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**Subject: State aid / Germany (Bund)
SA.42921 (2015/N)
GAK framework plan - support area 3 "Improving marketing structures", measure 3.0 "cooperations"**

Sir,

The European Commission ("the Commission") wishes to inform Germany that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to the relevant scheme as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By letter of 19 August 2015, registered by the Commission on the same day, Germany notified, according to Article 108(3) TFEU, the above mentioned aid scheme. The Commission sent a request for additional information to the German authorities on 14 October 2015. The German authorities asked for a prolongation of the delay for the answer on 9 November 2015 which the Commission agreed by letter of 12 November 2015. The German authorities sent the answer to the above request by letter of 28 March 2016, registered by the Commission on the same day. The Commission sent further requests for additional information to the German authorities on 27 May 2016, 28 July 2016 and on 27 October 2016, which the German authorities answered by letters of 2 June 2016, 8 September 2016 and 16 November 2016 respectively, registered by the Commission in each case on the same day.

Seiner Exzellenz Herrn Frank-Walter STEINMEIER
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() Ce timbre porte sur l'ensemble des documents qui composent le dossier.*

2. DESCRIPTION

2.1. Background

- (2) The notified measure is not included in the German National Framework Programme, approved by the Commission in December 2014, or in the rural development programmes of the individual German Länder, and will be purely nationally financed under the GAK (*Gemeinschaftsaufgabe "Verbesserung der Agrarstruktur und des Küstenschutzes"*, joint task "improvement of the agrarian structure and the coastal protection"). The present notification complements the above-mentioned rural development programmes.

2.2. Title

- (3) Bund: GAK framework plan - support area 3 "Improving marketing structures", measure 3.0 "cooperations"

2.3. Objective and scope

- (4) The notified aid scheme will benefit the agricultural sector by adapting the production, processing and marketing of agricultural products better to the needs of the market and of sustainable development, making supply chains and the sustainable supply of food, feed and biomaterials more efficient, and contributing to environmental and climate protection and adaptation to climate change, whilst strengthening regional cooperation so as to make market operators more competitive.
- (5) According to the German authorities the scheme thus indirectly contributes to improving the economic performance of farms, which is one of the Union priorities set in Article 5 of Regulation (EU) No 1305/2013¹, since it boosts the sale of agricultural products. The envisaged scheme should furthermore increase the attractiveness of rural areas through positive effects on the labour market and the value added.

2.4. Legal basis

- (6) The legal basis is:
- (a) Law on the joint task "improvement of the agrarian structure and the coastal protection" (*Gesetz über die Gemeinschaftsaufgabe "Verbesserung der Agrarstruktur und des Küstenschutzes"* (GAK-Gesetz – GAKG));
- (b) Support area 3 "improvement of marketing structures" of the framework plan of the joint task "improvement of the agrarian structure and the coastal protection" (*Förderbereich 3 "Verbesserung der Vermarktungsstrukturen" des Rahmenplans der Gemeinschaftsaufgabe "Verbesserung der Agrarstruktur und des Küstenschutzes"*).

¹ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, OJ L347 of 20.12.2013, p. 487

2.5. Duration

- (7) From the date of approval by the Commission until 31 December 2018.

2.6. Budget

- (8) The overall budget is EUR 2 million.

2.7. Beneficiaries

- (9) Beneficiaries of the envisaged measure will be producers, producer groups, undertakings processing and marketing agricultural products and other businesses involved in the processing and marketing of agricultural products, including organisations and institutions. The organisations and institutions of the agri-food sector must be constituted of a majority of members from the agri-food businesses and cooperate on a contractual basis.
- (10) Producer groups are in this context:
- Producer organisations,
 - Quality product producer groups and associations thereof.
- (11) Producer organisations and their associations must be recognised under the law on agricultural market structure. Quality product producer groups must have at least five members.
- (12) Producer groups and their associations must be micro, small and medium-sized enterprises (SME) within the meaning of Annex 1 to the Agricultural Block Exemption Regulation².
- (13) Excluded from aid are beneficiaries meeting the definition of 'undertaking in difficulty' laid down in the Community Guidelines on State aid for rescuing and restructuring undertakings in difficulty³;
- (14) Excluded are further undertakings subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the internal market.
- (15) The number of beneficiaries is estimated between 11 and 50.

2.8. Aid instrument

- (16) Direct grant.

² Commission Regulation (EU) No 702/2014 of 25/06/2014 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)

³ Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

2.9. Description of the aid scheme

- (17) According to the German authorities, the aid will be granted to promote the following forms of cooperation, involving at least two entities:
- (a) cooperation approaches and
 - (b) the creation of clusters and networks.
- (18) The same authorities confirmed that cooperation approaches will involve different undertakings in the agricultural sector, food chain (only if the result of the processing is an agricultural product) and other actors active in the agricultural sector that contribute to achieving the objectives and priorities of rural development policy, including producer groups, cooperatives and inter-branch organisations.
- (19) The German authorities furthermore confirmed that aid for the creation of clusters and networks will be granted only to newly formed clusters and networks and those commencing an activity that is new to them.
- (20) The following activities are eligible for support:
- (a) cooperation among small operators in the agricultural sector in organising resources;
 - (b) horizontal and vertical cooperation among supply chain actors for the establishment of logistic platforms to promote short supply chains and local markets.
- (21) The German authorities confirmed in this context that aid for promoting short supply chains will cover only supply chains involving not more than one intermediary between farmer and consumer.
- (22) The following costs incurred in implementing the activities referred to above are eligible for support:
- (a) concepts for cooperation among different operators in the agricultural and agri-food sector;
 - (b) feasibility studies, and costs for drawing up a business plan or equivalent plan;
 - (c) running costs of cooperation.
- (23) Excluded from aid are:
- expenditure for activities (direct costs of specific projects linked to the implementation of a business plan, a development strategy or action for innovation) which are covered by measure 2.0 "investments in processing and marketing of agricultural products" of support area 3 of the GAK framework plan;
 - support for industry organisations;
 - Value Added Tax (*Umsatzsteuer*)

- (24) The German authorities confirmed that the maximum aid intensity and the aid amount will be calculated by the granting authority at the moment of granting the aid. They furthermore confirmed that the eligible costs will be supported by documentary evidence which is clear, specific and contemporary.
- (25) Support provided for concepts for cooperation and feasibility studies (see recital (22) (a) and (b)) can be up to 50 % of the eligible costs.
- (26) Support provided for running costs (see recital (22) (c)) may account for up to 60 % of eligible costs in the first and second year, up to 50 % in the third year, up to 40 % in the fourth year and up to 20 % in the fifth year.
- (27) Subsidies for cooperation may be given for up to five years.
- (28) The maximum total amount of aid is limited to EUR 200 000 per cooperation.
- (29) The German authorities confirmed that relevant competition rules, in particular Article 101 and 102 TFEU and Articles 206 to 210 of Regulation (EU) No 1308/2013⁴ will be complied with.
- (30) The German authorities also confirmed that the aid will not be cumulated with other State aids or with de minimis aid. They furthermore confirmed that aid under the present scheme will not be cumulated with payments referred to in Articles 81(2) and 82 of Regulation (EU) No 1305/2013 in respect of the same eligible costs if such cumulation would result in an aid intensity or aid amount exceeding those laid down in the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020⁵ (hereinafter "the Guidelines").
- (31) The beneficiary must, before the start of activities, have submitted a written application for aid. The application must in particular include the following information: name and size of the undertaking, a description of the project including its expected start and end dates, location and estimated costs of the operation and type of grant.
- (32) Applications submitted by large enterprises must also contain a counterfactual analysis in accordance with point (72) of the Guidelines.
- (33) The German authorities confirmed that the transparency requirements pursuant to points (128) and (131) of the Guidelines will be complied with. The publication of the aid scheme and the individual aid grants above the thresholds fixed in point (128) (c) of the Guidelines will take place on the following web page⁶: <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>.

⁴ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347 of 20.12.2013, p. 671

⁵ OJ C 204 of 1.7.2014, p. 1. Amended by the Notice published in OJ C 390, 24.11.2015, p. 4

⁶ Pursuant to a letter of the German authorities to the Commission of 28 June 2016.

- (34) As regards potential environmental impacts of the scheme, the German authorities state that all relevant EU provisions regarding the environment will be respected. They expect positive environmental impacts as a result of the supported cooperations, since possible negative impacts resulting from activities of separate actors can be reduced through cooperation. Furthermore the aid applicants have to provide a proof in their application in which way the intended cooperation contributes to environmental and climate protection.

3. ASSESSMENT

3.1. Existence of aid - Application of Article 107(1) TFEU

- (35) According to Article 107(1) of the Treaty, "[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".
- (36) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (37) The notified scheme confers an advantage on its recipients. This advantage is granted through State resources (see recital (2) in connection with recital (8)) and it favours undertakings active in the agricultural sector (see recitals (9) to (15)) by strengthening their competitive position on the market. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.⁷
- (38) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade.⁸ The beneficiaries of aid operate on the market of agricultural products, where intra-EU trade takes place. The EU intra trade of agricultural products in 2015 amounted to some EUR 318.5 billion for exports and to EUR 314 billion for imports.⁹ The sector concerned is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.

⁷ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

⁸ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

⁹ Source: DG AGRI

- (39) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

- (40) The aid scheme was notified to the Commission on 19 August 2015. The German authorities confirmed that State aid will only be granted after the Commission decision authorising the aid scheme is adopted. Therefore, Germany has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Application of Article 107(3)(c) TFEU

- (41) Under Article 107(3)(c) TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (42) For this derogation to be applicable, the aid must comply with the relevant Union State aid rules.

3.3.2. Application of the Guidelines

- (43) As regards the notified aid scheme, Part I and Part II, Chapter 1.1.11 "Aid for cooperation in the agricultural sector", of the Guidelines are applicable.

3.3.2.1. Common Assessment Principles

Contribution to a common objective

- (44) The present scheme contributes to improving the economic performance of farms (cf. recital (5)) and complements the German National Framework Programme and the individual rural development programmes of the German Länder. The Commission therefore considers that point (47) of the Guidelines is complied with.

Need for State intervention

- (45) According to point (55) of the Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid measures fulfilling the specific conditions laid down in Part II of these Guidelines. Therefore, such aid should be considered necessary to achieve the objectives of common interest specified under Section 3.1. of Part I of these Guidelines. The current aid scheme fulfils the specific conditions laid down in Part II, Chapter 1.1.11. of the Guidelines, as described in recitals (57) - (66) below, and therefore point (55) of the Guidelines is complied with.

Appropriateness of aid

- (46) According to point (57) of the Guidelines, the Commission considers that aid granted in the agricultural sector, which fulfils the specific conditions laid down in the relevant Sections of Part II of those Guidelines, is an appropriate policy instrument. The aid scheme fulfils the specific conditions laid down in Part II, Chapter 1.1.11. of the Guidelines, as described in recitals (57) - (66) below and therefore point (57) of the Guidelines is complied with.
- (47) The notified aid measure is not at the same time included in the German National Framework Programme, approved by the Commission in December 2014, or in the rural development programmes of the individual German Länder (cf. recital (2)). The provisions of point (58) of the Guidelines therefore do not apply in this case.
- (48) The Commission furthermore considers that in case of aid for cooperation measures, direct grants are an appropriate aid instrument. The cooperation activities envisaged under the present scheme will not generate any direct proceeds from which the beneficiaries could pay back a loan (as would be required in case of aid granted in the form of a guarantee or of interest rate subsidies). Furthermore, the grants are limited to EUR 200 000 per cooperation (see recital (28)) which should help limit the distortion of trade and competition.

Incentive effect and need for aid

- (49) As explained by the German authorities (see recital (31)), an aid application is submitted by the beneficiary before the work on the project or the aided activity, has started. The content of the aid application meets the minimum requirements laid down in point (71) of the Guidelines. Large undertakings will submit a counterfactual scenario, in accordance with point (72) of the Guidelines (cf. recital (32)). Therefore, the incentive effect requirement is complied with.

Proportionality of the aid

- (50) Maximum aid intensity: Points (82) and (84) of the EU Guidelines stipulate that if the aid amount does not exceed the eligible costs and that the aid intensity respects the ceilings set out in Part II thereof, the aid is deemed to be proportionate. The current aid scheme fulfils the specific conditions regarding the eligible costs and the aid intensities laid down in Part II, Chapter 1.1.11. of the Guidelines (cf. recital (66)) and therefore points (82) and (84) of the Guidelines are complied with.
- (51) Value added tax is excluded from the eligible costs (cf. recital (23) and the German authorities confirmed that the maximum aid intensity and the aid amount will be calculated by the granting authority at the moment of granting the aid and that the eligible costs will be supported by documentary evidence which is clear, specific and contemporary (cf. recital (24)). Points (85) and (86) of the Guidelines are therefore also complied with.
- (52) Cumulation: Aid under the present scheme cannot be cumulated with other State aids or with de minimis aid (cf. recital (30)). Therefore, points (99) and (104) of the Guidelines are not relevant in the case at hand. The German authorities furthermore confirmed that aid under the notified scheme will not be cumulated with payments referred to in Articles 81(2) and 82 of Regulation (EU) No 1305/2013 in respect of the same eligible costs if such cumulation would result in

an aid intensity or aid amount exceeding those laid down in the Guidelines (cf. also recital (30)). Therefore, point (102) of the Guidelines is complied with.

Avoidance of undue negative effects on competition and trade

- (53) According to point (113) of the Guidelines, the Commission considers that, where an aid fulfils the conditions and does not exceed the relevant maximum aid intensities laid down in the applicable Sections of Part II of these Guidelines, the negative effect on competition and trade is limited to the minimum. The aid scheme fulfils the conditions laid down in Part II, in Chapter 1.1.11. of the Guidelines (cf. recital (57) - (66) below), and therefore point (113) of the Guidelines is complied with.

Environmental impact

- (54) As laid out in recital (34) the German authorities have provided an assessment of possible environmental impacts of the scheme, which shows that they expect overall positive impacts and a contribution to the objective of environmental and climate protection. Therefore it can be concluded that the requirements of point (52) of the Guidelines are respected.

Transparency

- (55) The German authorities have given assurance that the transparency requirements pursuant to points (128) and (131) of the Guidelines will be complied with (cf. recital (33)).

Other commitments

- (56) As laid down in recitals (13) and (14), undertakings in difficulty and undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market are excluded from the scope of the beneficiaries. Therefore, the conditions of points (26) and (27) of the Guidelines are fulfilled.

3.3.2.2. Specific assessment according to the category of aid

- (57) According to the German authorities, the aid will be granted to promote the following forms of cooperation, involving at least two entities: cooperation approaches and the creation of clusters and networks (cf. recital (17)). Cooperation approaches will involve different undertakings in the agricultural sector, food chain (only if the result of the processing is an agricultural product) and other actors active in the agricultural sector that contribute to achieving the objectives and priorities of rural development policy, including producer groups, cooperatives and inter-branch organisations (cf. recital (18)). The cooperation will benefit the agricultural sector. It can therefore be concluded that the conditions of point (315) of the Guidelines are fulfilled.
- (58) The activities supported relate to cooperation among small operators or horizontal and vertical cooperation among supply chain actors for the establishment of logistic platforms to promote short supply chains and local markets (cf. recital (20)). This falls within the activities listed in point (316) (c) and (d) of the Guidelines and therefore the conditions of this point are also fulfilled.

- (59) The aid for the establishment and development of short supply chains covers only supply chains involving not more than one intermediary between farmer and consumer (cf. recital (21)). Therefore the conditions of point (319) of the Guidelines are fulfilled.
- (60) Aid for the creation of clusters and networks will be granted only to newly formed clusters and networks and those commencing an activity that is new to them (cf. recital (19)). The conditions of point (317) of the Guidelines are therefore also fulfilled.
- (61) Germany has committed to comply with the applicable competition rules (cf. recital (29)). Therefore the conditions of point (320) of the Guidelines are also complied with.
- (62) Aid covers the following eligible costs (cf. recital (22)):
- (i) concepts for cooperation among different operators in the agricultural and agri-food sector;
 - (ii) feasibility studies, and costs for drawing up a business plan or equivalent plan;
 - (iii) running costs of cooperation.
- These cost items fall within those listed in point (321) (a) and (c) of the Guidelines and thus the conditions of this point are also fulfilled.
- (63) The aid will be granted for a maximum period of 5 years (cf. recital (27)). Therefore the conditions of point (322) of the Guidelines are complied with.
- (64) The aid intensity will not exceed 60 % of eligible costs (cf. recitals (25) and (26)), which is within the limits of point (323) of the Guidelines.
- (65) The aid scheme is limited until 31 December 2018 which is in line with point (719) of the Guidelines.
- (66) On the basis of the above the Commission considers that the requirements set out in the Guidelines for aid for cooperation in the agricultural sector are fulfilled.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified scheme on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy in State aid decisions¹⁰ and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline Germany will be deemed to agree to the publication of the full text of this letter.

¹⁰ Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C 297, 9.12.2003, p. 6.

If Germany wishes certain information to be covered by the obligation of professional secrecy please indicate the parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(3) of Commission Regulation (EC) No 794/2004¹¹, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN
Member of the Commission

¹¹ 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).