COMMISSION DECISION (EU) 2016/290

of 16 December 2015

concerning aid measures implemented by Verband der deutschen Milchwirtschaft e.V. in connection with the German Milk and Fat Law SA.35484 (2013/C) (ex SA.35484 (2012/NN))

(notified under document C(2015) 9052)

(Only the German text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above ([1]),

Whereas:

1. PROCEDURE

(1) By letters dated 28 November 2011 and 27 February 2012, the European Commission (hereinafter 'the Commission') asked Germany for additional information concerning the 2010 annual report on State aid in the agricultural sector which Germany had submitted in accordance with Article 21(1) of Council Regulation (EC) No 659/1999 ([2]). Germany answered the Commission's questions by letters dated 16 January 2012 and 27 April 2012. In the light of Germany's answers, it emerged that Germany had granted financial support to the German dairy sector pursuant to the 1952 *Gesetz über den Verkehr mit Milch, Milcherzeugnissen und Fetten* (hereinafter 'the Milk and Fat Law' or 'the MFG').

(2) By letter dated 2 October 2012, the Commission informed Germany that the measures in question had been registered as non-notified aid under registration number SA.35484 (2012/NN). By letters dated 16 November 2012, 7, 8, 11, 13, 14, 15 and 19 February, 21 March, 8 April, 28 May, 10 and 25 June and 2 July 2013, Germany submitted further information.

(3) By letter of 17 July 2013 (C(2013) 4457 final) (hereinafter 'the Opening Decision'), the Commission informed Germany that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of certain sub-measures carried out in accordance with the MFG. In the same letter, the Commission indicated that other sub-measures covering either the period 28 November 2001 to 31 December 2006 or the period from 1 January 2007 or covering both periods were compatible with the internal market, did not constitute State aid within the meaning of Article 107(1) TFEU or did not fall within the scope of the State aid rules (hereinafter 'the Positive Decision').

(4) For all other sub-measures, including the measures implemented in the period since 28 November 2001 by Verband der deutschen Milchwirtschaft e.V. (hereinafter 'VDM') in connection with the MFG which are the subject of this Decision, the Commission based its Opening Decision on the belief that aid had been granted and expressed doubts as to the compatibility of the measures with the internal market.

(5) By letter dated 20 September 2013, Germany submitted comments concerning the Opening Decision.

(6) The Opening Decision was published in the *Official Journal of the European Union* ([3]). The Commission invited interested parties to submit their comments within one month.

([1]) OJ C 7, 10.1.2014, p. 8.
([2]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).
([3]) See footnote 1. A corrigendum was previously submitted to Germany by letter dated 9 December 2013.

(7) The Commission received 19 sets of comments from interested parties. One of these parties asked the Commission not to disclose its identity and gave sound reasons for this. A total of six sets of comments received between 6 and 10 February 2014 related to the sub-measures involving VDM.

(8) The comments received were transmitted to Germany by letters of 27 February, 3 March and 3 October 2014 without the identity of the abovementioned interested party being disclosed.

(9) Germany did not initially respond to the comments submitted by interested parties in February 2014. Germany responded to an additional opinion dated 8 July 2014 by letter dated 3 December 2014.

(10) On 6 June 2014 the Commission asked Germany for additional information, which Germany provided by letter of 16 July 2014.

2. **DESCRIPTION**

(11) Described below are the measures implemented by VDM in connection with the Milk and Fat Law, designated in the Opening Decision as sub-measures BW 6, BY 9, HE 5, NI 10, NW 9, RP 8, SL 6 and TH 6, and in respect of which the Commission expressed doubts as to their compatibility with the internal market.

Reasons that prompted the Commission to initiate the procedure provided for in Article 108(2) TFEU

(12) The MFG is a Federal law which entered into force in 1952 and has since been amended several times, most recently on 31 October 2006. It constitutes the legal framework for the measures at issue, and its validity is unlimited in time.

(13) Section 22(1) of the MFG authorises the German *Länder* to impose a milk levy on dairies based on the quantities of delivered milk. According to the information made available by Germany, nine (out of 16) German *Länder* made use of this authorisation, i.e. Baden-Württemberg, Bavaria, Brandenburg, Hessen, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland and Thuringia. The levies imposed by the *Länder* amount to up to EUR 0,0015 per kg of milk.

(14) Germany has explained that the milk levy imposed in the respective *Länder* is not applicable to imports. By contrast, exports may be subject to the milk levy.

(15) Section 22(2) of the MFG provides that the revenues generated by the milk levy may be used solely for:

1. improving and sustaining quality on the basis of certain implementing provisions;
2. improving hygiene during milking and the delivery, processing and distribution of milk and milk products;
3. milk yield recording;
4. advice to operators on matters relating to the dairy industry and ongoing training of young employees;
5. advertising aimed at increasing the consumption of milk and dairy products;
6. performance of the tasks conferred by the MFG.

(16) Section 22(2a) of the MFG provides that, by derogation from paragraph 2, the revenues generated pursuant to paragraph 1 may also be used to:

1. reduce increased structural collection costs in respect of the supply of milk and cream from the producer to the dairy,
2. reduce increased transport costs in respect of the supply of milk between dairies where such supply is necessary to ensure the supply of drinking milk to the recipient dairies' sales area, and
3. improve quality regarding the central distribution of milk products.

(17) Section 22(4) provides that contributions and fees paid by dairies or their associations to establishments in the dairy industry for the purposes set out in paragraph 2 may be offset in full or in part by the revenues generated by the milk levy.

(18) Germany explained that the financing of VDM as provided for in point 6 of Section 22(2) of the MFG involves the performance of public service duties (*Leistungsverwaltung*), and not the exercise of a prerogative as a public authority (*Eingriffsverwaltung*) restricting the rights of the parties concerned — and the positive granting of benefits. A substantive statutory basis was not necessary because the statutory reservation of powers under Article 20(3) of the German Constitution (*Grundgesetz*) did not cover this area. Authorisation in the respective *Land* budgets and the corresponding grant by administrative act were sufficient in this case.

(19) In the individual *Länder*, the applicable *Land* budget regulations provided the legal basis for the release of appropriations.

(20) The legal basis for the collection of the milk levy in the respective *Länder* was provided by the following regulations:

(21) Baden-Wurttemberg: Regulation of the Ministry of Food and Rural Affairs amending the Regulation on the collection of levies from the dairy industry of 18 May 2004 (GBl.S.350), as amended by Regulation of 24 January 2006 (GBl.S.40).

(22) Bavaria: Regulation on a levy for milk (BayMilchUmlV) of 17 October 2007.

(23) Hessen: Regulation on the collection of a levy to promote the dairy industry of 1 December 1981

(24) Lower Saxony: Regulation on the collection of a levy within the dairy industry of 26 November 2004 (Nds. GVBl. (Lower Saxony Law Gazette), No 36/2004, p. 519), as last amended by the Regulation amending the Regulation on the collection of a levy within the dairy industry of 22 December 2005 (Nds. GVBl., No 31/2005, p. 475)

(25) North Rhine-Westphalia: Regulation on levies to promote the dairy industry of 30 November 1965

(26) Rhineland-Palatinate: *Land* Regulation on the collection of a levy within the dairy industry of 15 October 2002, as last amended by the First *Land* Regulation amending the *Land* Regulation on the collection of a levy within the dairy industry of 4 July 2009

(27) Saarland: Regulation on the collection of a levy within the dairy industry of 9 December 1982.

(28) Thuringia: Thuringian Regulation of 29 December 1999 on the collection of a levy to promote the dairy industry

(29) Baden-Württemberg, Bavaria, Hessen, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland and Thuringia all grant financial support for the measures implemented by VMD at issue. Between 2001 and 2011, the total budgetary resources earmarked (all *Länder* combined) amounted to approximately EUR 4 million.

(30) Germany further explained that, in those *Länder* that do not collect a milk levy, payments were made to VDM on a voluntary basis by Milcherzeugervereinigung in Schleswig-Holstein e.V., Arbeitsgemeinschaft Milch e.V. in Mecklenburg-Western Pomerania, Landeskontrollverband Berlin-Brandenburg e.V., Interessengemeinschaft der Erzeugerzusammenschlüsse in Sachsen e.V. and by the dairy industry in Saxony-Anhalt through Landesvereinigung der Milchwirtschaft in Niedersachsen. Payments were calculated according to the quantity of milk produced in the *Land* in question, taking account of the financial capacity of the organisations concerned.

(31) Baden-Württemberg has also pointed out that the collection of the levy was suspended in Baden-Württemberg on 31 December 2012. The dairy industry in Baden-Württemberg contributed to funding VDM in both 2013 and 2014 through Milchwirtschaftlicher Verein Baden-Württemberg e.V. (from members' contributions).

(32) According to Germany, VDM's tasks include in particular:

— protecting and promoting the interests of the dairy industry,

— comprehensive consulting with regard to all dairy-industry issues at both national and international level,

— representing dairy-industry interests during the legislative process vis-à-vis ministries, parliamentary bodies, committees and working parties within national and international technical associations and organisations, and

— organising events on current developments and trends.

(33) According to Germany, VDM is a member of the International Dairy Federation (IDF) and represents the German National Committee within that organisation. In particular, VDM bore full responsibility for coordinating Germany's collaboration within IDF. VDM nominated experts to sit on IDF bodies on behalf of the member associations and the Federal Government and adopted a position on international matters vis-à-vis the German national committee. It represented the interests of the entire dairy sector in collaboration with its members and in close cooperation with the Federal Government and the representatives of the *Länder*.

(34) Acting on behalf of the entire dairy sector, VDM was also involved in standardisation and harmonisation at national and international level in cooperation with the competent standards organisations such as ISO, IDF, CEN and DIN. It also advised the Federal Government and the IDF regarding the *Codex Alimentarius*. By issuing statements, handbooks and guidelines VDM helped to ensure that the dairy industry and the authorities spoke with one voice where environmental and safety-related matters were concerned. Finally, VDM produced instruction materials for the sector and oversaw the entire technical standardisation process. Technical standards were essential in the dairy sector, helping to ensure that safe and high-quality food was produced

(35) VDM was likewise a network consisting of members' associations, representatives of the Federal Government, the *Länder* and the scientific community. All participants were consulted on the direction of national and international food law, on dairy science, the analysis of milk and dairy products, and nutrition. They were also consulted on issues relating to environmental, climate and animal protection. In this respect VDM promoted cooperation throughout the sector. Indeed, one of the association's aims was to support the dairy industry and promote technical progress within it.

(36) No single undertaking active in producing, processing or trading in milk was represented as a member within VDM. Its membership was made up solely of associations and scientific institutions. According to VDM's website its members include groups such as Milchindustrie-Verband e.V., Deutscher Bauernverband e.V., Bundesverband der Privaten Milchwirtschaft e.V., ZV Deutscher Milchwirtschaftler e.V., Bundesverband Molkereiprodukte and Arbeitsgemeinschaft Deutscher Rinderzüchter e.V ([4]).

(37) Germany considers that the financial support given to VDM did not constitute aid because VDM was not an undertaking, i.e. it was not an economic operator. VDM did not pursue any economic activity. VDM was an amalgamation of stakeholders at a variety of levels in the German dairy industry's value chain but was not economically active in its own right. Under the German corporate tax system, VDM was regarded as a professional association and was thus entitled to certain tax advantages which were not available to companies engaged in economic activities.

(38) Germany argues that, in accordance with Article 183 of Council Regulation (EC) No 1234/2007 ([5]), 'without prejudice to the application of Articles 87, 88 and 89 (now Articles 107, 108 and 109) of the Treaty as provided for in Article 180 of the said Regulation, a Member State may impose a promotional levy on its milk producers in respect of marketed quantities of milk or milk equivalent in order to finance the measures on promoting consumption in the Community, expanding the markets for milk and milk products and improving quality'.

(39) In its comments of 20 September 2013, Germany argued that, according to decisional practice, federations and associations (such as VDM) were regarded as undertakings within the meaning of Article 107(1) TFEU only in exceptional cases and provided they also pursued an economic activity themselves (e.g. leasing of immovable property; selling of television rights) ([6]).

([4]) http://www.idf-germany.com/der-verband/mitglieder-und-foerderer/

([5]) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).

([6]) Judgment of the Court of 26.1.2005, Piau v Commission, Case T-193/02, ECLI:EU:T:2005:22, paragraph 69; Commission Decision of 26 April 2006, N277/2003 — Transfer of nature conservation areas.

(40) Its activities continued to include representing the dairy industry at national and international level (e.g. in the Codex Alimentarius Commission and the DIN Committee). VDM presented the know-how of independent external scientists and experts to the respective bodies in a consolidated and processed form. It acted as a consultant and advisor to Federal and *Land* ministries.

(41) These activities did not benefit individual undertakings. Rather, they corresponded to the typical tasks of a (non-profit-making) association. It would be misunderstanding VDM's activity to regard it as a commercial lobbyist for the dairy sector whose services could be 'bought' on the market. Its members were also unable to make use of any other 'service providers' for the services offered by VMD. No competition therefore took place. VDM was therefore not economically active on a market.

(42) Moreover, according to Germany, not even dairies derived an advantage from VDM's services. In particular, VDM did not offer 'targeted consultancy services' for dairy businesses. VDM's activities were instead of a general nature. It informed interested parties, and ultimately the general public, about the direction of national and international food law, dairy science, the analysis of milk and milk products, nutrition and issues relating to environmental, climate and animal protection. In so doing, it disseminated information primarily in generally available publications (via the internet) and organised conferences. It therefore fulfilled a role as a 'multiplier', a typical activity for an association and also crucial to making information generally accessible.

(43) This 'open' and general form of 'advice' was not a commercial advantage accruing to the dairy industry. It could not be compared to the 'targeted' advice provided by business consultancies. Any possible advantages to dairy businesses resulting from the disclosure of information were not relevant from a State aid point of view. Germany was not aware of any Commission decisions or EU Court judgments in which such a broad understanding of aid had been advocated.

(44) The possibility of indirect aid was also excluded. For this it would be necessary for the payment made to a third party to be specifically designed to favour the indirect beneficiary or for this advantage to a company or branch to be inherent in the measure. This did not apply in this case. Possible knock-on advantages resulting from measures such as the provision of general information on the direction of national and international food law, dairy science, the analysis of milk and dairy products, nutrition and issues relating to environmental, climate and animal protection were not specific and could not corroborate the existence of aid. In addition, as general measures they did not distort competition.

(45) In the present case, there was nothing to justify the assumption that a distortion of competition favouring certain undertakings was intended or had occurred. Rather, the contributions to VDM were intended to ensure that it was able to fulfil the non-economic tasks described above.

Reasons that prompted the Commission to initiate the procedure provided for in Article 108(2) TFEU

(46) In the Opening Decision the Commission noted that VDM was a provider of services since it represented the German dairy sector at various levels and performed specific consultancy services in connection with milk production. The ultimate beneficiaries of these services were the entire dairy sector in Germany, in particular dairies, which constituted undertakings. It had also emerged that all the conditions for the existence of aid were met.

Comments from VDM

(47) In a letter of 6 February 2014, VDM submitted the following comments concerning the payments made to it.

(48) The resources from the milk levy could not be regarded as aid granted to VDM. VDM was not an undertaking within the meaning of Article 107 TFEU, and in any event VDM's activities funded from milk levy resources were not a commercial activity, i.e. an economic activity involving the supply of goods or services on a market. This meant that VDM, at least with regard to the activities funded from the milk levy, should not be regarded as an undertaking because the status of undertaking should in each case be determined on a functional basis in relation to a specific activity.

(49) VDM was not a provider of services on a market. Its activities were instead the typical activities of an association. As an umbrella organisation, VDM consolidated and represented the dairy sector in Germany. It would be wrong in that respect to regard such activities resulting from VDM's membership-based structure as 'services' to its members. Rather, by dint of this structure, VDM fulfilled the task of shaping the dairy sector's democratic opinion in areas such as legislation and standardisation. Representatives of the Federal Government, the *Länder* and the scientific community, which were represented in VDM either on a consultative basis or with voting rights, were also involved in this process. Such typical activities of an association of shaping the opinion of and representing members did not involve the supply of services 'on a market'.

(50) Even if one were to examine more closely the individual areas in which VDM was active, as set out below, it was apparent that those areas of activity funded from milk levy resources did not involve an 'economic activity' on a given market.

(51) An essential aspect of the activities of VDM was that of 'comprehensive consulting with regard to all dairy-industry issues at both national and international level'. This accounted for approximately 15 % of the funds which VDM received from the milk levy. This activity, however, did not constitute advice to undertakings in the dairy industry but rather advice to national and international legislative and regulatory bodies, i.e. communication of the opinion of and information concerning the dairy sector prior to legislative and other regulatory activities. In this procedure, VDM acted as an expert and representative of the dairy industry in Germany. But here too VDM did not act as a 'service provider' on a market. Rather, VDM's activities related to communicating the democratically formulated opinion of its members in the legislative process. For this reason, lobbying on behalf of the entire dairy sector in the legislative process vis-à-vis ministries, parliamentary bodies, committees and working groups within national and international technical associations and organisations could not be regarded as an economic activity.

(52) However, even if this role as advisor to state bodies at national and international level were to be regarded as a service, the state bodies that received this 'service' were not undertakings and thus could not be regarded as recipients of aid within the meaning of 107 TFEU. In view of the fact that it performed the typical activities of an association as described above, VDM could not be regarded as an undertaking or, therefore, as a suitable recipient of aid. Targeted consultancy services in the form of selective advice to undertakings in the dairy sector were, on the contrary, not funded from milk levy resources made available by the *Länder* to VDM.

(53) Acting on behalf of the entire dairy sector, VDM was also involved in standardisation and harmonisation at national and international level in cooperation with the competent standards organisations such as ISO, IDF, CEN and DIN. It also advised the Federal Government regarding the *Codex Alimentarius*. VDM thus sat on the following CODEX Committees, amongst others, as an advisor to Federal Government:

— CCMMP — Milk and Milk Products (in particular, all dairy product standards of the CCMMP were revised between 2001 and 2011),

— CCFH — Food Hygiene,

— CCCF — Contaminants in Foods,

— CCFA — Food Additives,

— CCFICS — Food Import Certificates,

— CCFL— Food Labelling,

— CCGP — General Principles,

— CCMAS — Methods of Analysis and Sampling,

— CCNFSDU — Nutrition and Foods for Special Dietary Uses, and

— CCRVDF — Residues of Veterinary Drugs in Food.

(54) This area of standardisation and harmonisation at national and international level accounted for some 45 % of the resources which VDM received from the milk levy. This should not be regarded as an economic activity either. In this case, VDM did not provide services to the market but represented the entire dairy sector as an umbrella organisation in the context of a task performed in the public interest. It was widely acknowledged that its activities relating to standardisation and harmonisation within ISO, IDF, CEN, DIN and the Codex Alimentarius Commission were in the public interest and did not involve any selective aid.

(55) The Statute of DIN e.V. stated, for example, that 'the task (purpose) of DIN is to initiate, organise, direct and moderate standardisation and harmonisation for the benefit of the public while safeguarding the public interest in the context of an orderly and transparent process. The results of its work shall be used for the purposes of innovation, safety and understanding in business, science, administration and society and of quality assurance, rationalisation, occupational health and safety and environmental and consumer protection'.

(56) The same is true of the Codex Alimentarius Commission, the purpose of which is described as follows on the organisation's website:

'The Codex Alimentarius Commission, established by FAO and WHO in 1963 develops harmonised international food standards, guidelines and codes of practice to protect the health of the consumers and ensure fair practices in the food trade'.

(57) The *Codex Alimentarius* also forms an important basis for food law, i.e. the statutory and administrative rules governing foodstuffs in general and food safety in particular, be it at Community or national level. As the main international food law standard, it had to be taken into account by regulatory bodies from the point of view of food safety and consumer protection in developing or amending food law ([7]).

(58) VDM did not therefore engage in any economic activity in this area in the sense of offering services on a market. This was corroborated solely by dint of the fact that such standardisation and harmonisation activities were in the public interest, in particular that of consumers, and lacked the existence of a market ([8]).

(59) A further aspect of VDM's activities related to the provision of general information concerning milk and dairy farming and, in that context, the dissemination of scientific knowledge and new methods in this field in a comprehensible form. In this regard, VDM drew up opinions, handbooks and guidelines with a view to informing all interested parties, including consumers, about issues such as best available techniques in the area of environmental protection, good agricultural practice, water consumption, CO_2 emissions, animal welfare in dairy farming and feeding systems in milk production in a readily comprehensible manner. This accounted for approximately 35 % of the funds which VDM received from the milk levy.

(60) This was not an economic activity either because it did not involve the provision of specific services in competition with other providers. In view of the fact that no specific activities were performed for the benefit of undertakings in the dairy sector, but rather VDM informed all interested third parties, i.e. the public, about matters relating to milk and dairy farming, its activities involved services which it provided free of charge and which could not be provided for remuneration by a third party. Only small copyright fees were charged for certain publications.

(61) VDM also supported scientists, in particular young ones, from state universities by refunding on request some of their travelling expenses to dairy-industry events. Since this involved support for private individuals in a non-commercial sector, the pre-requisites for the existence of State aid were also not met.

([7]) VDM refers in this respect, inter alia, to Article 5(3) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

([8]) VDM refers in this respect, with regard to the non-economic nature of setting and drawing up standards, to the Judgment of the Court of 12 December 2006, *SELEX* v *Commission*, ECLI:EU:T:2006:387.

(62) In addition, two employees of VDM had given lectures at the Fachhochschule Hannover, an activity which should not be regarded as an economic activity either. This area (support for young scientists and lectures given by VDM employees) accounted overall for approximately 5 % of the milk levy resources received by VDM.

(63) To the extent that the costs of VDM's work within the IDF and its role as the German National Committee within the IDF, e.g. issuing opinions on international matters, were funded by milk levy resources, these activities formed part either of VDM's role as advisor to state bodies or of its standardisation and public information work. Moreover, the participation of VDM representatives in IDF meetings was in itself an indication of its association status and did not therefore constitute an economic activity. The focus of the IDF's work was to contribute to international standards (*Codex Alimentarius*, ISO, CEN) and the provision of general, generic information.

(64) This did not involve aid to undertakings in the dairy industry either. The fact that state bodies consulted VDM prior to or during legislative and other regulatory procedures and, in order to ensure its independence, regulated its funding on the basis of a mandatory levy did not mean that undertakings that were obliged to finance the provision of information to state bodies through the mandatory levy were being favoured by the State.

(65) The same applied to the areas of standardisation in the public interest and the support of university scientists, in particular young ones. Finally, the provision of information also lacked any specific favouring of undertakings in the dairy industry. The purpose of that activity was to raise public awareness of issues in the dairy industry and to disseminate knowledge concerning the applicable requirements, rules, standards and the current state of the art in order to ensure high quality and environmental standards in the public interest. Moreover, if undertakings in the dairy industry did derive advantages from VDM's measures, these were non-measurable, indirect knock-on advantages, which were not enough for these measures implemented with a different objective to become State aid. Moreover, if it were to be assumed that aid was being granted to the 'dairy industry', it would not be possible to recover the aid granted because it could not be determined, even to a limited degree, which undertakings had benefited and to what extent, particularly given that the positive effects were not by any means restricted to undertakings in the German dairy industry but also benefited foreign undertakings if they were active in Germany or if the activities — such as international standardisation and *Codex Alimentarius* activities — were of international reach.

(66) If, contrary to the above, the use of the funds from the milk levy paid to VDM under measures BW 6, BY 9, HE 5, NI 10, NW 9, RP8, SL 6 and TH 6 were to be regarded as State aid, these would in any case be compatible with the relevant secondary legislation.

(67) If, contrary to VDM's view, VDM's role as an advisor were to be regarded as constituting State aid to undertakings in the dairy industry, this would be permissible technical support within the meaning of paragraph 14 of the 2000-2006 Community Guidelines for State aid in the agriculture sector ([9]) (the '2000-2006 Guidelines') and Section IV.K. of the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ([10]) (the '2007-2013 Guidelines').

(68) VDM also claimed that, for the period 2001-2006, the measures related solely to milk, an Annex I product. The measures were concerned with the dissemination of scientific knowledge, in particular the state of the art and current best practice, forming the basis for the standards co-formulated by VDM or established with its input, or influencing new legislative initiatives. VDM's measures in this area thus regularly related to new techniques within the meaning of paragraph 14.1 of the 2000-2006 Guidelines. Since they involved the determination and dissemination of scientific knowledge, VDM's standardisation and harmonisation activities should therefore also be categorised as technical support.

(69) Moreover, the dissemination of scientific knowledge and generic factual information (within the meaning of Section IV.K of the 2007-2013 Guidelines) should also be regarded as having been permissible during the period of validity of the 2000-2006 Guidelines since it could be seen as falling within the scope of consultancy services or education and training ([11]).

([9]) OJ C 28, 1.2.2000, p. 2.
([10]) OJ C 319, 27.12.2006, p. 1.
([11]) VDM refers in this respect, regarding the dissemination of reports and statistics, to the Commission Decision of 27 July 2006, State aid N 425/09, end of paragraph 9.

(70) Any other interpretation of the 2007-2013 Guidelines would give rise to an inconsistency with regard to advertising measures, which have a much greater impact on the market. These would also have been permissible before 2007 on the basis of the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products (2001/C-252/03) (the 'Advertising Guidelines'). As a surplus product, milk meets the positive criteria set out for advertising.

(71) This meant that in the dairy sector Member States were, without any further restrictions, permitted to grant State aid covering 100 % of the costs of generic (i.e. neutral in terms of origin and the undertakings involved) advertising for milk. Member States had made extensive use of that possibility ([12]). Consequently, if generic advertising for milk and dairy products had been permissible without restriction in the period 2001-2006, there was no reason why generic factual information or the dissemination of scientific knowledge concerning milk and dairy products, which had a much smaller impact on the market, should be made subject to much stricter requirements under the State aid rules.

(72) It could not have been the intention of substantive State aid law or of the Commission when drawing up the Guidelines to regard a state-funded advertising campaign with the slogan 'Drink more milk!' as permissible advertising aid while at the same time treating a campaign informing consumers in a factual way about the nutritional value and importance to child nutrition of milk as unlawful aid.

(73) The other conditions set out in paragraph 14 of the 2000-2006 Guidelines were also met. Because the measures were general and neutral in terms of the undertakings involved, they were not automatically restricted to identified groups (paragraph 14.2). A detailed financial breakdown showing how the measures were carried out by individual undertakings was — as explained above — impossible to make in the absence of any direct links to them. Given the relatively small amount of resources allocated to this aspect and the large number of undertakings operating in the dairy sector, the thresholds set out in paragraph 14.3 were nowhere near being reached.

(74) For the period from 2007, VDM stated that the corresponding measures it implemented should be regarded as constituting the dissemination of scientific knowledge in a readily understandable form and as generic factual information within the meaning of Section IV.K of the 2007-2013 Guidelines, as read in conjunction with Article 14 of Regulation (EC) No 1857/2006. The restriction to SMEs was not applicable here because generic factual information that was neutral in terms of the undertaking(s) receiving it could not be restricted to small and medium-sized enterprises by dint of that neutrality itself. Furthermore, it should be noted that the 2007-2013 Guidelines could not be applied in a self-contradictory manner. Here too, the intention could not have been to make generic advertising for milk and dairy products (which are agricultural products) permissible at an intensity of 100 % (see paragraph 157 of the 2007-2013 Guidelines), while making generic factual information, which has a much lower impact on competition, and the dissemination of scientific knowledge subject to stricter requirements. Otherwise, the Member States would have been encouraged to ensure that generic factual information or the dissemination of scientific knowledge was associated with an invitation to purchase in order to make certain that it constituted a permissible advertising measure.

(75) In view of the above arguments, VDM asked the Commission to review its assumptions concerning VDM's status as an undertaking and the admissibility of its activities from the point of view of the State aid rules. Owing to the complexity of the procedure, VDM also reserved the right to submit further comments.

Comments by other interested parties

(76) Between 6 and 10 February 2014, the Commission received a total of six letters from interested parties containing comments concerning the measures at issue implemented by VDM.

(77) Landesvereinigung der Bayerischen Milchwirtschaft e.V. (letter of 7 February 2014) stated that it supported and highly appreciated the international exchange of experience in which VDM participated as a means of ensuring preventative consumer protection on the basis of knowledge obtained from other countries. This did not give rise to any favouring of individual undertakings.

(78) In its comments of 6 February 2014, Landesvereinigung Thüringer Milch e.V. referred to the comments submitted by VDM and seconded them.

([12]) With regard to Germany, for example, VDM refers in this respect to State aid case N 571/2002 — Promotion Fund Law.

(79) In its comments of 6 February 2014, Milchprüfring Baden-Württemberg e.V. indicated that VDM was one of the bodies that had received levy resources in Baden-Württemberg. All of the bodies referred to under the above heading had implemented measures in favour of the dairy industry under Section 22 of the Milk and Fat Law. The allocation of levy resources had been limited to the extent necessary to implement those measures.

(80) In its comments of 10 February 2014, Milchwirtschaftliche Arbeitsgemeinschaft Rheinland-Pfalz e.V. presented the same arguments as Germany had put forward in its comments of 20 September 2013.

(81) In its comments of 6 February 2014, Milchwirtschaftlicher Verein Baden-Württemberg e.V. reiterated what Milchprüfring Baden-Württemberg e.V. had stated (see recital 79 above).

(82) In its letter of 7 February 2014, Landesvereinigung der Milchwirtschaft Niedersachsen e.V. (LVN) did not comment directly on the payments granted to VDM, but it did fundamentally deny the existence of any aid for any of the sub-measures under the MFG.

(83) On the individual issues, LVN put forward its views that the measures funded by milk levy resources did not involve any loss to the *Land* budget, that the State did not have any power of disposal over the milk levy resources, and that the State did not exercise any control over either the amount of the levy or the content of the measures. Consequently, the payments in question could not be attributed to the State. Moreover, the State neither controlled the level of payments nor was involved organisationally in LVN.

(84) It also stated that LVN was overseen not by state bodies but rather by the Hannover Chamber of Agriculture, a public self-regulating body which therefore did not come directly under the public administration.

(85) In supplementary comments submitted on 8 July 2014, LVN referred, inter alia, to the Commission's *Val'Hor* Decision ([13]). In that Decision the Commission had acknowledged that neither the state's power to recognise an interbranch organisation nor its regulatory support in the collection of sector-related 'contributions' (through the possibility, in the case in question, of extending agreements) led to the conclusion that the measures implemented by the interbranch organisation were attributable to the state. Whether state involvement in parafiscal systems of funding led to advantages being attributable to the state as 'State aid' depended on the circumstances in the individual case and on an overall assessment to be made on that basis. The aspects that were relevant to an examination as to whether State aid existed, as developed by case-law, were as follows:

— Who decided about the collection and use of the funds?

— If this was a private organisation, how did the State influence this decision?

— From what resources were the payments funded?

— What type of measures were funded?

— From whom were the resources collected?

— Who was responsible for initiating the measure?

(86) Via its legal representatives, LVN had examined the legal situation in other German *Länder* and had come to the conclusion that the indicators for the existence of State aid developed by case-law were not met, which meant that the MFG could not, overall, be regarded as comprising an aid element.

(87) According to LVN, it was the *Land* associations that decided to collect the levy from dairies. Under the first sentence of Section 22(1) of the MFG, the levy could only be collected in consultation with the *Land* associations. Under the second sentence of Section 22(1) of the MFG, any increase in the levy had to be requested by the *Land* association.

([13]) Commission Decision 2014/416/EU of 9 April 2014 on State aid scheme SA.23257 (12/C) (ex NN 8/10, ex CP 157/07) implemented by France (interbranch agreement concluded under the auspices of the French Association for developing the horticultural and landscaping sectors and their products — 'Val'Hor') (OJ L 192, 1.7.2014, p. 59).

(88) The detailed arrangements and amount of the levy were regulated in Lower Saxony and Thuringia by a Levy Collection Regulation (*Umlageerhebungsverordnung* (UmlErhVO)) which had been issued 'in consultation' with the relevant *Land* association.

(89) The *Land* association in question also determined how the revenues from the levy, which had to be administered separately (see the first sentence of Section 22(3) of the MFG), were to be used. For this reason, they were in some cases even paid into an account belonging to the *Land* association (see, for example, Section 3(1) of the Thuringia Levy Collection Regulation). The *Land* associations thus drew up proposals under their own responsibility in the area as to how the revenues should be used. In Thuringia, for example, this occurred on the basis of applications submitted to the local *Land* association, Landesvereinigung Thüringer Milch (LVTM), by its members (see point 6.3 of the Thuringia Working Guidelines (*Thüringer Arbeitsrichtlinie*)).

(90) Although the proposals on the use of the resources drawn up by the *Land* associations were 'enacted' (for Lower Saxony, see point 6.2 of the Payment Guidelines (*Zuwendungsrichtlinie*), and for Thuringia, see Section 4 of the Thuringia Levy Collection Regulation) or 'approved' (as in North Rhine-Westphalia and Bavaria) by a state body, this did not mean that the state exercised any significant influence since the only basis for state 'overseeing' was what was laid down by Section 22(2) of the MFG. Consequently, the provisions in question conferred upon state bodies no more power to direct or influence the administration of the funds than in *Doux Élevage* ([14]).

(91) Moreover, the revenues from the levy were indeed used in all *Länder* in accordance with the proposals put forward by the *Land* associations. That in itself was evidence enough — irrespective of the specific legal arrangements that were applicable — that the revenues in question were not imputable to the State ([15]).

(92) According to LVN, each of the *Land* associations had the status of a private body. Their statutes made it clear that they considered themselves to represent the interests of their members, who were recruited solely from the dairy industry (including consumer representatives).

(93) In Section 14 of the MFG, *Land* associations were described as 'voluntary' organisations made up of businesses and consumers involved in the dairy industry whose purpose it was to ensure the joint representation of their members' economic interests.

(94) The *Land* associations differed from the *Hoofdbedrijfschap Ambachte*, the opticians' trade association entrusted with collecting and allocating a compulsory levy for advertising measures at issue in *Pearle*. Although that professional association had the status of a public body, the Court of Justice found that State aid did not exist because the advertising measures were funded not by resources made available to state bodies but rather by levies collected from undertakings operating in the sector ([16]).

(95) The *Land* associations, as the bodies competent for collecting and allocating the milk levy, also differed from the agricultural committees in *Plans de Campagne*, which were not involved in defining the measures in question and did not have any discretion in their application ([17]).

(96) The *Land* associations were non-state and entirely private bodies that determined the amount and allocation of the milk levy as such on their own responsibility.

(97) Moreover, the benefit enjoyed by the dairy industry was not a drain on the public exchequer because the milk levy was collected from operators belonging to the dairy industry, i.e. the selective 'advantage' was offset by a selective burden. This in itself was enough to rule out any preferential treatment or distortion of competition because the 'advantages' enjoyed by dairies and milk producers were offset by having to pay the levy.

(98) In *Vent de Colère*, the Court of Justice had found a system of charges to constitute State aid because — following a change to the law — the burden was no longer offset solely by charges paid by members of the economic sector in question (energy) but by charges paid by all end-consumers of electricity resident in the national territory ([18]).

([14]) Judgment of the Court of 30 May 2013, *Doux Élevage*, C-677/11, ECLI:EU:C:2013:348, paragraph 38.
([15]) Judgment of the Court of 18 May 2002, *Stardust Marine*, C-482/99, ECLI:EU:C:2002:294, paragraph 52.
([16]) Judgment of the Court of 15 July 2004, *Pearle BV*, C-345/02, ECLI:EU:C:2004:448, paragraph 36.
([17]) Judgment of the Court of 27 September 2012, *Plans de Campagne*, T-139/09, ECLI:EU:T:2012:496, paragraph 62.
([18]) Judgment of the Court of 19 December 2013, *Vent de Colère*, C-262/12, ECLI:EU:C:2013:851, paragraph 11; and the opinion of Advocate-General Jääskinen of 11 July 2013, *Vent de Colère*, C-262/12, ECLI:EU:C:2013:469, inter alia, paragraph 49.

(99) LVN also considered State aid not to exist in the event that it related to 'collective operations' implemented in the interests of a specific sector and funded on the basis of contributions collected from members of that sector.

(100) The contested measures were intended solely to promote milk as a product and thus the collective interest of the dairy industry. The measures in question also partially protected consumer interests because the two purposes could not be separated from each other owing to the overlapping of interests that existed.

(101) The role of the State was confined to making available to the dairy sector, through the MFG, a statutory compensation mechanism that — by its nature — guaranteed that the members of the dairy industry who benefited from the measures implemented for milk as a product were the ones who contributed to the costs. As in *Pearle*, *Doux Élevage* and *Val'Hor*, the State thus functioned solely as a facilitator enabling the compensation mechanism set up by the private sector to be made mandatory and thus ensuring a fair sharing of burdens ([19]).

(102) The levy had been initiated by the *Land* associations and thus by the private sector. The levy was thus collected pursuant to Section 22 of the MFG solely in 'consultation' with the *Land* associations. The *Land* associations were themselves not a product of State action either but rather 'voluntary' organisations made up of members of the dairy industry (Section 14 of the MFG). The situation in Thuringia, where the *Land* association was not recognised until 1999, was clearly documented in this respect. At the request of the Thuringian Farmers' Association, the competent Ministry 'initiated the necessary formal administrative steps' to collect the levy from dairies and milk collection centres. This made it blatantly clear that the milk levy was a purely private compensation mechanism, with the state acting solely as a facilitator in order to make payment of the levy mandatory ([20]).

(103) In summing up, LVN stressed what it considered to be the similarities and differences between various legal cases on the one hand and the MFG on the other.

(104) In *Val'Hor* (Decision 2014/416/EU) (result: no aid), as in the case of the milk levy, the funds were collected and allocated essentially by a state-recognised private and voluntary interbranch organisation, the contributions paid by operators within the branch were used to fund collective operations for the benefit of the branch, the possibility provided for by law of state recognition of the private interbranch organisation did not in itself lead to the assumption of public control, the state could not in fact use the funds to support certain businesses, and the interbranch organisation itself decided on how the funds were to be used.

(105) In *Vent de Colère* (C-262/12) (result: aid), unlike with the milk levy, the amount of the charge in question was fixed unilaterally by ministerial decree without the involvement of private parties, there was a state guarantee, the funds were managed by a public body and state penalty mechanisms were put in place.

(106) In *Doux Élevage* (C-677/11) (result: no aid), as in the case of the milk levy, the funds were collected and allocated essentially by a state-recognised private and voluntary interbranch organisation, the possibility provided for by law of state recognition of the private interbranch organisation did not in itself lead to the assumption of public control, the funds came entirely from contributions collected from economic operators, the state could not in fact use the funds to support certain businesses, and the interbranch organisation itself decided on how the funds were to be used.

(107) In *Plans de Campagne* (T-139/09) (result: aid), unlike with the milk levy, an authority decided on the level of contributions, the income from contributions was topped up by State resources, measures were defined by the State (stamp of the State financial controller, etc.) without involvement on the part of branch committees, the latter had no discretion in applying the measures, and a representative of the Minister took part in committee meetings.

(108) In *Pearle* (C-345/02) (result: no aid), as in the case of the milk levy, funds were used solely for the purposes of the branch in question, an association of a specific branch had asked a public body to collect contributions in order to implement certain measures for the benefit of that branch, and, unlike with the milk levy, a public and not a private professional association played an important role in collecting and allocating the compulsory levy, with the result that *Pearle* seemed to be more problematic than the milk levy.

([19]) Judgment of the Court of 15 July 2007, *Pearle BV*, C-345/02, ECLI:EU:C:2004:448, paragraph 37; Judgment of the Court of 30 May 2013, *Doux Élevage*, C-677/11, ECLI:EU:C:2013:348, paragraph 40; Decision 2014/416/EU.

([20]) Judgment of the Court of 15 July 2004, *Pearle BV*, C-345/02, ECLI:EU:C:2004:448, paragraph 37; Judgment of the Court of 30 May 2013, *Doux Élevage*, C-677/11, ECLI:EU:C:2013:348, paragraph 40.

Germany's comments of 3 December 2014

(109) Germany did not initially respond to the comments submitted by interested parties in February 2014. Germany responded to an additional opinion of LVN dated 8 July 2014 by letter dated 3 December 2014, as follows:

(110) In their comments in the formal investigation procedure concerning the milk levy provided for in the MFG, the German *Länder* in question had focused on two aspects: the consistency of the measures implemented with the material requirements of the State aid rules (in particular as regards their compatibility with the requirements of the Agriculture Exemption Regulation and the current agricultural guidelines), and the question whether there was any 'favouring' relevant to the State aid rules within the meaning of Article 107(1) TFEU.

(111) LVN's comments of 8 July 2014 and the current decisional practice of the European Courts and the European Commission gave rise to the need for additional comments of a fundamental nature concerning whether State aid within the meaning of Article 107(1) TFEU indeed existed, and in particular whether the constituent element of aid being granted 'through state resources' applied.

(112) LVN's comments of 8 July 2014 and an examination of the abovementioned Judgments at least gave rise to doubts as to whether the element of aid being granted 'through state resources' applied in this case and whether, therefore, the collection and allocation of the milk levy constituted State aid. The reasons for this were as follows:

(113) As had emerged from the *Val'Hor* Decision (Decision 2014/416/EU) and in *Doux Élevage* (C-677/11), measures funded and implemented by private interbranch organisations did not constitute State aid. The *Land* associations for milk that existed in the individual *Länder* were organisations that could be regarded as comparable to the organisations referred to in *Val'Hor* and *Doux Élevage*. state bodies had never been members of these *Land* associations. They took part in meetings without any voting rights and thus essentially as external guests. The involvement of state bodies in implementing the milk levy or monitoring compliance with the legal conditions set out in the MFG did not alter the fact that the *Land* associations were the competent body for selecting projects.

(114) In actual fact, it was the respective *Land* associations that managed revenues from the levy and determined how they should be allocated. No state influence as a result of the 'monitoring' or 'adoption' of the *Land* associations' proposals by state bodies existed in reality since the latter merely operated as provided for in Section 22(2) of the MFG and sought to examine whether the statutory requirements of Section 22 of the MFG were being met. The levy resources were used in accordance with the proposals which the *Land* associations themselves made concerning their allocation, a fact which, in accordance with the Judgment of the Court of Justice of 16 May 2002 in *Stardust Marine* (C-482/99), clearly indicated that they were not State resources.

(115) The *Land* associations were purely private organisations. This fact, together with the observation that the *Land* associations managed the milk levy and how it was used, was a clear indication that the milk levy should, in line with the abovementioned case-law, not be classified as State aid.

(116) The existence of State aid was further disproved by the fact that the milk levy resources were purely private resources. They were resources derived from the assets of the private undertakings that were required to pay the levy. In the case of the milk levy, there was no state funding or guarantee, in contrast to the situation in Cases C-262/12 (*Vent de Colère*) and T-139/09 (*Plans de Campagne*), in which it was found that State aid existed for this very reason.

(117) Moreover, the milk levy was a collective, industry-wide measure which, in accordance with the current legal situation as established in *Val'Hor* (Decision 2014/416/EU) and *Doux Élevage* (C-677/11), militated against the existence of State aid.

(118) It was also doubtful whether any advantage was conferred by the scheme, something that it would have to do if it were to be assumed to constitute aid. This was because the advantages enjoyed by dairies and milk producers were fully cancelled out or 'neutralised' by the levies paid by dairies and thus indirectly by milk producers. This was also confirmed by the Judgment of 19 December 2013 of the Court of Justice in *Vent de Colère* (C-262/12), in which it was also deemed that State aid existed because the costs were no longer met solely by operators in the branch but by all domestic electricity consumers.

(119) It followed from these points, some of which had emerged from a re-examination of the milk levy scheme and from the fact that the German *Länder* in question were maintaining their current position, that doubts existed as to whether the milk levy system did constitute State aid. This question, and in particular whether the 'State resources' element existed, had to be answered by the European Commission.

3. ASSESSMENT

Sub-measures not constituting aid

Support for scientists

(120) With regard to the matter of support for scientists (see recital 61), the Commission finds that this support benefits private individuals. The Commission also assumes that those scientists were engaged in independent research and development to increase knowledge and understanding within the meaning of paragraph 19 of the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest ([21]). The Commission believes in this case that the activity in question is a non-economic activity.

(121) Only persons engaging in economic activities may be classified as undertakings under Article 107(1) TFEU. Consequently, the support granted to scientists under this sub-measure does not constitute aid within the meaning of Article 107(1) TFEU.

Lectures at Fachhochschule Hannover

(122) With regard to the lectures given by VDM employees at Fachhochschule Hannover (see recital 62), the Commission finds that courses at public technical universities fall within the scope of state-run public education.

(123) Union case-law has established that public education organised within the national educational system funded and supervised by the state may be regarded as a non-economic activity. The Court has thus stated that, 'by establishing and maintaining such a system of public education, normally financed from the public purse and not by pupils or their parents, the state does not intend to become involved in activities for remuneration, but carries out its task towards its population in the social, cultural and educational areas' ([22]).

(124) The lectures form part of the teaching programme of a public higher education institution. The public education organised by this institution should be regarded as a non-economic activity (see recital 123). The Commission takes it that teaching activities are secondary activities and, as such, not an economic activity ([23]). Where there is no economic activity, there can be no favouring of undertakings within the meaning of Article 107(1) of the TFEU. Consequently, this activity does not constitute State aid within the meaning of that provision.

Sub-measures constituting aid

(125) Article 107(1) TFEU lays down that any aid granted by a Member State or through State resources in any form which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between Member States is incompatible with the internal market.

Aid granted by the state or through state resources

(126) It must be examined on the basis of the available information and, in particular, the comments submitted by the parties involved and by the German authorities whether the milk levy resources constitute State aid within the meaning of Article 107(1) TFEU.

([21]) OJ C 8, 11.1.2012, p. 4.

([22]) Judgment of the Court of 11 September 2007, *Commission* v *Germany*, C-318/05, ECLI:EU:C:2007:495, paragraph 68. See also Decision of the Commission of 25 April 2001 in Case N 118/00 — Public subsidies for professional sports clubs, and the Decision of the EFTA Surveillance Authority in Case 68123 — Norway — *Nasjonal digital læringsarena*, 12 October 2011, p. 9.

([23]) Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, paragraph 27 (OJ C 198, 27.6.2014, p. 1).

(127) According to settled case-law, it is not appropriate to distinguish between cases in which aid is granted directly by the state and those in which it is granted by a public or private body designated or established by that state ([24]). However, for advantages to be capable of being categorised as State aid within the meaning of Article 107(1) TFEU, they must, first, be granted directly or indirectly through state resources and, second, be imputable to the state ([25]).

(128) With regard to the measures described in Section 2 of this Decision, support is granted on the basis of the legal provisions of the *Länder* for which the Milk and Fat Law in turn forms the legal framework.

(129) Specifically, the first sentence of Section 22(1) of the MFG provides that the *Land* governments, acting in consultation with the *Land* association or professional organisations, may support the dairy industry by collecting levies of up to 0,1 cent per kilogram of delivered milk jointly from dairies, milk collection centres and creameries. Under the second sentence of Section 22(1) of the MFG, *Land* Governments may, if requested to do so by the *Land* association or professional organisations, collect joint levies of up to 0,2 cents per kilogram of delivered milk if the levies provided for under the first sentence are not sufficient for the performance of tasks.

(130) The *Land* Governments collect the milk levy in consultation with the *Land* association in question. However, 'consultation' represents a significantly weaker form of participation than 'agreement'. While 'agreement' means that another body (e.g. a legislative body or authority) must necessarily give its consent before a legal act is adopted, a decision that is to be adopted in 'consultation' with another body is not ultimately dependent on that other body's consent. This distinction between different forms of participation is made in some areas of German administrative law ([26]). Because the first sentence of Section 22(1) of the MFG provides for the form of participation of 'consultation', the power to collect the levy and the decision to do so lie solely with the *Land* governments ([27]). By contrast, the *Land* associations are only 'involved' in the preparation and technical implementation of the measures to be adopted under Section 22 (Section 14(1) MFG) and are subject in this respect to the supervision of the highest *Land* authority (Section 14(2) and (4) MFG).

(131) The legal basis for collecting a milk levy in the individual German *Länder* is accordingly provided by *Land* regulations on the detailed arrangements for collecting the levy, including the amount of the levy ([28]). It is therefore the state (represented by the respective *Land* Government) that regulates the levy's collection. As explained in recital 130 above, this is not altered by the fact that the regulations in question were issued in consultation with the respective *Land* association representing the dairy industry.

(132) In the case in hand, a levy is collected from private undertakings. Revenues from this levy accrue to the respective *Land* budget before they are used to fund the various support measures and, under the first sentence of Section 22(3) of the MFG, must be managed separately within it. Under Section 23 of the respective budgetary ordinances (see recital 19), expenditure and commitment appropriations for payments to bodies outside the *Land* administration to meet specific purposes (subsidies) may only be made available if the *Land* has a significant interest in the bodies in question fulfilling a given purpose that cannot be satisfied, or not to the necessary extent, without subsidies. This requirement implies that there is a State interest in the measures being implemented. The fact that in Thuringia levy payments are made into the 'Milk levy' trust account of Landesvereinigung Thüringer Milch e. V. (recital 89, Section 3(1) of the Thuringia Levy Collection Regulation) is not contrary

([24]) Judgment of the Court of 20 November 2003, *Ministère de l'Économie, des Finances et de l'Industrie* v *GEMO*, C-126/01, ECLI:EU:C:2003:622, paragraph 23.

([25]) Judgment of the Court of 20 November 2003, *Ministère de l'Économie, des Finances et de l'Industrie* v *GEMO*, C-126/01, ECLI:EU:C:2003:622, paragraph 24.

([26]) For example, Section 37(2), third sentence, of the German Building Code (BauGB), Sections 17(1) and (2), 18(3) and (4) and 22(5) of the Federal Nature Protection Act (BNatSchG), and Sections 2(7), 11(2) and (3), 12(7), 14(4), point 2, 26(3) and 35a(3) of the General Railways Act (AEG). With regard to the former Section 9 of the Federal Nature Protection Act, see paragraph 22 of the Judgment of the German Federal Administrative Court of 29.4.1993 in Case 7 A 4/93 ('… a Decision involving "consultation", in contrast to one involving "agreement", does not require any consensus. It means nothing more than the consultation (on an advisory basis) of the other authority, which thereby has the opportunity to introduce its ideas into the process') and, with regard to the former Section 18(2), first sentence, point 2, of the General Railways Act, paragraph 5 of the Judgment of the German Federal Administrative Court of 31.10.2000 in Case 11 VR 12/00 ('The consultation of the plaintiff provided for in Section 18(2), first sentence, point 2, of the General Railways Act which, in contrast to "agreement", does not require there to be any consensus …') and paragraph 11 of its Judgment of 7.2.2005 in Case 9 VR 15/04 ('The consultation of the applicant, which was thus all that was required, […], was effected by the planning approval authority by giving […] the applicant an opportunity to submit comments').

([27]) See also the sixth sentence of Section 22(1) MFG, which refers to the 'powers' of the *Land* Governments (and the possibility of delegating them to the highest *Land* authorities) and Section 23(2) MFG, under which levies are recoverable in accordance with the General Tax Code, which in turn requires a tax notice or similar administrative document to have been issued (cf. Sections 122 and 251 of the General Tax Code). Under Section 14(3) MFG, however, no public tasks may be transferred to the relevant *Land* association.

([28]) The individual *Land* regulations are cited in recitals 21 to 28.

to that State interest. In Thuringia outstanding levies and interest are also collected in accordance with the provisions of the General Tax Code and its implementing provisions (Section 3(4) of the Thuringia Levy Collection Regulation). It is also in the nature of a trust account that the account holder's access to the funds available is not unrestricted, but subject to the statutory requirements set in this case by the State.

(133) In response to the arguments presented by the interested parties and the German authorities, the Commission finds as follows:

(134) With regard to LVN's assertion that it is the *Land* associations that actually decide to collect the levy from dairies (recitals 83 to 87 and 91), the Commission considers that it is the Federal Government that, on the basis of Section 22(1) of the MFG, has empowered the *Land* Governments to collect a milk levy. That provision stipulates, inter alia, that the milk levy may normally amount to 0,1 cents per kilogram of delivered milk and that the *Land* Government may increase the levy to 0,2 cents per kilogram if requested to do so by the *Land* association or jointly by the professional organisations.

(135) In addition, Section 22(2), points 1-6, of the MFG stipulates the purposes for which milk levy resources may be used.

(136) Under the third sentence of Section 22(3) of the MFG, the *Land* association or professional associations must merely be consulted before the resources are used.

(137) This indicates that, although the state (at Federal level) grants the *Land* associations certain rights of participation, it has nevertheless established a clear legal framework in determining the rates that must be applied in respect of the milk levy and how the resources are to be used, and it is ultimately up to the *Land* Government in question (or, in the case of delegation, the highest *Land* authorities) to decide on this matter. It would not, for example, be possible for the rate of the levy to be increased to more than 0,2 cents per kilogram if the *Land* associations were to request this or for the resources to be used for purposes other than those set out in Section 22(2), points 1-6, of the MFG. Moreover, the duty of consultation required regarding their use (third sentence of Section 22(3) MFG) does not in any way require the views of those consulted to be followed. The final decision as to how the resources are to be used lies with the respective *Land* authorities, i.e. with the State.

(138) This distinguishes this case significantly from the *Doux Élevage* case cited by LVN. Collection of the milk levy and the allocation of the corresponding resources are regulated by the state at two levels, i.e. Federal and *Land*. In Germany, the legislator has not only granted the *Land* Governments the power to collect the levy but has also restricted the margin available at *Land* level to dispose of the resources generated from levies by Federal law. The *Land* associations are not able to seek to amend the objectives that may be promoted as set out in Section 22(2), points 1-6, of the MFG, for example by submitting a request to that end. A state restriction of this nature did not form part of the facts on which the *Val'Hor* and *Doux Élevage* cases were based.

(139) Moreover, the MFG cannot be understood merely as a means of enforcing purely economic interests of an interbranch organisation. Section 14 thereof stipulates, for example, that, if they wish to participate, professional organisations acting for agriculture, dairies and the dairy trade must be represented within it, while an appropriate representation of consumers must also be ensured in the bodies of the association. With these requirements concerning participation and representation, the legislator (i.e. the state) is ensuring that, in pursuing the public policy objectives set out in the MFG, all interests going beyond the mere promotion of an economic sector are comprehensively represented.

(140) Contrary to the situation in *Doux Élevage*, the promotion objectives set out in the MFG are not objectives that the interbranch organisations themselves have laid down and introduced ([29]). Objectives 1 ('improving and sustaining quality on the basis of provisions issued under Section 10 of this Act or Section 37 of the *Milchgesetz* (Milk Act) of 31 July 1930 (Reich Law Gazette I, p. 421) and 2 ('improving hygiene during milking and the delivery, processing and distribution of milk and milk products') set out in Section 22(2) of the MFG in particular display

([29]) Judgment of the Court of 30 May 2013, *Doux Élevage*, C-677/11, ECLI:EU:C:2013:348, paragraph 40.

characteristics that form part of a policy determined by state authorities ([30]), contrary to the situation in *Doux Élevage*, and refer to public tasks that, in accordance with Section 14(3) MFG, may not *a priori* be transferred to the *Land* associations. In so far as Germany relies on Section 22(2), point 6, of the MFG in the present case, it is clear from the very wording of the law that the tasks are 'tasks conferred in accordance with the Milk and Fat Law' (and therefore not tasks laid down by VDM itself).

(141) Also in contrast to the situation in *Doux Élevage*, the normal civil or commercial judicial process is not used to collect milk levies in the event of non-payment ([31]). This is because Section 23(2) of the MFG stipulates that levies are recoverable in accordance with the General Tax Code and its implementing provisions. In their respective milk levy collection regulations, the *Länder* in question likewise provided for recovery in accordance with the Code and its implementing provisions ([32]). Under the German legal system, the Code is considered to form part of public law. In Germany, public debts are enforced through administrative channels, while under civil law they are enforced through the courts. In this respect, administrative channels are a more effective method than the courts because the public authorities are themselves able to create an enforcement order by adopting an administrative act ([33]) which, in the case of claims under civil law, could only be challenged in the courts ([34]). This indicates that the State is interested in collecting and, where appropriate, recovering outstanding levy payments as efficiently as possible and to the maximum possible extent, including in order to guarantee that the state objectives funded by levy resources are realised quickly.

(142) This refutes LVN's assertion that the milk levy resources are not state resources within the meaning of Article 107(1) TFEU.

(143) This means that the revenues from the levy in question should be regarded as being under state control ([35]) and that the measures funded by them were granted through state resources and are attributable to the state.

Selective advantage/Undertakings

(144) VDM is a body which provides services of benefit to undertakings in the dairy industry, in particular dairies.

(145) Germany and VDM dispute that VDM offers services as an undertaking in a market. In particular, VDM refers to its activities as those of an association, which the Court has judged to be commercial activities only in exceptional cases (see recitals 39 and 49).

(146) In its judgment in Case T-193/02 *Piau* v *Commission* cited by Germany, the Court found that an association, i.e. FIFA, engaged in an economic activity. Germany has, conversely, been unable to cite any case-law in which it was explicitly found that the opposite was the case, i.e. that an association did not (necessarily) engage in any economic activity or that the activities of an association were excluded from the monitoring of aid.

(147) It is indisputable that VDM engages in activities in the interests and to the benefit of its members. This is how VDM itself perceives its role, as is apparent from various descriptions of its activities on its website, e.g. 'VDM represents the interests of the dairy sector within IDF', 'protecting and promoting the interests of the dairy industry' and 'representing dairy-industry interests during the legislative process in relation to the ministries'. LVN therefore also takes the view that the contested measures were intended solely to promote milk as a product and thus the collective interest of the dairy industry (see recitals 99-100 above).

(148) The Commission thus maintains its view that the individual activities pursued by VMD display the characteristics of services. The services benefit dairies in the *Länder* that collect the milk levy.

([30]) Judgment of the Court of 30 May 2013, *Doux Élevage*, C-677/11, ECLI:EU:C:2013:348, paragraph 31.
([31]) Judgment of the Court of 30 May 2013, *Doux Élevage*, C-677/11, ECLI:EU:C:2013:348, paragraph 32.
([32]) See, for example, Section 6(3) of the regulation on a levy for milk (BayMilchUmlV) of 17 October 2007.
([33]) See, for example, Section 5 of the regulation on a levy for milk (BayMilchUmlV) of 17 October 2007.
([34]) See Judgment of the Court of 11 September 2014, *Commission* v *Germany*, C-527/12, ECLI:EU:C:2014:2193, paragraphs 41 and 56.
([35]) Judgment of the Court of 30 May, *Doux Élevage*, C-677/11, ECLI:EU:C:2013:348, paragraphs 32, 35 and 38.

(149) Several of the activities referred to by VDM itself on its website display characteristics of services in the sense that their purpose is to represent the interests of the dairies and milk producers concerned in relation to the German authorities and the legislator and in international bodies ([36]).

(150) The provision of such services benefits the dairies concerned and supports them in the exercise of their core business: the production and sale of milk and dairy products, which are undoubtedly economic activities.

(151) VDM carries out its activities under the headings 'advice to state bodies', 'involvement in standardisation and harmonisation' and 'provision of general information' in the interests and on behalf of its members. Those activities, which are directly related to its economic activities, save the dairies from having to implement such initiatives themselves — and from having to provide the necessary funding — in order to create a (market) environment conducive to their sales. Members of VDM include Milchindustrie-Verband e.V. (MIV) and Deutsche Bauernverband e.V. (DBV). The membership of MIV is in turn made up of German dairies, including those covered by this Decision, in the *Länder* that collect the milk levy.

(152) The 'advice to state bodies' and 'involvement in standardisation and harmonisation' are activities which represent interests in the political process and are intended to shape opinion through different channels (legislation, technical standardisation, etc.). Ultimately this affects the legal conditions underlying the dairies' production and marketing activities. The 'provision of general information' measure also benefits the dairies concerned as it promotes sales by highlighting the benefits of milk as a product.

(153) No questions are raised in this respect by VDM's assertion that the content of its activity involved 'channelling the democratically formulated opinion of its members into the legislative process'. The fact is that VDM does not represent general interests but rather the interests of its members, the aim being to channel the dairy industry's views into the legislative and regulatory process and thus to bring its influence to bear in that process

(154) With regard to the activity of 'standardisation and harmonisation', VDM has explained that, acting on behalf of the entire dairy sector, it is involved in standardisation and harmonisation at national and international level in cooperation with the competent standards organisations such as ISO, IDF, CEN and DIN (see recital 53).

(155) In this context, the Commission notes that it is the said standardisation bodies that are primarily responsible for bringing about standardisation and harmonisation. VDM does not act as a neutral party (or independent advisor) in that process but rather it channels the viewpoints of the dairy industry into the standardisation process).

(156) In this regard too, the Commission therefore concludes that VDM offers services as a private association. The beneficiaries — if not the recipients — of those services are again the dairies in the *Länder* in question (i.e. the members of VDM's member associations), whose interests are represented by VDM vis-à-vis the standardisation bodies.

([36]) The following statements can be found on the VDM website (http://www.idf-germany.com/): 'VDM represents the interests of the dairy sector within IDF'; 'protecting and promoting the interests of the dairy industry'; 'representing dairy-industry interests during the legislative process in relation to the ministries'; '… the consultation on all dairy-industry issues directly or indirectly benefits the individual milk producers or dairies'; '[VDM] therefore ensures that German interests are taken into account … by all international bodies'; '[its role is to] present a consensus view on the interests of the dairy industry to the relevant federal authorities'; '… to promote agreement between the federal authorities and the dairy industry'; 'VDM helps to ensure that the dairy industry and the authorities speak with one voice'; 'Acting on behalf of the entire dairy sector, VDM is involved in standardisation and harmonisation…'; 'As the Federal Ministry of Food, Agriculture and Consumer Protection sends the German delegations to the meetings of the Codex Committees, VDM and its members' associations represent dairy-industry interests there too'; 'VDM represents the political position of the dairy industry'.

(157) Similarly, the provision of general information (see recitals 59 and 60) constitutes a service. Whether this information is more general or more specific in nature does not alter the fact that its provision promotes the economic activity of the dairy industry.

(158) The services in question which VDM provides selectively favour certain undertakings, namely those in the economic sector of the processing and marketing of milk in the *Länder* that collect the milk levy. In this context, the Commission does not share VDM's view that it is an umbrella organisation that represents general interests. Rather, the Commission sees VDM's activities as constituting a sector-specific representation of interests to the benefit of the dairies affiliated to it as members through the associations in the *Länder* concerned.

Distortion of competition and effect on trade

(159) The Court of Justice has consistently held that strengthening the competitive position of an undertaking through the granting of State aid generally distorts competition with other competing undertakings not having benefited from this aid ([37]). Aid for an undertaking that operates in a market where there is intra-Union trade is liable to affect trade between Member States ([38]), even if the undertaking receiving it does not itself participate at all in intra-Community trade ([39]). There was substantial intra-Union trade in agricultural products in the period 2001-2012. For example, intra-Community imports to and exports from Germany of products falling within heading 0401 of the Combined Nomenclature (milk and cream, not concentrated nor containing added sugar or other sweetening matter) ([40]) were worth EUR 1,2 billion and EUR 957 million respectively in 2011 ([41]).

(160) The measures being assessed in this Decision are designed to support activities in the agricultural sector, in particular the activities of dairies. As described above, trade in the products of dairies does exist within the Union. The Commission therefore takes the view that the measures at issue are such as to affect trade between the Member States.

(161) In view of the substantial level of trade in dairy products, it can therefore be assumed that the sub-measures in question distort or threaten to distort competition and affect trade between Member States.

Existing aid/new aid

(162) According to Article 108(1) TFEU, the Commission must, in cooperation with Member States, keep under constant review all existing systems of aid. To that end, the Commission can obtain from Member States all information necessary for the review of existing aid schemes and, if necessary, propose appropriate measures.

(163) Article 1(b)(i) of Regulation (EC) No 659/1999 defines existing aid as all aid which existed prior to the entry into force of the Treaty in the respective Member State and is still applicable after the entry into force of the Treaty.

(164) However, according to Article 1(c) of Regulation (EC) No 659/1999, any alteration to existing aid makes it 'new aid'. Article 4 of Commission Regulation (EC) No 794/2004 ([42]) defines an alteration to existing aid as 'any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market'.

(165) According to case-law ([43]), the original scheme is transformed into a new aid scheme only if the change affects the essence of the provision; there can be no question of such a substantive alteration where the new element is clearly severable from the initial scheme.

([37]) Judgment of the Court of 17 September 1980, *Philip Morris Holland BV* v *Commission*, C-730/79; ECLI:EU:C:1980:209, paragraphs 11-12.
([38]) See in particular the Judgment of the Court of 13 July 1988, *French Republic* v *Commission*, 102/87, ECLI:EU:C:1988:391.
([39]) Judgment of the Court of 14 January 2015, *Eventech Ltd* v *Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraph 67.
([40]) Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 304, 31.10.2012, p. 1).
([41]) Source: Eurostat.
([42]) 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 Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).
([43]) Judgment of the Court of 30 April 2002, *Gibraltar* v *Commission*, T-195/01 and T-207/01, ECLI:EU:T:2002:111, paragraph 111.

(166) According to Article 108(3) TFEU, all new aid has to be notified to the European Commission and it cannot be put into effect before it has been approved by the Commission (standstill obligation).

(167) According to Article 1(f) of Regulation (EC) No 659/1999, new aid put into effect in contravention of Article 108(3) TFEU is unlawful.

(168) With the exception of the MFG itself (which is only a framework law and an enabling act, but is not the legal basis for the measures at issue), the German authorities have not presented any information demonstrating that a legal basis issued before 1958 was still applicable in its original version during the period of investigation. This applies both to the levy regulations which form the basis for funding the aid in question (those applicable in Baden-Württemberg and Bavaria, for example, date from 2004 and 2007 respectively (see recitals 21-22)) and to the *Land* budgetary ordinances which form the legal basis for use of the levy and whose intended use is bound merely by Section 22(2) MFG. On this basis, the *Land* authorities authorise the use of resources in the financial year in question by means of an appropriation notice.

(169) The measures in question therefore constitute new aid that should have been notified pursuant to Article 108(3) TFEU. Because Germany has not at any time notified the aid scheme at issue, it is unlawful (Article 1(f) of Regulation (EC) No 659/1999).

Compatibility assessment

Applicable rules

(170) Under Article 107(3)(c) TFEU, aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the Union interest.

(171) According to the Commission notice on the determination of the rules applicable to the assessment of unlawful aid ([44]), any unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999 is to be appraised in accordance with the rules applicable at the time the aid was granted.

(172) Specific guidelines have applied for the agriculture sector since 1 January 2000. Aid granted during the period between 28 November 2001 and 31 December 2006 (hereinafter: 'the period 2001-2006') is to be assessed in the light of the 2000-2006 Guidelines.

(173) Aid granted since 1 January 2007 (hereinafter: 'the period from 2007') will be assessed in the light of the 2007-2013 Guidelines.

First sub-measure (period 2001-2006): 'Role of advisor to state bodies' and 'standardisation and harmonisation activities'

(174) For the purposes of examining whether aid promoting the provision of advice to state bodies (see recitals 51 and 52) and VDM's standardisation and harmonisation activities (see recitals 53 to 58) is compatible with the internal market, VDM referred to the provisions concerning technical support (recitals 67 and 68).

(175) The provision of technical support is regulated by paragraph 14 of the 2000-2006 Guidelines. According to the third indent of point 14.1 of the 2000-2006 Guidelines, consultant's fees are fully compatible with the internal market. Dairies are undertakings for the processing and marketing of agricultural products. Aid to that sector falls, inter alia, within the scope of the 2000-2006 Guidelines (point 2.1 of the Guidelines). The purpose of the provision of the third indent of point 14.1 is to declare that support whose direct purpose is to improve the processing of agricultural products by disseminating the requisite knowledge is compatible with the internal market. VDM's advisory services were, however, aimed at state bodies. VDM's members, which include the dairies in the *Länder* that collect the milk levy, were, by contrast, beneficiaries only indirectly. The Commission finds that the aid in question cannot be declared compatible with the internal market under Section 14 of the 2000-2006 Guidelines.

([44]) OJ C 119, 22.5.2002, p. 22.

(176) Similarly, VDM's standardisation and harmonisation activities relate to advice provided to state (or state-recognised) bodies serving ultimately to represent the interests of VDM's members. In the final analysis, standardisation and harmonisation activities fall within the remit of state bodies, which implement rules and standards, especially those developed at the international level, generally by legislative or administrative means. An association such as the VDM can bring its influence to bear on the relevant procedures (negotiations in international bodies, legislation) only in an advisory capacity. Compatibility with the internal market under Section 14 of the 2000-2006 Guidelines is therefore excluded.

(177) Compatibility with the internal market also cannot be achieved under provisions other than those referred to by the parties (nor has Germany invoked any other compatibility rules). The Commission therefore concludes that the aid granted to businesses operating in the processing and marketing sector in the 2001-2006 period is incompatible with the internal market.

First sub-measure (period from 2007): 'Role of advisor to state bodies' and 'standardisation and harmonisation activities'

(178) For the period from 2007, the provisions on the compatibility of technical support with the internal market were amended.

(179) The provision of technical support is regulated by Section IV.K of the 2007-2013 Guidelines. The aid benefited dairies in the *Länder* that collect the milk levy. Dairies are undertakings for the processing and marketing of agricultural products (see also recital 175).

(180) With regard to the aid granted to marketing and processing businesses, paragraph 105 of the 2007-2013 Guidelines in conjunction with Article 5 of Commission Regulation (EC) No 70/2001 ([45]) could be considered to constitute a provision establishing compatibility with the internal market. For the period from the date of entry into force of Commission Regulation (EC) No 800/2008 ([46]), paragraph 105 must be read as referring to Articles 26 and 27 of that Regulation.

(181) Both Article 5 of Regulation (EC) No 70/2001 and Articles 26 and 27 of Regulation (EC) No 800/2008 relate to consultancy services. From the perspective of the dairies, however, the case at issue is not about consultancy but rather, as stated in recitals 175 to 177, about the representation of interests.

(182) Moreover, compatibility with the internal market also cannot be achieved under provisions other than those referred to by the parties (nor has Germany invoked any other compatibility requirements). VDM's activities in the areas of 'role of advisor to state bodies' and 'standardisation and harmonisation activities' in the 2007-2013 period are therefore not compatible with the internal market.

(183) The Commission accordingly concludes that the aid granted to businesses operating in the processing and marketing sector in the period from 2007 is incompatible with the internal market.

Second sub-measure (period 2001-2006): Provision of general information

(184) The aid granted in respect of the provision of general information (recitals 59 and 60) could be considered to be compatible with the internal market under the provisions concerning technical support.

(185) As stated above in recital 175, the provision of technical support is regulated in Section 14 of the 2000-2006 Guidelines.

([45]) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33).

([46]) Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3).

(186) Section 14 of the Guidelines covers aid granted in connection with activities relating to the processing and marketing of agricultural products (see recital 175).

(187) The Commission is of the view that this measure has contributed to the long-term viability of the sector while its effects on competition are likely to have been very limited (second sentence of paragraph 14.1 of the 2000-2006 Guidelines).

(188) The aid was granted to cover the costs of disseminating general information.

(189) The eligible costs relating to the provision of technical support are exhaustively listed in the five indents of paragraph 14.1 of the 2000-2006 Guidelines. The provision of the information in question may be regarded as measure for the dissemination of knowledge relating to new techniques pursuant to the fifth indent. The wording of the fifth indent allows a broad interpretation of the term 'dissemination of knowledge relating to new techniques'. The addition 'such as reasonable small-scale pilot projects or demonstration projects' should not be understood restrictively but rather, as the words 'such as' make clear, merely as an example. The provision of general information, in particular the publication of scientific findings and generic factual information about milk in a readily understandable form, may therefore be considered to be comparable with the dissemination of knowledge relating to new techniques. The purpose of the provision on compatibility in paragraph 14.1 was indeed to allow the promotion of measures which, like those at issue here, inform beneficiaries of new techniques in various areas relevant to agriculture such as good agricultural practice or animal welfare in dairy farming (see recital 59).

(190) The Commission believes that this aid was in principle available to all 'eligible' natural and legal persons in the area concerned based on objectively defined conditions (first sentence of paragraph 14.2 of the 2000-2006 Guidelines), i.e. that such persons were able to benefit without restriction from the information provided.

(191) Germany has provided an assurance that the total amount of aid granted in the period 2001-2006 did not exceed EUR 100 000 per beneficiary over a period of three years. To the extent that undertakings falling within the scope of the Commission's definition of small and medium-sized enterprises ([47]) were granted an amount of more than EUR 100 000, the maximum permitted aid intensity did not exceed 50 % of eligible costs. For the purpose of calculating the amount of aid, the beneficiaries were regarded as being the persons availing themselves of such services, i.e. the dairies in the *Länder* that collect the milk levy.

(192) The Commission concludes that the aid assessed in that section met the relevant conditions of the 2000-2006 Guidelines and was therefore compatible with the internal market in the period 2001-2006.

Second sub-measure (period from 2007): Provision of general information

(193) As with the previous period, aid for the provision of general information is subject to the provisions concerning technical support.

(194) These are laid down in Section IV.K of the 2007-2013 Guidelines. The aid benefited dairies in the *Länder* that collect the milk levy. Dairies are undertakings for the processing and marketing of agricultural products (see also recital 175).

(195) Firstly, the 2007-2013 Guidelines provide that the Commission will under no circumstances authorise aid in favour of large companies (paragraph 106 of the Guidelines), meaning that any aid granted to such companies will not be declared compatible. It has not yet been examined whether aid granted to small and medium-sized enterprises is compatible with the internal market. In the following, therefore, the assessment of the compatibility of the aid granted is restricted to small and medium-sized enterprises.

(196) With regard to the aid granted to dairies, which are businesses operating in the processing and marketing sector, paragraph 105 of the 2007-2013 Guidelines refers to the relevant provisions of Article 5 of Regulation (EC) No 70/2001. For the period from the date of entry into force of Regulation (EC) No 800/2008, that provision must be read as referring to Articles 26 and 27 of the Regulation.

([47]) OJ L 107, 30.4.1996, p. 4.

(197) None of the cited provisions of Regulations (EC) No 70/2001 and (EC) No 800/2008 provided for the dissemination of general information.

(198) The Commission is also unable to identify any other provisions of EU law that enable such aid granted to businesses operating in the processing and marketing sector to be deemed compatible with the internal market (nor has Germany invoked any other compatibility rules).

(199) The Commission concludes that the aid granted to processing and marketing businesses, i.e. to dairies, in the period form 2007 was incompatible with the internal market.

Parafiscal charges

(200) Since the State aid in question was financed by a parafiscal charge (see recitals 13 to 17), the Commission must examine both the measures supported, i.e. the aid, and the way in which they were financed. Where the method of financing the aid, in particular through compulsory contributions, forms an integral part of the aid measure, the Commission must also take that method of financing into account when examining the aid ([48]).

(201) For a charge or part of a charge to be considered as forming an integral part of an aid measure, it must be hypothecated to the aid measure under the relevant national rules, in the sense that the revenue from the tax must be necessarily allocated for the financing of the aid measure ([49]), and the amount of the tax should have a direct impact on the amount of State aid ([50]).

(202) These two criteria have to be applied for the entire period under investigation.

(203) The first criterion seems to be met since, under Section 22(1) of the MFG, the *Länder* have the option to impose the parafiscal charge at issue. At the same time, Section 22(2) and (2a) of the MFG lays down precisely what types of aid can be financed from the levy revenues. The Commission therefore finds that the revenues from the levy are earmarked and may be used only for the purposes laid down by law. In the light of the Positive Decision and this Decision, the Commission believes that the vast majority of support measures implemented in this context constitute aid. Moreover, the fact that the revenues from the levy are earmarked means that they cannot be used for other public tasks not referred to in Section 22(2) and (2a) of the MFG.

(204) As regards the question whether the amount of the levy has a direct impact on the amount of State aid, attention is drawn to Section 22(3) of the MFG, according to which levy revenues must be kept separate and may not be used for administrative expenses incurred by the *Land* authorities. According to the information submitted by Germany, no State resources other than milk levy resources are used to finance the measures assessed in this Decision. This leads the Commission to conclude that the amount of the levy does indeed have a direct impact on the amount of State aid.

(205) Where the levy forms an integral part of the aid measure, the Commission then has to examine whether it discriminates between imported products and national ones ([51]), or between exported national products and national products marketed on the domestic market ([52]).

(206) The milk levy does not apply to imports. Consequently, aid measures under the MFG do not discriminate against imported products.

([48]) Judgment of the Court of 21 October 2003, *van Calster*, C-261/01 and C-262/01, ECLI:EU:C:2003:571, paragraph 49.

([49]) Judgment of the Court of 13 January 2005, *Streekgewest Westelijk Noord-Brabant*, C-174/02, ECLI:EU:C:2005:10, paragraph 26; Judgment of the Court of 27 October 2005, *Nazairdis SAS and others* v *Caisse nationale de l'organisation autonome d'assurance vieillesse des travailleurs non salariés des professions industrielles et commerciales (Organic)*, C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04, ECLI:EU:C:2005:657, paragraphs 46 to 49.

([50]) Judgment of the Court of 13 January 2005, *Streekgewest Westelijk Noord-Brabant*, C-174/02, ECLI:EU:C:2005:10, paragraph 28, and Judgment of the Court of 15 June 2006, *Air Liquide*, Joined Cases C-393/04 and C-41/05, ECLI:EU:C:2006:403, paragraph 46.

([51]) With regard to discrimination between domestic and exported products, see, inter alia, the Judgment of the Court of 23 April 2002, *Nygård*, C-234/99, ECLI:EU:C:2002:244, paragraphs 21-22.

([52]) With regard to discrimination between domestic and imported products, see the Judgment of the Court of 11 March 1992, *Compagnie Commerciale de l'Ouest*, Joined Cases C-78/90, C-79/90, C-80/90, C-81/90, C-82/90 and C-83/90, ECLI:EU:C:1992:118, paragraph 26.

(207) Furthermore, the milk levy may be regarded as discriminatory internal taxation prohibited by Article 110 TFEU if, to the extent that the milk levies due on goods produced and processed on the domestic market are only partially offset by advantages deriving from the use made of levy revenues, the milk levy puts exported domestic products at a disadvantage. The German authorities have explained that, to their knowledge, undertakings that export dairy products do not suffer any disadvantages as a result of the collection of the levy. However, if an undertaking that has exported dairy products were in future to demonstrate that it had been disadvantaged by the collection of the levy, the levy amounts in question would, according to Germany's assurance, be refunded. On that basis the Commission believes that there is no risk of discrimination.

(208) The Commission therefore finds that the levy does not constitute an infringement of the provisions of Article 110 TFEU ([53]).

(209) It should also be examined whether charging the milk levy does not run counter to the objectives of the common organisation of markets in the agricultural sector. In this respect, it has to be assessed whether the milk levy interferes with the prices of domestic end products and thus whether domestic products are discriminated against compared to imported products ([54]). In this regard, the Commission notes that milk is sold at retail level in Germany at prices apparently not below EUR 0,45 per litre. The milk levy amounts to not more than EUR 0,0015 per kg and therefore represents only a marginal fraction of the retail price. The Commission therefore concludes that collecting the milk levy does not run counter to the objectives of the common organisation of the relevant market.

Conclusion

(210) Article 15(1) of Regulation (EC) No 659/1999 lays down that the powers of the Commission to recover aid are subject to a limitation period of 10 years. According to Article 15(2) of Regulation (EC) No 659/1999, any action taken by the Commission with regard to unlawful aid interrupts this limitation period.

(211) Further to Germany's submission of the 2010 annual report on State aid in the agricultural sector, the Commission asked Germany by letter of 28 November 2011 to provide additional information on the scheme. This action by the Commission interrupted the limitation period. In line with the ten-year limitation period referred to in the previous recital, this Decision therefore relates to the period from 28 November 2001.

(212) The Commission finds that Germany has unlawfully granted the aid in question in breach of Articles 107 and 108 TFEU. The aid benefited undertakings in the milk processing and marketing sector throughout Germany. The aid is partially compatible with the internal market (recital 192) and partially incompatible with the internal market (recitals 177, 183, 199).

(213) The Commission considers it reasonable for the aid that is incompatible with the internal market to be recovered as follows: The payments made to VDM from milk levy resources for the measures which it implemented should be returned to the dairies concerned in line with the amounts of milk levy paid by them in order to determine the aid to be recovered. The Commission is willing to discuss with Germany other ways in which the funds in question might be allocated to the beneficiaries,

HAS ADOPTED THIS DECISION:

Article 1

The financial support for the scientific community granted by Germany through Verband der Milchwirtschaft e.V. does not constitute aid within the meaning of Article 107(1) TFEU.

The financial support granted by Germany through Verband der Milchwirtschaft e.V. in connection with lectures given at Fachhochschule Hannover does not constitute aid within the meaning of Article 107(1) TFEU.

The financial support granted by Germany in connection with the role of Verband der Milchwirtschaft e.V. as a provider of general information and an advisor to state bodies and regarding standardisation and harmonisation activities constitutes State aid within the meaning of Article 107(1) TFEU.

([53]) Judgment of the Court of 21 October 2003, *van Calster*, C-261/01 and C-262/01, ECLI:EU:C:2003:571, paragraph 48.
([54]) Judgment of the Court of 22 May 2003, *Freskot*, C-355/00, ECLI:EU:C:2003:298, paragraphs 18-32.

Article 2

The aid granted unlawfully by Germany in breach of Article 108(3) TFEU in connection with the role of Verband der Milchwirtschaft e.V. as a provider of general information in the period between 28 November 2001 and 31 December 2006 is compatible with the internal market.

Article 3

The aid granted unlawfully by Germany in breach of Article 108(3) TFEU in connection with the role of Verband der Milchwirtschaft e.V. as an advisor to state bodies and regarding standardisation and harmonisation activities is incompatible with the internal market.

The aid granted unlawfully by Germany in breach of Article 108(3) TFEU in connection with the role of Verband der Milchwirtschaft e.V. as a provider of general information in the period from 1 January 2007 is incompatible with the internal market.

Article 4

1. German shall recover the incompatible aid granted under the scheme referred to in Article 3 from the beneficiaries.

2. The amount to be recovered shall bear interest from the date on which it was put at the disposal of the beneficiaries until its actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Commission Regulation (EC) No 271/2008 ([55]) amending Regulation (EC) No 794/2004.

4. Germany shall cancel all outstanding payments of aid under the scheme referred to in Article 3 with effect from the date of adoption of this Decision.

Article 5

1. Recovery of the aid granted under the scheme referred to in Article 3 shall be immediate and effective.

2. Germany shall ensure that this Decision is implemented within four months of the date of its notification.

Article 6

1. Within two months following notification of this Decision, Germany shall submit the following information to the Commission:

(a) the list of beneficiaries that have received aid under the scheme referred to in Article 3 and the total amount of aid received by each of them under the scheme;

(b) the total amount (principal and recovery interest) to be recovered from each beneficiary;

([55]) Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

(c) a detailed description of the measures already taken or planned to comply with this Decision;

(d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. Germany shall keep the Commission informed of the progress of the national measures taken to implement this Decision until the recovery of the aid granted under the scheme referred to in Article 3 has been completed. Upon request by the Commission, Germany shall immediately submit information on the measures already taken or planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiaries.

Article 7

This Decision is addressed to the Federal Republic of Germany.

Germany is requested to forward a copy of this Decision to the beneficiaries of the aid without delay.

Done at Brussels, 16 December 2015.

For the Commission
Phil HOGAN
Member of the Commission