requirements of point 14.2.

(235) Total expenses in relation to measure HE 9 in the period 2001-2006 amounted to approximately EUR 35 000 (see paragraph 64). Therefore, the upper limit of EUR 100 000 per beneficiary in a three-year period (point 14.3) could not be exceeded.

(236) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled in the case of measure HE 9.

NI 5

(237) Lower Saxony granted the Landesvereinigung der Milchwirtschaft Niedersachsen e.V. (LVMN) financial support for participation in fairs and exhibitions and for the preparation of scientific information in a readily comprehensible form (see paragraph 65). Participation in fairs and exhibitions and the preparation of scientific information is to be considered technical assistance.

(238) The cost of rent and equipment for exhibition halls as well as the cost of publication of factual information are eligible costs pursuant to point 14.1 (first indent).

(239) According to the German authorities, the measure was centred on sponsoring the LVMN exhibition stand (see paragraph 66), benefiting all dairy plants in Lower Saxony (on average about 17 500 businesses in the period 2001-2006) (see paragraph 67). Thus the measure was open to all dairy plants and the conditions contained in point 14.2 are fulfilled.

(240) Whilst Germany has not confirmed in its comments that the measure was limited to a maximum of EUR 100 000 per beneficiary over a period of three years, the Commission considers that this upper threshold cannot be exceeded in the case of promoting an exhibition stand in favour of all dairy plants in Lower Saxony. The conditions of point 14.3 are therefore met.

(241) Measure NI 5 thus meets the requirements set out in point 14 of the 2000-2006 Guidelines.

NI 6 (2002-2003)

(242) Lower Saxony granted financial support for the participation of processing undertakings (dairies) in fairs. Funding the participation of businesses in fairs is to be considered a form of technical assistance.

(243) German authorities gave assurances that no legally binding commitments had been made ([68]) towards beneficiaries in 2001, i.e. the main examination period. They also indicated that the measure in question had been based on approved State aid No 200/2003 since 26 November 2003 (see paragraph 68). Therefore, the evaluation of the measure in question only covers the period between 1 January 2002 and 26 November 2003.

(244) The eligible costs (paragraph 68) correspond to the eligible costs laid down in the first indent of point 14.1 of the 2000-2006 Guidelines.

(245) The German authorities gave assurances that measure NI 6 was accessible to all companies in the area of processing and marketing of dairy products and was awarded according to objective criteria. Moreover, the measure was independent from membership in producer or other agricultural organisations (see paragraph 70). The conditions of point 14.2 of the 2000-2006 Guidelines are therefore met.

(246) Maximum aid intensity for the measure in question in the relevant period was 48 % (see paragraph 71). According to the German authorities, only one company (Nordmilch eG) received a total amount of aid in excess of EUR 100 000. According to those same authorities, Nordmilch eG does not fall within the definition of an SME. Therefore, aside from the aid granted to Nordmilch eG, the requirements laid down in point 14.3 are met.

(247) With around 2 500 staff and a turnover of around EUR 1,9 billion, Nordmilch eG was one of the biggest dairy undertakings in Germany ([69]). Given these figures, it did not fall within the Commission's definition of a small and medium-sized enterprise set out in point 14.3 ([70]). Pursuant to point 14.3 of the 2000-2006 Guidelines, it should therefore have received a total aid amount not exceeding EUR 100 000 over a period of three years. The aid granted to Nordmilch eG does not therefore meet the requirements laid down in point 14.3 ([71]).

(248) Measure NI 6 thus basically meets the requirements set out in point 14 of the 2000-2006 Guidelines.

(249) In the case of the aid granted to Nordmilch eG in the period 2002-2003, measure NI 6 does not meet the requirements set out in point 14 of the Guidelines.

NI 7

(250) Lower Saxony granted financial assistance for activities undertaken by the LVMN as part of general consumer information campaigns on the use of milk as a foodstuff. General information campaigns about milk constitute aid that benefits the entire dairy sector (see paragraph 173). The rules on the provision of technical assistance in accordance with point 14 of the 2000-2006 Guidelines apply.

([68]) See footnote 24 of this Decision.
([69]) Figures: 2009; Source: http://www.nordmilch.de/unternehmen/geschichte/. In April 2011, Nordmilch GmbH and Humana Milchindustrie GmbH merged to form DMK Deutsches Milchkontor GmbH.
([70]) OJ L 107, 30.4.1996, p. 4.
([71]) In its communication dated 27 February 2015, Germany stated that a recovery of this aid had already been examined (see paragraph 68).

(251) The subsidised costs (paragraph 72) correspond to the eligible costs pursuant to point 14.1.

(252) The measure was not limited to a particular group, but supported the entire dairy sector in a general manner (paragraph 75). Therefore, the measure was also consistent with the requirements of point 14.2.

(253) According to the German authorities, an average amount of EUR 395 was granted per beneficiary under measure NI 7 throughout the period (see paragraph 76). The level of aid was thus significantly lower than the limit specified in point 14.3.

(254) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled in the case of measure NI 7.

NW 4 and NW 5

(255) North Rhine-Westphalia granted financial support to the Landesvereinigung der Milchwirtschaft Nordrhein-Westfalen e.V. (LVMNRW) and the Landwirtschaftsverbände Rheinland und Westfalen-Lippe for informative events and actions of the sort of general consumer advocacy and regarding the use of milk and dairy products and their general characteristics (sub-measure NW 4). North Rhine-Westphalia granted further financial support for events related to the exchange of knowledge between milk producers on dairy industry issues (sub-measure NW 5).

(256) Information events and general consumer information (NW 4) and events organised for the exchange of knowledge between producers (NW 5) constitute a form of State aid which benefits the entire dairy sector (see paragraph 173). Furthermore, such aid should be regarded as selective since it benefits a single sector only (i.e. dairy industry) (see paragraph 175). The measures in question are to be considered as technical assistance.

(257) The subsidised costs of event organisation and management, consulting, education and training related to issues of the dairy industry (see paragraph 79) correspond to the eligible costs laid down in point 14.1.

(258) The measures were aimed at all dairy cattle holding farms (see paragraph 81), thus satisfying the conditions laid down in point 14.2.

(259) Based on the total expenditure for the two measures during the investigation period and the average number of dairy farms in North Rhine-Westphalia, the amounts of aid granted per beneficiary were far below the limit laid down in point 14.3 (see paragraph 81).

(260) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled in the case of measure NW 4 and NW 5.

NW 6

(261) North Rhine-Westphalia provided financial support to the Vereinigung der Milchindustrie LVMNRW for the collection, analysis and publication (as communications and market reports) of relevant data related to the dairy market.

(262) The publication of factual and scientific information in the form of communications and market reports constitutes technical assistance, so point 14 of the 2000-2006 Guidelines applies.

(263) The subsidised costs (paragraph 82) correspond to the eligible costs pursuant to point 14.1.

(264) The publications were offered free of charge to anyone, thus fulfilling the conditions laid down in point 14.2.

(265) Based on the total expenditure for the measure NW 6 during the investigation period and the average number of dairy farms in North Rhine-Westphalia, the amounts of aid granted per beneficiary were far below the limit laid down in point 14.3 (see paragraph 85).

(266) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled in the case of measure NW 6.

RP 1 and SL 2

(267) Rhineland-Palatinate and Saarland granted the Milchwirtschaftliche Arbeitsgemeinschaft Rheinland-Pfalz e.V. (MILAG) and the Landesvereinigung der Milchwirtschaft des Saarlandes e.V. (LVMS), respectively, financial support for consumer information, including the dissemination of scientific knowledge, general factual information about products, their nutritional benefits and suggested uses.

(268) General information campaigns about milk constitute aid that benefits the entire dairy sector (see paragraph 173). The rules on the provision of technical assistance in accordance with point 14 of the 2000-2006 Guidelines apply.

(269) The costs subsidised under this sub-measure (see paragraph 86) correspond to the eligible costs pursuant to point 14.1.

(270) According to the German authorities, the measure was not limited to a particular group, but supported the entire dairy sector in a general manner (see paragraph 90). This was also confirmed by MILAG in their comments dated 10 February 2014 (see paragraph 153). The conditions of point 14.2 are therefore met.

(271) Germany also argued that the total amount of aid granted over a period of three years was far below the upper threshold of EUR 100 000 per beneficiary (see paragraph 91), which satisfies the conditions laid down in point 14.3.

(272) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled.

RP 5 and SL 5

(273) Rhineland-Palatinate and Saarland granted the Landeskontrollverband Rheinland-Pfalz e.V. (LKVRP) and LVMS, respectively, financial support for consulting and training programmes for milk producers to improve the hygiene of milking equipment and the quality of delivered milk. Ongoing consulting services were excluded from funding (see paragraph 92). Advising and training milk producers falls within the scope of point 14 (Provision of technical assistance) of the 2000-2006 Guidelines.

(274) The subsidised costs (see paragraphs 92 and 94) correspond to the eligible costs pursuant to point 14.1.

(275) According to the German authorities, the offer of consultancy/training services was open to all milk producers in Rhineland-Palatinate/Saarland as membership in the LKVRP/LVMS, respectively, was not required (see paragraph 94) ([72]). The requirements of point 14.2 are therefore met.

(276) The average amounts of funding per year were about EUR 197 ([73]) in Rhineland-Palatinate and about EUR 130 in Saarland (see paragraph 98). The upper threshold laid down in point 14.3 could thus not be exceeded.

(277) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled in the case of measure in question.

TH 3 and TH 4

(278) Thuringia granted the Landesvereinigung Thüringer Milch e.V. (LVTM) financial support for participation in trade and consumer exhibitions and for organising conferences to disseminate scientific information (sub-measure TH 3, see paragraph 100). In addition, the publication of factual information about producers from the region was subsidised (sub-measure TH 4, see paragraph 101). Participation in exhibitions, the organisation of trade conferences and the publication of factual information constitutes technical assistance within the meaning of point 14 of the 2000-2006 Guidelines.

(279) The subsidised costs (see paragraphs 100 and 101) correspond to the eligible costs pursuant to point 14.1.

([72]) This was confirmed by MILAG in connection with measure RP 5 as well, in their comments of 10 February (see paragraph 153).
([73]) See footnote 79.

(280) According to Germany, the two sub-measures were not limited to a particular group, but supported the entire dairy sector in a general manner (see paragraphs 105 and 108). The requirements of point 14.2 are therefore met.

(281) Furthermore, the German authorities also confirmed that the amounts granted as aid did not exceed the upper threshold laid down in point 14.3 (see paragraphs 105 and 109).

(282) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled in the case of the measure in question.

TH 9 and TH 10

(283) Thuringia granted the Verein Landvolksbildung Thüringen (VLT) financial support for the training of employees in dairy farms (sub-measure TH 9). Furthermore, Thuringia granted financial support for the Thüringer Landjugendverband e.V. (TLJV) and the Thüringer Melkergemeinschaft e.V. (TMG) for the promotion of professional competitions (sub-measure TH 10) (see paragraph 110).

(284) Initially, Germany argued that these two sub-measures did not constitute State aid since the payments to the VLT (TH 9), the TLJV and the TMG (TH 10) should be considered as service charges which offset equivalent expenses and therefore no advantage arises (see paragraphs 114 and 117). However, the Commission is of the opinion that, even if there was no advantage to the service provider, training measures on dairy farms and the organisation of professional competitions benefit dairy farms and represent a form of technical assistance pursuant to point 14 of the 2000-2006 Guidelines.

(285) The subsidised costs (see paragraphs 111 and 112) correspond to the eligible costs in accordance with the provisions of point 14.1.

(286) According to Germany, the opportunity to participate in training and professional competitions was equally open to all concerned parties who were active in the area concerned, based on objectively defined criteria (see paragraphs 115 and 118). The conditions of point 14.2 are therefore met.

(287) Germany stated that the cumulative amount of aid under both these sub-measures did not exceed EUR 100 000 over three years (see paragraph 118). The upper threshold laid down in point 14.3 could thus not be exceeded.

(288) The conditions set out in point 14 of the 2000-2006 Guidelines are thus fulfilled in the case of the measure in question.

(289) The Commission concludes that measures BY 3, BY 10, BW 4, BB 1, BB 3, HE 2, HE 3, HE 9, NI 5, NI 6, NI 7, NW 4, NW 5, NW 6, RP 1, RP 5, SL 2, SL 5, TH 3, TH 4, TH 9 and TH 10, with the exception of aid provided to Nordmilch eG under measure NI 6 (see paragraph 290), satisfied the relevant requirements laid down in the 2000-2006 Guidelines and were therefore compatible with the internal market over the period 2001-2006.

(290) The Commission also concludes that the aid granted to Nordmilch eG under measure NI 6 in the period 2002-2003 did not meet the relevant conditions of the 2000-2006 Guidelines and was therefore incompatible with the internal market in the period 2001-2006.

6.3.2. *Provision of technical support in the agricultural sector in the period from 2007*

(291) For the period from 2007, the provisions on the compatibility of technical support with the internal market were amended.

(292) The provision of technical support is governed by Chapter IV.K of the 2007-2013 Guidelines.

(293) Pursuant to point 105 of the 2007-2013 Guidelines, the Commission can declare State aid for the provision of technical support to companies processing and marketing agricultural products compatible with Article 87(3)(c) of the Treaty ([74]) if it fulfils all the conditions of Article 5 of Regulation (EC) No 70/2001. In accordance with paragraph 106 of the same Guidelines, no State aid was approved for large enterprises.

(294) Article 5(b) of Regulation (EC) No 70/2001 provides that gross aid for participation in fairs and exhibitions must not exceed 50 % of the additional costs incurred for renting, setting up and running the stand. This exemption applies only to the first participation of an enterprise in a particular fair or exhibition.

(295) Regulation (EC) No 70/2001 was replaced with Regulation (EC) No 800/2008 ([75]) on 29 August 2008. Article 27 of Regulation (EC) No 800/2008 provides that aid to SMEs for participation in fairs is compatible with the common market if the aid intensity does not exceed 50 % of eligible costs and if the eligible costs are limited to those incurred for renting, setting up and running the stand for the first participation of an undertaking in any particular fair or exhibition.

(296) According to paragraph 106 of the 2007-2013 Guidelines, no State aid was approved for large enterprises under technical assistance.

(297) In the Opening Decision, the Commission expressed doubts regarding the compatibility of a measure (RP 2) with the internal market in the relevant period ([76]).

Measure RP 2

(298) Under measure RP 2, Rhineland-Palatinate granted financial support to processing and marketing companies for participation in forums to share knowledge between businesses, competitions, exhibitions and fairs. Eligible costs were those incurred in setting up an exhibition stand (see paragraph 125). This support was not limited to the first participation of an undertaking in a particular fair or exhibition. Aid intensity was limited to 10 % of proven costs, but not more than EUR 5 200 per business and event (see paragraph 119).

(299) The aid intensity of 10 % under measure RP 2 does not exceed the maximum aid intensity value of 50 % laid down in Article 5(b) of Regulation (EC) No 70/2001 and Article 27 of Regulation (EC) No 800/2008.

(300) The subsidised costs (costs related to setting up an exhibition stand) correspond to the eligible costs in accordance with Article 5(b) of Regulation (EC) No 70/2001 and Article 27 of Regulation (EC) No 800/2008, which state that renting, setting up and running a stand are eligible for aid (see paragraphs 294 and 295). However, these rules state that only the first participation of an undertaking in any particular fair or exhibition is eligible.

(301) In their comments of 20 September 2013, Germany provided a table containing the number of businesses which were granted subsidies in the period 2003 – 2012 for repeated participation in a particular fair or exhibition, together with the respective aid amounts (see paragraph 123). This table shows that the average funding amounts for repeated participation in a particular fair or exhibition per subsidised company and year was between EUR 294 and EUR 5 113 in the period 2007-2012.

(302) In its comments dated 13 January 2017, Germany also stated that the two undertakings Hochwald Foods GmbH and MUH Arla eG had received aid under this sub-measure (see paragraph 124).

(303) MUH Arla came into existence in 2012 as a result of the merger of Milch-Union Hocheifel (MUH) and the Scandinavian dairy conglomerate Arla Foods. In 2011, MUH employed around 800 staff and had a turnover of around EUR 693 million ([77]).

(304) The Hochwald group employs more than 1 900 staff and achieved a turnover of around EUR 1,44 billion in 2015 ([78]).

([74]) Now Article 107(3)(c) TFEU.
([75]) On 1 July 2014, Regulation (EC) No 800/2008 was repealed by Regulation (EU) No 651/2014.
([76]) Opening Decision, paragraph 244.
([77]) *Source:* http://www.arlafoods.de/ubersicht/presse/2012/pressrelease/eu-genehmigt-fusion-der-milch-union-hocheifel-und-arla-836614/
([78]) *Source:* https://www.hochwald.de/de/unternehmen/zahlen-fakten.html

(305) Given these figures, neither MUH Arla eG nor Hochwald Foods GmbH fell within the definition of a small and medium-sized enterprise (SME) set out in point 9 of Chapter II of the 2007-2013 Guidelines ([79]). In accordance with point 106 of the 2007-2013 guidelines, they should not, therefore, have received any aid (see paragraph 296).

(306) The requirements of Chapter IV.K. of the 2007-2013 Guidelines, in conjunction with Article 5(b) of Regulation (EC) No 70/2001 and Article 27 of Regulation (EC) No 800/2008 respectively, are thus fulfilled only for cases in which processing and marketing businesses falling under the definition of SMEs received under measure RP 2 aid for the first participation in a particular fair or exhibition.

(307) The requirements of Chapter IV.K. of the 2007-2013 Guidelines, in conjunction with Article 5(b) of Regulation (EC) No 70/2001 and Article 27 of Regulation (EC) No 800/2008 respectively, are not fulfilled for aid granted under measure RP 2 to undertakings not falling under the definition of SMEs, in particular to MUH Arla eG and Hochwald Foods GmbH (see paragraph 305).

(308) The requirements of Chapter IV.K. of the 2007-2013 Guidelines, in conjunction with Article 5(b) of Regulation (EC) No 70/2001 and Article 27 of Regulation (EC) No 800/2008 respectively, are also not fulfilled for aid granted under measure RP 2 in respect of repeated participation in a particular fair or exhibition (see paragraph 301).

(309) The Commission concludes that aid under measure RP 2 met the relevant conditions of the 2007-2013 Guidelines and was therefore compatible with the internal market in the period from 2007 only in the cases referred to in paragraph 306.

(310) In the cases referred to in paragraphs 307 and 308, aid measure RP 2 did not meet the relevant conditions of the 2007-2013 Guidelines and was therefore not compatible with the internal market in the period from 2007.

6.3.3. *State aid for quality products in the period 2001-2006*

(311) Measures to encourage the production and marketing of quality agricultural products implemented between 2001 and 2006 must meet the conditions specified under point 13 of the 2000-2006 Guidelines.

(312) Point 13.2 contains a non-exhaustive list of eligible activities in this area. Aid may be granted for consultancy and similar support, including technical studies, feasibility and design studies and market research, to be given for activities related to the development of quality agricultural products, including:

— the introduction of quality assurance schemes such as the ISO 9000 or 14000 series, systems based on hazard analysis and critical control points (HACCP) or environmental audit systems,

— the costs of training personnel to apply quality assurance and HACCP systems.

Aid may also be granted to cover the cost of the charges levied by recognised certifying bodies for the initial certification of quality assurance and similar systems.

(313) Points 3, 4 and 5 of point 13 of the 2000-2006 Guidelines provide for special conditions and limitations. The Commission takes the view that no aid should be granted in respect of routine in-process quality controls and routine product controls undertaken by the manufacturer, irrespective of whether they are undertaken on a voluntary basis or on a compulsory basis as a part of HACCP or similar systems. Aid should only be granted in respect of 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 denominations of origin, organic labels, or quality labels.

(314) The total amount of aid that can be granted for SMEs under this section must not exceed 50 % of eligible costs or EUR 100 000 per beneficiary over a period of three years, depending on which amount is higher (see point 13.2).

([79]) Point 9 of the 2007-2013 guidelines refers in this context to Annex I to Regulation (EC) No 70/2001, which was replaced on 29 August 2008 by Annex I to Regulation (EC) No 800/2008.

(315) Baden-Württemberg, Lower Saxony and Thuringia (sub-measures BW 10, BW 11, NI 1 and TH 5) granted financial support for improving the quality of the delivered milk through advice and training of dairy producers, the compilation and updating of databases and checks of dairy producers, parallel with the introduction of the 'Quality Management QM Milk' quality assurance systems (see paragraph 126).

(316) According to the German authorities, aid intensity amounted to a maximum of 100 % of eligible costs (see paragraph 129).

(317) In the Opening Decision, the Commission expressed doubts regarding the compatibility of the abovementioned sub-measures with the internal market in the relevant period ([80]).

BW 10 and BW 11

(318) The two sub-measures were carried out by the Milchprüfring Baden-Württemberg (BW 10) and the Milchwirtschaftlicher Verein Baden-Württemberg (BW 11) in favour of milk-producing agricultural enterprises which took part in the 'QM-Milch' quality assurance system (see paragraphs 131 and 132).

(319) The execution of audits at dairy farms and the cost of initial certification by a recognised certification body (BW 10) as well as the costs of consultancy tasks in connection with the introduction of the quality assurance system (BW 11) were subsidised (see paragraphs 133 and 134). The subsidised costs thus correspond to the eligible costs laid down in point 13.2 of the 2000-2006 Guidelines.

(320) Support was not provided for quality and product checks carried out routinely by the manufacturers during the production process, which are excluded in accordance with point 13.3.

(321) According to the German authorities, the average expenditure was EUR 106 per beneficiary (see paragraph 135), well below the maximum allowable amount under point 13.2 of EUR 100 000 per beneficiary over a period of three years.

(322) The conditions set out in point 13 of the 2000-2006 Guidelines are thus fulfilled in the case of sub-measures BW 10 and BW 11.

NI 1

(323) Lower Saxony granted the LVMN financial support for the implementation of a quality assurance system for milk producers ('QM-Milch'). Point 13 of the 2000-2006 Guidelines therefore applies.

(324) The costs of preparatory measures for the implementation of the QM-Milch system (consulting services) as well as the costs for the coordination of the QM-Milch system and the creation of a database were subsidised (see paragraph 137). The subsidised costs thus correspond to the eligible costs laid down in point 13.2 of the 2000-2006 Guidelines.

(325) Funding amounted to EUR 12,78 per case for consulting services and EUR 35 per farmer within 3 years for farm audits (see paragraph 138), which is well below the upper threshold specified in point 13.2 of the 2000-2006 Guidelines.

(326) Germany has confirmed that the checks in the farm audits were carried out by or on behalf of third parties where the Landeskontrollverband Niedersachsen acts as an independent supervisory institution (see paragraph 139). This meets the requirements laid down in point 13.3.

(327) The measure in question thus fulfils the requirements set out in point 13 of the 2000-2006 Guidelines.

TH 5

(328) Thuringia granted the Thüringer Verband für Leistungs- und Qualitätsprüfungen in der Tierzucht (TVLEV) financial support for the introduction of a quality assurance system for milk producers (see paragraph 140). Point 13 of the 2000-2006 Guidelines therefore applies.

([80]) Opening Decision, paragraph 253.

(329) According to the German authorities, the measure was introduced in 2004 (see paragraph 140).

(330) According to Germany, in the period 2004-2006, producers were only subsidised with respect to initial certification. The average aid granted to individual producers amounted to approximately EUR 83 (see paragraph 141).

(331) The subsidised costs correspond to the costs eligible under point 13.2 and the amount of aid is far below the ceiling set in the same point.

(332) Measure TH 5 thus fulfils the requirements set out in point 13 of the 2000-2006 Guidelines.

(333) The Commission concludes that the aid assessed above (BW 10, BW 11, NI 1 and TH 5) did meet the relevant conditions of the 2000-2006 Guidelines and was therefore compatible with the internal market in the period 2001-2006.

6.4. **Recovery**

(334) Article 17(1) of Regulation (EU) 2015/1589 states that the powers of the Commission to recover aid are subject to a limitation period of 10 years. According to Article 17(2) of that same Regulation, any action taken by the Commission with regard to unlawful aid interrupts this limitation period.

(335) Further to Germany's submission of the 2010 annual report on State aid in the agricultural sector, the Commission asked Germany by letter of 28 November 2011 to provide additional information on the scheme. This action by the Commission interrupted the limitation period. In line with the ten-year limitation period referred to in paragraph 334, this Decision therefore relates to the period from 28 November 2001.

(336) The Commission finds that the aid granted to Nordmilch eG in the period 2002-2003 under measure NI 6 (see paragraph 289) is not compatible with the internal market. This aid must be recovered.

(337) The Commission also finds that the aid granted under measure RP 2 to undertakings not falling under the definition of SMEs, in particular to MUH Arla eG and Hochwald Foods GmbH (see paragraph 307) and the aid granted in respect of repeated participation in a particular fair or exhibition (see paragraph 308) are not compatible with the internal market. This aid must be recovered.

(338) Based on the suspensive effect of the formal procedure under Article 108(3) TFEU, the Commission is examining measure RP 2 from 1 January 2007 up to 17 July 2013, the date on which the Commission notified Germany of its decision to initiate proceedings under Article 108(2) TFEU.

7. **CONCLUSION**

(339) The Commission finds that Germany has unlawfully implemented the aid schemes in question in question in breach of Article 108(3) of the Treaty on the Functioning of the European Union. This aid is, with the exception of the aid cases mentioned in the following recital, compatible with the internal market (see paragraphs 289, 309 and 333).

(340) The Commission finds that the aid granted under measure NI 6 to Nordmilch eG and the aid granted under measure RP 2 to MUH Arla eG and Hochwald Foods GmbH, and the aid granted under measure RP 2 in respect of repeated participation in a particular fair or exhibition (see paragraphs 290 and 310) are not compatible with the internal market. This aid must be recovered,

HAS ADOPTED THIS DECISION:

Article 1

State aid granted unlawfully by Germany between 28 November 2001 and 31 December 2006 (measures BY 3, BY 10, BW 4, BB 1, BB 3, HE 2, HE 3, HE 9, NI 5, NI 6, NI 7, NW 4, NW 5, NW 6, RP 1, RP 5, SL 2, SL 5, TH 3, TH 4, TH 9, TH 10, BW 10, BW 11, NI 1 and TH 5) or between 1 January 2007 and 17 July 2013 (measure RP 2) in breach of Article 108(3) TFEU is compatible with the internal market, with the exception of that referred to in Article 2.

Article 2

State aid granted by Germany in 2002 and 2003 to Nordmilch eG as part of measure NI 6, in breach of Article 108(3) TFEU, is incompatible with the internal market.

The aid granted by Germany between 1 January 2007 and 17 July 2013, in breach of Article 108(3) TFEU, under measure RP 2 to undertakings not falling under the definition of SMEs, in particular to MUH Arla eG and Hochwald Foods GmbH, is incompatible with the internal market.

State aid granted by Germany between 1 January 2007 and 17 July 2013, in breach of Article 108(3) TFEU, under measure RP 2 in respect of repeated participation in a particular fair or exhibition, is incompatible with the internal market.

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 met the conditions laid down in a regulation adopted pursuant to Article 2 of Council Regulation (EU) 2015/1588 ([81]) and that regulation 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 the aid is granted, fulfils the conditions laid down in a regulation adopted pursuant to Article 1 of Regulation (EU) 2015/1588 or by any other approved aid scheme, is compatible with the internal market, up to the maximum aid intensities applicable to this type of aid.

Article 5

1. The Federal Republic of Germany shall recover from the beneficiaries the aid that was granted in relation to the aid schemes referred to in Article 2 and that is incompatible with the internal market.

2. The amount to be recovered shall bear interest from the date on which it was put at the disposal of the beneficiaries until its actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Commission Regulation (EC) No 271/2008 ([82]) amending Regulation (EC) No 794/2004.

4. Germany shall cancel all outstanding payments of aid under the schemes referred to in Article 2 with effect from the date of adoption of this Decision.

Article 6

1. Recovery of the aid granted under the schemes referred to in Article 2 shall be immediate and effective.

2. Germany shall ensure that this Decision is implemented within four months of the date of notification of the Decision.

Article 7

1. Within two months following notification of this Decision, Germany 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 schemes;

(b) the total amount (principal and recovery interest) to be recovered from each beneficiary;

([81]) Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 248, 24.9.2015, p. 1).

([82]) Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

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

(d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. Germany shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted in accordance with the schemes referred to in Article 2 has been completed. Upon request by the Commission, Germany shall immediately submit information on the measures already taken or 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 Federal Republic of Germany.

Germany is requested to forward a copy of this Decision to the beneficiaries of the aid without delay.

Done at Brussels, 29 May 2017.

For the Commission
Phil HOGAN
Member of the Commission