Subject: State Aid / Germany (Bavaria)
SA.42411 (2015/N) - Sales promotion including advertising campaigns related to milk and dairy products

Sir,

The European Commission ("the Commission") wishes to inform the Federal Republic of 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 1 July 2015, registered by the Commission on the same day, the Permanent Representation of the Federal Republic of Germany notified, according to Article 108(3) TFEU, the above mentioned aid scheme. The Commission sent requests for additional information to the German authorities on 5 August, on 30 October 2015, on 20 January 2016, which the German authorities answered by letters of 1 September, 26 November 2015 and 29 January 2016 respectively, all registered by the Commission on the same day. Additional information was submitted by the German authorities by letter of 23 March 2016. The Commission sent a further request for information on 24 May 2016, which the German authorities replied by letter of 9 June 2016, registered the same day.
2. **DESCRIPTION**

2.1. **Title**

(2) Sales promotion including advertising campaigns related to milk and dairy products

2.2. **Objective**

(3) The aim of Bavarian regional agricultural policy is to strengthen rural areas as independent and diversely formed living space as well as to contribute to the sustainable development of the agricultural sector. The sale of milk and dairy products has an essential role to play here. Measures to strengthen sales in Germany, on the internal market and in third countries are therefore to be supported.

(4) In the context of this promotion, consumers’ needs for comprehensive and up-to-date information are to be met. To that end, the information must be processed regularly in a manner appropriate to the subject matter and to the target group, and in particular conveyed professionally using modern means of communication.

2.3. **Legal bases**

(5) Principles for the promotion of milk and dairy product sales from the resources of the Dairy and Animal Fat Industry’s Special Fund in Bavaria.

(6) Bavarian Budget Regulations, in particular Articles 23 and 44, and the related administrative provisions, as amended.

(7) Law on trade in milk, dairy products and fats (Milk and Fat Law), in particular Article 22 paragraph 2.

2.4. **Duration**

(8) From the date of the Commission decision until 31 December 2020.

2.5. **Budget**

(9) Annual budget: EUR 4.5 million, overall budget EUR 22.5 million.

2.6. **Subject of support**

(10) Costs for the following measures will be supported:

(a) Costs related to the organisation of and participation in competitions, trade fairs and exhibitions.

(b) Costs of publications.

(c) Costs for the dissemination of scientific knowledge and factual information.
(d) Costs of advertising campaigns tailored to consumers and advertising material.

Administrative costs (personnel and materials) are limited to the costs actually incurred in implementing the sales promotion measure.

2.7. Type, scope and intensity of aid

(11) The aid will be granted:

- In the form of a grant of at most 100% of the eligible costs on the basis of reimbursement of real costs incurred by the beneficiary in the case of organisation of and participation in competitions, trade fairs and exhibitions;

- In the form of payment in kind with an aid intensity of up to 100% of eligible costs in the case of publications, dissemination of knowledge and information, advertising campaigns and advertising material.

(12) Where the aid is granted in the form of payment in kind, it will not include direct payments to the aid recipients but will be paid to the provider of the sales promotion measures.

2.8. Beneficiaries and support recipients

(13) Depending on the aid measures the beneficiaries (Beihilfeempfänger) are:

i. small and medium-sized enterprises (SMEs) as defined in Annex I to Regulation (EU) No 702/2014 which are active in the primary production, processing or marketing of milk and dairy products in the case of costs related to the organisation of and participation in competitions, trade fairs and exhibitions (see recital (10) (a));

ii. all undertakings active in the primary production, processing or marketing of milk and dairy products in the case of costs related to the items mentioned in recital (10)(b),(c) and (d);

(14) Support recipients (Zuwendungsempfänger) are milk sector umbrella organisations recognised by Bavaria under Milk and Fat Law (Dachorganisationen der Milchwirtschaft) which act as providers of promotion measures and are producer groups and other organisations in the sense of point (459) of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (hereinafter the "Guidelines").

(15) In the case of measures under recital (10)(a), also SMEs active in milk processing pursuant to Annex I to Regulation (EU) No 702/2014 can be support recipients in the above sense.

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(16) No aid will be granted:
- to businesses which have not complied with a recovery order following a previous Commission Decision declaring aid unlawful and incompatible with the internal market,
- to businesses in difficulty as defined in point 35 No 15 of the Guidelines.

2.9. Eligible costs

(17) The aid will cover the following eligible costs for the organisation of and participation in competitions, trade fairs and exhibitions:
- participation fees;
- travel costs and animal transportation costs;
- costs of publications and websites announcing the event;
- rent for exhibition premises and stands and costs of their installation, operation and dismantling;
- symbolic prizes up to a value of €1,000 per prize and per competition winner;

(18) The aid for symbolic prizes referred to above may only be paid to the provider of the promotion measures if the prize has been actually granted and upon presentation of a proof of the award.

(19) The aid will serve to cover the following eligible costs for publications:
publications in print and electronic media, websites, and advertising spots in electronic media, on radio or television, aimed at presenting factual information on producers from a particular region or producing a particular agricultural product, provided that the information is neutral and that all producers concerned have equal opportunities to be represented in the publication.

(20) Costs for the dissemination of scientific knowledge and factual information are eligible for:
(a) the following quality schemes, as referred to in point 282(a) of the Guidelines:
- „Allgäuer Emmentaler“ (Cheese Speciality, Protected Designation of Origin (PDO), Legal base: Commission Regulation (EC) No 123/97),
- „Allgäuer Bergkäse“ (Cheese Speciality, Protected Designation of Origin (PDO), Legal base: Commission Regulation (EC) No 123/97),

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- "Weißlacker/Allgäuer Weißlacker“ (Cheese Speciality, Protected Designation of Origin (PDO), Legal base: Commission Implementing Regulation (EU) No 2015/303)³

- "Obazda/Obatzter“ (Cheese Speciality, Protected Geographical indication (PGI), Legal base: Commission Implementing Regulation (EU) No 2015/1002)⁴

- "Heumilch“ (Hay milk, Traditional Speciality Guaranteed (TSG), Legal base: Commission Implementing Regulation (EU) No 304/2016)⁵. This quality scheme is open to milk and dairy products from other Member States and third countries,

(b) generic milk and dairy products, their nutritional benefits and suggested uses. This also includes public relations measures, e.g. through the testimonials of the Bavarian Milk Queen, informing consumers about the characteristics of milk and dairy products.

(21) The following costs of advertising campaigns tailored to consumers and advertising material are eligible:

- advertising campaigns, in the media or retail outlets, tailored to consumers;

- advertising material which is distributed directly to consumers.

(22) Value added tax (VAT) is not eligible for aid, except where it is not refunded under national VAT legislation.

2.10. Support conditions

(23) The organisation of, and participation in, competitions, trade fairs and exhibitions must be open to all interested businesses and institutions in the dairy sector.

(24) The publications must contain neutral information and all producers must have the same opportunity to be included in the publications.

(25) Promotion measures concerning dissemination of scientific knowledge and factual information and advertising campaigns must not contain any references to specific businesses or specific trademarks or the products’ origin and do not risk endangering sales or denigrate products


⁵ Commission Implementing Regulation (EU) 2016/304 of 2 March 2016 entering a name in the register of traditional specialities guaranteed (Heumilch/Haymilk/Latte fieno/Lait de foin/Leche de heno (TSG)), OJ L 58, 4.3.2016, p. 28–34.
from other Member States. The restriction on the reference to origin does not, however, apply to information, sales promotion and advertising measures which concern products falling under the quality schemes referred to in point (282) of the Guidelines, provided that the following condition is met:

In so far as the sales promotion measure concerns designations recognised by the Union, reference may be made to the origin provided that the reference corresponds exactly to the name registered by the Union.

(26) The German authorities confirm that promotion campaigns will comply with Regulation (EU) No 1169/2011 of the European Parliament and of the Council, and, where appropriate, with the specific labelling rules laid down for various products.

(27) Advertising campaigns will not be confined to products of particular businesses. Appropriate samples of the advertising material will be submitted for examination by the Commission before the advertising campaign is launched.

(28) The German authorities state that the promotion campaigns will not exceed an annual budget of EUR 5 million.

(29) Participation in the umbrella organisations’ sales promotion measures must be open to all interested parties. Membership of a recognised umbrella organisation must not be a precondition for participation. Any contributions towards the umbrella organisation’s administrative costs must be limited to the costs of carrying out the sales promotion measures.

(30) Any contracts awarded to third parties by the umbrella organisations must be awarded in accordance with tendering legislation.

2.11. Financing of aid

(31) The aid will be granted from the Milk and Fat Industry’s special fund in Bavaria. This fund is financed through parafiscal taxes according to Article 22 paragraph 2 of the Milk and Fat Law. The annual amount of resources will be up to EUR 4.5 million.

(32) The Milk and Fat Law – a German federal law – empowers in its Article 22 paragraph 1 the German Länder to impose a levy ("Milchumlage" = "milk levy") at the level of the dairies, based on the milk quantities delivered to these dairies. This levy can amount up to a maximum of EUR 0.001 per litre of milk delivered.

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(33) The revenue from the levy is earmarked for specific purposes and may be used only for types of aid falling under Article 22 paragraph 2 of the Milk and Fat Law. Promotion is one of the purposes for which the revenues of this levy can be used. The German authorities state that for promotion aid for the period 2016 to 2020 the overall amount of EUR 22.5 million is earmarked as a planning figure. The actual aid amount of up to EUR 4.5 million is fixed yearly by the committees of the Bavarian Regional Dairy Association (Landesvereinigung der Bayerischen Milchwirtschaft) responsible. The German authorities state that the share of promotion aid of the total levy revenues is around 70%.

(34) The German authorities state that the levy is not charged on raw milk supplied from other Member States. So the suppliers of that raw milk are not disadvantaged.

(35) They also confirm that the levy is also charged on milk which is exported directly or in the form of processed products.

(36) As regards possible discrimination of products destined for export, the German authorities state that, in so far as the sales promotion measures for milk and dairy products are also carried out abroad, the persons liable to pay the levy who export the milk directly or as a processed product benefit directly from the aid measures. However, even if the levy funds are used for sales promotion measures in Germany, exported goods benefit from these measures. This is because these sales promotion measures lead to a stabilisation of sales in Germany. Falling sales of milk and dairy products in Germany would result in falling prices. This would lead to more goods being exported, which would result in falling prices for exports too. Therefore, according to the German authorities, exported products benefit in the same way as products sold domestically, from sales promotion measures which stabilise the market and prices in Germany.

(37) However, the German authorities assure that, if a business furnishes proof that it has been disadvantaged by the levy being charged, it is guaranteed that the contributions in question will be reimbursed.

(38) The German authorities state that the milk levy does not influence the prices for domestic end products. The price of milk sold in retail outlets in Germany is more than EUR 0.50 per litre. The milk levy used for this aid is EUR 0.00043 per kg and therefore constitutes only a very small proportion of the selling price. Charging the milk levy is according to the German authorities therefore not contrary to the objectives of the common market organisation in the agricultural sector.

(39) Support will be granted on the basis of the principles laid down above and of the Bavarian Budget Regulations, and within the limits of the resources available from the Dairy and Animal Fat Industry’s Special Fund. There is no legal entitlement to the granting of aid.
2.12. Other commitments

(40) The beneficiary of aid for organisation of and participation in competitions, trade fairs and exhibitions (see recital (17)) must, before the start of the project, submit a written aid application, containing the following information:

- Name and size of the business
- Description of the project or activity, including its start and end dates
- Location of the project or activity
- Breakdown of the eligible costs
- Type of aid and amount of public funding required for the project or activity.

(41) The following details will be published on a separate aid website. As from 1 July 2016 this will be done on the website "Tranparancy Award Module" (TAM) which is made available by the Commission to the Member States:


- the full text of these principles;
- the name of the approval authority;
- the names of the aid recipients with essential eligibility criteria, exceeding the following thresholds: EUR 60 000 in the case of recipients engaged in primary agricultural production; EUR 500 000 in the case of recipients engaged in the processing and marketing of agricultural products.

(42) Publication must take place after approval of the aid and remain publicly accessible for 10 years.

(43) According to the information provided, the cumulation of the present grant with aid received from other public resources, including regional, national or EU aid schemes to cover the same eligible costs is excluded. The aid authorised under this scheme will not be cumulated with any *de minimis* aid in respect of the same eligible costs. The German authorities commit themselves to respect this restriction, as well as to assure that the maximum allowed intensities will be respected.

(44) The German authorities state that they do not expect that the notified measure will have environmental impacts.
3. ASSESSMENT

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

(45) For Article 107(1) TFEU to apply, the scheme must provide an economic benefit to an undertaking which it would not have received in its normal course of business, the aid must be granted to certain undertakings, the benefit must be granted by a Member State or through State resources and the scheme must be capable of affecting trade between Member States.

Existence of State resources

(46) The aid is financed through the revenues from a parafiscal levy (recitals (31) and (32)).

(47) As to whether or not the revenue of parafiscal levies (recitals (31) to (33)) can be regarded as State resources, no distinction needs to be made between cases in which the aid is granted directly by the State or by public or private bodies that have been designated or created by the State.7

(48) In the Pearle case8 the European Court of Justice pointed out that compulsory contributions levied by an intermediary body, such as the Milk and Fat Industry’s special fund in Bavaria, on all undertakings in a commercial sector can be regarded as not being State resources only if the following four cumulative conditions are met:

- the measure in question is established by the professional body that represents the enterprises and the employees of a business sector and does not serve as an instrument for the implementation of policies established by the State;

- the goals of the measure in question are fully financed by the contributions of the enterprises of the sector;

- the way of financing and the percentage/amount of the contributions are established by the professional body of the business sector, by representatives of employers and employees, without any State interference;

- the contributions are obligatorily used for financing of the measure, without the possibility for the State to intervene.

(49) In addition, in its judgment in Doux Elevage9 the Court of Justice stated that neither the State's power to recognise an inter-trade organisation,


8 Judgment in Pearle BV, C-345/02, ECLI:EU:C:2004:448.

9 Judgment in Doux Élevage SNC and Coopérative agricole UKL-ARREE v Ministère de l’Agriculture, C-677/11, ECLI:EU:C:2013:348, para. 41 (see also paras 32, 35 and 38).
nor the power of that State to extend an inter-trade agreement to all the traders in an industry permit the conclusion that the activities carried out by the inter-trade organisation are imputable to the State.

(50) The notified aid scheme does not conform to all the conditions of the above quoted Pearlé and Doux Elevage cases. In particular, levies are charged by the State and the Milk and Fat Industry’s special fund is a legal body established by the State according to the provisions of Article 22 of the Milk and Fat law. The fact that the amount of the aid destined for promotion is agreed by the Bavarian Regional Dairy Association (see recital (33)), does not change the responsibility of the State for collecting and redistributing the resources involved. Therefore, the Commission considers that the State has the possibility to intervene. Since not all conditions of the Pearlé and Doux Elevage judgments are met, it can be concluded that the financial means used by the Milk and Fat Industry’s special fund in Bavaria to support the measures described in recitals (10) to (22) do in fact amount to State resources. As the State retains control on the financing and on the expenditure modalities of the scheme, it can be concluded that the measures funded by revenues of the levy under the present scheme are granted through State resources and are imputable to the State.

Other conditions of Article 107(1) TFEU

(51) The scheme in question confers an advantage on its recipients. This advantage is granted through State resources (see recitals (46)-(50)) and it benefits only certain undertakings, as indicated in recital (13) above.

(52) The scheme has the potential to distort competition as it confers an economic advantage on its recipients and that advantage strengthens their 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

(53) Pursuant to the case law of the Court of Justice, aid to an undertaking is capable of affecting trade between Member States where that undertaking operates in a market open to intra-Union trade. The beneficiaries of aid operate in the agriculture sector which 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 measure is liable to affect trade between Member States.


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

12 In 2013, German trade with all agricultural products with EU countries for exports amounted to EUR 52 570.5 million, and for imports amounted to EUR 60 552.7 million. Source: European Commission, Agriculture in the European Union and the Member States - Statistical factsheets, Germany - January 2015. Available at: http://ec.europa.eu/agriculture/statistics/factsheets/pdf/de_en.pdf.
In 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. It may only be considered compatible with the internal market if it can benefit from any of the derogations provided for in the TFEU.

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

The aid scheme was notified to the Commission on 1 July 2015. It has not been implemented yet. 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

Under Article 107(3)(c), 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.

For this derogation to be applicable, the aid must fulfil the requirements of the relevant Union State aid legislation.

3.3.2. Application of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020

As regards the notified aid scheme, Section 1.3.2. of Part II of the Guidelines is applicable.

It follows from point (452) of the Guidelines that the Commission will consider aid for promotion measures in favour of agricultural products compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of the Guidelines and with the conditions set out in Section 1.3.2. of Part II of the Guidelines.

3.3.2.1. Specific assessment according to the conditions set out on Section 1.3.2. of the Guidelines

In line with recitals (13) and (15) above, the German authorities have confirmed that only SMEs will benefit from aid for the organisation of competitions, trade fairs and exhibitions. Therefore, the requirement set out in point (453) of the Guidelines is complied with.

As laid down in recital (10), the German authorities demonstrate that the intended promotion activities correspond to those set out in point (454) of the Guidelines.

Furthermore the German authorities lay down that the promotion campaigns are either focused on quality schemes in the sense of point (282) of the Guidelines or generic, as required under point (455) of the Guidelines (see recital (20)).
As laid down in recital (26), the German authorities confirm that the promotion campaigns will comply with the relevant food information and labelling rules referred to in point (456) of the Guidelines.

The German authorities committed to provide representative samples of material intended for the promotion campaigns before the launching of the promotion campaigns (recital (27)). Therefore, the requirements under point (457) of the Guidelines are met.

As the German authorities have confirmed that the promotion campaigns will not exceed an annual budget of EUR 5 million (recital (28), the requirement under point (458) in conjunction with point 37(b) of the Guidelines does not apply to the present scheme.

Where the aid is granted through producer groups or other organisations (see recital (14)), the German authorities prove that the obligations set out in point (459) of the Guidelines for those organisations are fulfilled (recital (29)).

As laid down in recital (11), the aid will be given either in form of a grant on the basis of reimbursement of real costs incurred by the beneficiary in the case of organisation of and participation in competitions, trade fairs and exhibitions or in the form of a payment in kind in the form of subsidised services in the case of publications, dissemination of knowledge and information and advertising campaigns and advertising material. In the latter case it will be paid directly to the provider of the promotion measures (recital (12). This is in line with the general provision of point (460) of the Guidelines, and with the provision of point (461), as regards promotion campaigns. Furthermore the way of payment of aid granted in kind (to the service provider) is in accordance with point (462) of the Guidelines.

As laid down in recital (18), the conditions concerning the payment of the aid for symbolic prizes set out in point (463) of the Guidelines are met.

The German authorities lay down in detail that the eligible costs for the other promotion activities correspond to those listed under point (464) (a) to (d) of the Guidelines:

(a) as regards organisation of and participation in competitions, trade fairs and exhibitions in recital (17),

(b) as regards publications in recital (19),

(c) as regards dissemination of scientific knowledge and factual information in recital (20),

(d) as regards consumer-targeted promotion campaigns in recital (21).

The German authorities confirm (recital (25)) that promotion measures concerning dissemination of scientific knowledge and factual information and advertising campaigns will comply with the conditions concerning the reference to particular undertakings, brand name or
origin set out in point (465) of the Guidelines. The promotional activities referred to in point (464)(c) and campaigns referred to in point (464)(d) do not mention any particular undertaking and brand name and do not risk endangering sales or denigrate products from other Member States (recitals (25) and (27)).

(71) Concerning the reference to origin, aid will also be granted for promotion measures for quality schemes focused on EU-recognised denominations as referred to in point (282)(a) of the Guidelines (see recital (20). The German authorities assure that the reference to the origin will fully comply with the conditions referred to in point (466)(a) of the Guidelines (see recital (25)).

(72) These quality schemes listed in recital (20) are three Protected Designations of Origin (PDO) and one Protected Geographical indication (PGI). In these cases a reference to the origin is possible within the limits referred to above since the origin is one of the quality components of the products concerned. In the case where the subject of the promotion measures is a Traditional Speciality Guaranteed (TSG), the German authorities confirm that these measures are also open to products from other Member States and third countries (see recital (20). Therefore, the Commission considers that the measures do not risk endangering sales or denigrate products from other Member States.

(73) Taking all the above into consideration, the Commission concludes that the relevant conditions of points (465) and (466) are met.

(74) The maximum permitted aid intensity, as stated under point (467) of the Guidelines, is up to 100% for all eligible costs (for costs referred to in point (464)(a) to (c)). The German authorities have confirmed that the aid intensities are compliant with this allowed maximum value (recital (11)).

(75) In the case of promotion campaigns referred to point (464)(d) of the Guidelines the aid intensity is normally limited to 50% of the eligible costs (80% for campaigns in third countries). However, since in this case the aid is financed through revenues from parafiscal taxes (see recitals (31) to (33)) which are borne completely by the milk sector, the aid scheme is in conformity with the requirement regarding the contribution of the sector concerned laid down in point (468) of the Guidelines.

(76) Based on the above, it can be concluded that the requirements of Section 1.3.2. of Part II of the Guidelines are met.

3.3.2.2. Common Assessment Principles

(77) According to points (38), (42) and (452) of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3)(c) TFEU.

(78) As stated in recital (3), the objective of the present notified aid scheme is to strengthen rural areas as well as to contribute to the sustainable
development of the agricultural sector by promoting the sales of milk and milk products. Therefore the notified aid scheme contributes to a common objective in line with points (43) and (44) of the Guidelines. The notified aid scheme falls under Section 1.3 of the Guidelines and under the categories of measures, for which in accordance with point (48) of the Guidelines, the Commission considers that such aid is contributing to the objectives of rural development.

The subject of the aid is promotion activities which are focused on marketing and not on production of agricultural products. Therefore, the German authorities state that they do not expect that the notified measure will have environmental impacts (recital (44)). This type of aid can indeed not lead to an infringement of applicable Union environmental protection legislation and also have no negative impact on the environment within the meaning of point (52) of the Guidelines.

Since the notified aid scheme fulfils the specific conditions laid down in Section 1.3.2.of Part II of the Guidelines (cf. recital (76)), the Commission considers, in line with points (55) and (57) of the Guidelines, respectively, that the aid is necessary and that it is an appropriate policy instrument to address the objective of common interest.

The aid instruments, as assessed above (recital (67) are the ones foreseen for this kind of aid in the relevant points of Part II of the Guidelines. Therefore they can be considered as being appropriate in the sense of points (59) and (60) of the Guidelines.

As regards aid for competitions, fairs and exhibitions (see recital (10) (a)), which fall under point for (464)(a) of the Guidelines, the incentive effect applies. The beneficiaries have to submit a written application before starting the relevant project (see recital (40)). Therefore the conditions of points (70) and (71) of the Guidelines are met. The provisions of point (72) of the Guidelines do not apply since only small and medium sized enterprises can be beneficiaries of this kind of aid (recital (13)).

As regards the other promotion measures (publications, dissemination of information, promotion campaigns (see recital (10)(b), (c) and (d)), which fall under point (464)(b), (c) and (d) of the Guidelines), they are deemed to have an incentive effect pursuant to point (75)(m) of the Guidelines.

As described in recitals (11),(12),(74) and (75), the aid amount will not exceed the eligible costs, whereas the eligible costs are calculated accurately and the maximum aid intensities foreseen in Section 1.3.2. of Part II of the Guidelines are respected. Furthermore, as provided for in recital (43) above, the aid scheme does not allow for a cumulation of the aid under the present scheme with any other aid to cover the same eligible costs. Thus, it is in line with points (84), (99) and (100) of the Guidelines and the principle of proportionality of the aid is respected.
Since the present scheme fulfils the conditions laid down in Section 1.3.2. of Part II of the Guidelines (cf. recital (76)) and does not exceed the relevant maximum aid intensities (cf. recitals (74) and (75)), the Commission considers, in line with point (113) of the Guidelines, that the negative effect on competition and trade is limited to the minimum.

Germany also committed to comply with the transparency requirements under point (128) of the Guidelines (recitals (41) and (42)).

### 3.3.3. Other commitments

The Commission notes that in line with point (26) of the Guidelines no aid will be granted to the undertakings in difficulty (cf. recital (16)).

The Commission notes that Germany will not grant aid to beneficiaries who have not complied with a recovery order following a previous Commission Decision declaring aid unlawful and incompatible with the internal market line with point (27) of the Guidelines (recital (16)).

### 3.3.4. Assessment of the levy

According to point (29) of the Guidelines, Member States are requested to notify a parafiscal levy used for financing an aid measure if this forms an integral part of the aid measure. In compliance with this, the German authorities notified the parafiscal levy being used to finance the current scheme as described in recitals (31)-(33)).

Since State aid financed by a parafiscal charge is involved, the Commission must examine both the measures financed, i.e. the aid, and the way they are financed. According to the Court, where the method of financing the aid, in particular through compulsory contributions, forms an integral part of the aid measure, the Commission must take that method of financing into account when examining the aid.\(^{13}\)

In order to define whether the measure forms an integral part of the aid measure, the following should be taken into account: the levy revenue should be allocated for the financing of the aid\(^{14}\) and the amount of the tax should have a direct impact on the amount of State aid\(^{15}\).

It has to be noted that, according to the national legal basis, the Milk and Fat Industry’s special fund in Bavaria (hereinafter: the Fund) collects the levy which serves to finance different activities, under which promotion for milk and milk products (cf. recitals (31)-(33)) and so the levy benefits the notified aid without being affected to or transiting through the general Land budget. All the measures under the

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\(^{13}\) See for example the judgment in Van Calster, joined cases C-261/01 and C-262/01, ECLI:EU:C:2003:571.

\(^{14}\) Judgment in Streekgewest Westelijk Noord-Brabant, C-174/02, ECLI:EU:C:2005:10, paragraph 26; and judgment in Laboratoires Boiron, C-526/04, ECLI:EU:C:2006:528, paragraph 44.

present scheme are covered exclusively by the revenue of the levy (recital (31)). The total amount of the levy is set to cover the different Fund's activities. The Fund's resources are earmarked for the different activities, under which promotion with a share of around 70% of the yearly revenues is of major importance (see recital (33)). Since aid can only be granted within the limits of the Fund's resources (see recital (39)), the amount of the overall revenues of the milk levy has a direct impact on the aid budget available.

Furthermore, the yearly amount of the aid destined for sales promotion which is agreed by the committees of the Bavarian Regional Dairy Association is a maximum amount. (see recital (33)). This means, it could be reduced also in the short term if the levy revenues would decrease.

On the basis of the above it can be concluded that the amount of the milk levy which determines the Fund's overall resources has a direct impact on the aid amount, which is only fixed as a planning figure (see recital (33) and can be adapted when the yearly aid amount is decided (see above).

In light of the above the Commission considers that the levy in the case at hand is an integral part of the aid scheme, and should therefore be taken into account by the Commission when examining the aid.

A levy may be regarded as discriminatory internal taxation prohibited by Article 110 TFEU if the levy revenue is used for the benefit of domestic products only, so that the advantages accruing from it fully or partly offset the charge borne by those products. If the scheme discriminates between imported products and national products, the Commission cannot qualify the scheme as being compatible as the method of financing the aid would then infringe Article 110 TFEU.  

It should be noted that the Commission had already examined the conformity of the milk levy charged by some German Länder with the provisions on the internal market in its decision on State Aid No SA. 35484 (2013/C) on measures under the Milk and Fat Law.  

As confirmed by the German authorities, the levy will not be imposed on imported raw milk from other Member States. So the suppliers of these products will not be disadvantaged by its imposition (recital (34)).

As regards possible discrimination of exported products, the German authorities state that, in so far as the sales promotion measures for milk and milk products are also carried out abroad, the persons liable to pay the levy who export the milk directly or as a processed product benefit directly from the aid measures. Also in the case of promotion measures in Germany these products would benefit indirectly in the same way, since these measures help to stabilise prices on the domestic market.

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16 Judgment in Van Calster, joined cases C-261/01 and C-262/01, ECLI:EU:C:2003:571, paragraph 48.
(recital (36)). Furthermore, the German authorities assure that, if a business furnishes proof that it has been disadvantaged by the levy being charged, it is guaranteed that the contributions in question will be reimbursed (recital (37)).

(100) On the basis of these arguments it can be concluded that the suppliers of exported products are not disadvantaged.

(101) In relation to the Freskot judgment18, the German authorities provided the necessary information to demonstrate that the levy does not breach the common market organisation (CMO) rules (i.e. the charges do not create competitive disadvantages by affecting market prices). Based on the calculations provided by the German authorities, it is demonstrated that the levy charged constitutes only a very small fraction of the retail price of milk (recital (38)). Therefore, the Commission considers that it is unlikely that cost increases as consequence of the levies have an influence on the market prices, and that the levy does not have a significant impact on trade, in particular on price formation.

(102) On the basis of above, it can be concluded that the financing of the aid through parafiscal charges raises no objections.

3.3.5. Duration of the aid scheme

(103) Pursuant to point 719 of the Guidelines, the Commission only authorizes schemes of limited duration. Aid schemes other than those benefiting from co-financing under Regulation (EU) No 1305/2013 and its implementing regulation should not apply for more than seven years. It follows from recital (8) that this requirement is met.

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 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. 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.

18 Judgement in Freskot AE v Elliniko Dimosio, C-355/00, ECLI:EU:C:2003:298.
Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004\textsuperscript{19}, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN  
Member of the Commission