



EUROPEAN COMMISSION

Brussels, 10.4.2014

C(2014) 2470 final

**Subject: State aid/ Germany (Saxony)
Aid No SA.37724 (2013/N)
Aid to offset the cost of transporting and safe disposal of fallen stock**

Sir,

The Commission wishes to inform Germany that 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) By electronic notification of 13 November 2013, registered by the Commission on 22 November 2013, Germany notified, according to Article 108(3) TFEU, the above mentioned aid measure. Following a request for information from the Commission on 21 January 2014, the German authorities provided additional information on 19 February 2014, registered as received on the same date.

2. DESCRIPTION

2.1 Title

- (2) Saxony - Aid to offset the cost of transporting and safe disposal 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 Frank-Walter Steinmeier
Federal Minister for Foreign Affairs
Werderscher Markt 1
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2.2 Objective

- (3) The objective is to notify to the Commission the amendment to the aid scheme SA.16957 (N 633/2003): "Aid for the costs of transporting and destroying fallen stock" related to its duration and the budget. The aid scheme SA.16957 (N 633/2003) was approved by the Commission on 14 October 2004 and expired on 31 December 2013. According to the German authorities, aid will be granted under the same conditions as described in State aid decision SA.16957 (N 633/2003) (hereafter: "the reference decision"), to which the present decision refers in full as regards the description of the measure.

2.3 Beneficiaries

- (4) State aid will be granted in favour of farmers (animal owners) in Saxony but no direct payments will be made to producers. Payments may be made to economic operators active downstream from the farmer, providing services linked to the removal and/or destruction of fallen stock, but the actual benefit of State aid paid is passed on to the farmer. The number of beneficiaries is over 1000.

2.4 Legal Basis

- (5) The legal basis for the measure is the "*Sächsisches Ausführungsgesetz zum Tierische Nebenprodukte-Beseitigungsgesetz und zu weiteren Vorschriften über die Verarbeitung und Beseitigung von nicht für den menschlichen Verzehr bestimmten tierischen Nebenprodukten*".

2.5 Duration

- (6) From the date of the approval by the European Commission until 31 December 2019.

2.6 Budget and aid intensity

- (7) The overall budget approved in the aid scheme SA.16957 (N 633/2003) for the period 2003-2013 has been EUR 15 million (EUR 1.5 per year).
- (8) For the period 2014 – 2019 this budget is proposed to be EUR 18 million. The annual amount shall be EUR 3 million.
- (9) 75 % of the costs for removal and destruction (Abholung und Beseitigung) except for animals slaughtered as a veterinary measure for which the aid intensity is 100%.

2.7 Description

- (10) By the current notification, the German authorities seek to introduce a scheme identical to aid scheme SA.16957 (N 633/2003) until 31 December 2019, and to introduce a new budget for the measure.
- (11) According to the German authorities, aid will continue to be granted under the same conditions described in the reference decision, to which the present decision refers in full. The only modifications relates to the prolonged duration and the related increase of the budget by EUR 18 million. The German authorities confirmed that there would be no other modification of the aid scheme SA.16957 (N 633/2003).

2.8 Commitments by Germany

- (12) The German authorities committed to grant the aid only for activities undertaken or services received after an application for the aid had been properly submitted to the competent authority and accepted by the latter.
- (13) The German authorities have 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 and the corresponding recovery interest.
- (14) The German authorities have confirmed that firms in difficulty according to the definition set out in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty² are excluded from the scope of the scheme.
- (15) As the measure extends beyond the duration of the current Guidelines, the German authorities also 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

- (16) A previous, identical (except for its total budget and its duration) scheme for aid to compensate costs of removal of fallen stock and of its destruction was approved by the reference decision. As explained in recital (14) 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 Saxony), it favours certain undertakings (animal owners) in Saxony and it distorts or threatens to distort competition and affects trade between Member States.
- (17) 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 Compatibility of State aid

- (18) 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.
- (19) 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")⁴.

² OJ C 244, 1.10.2004, p. 2.

- (20) Point 16 of the Guidelines provides the conditions that must be fulfilled for the aid to have an incentive effect. As set out under recital (12) of this decision, these conditions are met.
- (21) Aid concerning fallen stock has to be assessed in the light of Chapter V.B.4, points 133 to 137 of the Guidelines.
- (22) 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 107(3)(c) TFEU if it fulfils all the conditions of Article 16 of Regulation 1857/2006.⁵
- (23) 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;

(e) aid at a rate of up to 100 % for costs of removal and destruction of carcasses where the aid is financed through fees or through compulsory contributions destined for the financing of the destruction of such carcasses, provided that such fees or contributions are limited to and directly imposed on the meat sector;

[...]

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.

³ OJ C 319, 27.12.2006, p. 1.

⁴ The validity of the Community guidelines for State aid in the agriculture and forestry sector 2007-2013 was extended until 30 June 2014. Commission communication concerning the amendment and prolongation of the application of the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013, OJ C 339, 20.11.2013, p.1.

⁵ OJ L 358, 16.12.2006, p. 3. The period of application of Regulation 1857/2006 has been extended until 30 June 2014 by Commission Regulation (EU) No 1114/2013 of 7 November 2013 amending Regulation (EC) No 1857/2006 as regards its period of application, OJ L 298, 8.11.2013, p. 34.

- (24) In addition to these requirements, pursuant to point 137 of the Guidelines, the Commission will authorise State aid for fallen stock in favour of farmers only. This condition is met (recital (4)).
- (25) The aid intensity is 75 % of the costs for removal and destruction (Abholung und Beseitigung). The aid intensities of Article 16 (1)(d) of Regulation (EC) No 1857/2006 are therefore met.
- (26) In the case of animals slaughtered as a veterinary measure, the maximum aid intensity for removal and destruction is 100%. The German authorities pointed out that the aid for these measures is financed through fees or through compulsory contributions destined for the financing of the destruction of such carcasses and that such fees or contributions are limited to and directly imposed on the meat sector. The conditions of Article 16 (1)(e) of Regulation (EC) No 1857/2006 are therefore met.
- (27) The German authorities pointed out that a consistent programme monitoring and ensuring safe disposal of all fallen stock exists. Therefore, the condition of Article 16 (2) of Regulation (EC) No 1857/2006 is met.
- (28) The German authorities confirmed that 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. Therefore, the condition of Article 16 (2) of Regulation (EC) No 1857/2006 is met.
- (29) As the German authorities confirmed, no direct payments will be made to producers (see recital (4) of the present decision). Therefore, the condition of Article 16 (3) of Regulation (EC) No 1857/2006 is met.
- (30) 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

- (31) 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 (13)).⁶
- (32) 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 at an extent contrary to the Union interest.

⁶ Judgment of the Court of 15 May 1997 in case C-355/95 P *Textilwerke Deggendorf GmbH v. Commission*, paragraph 25.

- (33) The Commission takes note of the German authorities' commitment (see recital (14)), 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) Since the present aid scheme is proposed to be applicable until 31 December 2019 and the current Guidelines are due to expire on 30 June 2014, the Commission also 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 (15)).

CONCLUSION

- (35) The Commission has accordingly decided not to raise objections to the measure as it is compatible with the internal market under Article 107(3)(c) TFEU.
- (36) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days from the receipt of the present letter. If the Commission does not receive a reasoned request by this deadline, you will be deemed to have agreed to the disclosure to third parties and to the publication of the full text of this letter in the authentic language on the internet site:
<http://ec.europa.eu/competition/elojade/isef/index.cfm>.
- (37) Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate Agricultural Legislation
Office: Loi 130 5/98A
B-1049 Brussels
Fax No: 0032 2 2967672

Yours faithfully,

For the Commission

Dacian CIOLOȘ
Member of the Commission