



EUROPEAN COMMISSION

Brussels, 23.11.2009
C(2009) 9171 final

**Subject: State Aid/Germany
Aid No N 597/2009
Federal Framework for small amounts of compatible aid in
agriculture ("Bundesregelung landwirtschaftliche Kleinbeihilfen")**

Sir,

The Commission wishes to inform Germany that, after examining the information supplied by your authorities on the aid referred to above, it has decided to raise no objections to the aid in question, as it is compatible with the EC Treaty.

The Commission has taken this decision on the basis of the following considerations:

1. PROCEDURE

- (1) By electronic notification of 30 October 2009, the German authorities notified a temporary aid scheme ("Bundesregelung landwirtschaftliche Kleinbeihilfen") for granting limited amounts of compatible aid under the Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis" (hereinafter referred to as the Temporary Framework)¹.
- (2) Additional information was submitted by e-mail of 06 November 2009.

2. DESCRIPTION OF THE AID SCHEME

2.1. Objective of the aid scheme

- (3) Germany considers that the financial crisis is affecting its real economy. According to the October 2009 report of the German Central Bank the GDP in the second

¹ Communication from the Commission - Temporary framework for State aid measures to support access to finance in the current financial and economic crisis, OJ C 83, 7.4.2009, p.1, as amended by Communication from the Commission of 28 October 2009, OJ C 26, 31.10.2009, p.2.

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quarter of 2009 contracted by 7.1% on a year-on-year basis. The unemployment rate had increased at the end of September 2009 by 0.6 percentage points on a year-on-year basis with 266,000 jobs lost in this reference period.

- (4) The German authorities consider that the crisis has as well considerably hit the agriculture sector, with the dairy and crop sector being particularly concerned. It is estimated that the decrease in producer prices has led to an income foregone in the German agriculture sector of some €6 billion. In a statistical sample of 10,000 agricultural undertakings 17% showed a negative cash flow in the financial years 2005/06 to 2007/08. This figure has increased to 38% in the current situation. The cash flow situation is especially precarious in the dairy sector where at present 43% of the 70,000 specialised dairy farms show a negative cash flow (compared to 10% in the period 2005/06 to 2007/08).
- (5) The notified measure complements other measures already put in place which aim at remedying the serious disturbance in the economy of Germany². According to the German authorities the macroeconomic data justify an extension of the Federal Framework for small amounts of aid to agricultural undertakings.
- (6) The scheme is expressly based on Article 87 (3) (b) EC Treaty, as interpreted by paragraph 4.2.2 of the Temporary framework.

2.2. The nature and form of the aid

- (7) The German authorities confirmed that the aid will be provided in transparent forms of aid as defined in Article 3 (6) of Regulation (EC) No 1535/2007³, and in particular in the form of direct grants, interest rate subsidies, loans with an aid element which is calculated on the basis of the applicable reference rate and in the form of guarantees where the aid element is calculated either on the basis of notified methodologies, or on the basis of the safe harbour premiums laid down in the annex to the Temporary Framework.

2.3. Legal basis

- (8) "Regelung zur vorübergehenden Gewährung geringfügiger Beihilfen an landwirtschaftliche Unternehmen zur Erleichterung des Zugangs zu Finanzierungsmitteln während der Finanz- und Wirtschaftskrise (Bundesregelung landwirtschaftliche Kleinbeihilfen)". The "Regelung" will enter into force upon its approval by the Commission.

2.4. Administration of the scheme

- (9) The notified scheme is a Federal framework scheme, allowing aid to be granted at Federal-, Länder- and local level.

² N 668/2008 "Federal Framework 'small amounts of compatible aid'" (as amended by N 299/09 and N 411/09); N 27/2009 "Guarantee scheme under the Temporary Framework; N 38/2009 "Federal Framework for low interest loans"; N 39/2009 "Federal Risk-Capital Framework" and N 426/2009 "Federal Framework for low interest loans for the production of green products".

³ Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid in the sector of agricultural production; OJ L 337, 21.12.2007, p.35

2.5. Budget and duration of the measure

- (10) The aid volume available under this scheme is estimated at €100 million.
- (11) Aid can be granted from the approval of the scheme by the Commission until 31 December 2010.

2.6. Beneficiaries

- (12) Undertakings active in the primary production of agricultural products.
- (13) Only those agricultural producers that were not firms in difficulty⁴ on 1 July 2008 can benefit from the aid. The aid may be granted to undertakings that entered into difficulties after this date due to the economic and financial crisis.
- (14) The German authorities estimate the number of beneficiaries to be over 1000 undertakings.

2.7. Sectoral scope, exclusion of export aid and aid favouring domestic over imported products

- (15) The scheme applies to the whole sector of primary agricultural production. According to the German authorities it does not apply to aids targeting specific agricultural products but will be open to all sub-sectors of agricultural production.
- (16) The scheme does not apply to export aids or aids favouring domestic over imported goods.

2.8. Aid measure

- (17) The German authorities confirm that the conditions laid down in section 4.2.2 of the Temporary Framework (as amended) for granting limited amounts of compatible aid to agricultural undertakings will be fully met. In particular,
- the aid shall not exceed €15,000 per undertaking; All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid;
 - before granting the aid, the aid granting authorities shall obtain from the undertakings concerned a declaration about any *de minimis* aid (as defined in Commission Regulation (EC) No 1535/2007) or aid granted under this measure received in the period since 1.1. 2008;
 - the total amount of *de minimis* aid and aid granted under this measure per undertaking in the period 1.1.2008 to 31.12.2010 may not exceed €15,000;

⁴ Within the meaning of point 2.1 of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty (OJ C 244, 1.10.2004, p.2) as regards large firms and within the meaning of Article 1 (7) of the General Block Exemption Regulation (Regulation (EC) No 800/2008, OJ L 214, 9.8.2008, p.3)) as regards SMEs.

- where the aid granted under this measure is to be combined with other compatible aid or with other forms of Community financing, the maximum aid intensities indicated in the relevant Guidelines or Block exemption regulations will be respected;
- the aid is not fixed on the basis of the price or quantity of products put on the market.

2.9. Monitoring and reporting, business secrets, language waiver

- (18) The German authorities confirm that the monitoring and reporting obligations laid down in Section 6 of the Temporary Framework will be respected (e.g.: detailed records regarding the granting of aid must be maintained for 10 years; before 31 October of each year during which the Temporary Framework is applicable, a report on the measures put in place should be provided).
- (19) The Commission notes that the German authorities have confirmed that the notification does not contain business secrets.
- (20) The German authorities confirm their acceptance that the Commission decision is adopted in the English language, due to exceptional circumstances.

3. ASSESSMENT UNDER COMPETITION RULES

3.1. Legality of measure

- (21) By notifying the aid measure before putting it into effect, the German authorities respected their obligations under Article 88 (3) of the EC Treaty.

3.2. Presence of aid within the meaning of Article 87(1) of the EC Treaty

- (22) Under Article 87(1) of the EC Treaty, 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, insofar as it affects trade between Member States, is incompatible with the common market.
- (23) The aid at issue is financed out of State resources and benefits certain undertakings (cf. point 2.6). Pursuant to the case law of the Court of Justice, aid to an undertaking is deemed to affect trade between Member States if that undertaking operates in a market open to intra-Community trade.⁵ The mere fact that the competitive position of an undertaking is strengthened compared with 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.⁶ The beneficiaries of the aid at issue operate on a market

⁵ See, in particular, judgment of the Court of 13 July 1988, Case 102/87, French Republic v Commission of the European Communities, ECR 1988, p. 4067.

⁶ Judgment of the Court of 17 September 1980, Case 730/79, Philip Morris Holland BV v Commission of the European Communities, ECR 1980, p. 2671.

where intra-community trade takes place.⁷ The aid measure could therefore distort competition and affect trade between Member States and consequently constitutes aid pursuant to Article 87(1) of the EC Treaty.

3.3. Compatibility of aid pursuant to Article 87(3)(b)

- (24) Having established that the measure involves state aid within the meaning of Article 87 (1) of the EC Treaty, it is necessary to consider whether the above mentioned measure can be found compatible with the common market.
- (25) As described under paragraph (3) above, the recent developments in the German economy point to an overall downturn when compared to previous periods. The data provided by the German authorities point as well to a considerable downturn in the agriculture sector, where the decrease in producer prices has led to an estimated income foregone of some € 6 billion since the beginning of the crisis (cf. paragraph (4)).
- (26) Germany already implemented various measures which aim at remedying the serious disturbance in its economy (cf. paragraph (5) in connection with footnote 2). By complementary granting limited compatible amounts aid to agricultural undertakings (€15,000 per undertaking during 2009 and 2010) the German authorities aim at supporting those undertakings that have an increased financing need due to the current crisis, as evidenced by the data provided by Germany (cf. paragraph (4)). Thus, the measure contributes to remedying the severe disturbance in the economy of Germany.
- (27) By adopting the Temporary Framework, the Commission indeed acknowledged (section 4.1) the "seriousness of the current financial crisis and its impact on the overall economy of the Member States". The Commission concluded "that certain categories of State aid are justified, for a limited period, to remedy these difficulties and that they may be declared compatible with the common market on the basis of Article 87(3)(b)." The Commission in its Communication of 28 October 2009 furthermore recognised increased difficulties for farmers to obtain credit as a consequence of the financial crisis and extended the scope of section 4.2.2 ("Compatible limited amount of aid") of the Temporary Framework by introducing a separate compatible limited amount of aid possibility for undertakings active in primary agricultural production.
- (28) The Commission considers that the macroeconomic data for the German economy including the whole agriculture sector justify the introduction of a complementary scheme for undertakings active in primary agricultural production.
- (29) The notified measure has been designed to meet the requirements of the additional category of aid ("Compatible limited amount of aid") described in section 4.2.2 of the Temporary Framework as amended.
- (30) The German authorities confirmed that the scheme does not apply to aids targeting specific agricultural products but will be open to all sub-sectors of agricultural production (cf. paragraph (15)).

⁷ Germany's intra-EU imports and exports of agricultural products in 2007 stood at €45 327 million and €37 514 million respectively (Source: EUROSTAT).

- (31) By excluding firms in difficulty on 1 July 2008 from the scope of the scheme (cf. paragraph (13)) it is excluded that aid is granted to agricultural producers already in structural difficulties before the beginning of the current crisis.⁸
- (32) The Commission accordingly considers that the notified measure is, in the context of the other measures already put in place, necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework as amended. In particular,
- The maximum aid amount will not exceed the cash equivalent of €15,000 per undertaking (point 4.2.2 (h));
 - The measure is granted through an aid scheme in line with point 4.2.2 (b);
 - The aid granting authorities will obtain from the undertakings concerned a declaration about any *de minimis* aid or aid granted under this measure received during the current fiscal year and will check that the total aid will not exceed €15,000 per undertaking during the period from 1 January 2008 to 31 December 2010 (point 4.2.2 (g), first sentence). Where the aid granted under this measure is to be combined with other compatible aid or with other forms of Community financing, the maximum aid intensities indicated in the relevant Guidelines or Block exemption regulations will be respected. Thus, the cumulation rules with *de minimis* aid and aid for other purposes are respected (in particular point 4.2.2 (g) and point 4.7);
 - Firms in difficulty (situation of 1.7.2008) are excluded from eligibility under the scheme in compliance with point 4.2.2 (c);
 - The measure applies to undertakings active in the primary production of agricultural products. Aid under this measure is not fixed on the basis of the price or quantity of products put on the market (point 4.2.2 (h));
 - Export aid and aid favouring domestic over imported goods and services are excluded (point 4.2.2 (e)).;
 - In line with point 4.2.2 (f) aid may be granted until 31.12.2010;
 - The monitoring and reporting rules laid down under point 6 of the Temporary Framework will be respected.
- (33) For these reasons, it may be concluded that the notified measure is in conformity with the Temporary Framework as amended and considers it to be compatible with the Treaty on the basis of Article 87 (3) (b) EC Treaty.
- (34) The Commission notes that the German authorities have confirmed that the notification does not contain business secrets.

⁸ Cf. statistical data in paragraph (4) according to which in the financial years 2005/06 to 2007/08 on average 17% of agricultural undertakings showed a negative cash flow while this figure has increased to 38% in the current situation.

(35) The Commission furthermore notes that the German authorities accepted that the decision is adopted in the English language, due to exceptional circumstances.

4. CONCLUSION

(36) In view of the foregoing, the Commission has accordingly decided to consider the aid compatible with the common market under Article 87(3)(b) of the Treaty.

Yours faithfully,
For the Commission

Mariann Fischer Boel
Member of the Commission