



EUROPEAN COMMISSION

Brussels,
C (2013)

**Subject: State Aid SA.37607 (2013/N) – Germany (Hessen)
Aid in relation to the transport and removal of fallen stock**

Sir,

The Commission wishes to inform Germany that, after having examined 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 Treaty on the Functioning of the European Union (TFEU)¹.

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) In accordance with Article 108(3) TFEU, Germany notified to the Commission the aid scheme mentioned above by electronic communication dated 30 October 2013, registered on 31 October. Additional information was provided by the German authorities by e-mail dated 15 November 2013, registered on 18 November 2013.

2. DESCRIPTION

2.1. Title

- (2) Hessen: Aid in relation to the transport and removal of fallen stock

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 provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should where appropriate be understood as references to Articles 87 and 88, respectively, of the EC Treaty.

H.E. Dr Guido Westerwelle
Federal Minister for Foreign Affairs
Werderscher Markt 1
10117 BERLIN / GERMANY

2.2. Budget

(3) Total budget: 24.5 million €. Annual budget: 3.5 million €.

2.3. Beneficiaries

(4) Primary agricultural producers in Hessen/Germany.

2.4. Legal Basis

(5) *§ 8 Hessisches Ausführungsgesetz zum Tierische Nebenprodukte-Beseitigungsgesetz (HAGTierNebG) vom 14. Dezember 2010 (GVBl. I 2010, 621)*

2.5. Description of the aid

(6) By the current notification, the German authorities seek to extend the duration of the existing aid scheme N 508/2003 (SA.17078) until 31 December 2020, and to increase its budget.

(7) According to the German authorities, aid will continue to be granted as described in recitals (7) to (11) of State aid decision N 508/2003 (hereafter: "the reference decision"), to which the present decision fully refers.

(8) In addition, the German authorities have assured that no direct payments will be made to producers.

2.6. Duration

(9) 1 January 2014 until 31 December 2020.

2.7. Aid intensity

(10) Up to 100%.

2.8. Incentive effect

(11) The German authorities have given their assurances that the aid will only be granted for activities undertaken or services received after an application for the aid had been properly submitted to the competent authority concerned and accepted by the latter.

2.9. Other commitments

(12) The German authorities committed to suspend the payment of the notified aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid including the corresponding recovery interest.

- (13) The German authorities committed that firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty² will not be eligible for aid under the notified scheme.
- (14) The German authorities committed to adapt the notified scheme to conform with any future amendments of the Union rules applicable to State aid in the agriculture sector.

3. ASSESSMENT

3.1. Existence of State aid

- (15) A previous, identical (except for its total budget and its duration) scheme for aid to compensate costs of transport of fallen stock and of its harmless disposal was approved by the reference decision. As explained in recital (13) of the reference decision, such a scheme constitutes State aid within the meaning of Article 107(1) TFEU, because it is granted out of State resources (the compensation measures are financed by the Land Hessen), it favours certain undertakings (animal owners) in Hessen and it distorts or at least threatens to distort competition and affects trade between Member States.
- (16) In the light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed measure 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 Treaty.

3.2. Assessment of the compatibility of the aid

- (17) For the present case, Article 107(3)(c) TFEU may provide the appropriate basis for compatibility. Under that provision, aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (18) In the agricultural sector this derogation applies to aid which complies with the Community Guidelines for State Aid in the agriculture and forestry sector 2007 - 2013³ (hereinafter "the Guidelines").
- (19) Point 16 of the Guidelines provides conditions that must be fulfilled for the aid to have an incentive effect. As set out under recital (11), these conditions are met.
- (20) Aid concerning fallen stock has to be assessed in the light of Chapter V.B.4, points 133 to 137 of the Guidelines.
- (21) In the case at hand, point 134 of the Guidelines applies, whereby the Commission will declare State aid concerning TSE tests and fallen stock compatible with Article

² OJ C 244, 1.10.2004, p. 2

³ OJ C 319, 27.12.2006, p. 1

107 (3) (c) TFEU if it fulfils all the conditions of Article 16 of Regulation 1857/2006.⁴

- (22) The following provisions of Article 16 of Regulation (EC) No 1857/2006 are relevant to the present case:

1. The following aid to enterprises active in the livestock sector shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty:

[...]

(d) aid at a rate of up to 100 % of costs of removal of fallen stock, and 75 % of the costs of destruction of such carcasses; alternatively, aid up to an equivalent amount towards the costs of premiums paid by farmers for insurance covering the costs of removal and destruction of fallen stock;

[...]

(f) aid of 100 % for the costs of removal and destruction of fallen stock where there is an obligation to perform TSE tests on the fallen stock concerned;

[...]

2. The exemption provided for in paragraph 1(d), (e), (f) and (g) shall be conditional upon the existence of a consistent programme monitoring and ensuring safe disposal of all fallen stock in the Member State. In order to facilitate administration of such State aid, payment may be made to economic operators active downstream from the farmer, providing services linked to the removal and/or destruction of fallen stock, if it can be properly demonstrated that the full amount of State aid paid is passed on to the farmer.

3. The aid shall not involve direct payments of money to producers.

- (23) Pursuant to point 137 of the Guidelines, the Commission will authorise such State aid in favour of farmers only.
- (24) The aforementioned conditions are considered to be met as already assessed in the reference decision and further outlined in the following recitals.
- (25) The aid intensity is limited to 100 % of the costs of removal of fallen stock, and 75 % of the costs of destruction of such carcasses (see recital (20) of the reference decision).

⁴ OJ L 358, 16.12.2006, p. 3

- (26) If there is an obligation to perform BSE/TSE tests on the fallen stock, the aid intensity will be 100% (see recital (18) of the reference decision).
- (27) A consistent programme monitoring and ensuring safe disposal of all fallen stock exists (see recital (21) of the reference decision).
- (28) State aid will only be granted in favour of farmers (see recital (22) of the reference decision).
- (29) Notwithstanding that aid should as a general rule only be granted in favour of farmers, payments may be made to economic operators active downstream from the farmer, providing services linked to the removal and/or destruction of fallen stock, if it can be properly demonstrated that the actual benefit of State aid paid is passed on to the farmer (see recital (23) of the reference decision).
- (30) As the German authorities assured, no direct payments will be made to producers (see recital (8) of the present decision).
- (31) Consequently, it may be concluded that the proposed aid measure complies with the relevant provisions of Chapter V.B.4. of the Guidelines.

Other Conditions

- (32) The German authorities committed to suspend any payment of aid under the notified scheme if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest (see recital (12)).⁵
- (33) In the light of point 20 of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, a firm in difficulty, given that its very existence is in danger, cannot be considered an appropriate vehicle for promoting other public policy objectives. As a consequence, the Commission considers that aid to firms in difficulty within the meaning of these guidelines cannot contribute to the development of economic activities without affecting trade to an extent contrary to the Union interest.

The Commission concludes based on the German authorities' commitment (see recital (13)), that the notified scheme does not apply to firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty. As a consequence, the criterion to exclude firms in difficulty from the scope of the notified aid (see point 145 of the Guidelines) is met.

- (34) The Commission takes note of Germany's commitment to adapt the notified scheme to conform with any future amendments of the Union rules applicable to State aid in the agriculture sector (see recital (14)).

⁵ Judgment of the Court of 15 May 1997 in case C-355/95 P *Textilwerke Deggendorf GmbH v. Commission*, paragraph 25

4. CONCLUSION

- (35) The Commission concludes that the measure constitutes State aid pursuant to Article 107(1) TFEU.
- (36) The scheme is in accordance with the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 – 2013, in particular with the requirements applicable to aid for combating animal and plant diseases, including aid concerning fallen stock. The aid measure can therefore be considered compatible with the internal market under Article 107 (3)(c) TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to disclosure to third parties and to publication of the full text of the letter in the authentic language on the Internet site <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate M
Office: Loi 130 5/138
B-1049 Brussels

Fax No: 0032 2 2967672

Yours faithfully,

For the Commission

Dacian CIOLOȘ

Member of the Commission