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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2017/1084

of 14 June 2017

amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid ⁽¹⁾, and in particular Article 1(1)(a)(xiv) and Article 1(1)(b) thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) Commission Regulation (EU) No 651/2014 ⁽²⁾ declares that certain categories of aid are compatible with the internal market and exempted from the requirement that they must be notified to the Commission before they are granted. Regulation (EU) No 651/2014 announced that the Commission intended to review the scope of that Regulation with a view to including other categories of aid, and in particular aid for port and airport infrastructure, once sufficient case experience had been acquired.
- (2) In the light of the experience acquired by the Commission and in order to simplify and clarify the State aid rules, as well as to reduce the administrative burden of notifying straightforward State aid measures and to allow the Commission to focus on the potentially most distortive cases, aid for port and airport infrastructure should be included in the scope of Regulation (EU) No 651/2014.
- (3) Investment aid to regional airports with average annual passenger traffic of up to three million passengers can improve both the accessibility of certain regions and local development, depending on the specificities of each airport. Such investment aid therefore supports the priorities of the Europe 2020 strategy contributing to further economic growth and objectives of common Union interest. The experience acquired in the application of the Guidelines on State aid to airports and airlines ⁽³⁾ shows that investment aid to regional airports does not give

⁽¹⁾ OJ L 248, 24.9.2015, p. 1.

⁽²⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

⁽³⁾ OJ C 99, 4.4.2014, p. 3.

rise to undue distortion of trade and competition, provided certain conditions are met. Investment aid to regional airports should therefore be covered by the block exemption in Regulation (EU) No 651/2014, provided that those conditions are fulfilled. It would not be appropriate to establish a notification threshold in terms of the amount of aid, since the competitive impact of an aid measure depends mainly on the size of the airport and not on the amount of aid.

- (4) The conditions for the exemption of investment aid from the notification requirement should aim at limiting distortions of competition that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, investment aid should fulfil two conditions. The aid intensity should not exceed a maximum permissible aid intensity, which varies according to the size of the airport. In addition, the aid amount should not exceed the difference between the eligible costs and the operating profit of the investment. For very small airports of up to 200 000 passengers per annum, the investment aid should only be required to fulfil one of those conditions. The compatibility conditions should ensure open and non-discriminatory access to the infrastructure. The exemption should not apply to investment aid granted to airports located in the vicinity of an existing airport from which scheduled air services are operated, because aid to such airports entails a higher risk of distortion of competition and should therefore be notified to the Commission, with the exception of aid granted to very small airports with up to 200 000 passengers per annum, which is unlikely to result in significant distortion of competition.
- (5) Operating aid to very small airports with up to 200 000 passengers per annum does not give rise to undue distortion of trade and competition, provided certain conditions are met. The compatibility conditions should, in particular, ensure that the aid amount does not exceed the operating losses and a reasonable profit and that there is open and non-discriminatory access to the infrastructure. In addition, the aid should not be granted under the condition that the airport operator concludes arrangements with one or more airlines relating to airport charges, marketing payments or other financial aspects of the airline's operations at that airport. Arrangements between an airport which has public resources at its disposal and an airline may, under certain circumstances, constitute State aid to the airline concerned ⁽¹⁾, and such aid should remain fully subject to the notification requirement of Article 108(3) of the Treaty.
- (6) Maritime ports are of strategic importance for achieving the smooth functioning of the internal market and the strengthening of economic, social and territorial cohesion, as set out, inter alia, in the Europe 2020 Strategy and in the Commission White Paper 'Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system' ⁽²⁾. As highlighted in the Communication 'Ports: an engine for growth' ⁽³⁾, the effective operation of ports in all Union maritime regions requires efficient public and private investment. Investments are necessary, in particular, for the adaptation of access infrastructure to ports and of port infrastructure to the increased size and complexity of the fleet, to the use of alternative fuel infrastructure and to stricter requirements on environmental performance. The lack of high quality port infrastructure results in congestion and extra costs for shippers, transport operators and consumers.
- (7) The development of inland ports and their integration into multi-modal transport is a major objective of the Union's transport policy. The Union rules explicitly aim at reinforcing transport intermodality and the shift towards more environmentally-friendly modes of transport such as rail and sea/inland waterway transport.
- (8) The conditions for the exemption of aid to ports from the notification requirement should aim at limiting distortions of competition that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, the aid should fulfil two conditions. The aid intensity should not exceed a maximum permissible aid intensity, which for maritime ports varies according to the size of the investment project. In addition, the aid amount should not exceed the difference between the eligible costs and the operating profit of the investment, except for very small aid amounts, for which a simplified approach is appropriate in order to reduce the administrative burden. The compatibility conditions should also ensure that any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure is assigned on a competitive, transparent, non-discriminatory and unconditional basis, without prejudice to the Union rules on public procurement and concessions, where applicable. Equal and non-discriminatory access to the infrastructure should also be ensured.

⁽¹⁾ See in particular section 3.5 of the Guidelines on State aid to airports and airlines.

⁽²⁾ COM(2011) 144.

⁽³⁾ COM(2013) 295.

- (9) Investments included in the work plans of the Core Network Corridors set up by Regulation (EU) No 1315/2013 of the European Parliament and of the Council ⁽¹⁾ are projects of common interest with a particular strategic interest for the Union. Maritime ports that are part of those networks constitute the entry and exit points of goods being transported in and out of the Union. Inland ports that are part of those networks are key factors enabling the multimodality of the network. Investments aiming to improve the performance of those ports should therefore benefit from a higher notification threshold.
- (10) In the light of the experience acquired in the application of Regulation (EU) No 651/2014 and Commission Regulation (EU) No 702/2014 ⁽²⁾, it is also appropriate to adapt certain provisions of those Regulations.
- (11) In particular, as regards regional operating aid schemes for outermost regions, the application of different rules for the compensation of additional transport costs and of other additional costs has proven difficult in practice and not appropriate to address the structural handicaps referred to in Article 349 of the Treaty, remoteness and insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, and the provisions should therefore be replaced by a method that applies to all additional costs. The implementation of regional investment and operating aid measures in outermost regions which, amongst others, benefit undertakings active in the fishery sector should be in line with the Union's obligations resulting from international agreements to which it is a contracting party. Therefore, such regional investment and operating aid measures should not benefit vessels engaged in illegal, unreported and unregulated fishing or contribute to overfishing or to an increase in the fishing capacity of vessels.
- (12) In view of the limited negative effects on competition of aid for culture and heritage conservation and of aid for sport and multifunctional recreational infrastructures, the notification thresholds for aid in those areas should be increased.
- (13) In order to simplify the calculation of eligible costs under Regulation (EU) No 651/2014 and Regulation (EU) No 702/2014 for operations that are at least partly financed through a Union fund that allows the use of simplified cost options, the provisions relating to eligible costs should be adapted.
- (14) Under the Horizon 2020 SME-instrument as referred in Article 22(2) of Regulation (EU) No 1291/2013 of the European Parliament and of the Council ⁽³⁾, projects can receive a Commission Seal of Excellence quality label. Such projects, given their limited aid amounts of maximum EUR 2,5 million per project and the fact that they are targeting exclusively SMEs, can be exempted from the notification requirement in accordance with the rules of Regulation (EU) No 651/2014.
- (15) Regulation (EU) No 651/2014 and Regulation (EU) No 702/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 651/2014 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (k) and (l) are replaced by the following:

‘(k) aid for sport and multifunctional recreational infrastructure;

(l) aid for local infrastructures;’;

⁽¹⁾ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

⁽²⁾ Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

⁽³⁾ Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014–2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

(ii) the following points (m) and (n) are added:

‘(m) aid for regional airports;

(n) aid for ports.’;

(b) in paragraph 3, the first subparagraph is replaced by the following:

‘This Regulation shall not apply to:

(a) aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council (*) with the exception of training aid, aid for SMEs’ access to finance, aid in the field of research and development, innovation aid for SMEs, aid for disadvantaged workers and workers with disabilities, regional investment aid in outermost regions and regional operating aid schemes;

(b) aid granted in the primary agricultural production sector, with the exception of regional investment aid in outermost regions, regional operating aid schemes, aid for consultancy in favour of SMEs, risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid and aid for disadvantaged workers and workers with disabilities;

(c) aid granted in the sector of processing and marketing of agricultural products, in the following cases:

(i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;

(ii) where the aid is conditional on being partly or entirely passed on to primary producers;

(d) aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision 2010/787/EU (**);

(e) the categories of regional aid referred to in Article 13.

(*) Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

(**) Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24).’;

(c) paragraph 4 is amended as follows:

(i) point (a) is replaced by the following:

‘(a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by certain natural disasters;’;

(ii) point (c) is replaced by the following:

‘(c) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters, start-up aid schemes and regional operating aid schemes, provided those schemes do not treat undertakings in difficulty more favourably than other undertakings.’;

(2) Article 2 is amended as follows:

(a) point 39 is replaced by the following:

‘(39) “operating profit” means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made;’;

(b) point 42 is replaced by the following:

‘(42) “regional operating aid” means aid to reduce an undertaking’s current expenditure. This includes cost categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when granting investment aid;’

(c) point 48 is replaced by the following:

‘(48) “sparsely populated areas” means NUTS 2 regions with less than 8 inhabitants per km² or NUTS 3 regions with less than 12,5 inhabitants per km² or areas which are recognized by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted;’

(d) the following point 48a is inserted:

‘(48a) “very sparsely populated areas” means NUTS 2 regions with less than 8 inhabitants per km² or areas which are recognized by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted;’

(e) point 55 is replaced by the following:

‘(55) “areas eligible for operating aid” means an outermost region referred to in Article 349 of the Treaty, a sparsely populated area or a very sparsely populated area;’

(f) the following point 61a is inserted:

‘(61a) “relocation” means a transfer of the same or similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer if the product or service in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the beneficiary in the EEA;’

(g) after point 143 the following titles and points (144) to (165) are added:

‘Definitions for Aid for regional airports

(144) “airport infrastructure” means infrastructure and equipment for the provision of airport services by the airport to airlines and the various service providers, including runways, terminals, aprons, taxiways, centralised ground handling infrastructure and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities;

(145) “airline” means any airline with a valid operating licence issued by a Member State or a Member of the Common European Aviation Area pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council (*);

(146) “airport” means an entity or group of entities performing the economic activity of providing airport services to airlines;

(147) “airport services” means services provided to airlines by an airport or any of its subsidiaries, to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services, including the provision of ground handling services and the provision of centralised ground handling infrastructure;

(148) “average annual passenger traffic” means a figure determined on the basis of the inbound and outbound passenger traffic during the two financial years preceding that in which the aid is granted;

- (149) “centralised ground handling infrastructure” means infrastructure which is normally operated by the airport manager and put at the disposal of the various providers of ground handling services active at the airport in exchange for remuneration, excluding equipment owned or operated by the providers of ground handling services;
- (150) “high-speed train” means a train capable of reaching speeds of over 200 km/h;
- (151) “ground handling services” means services provided to airport users at airports as described in the Annex to Council Directive 96/67/EC (**);
- (152) “non-aeronautical activities” means commercial services to airlines or other users of the airport, including ancillary services to passengers, freight forwarders or other service providers, renting out of offices and shops, car parking and hotels;
- (153) “regional airport” means an airport with average annual passenger traffic of up to 3 million passengers;

Definitions for Aid for ports

- (154) “port” means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators in the port;
- (155) “maritime port” means a port for, principally, the reception of sea-going vessels;
- (156) “inland port” means a port other than a maritime port, for the reception of inland waterway vessels;
- (157) “port infrastructure” means infrastructure and facilities for the provision of transport related port services, for example berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, alternative fuel infrastructure and infrastructure for the collection of ship-generated waste and cargo residues;
- (158) “port superstructure” means surface arrangements (such as for storage), fixed equipment (such as warehouses and terminal buildings) as well as mobile equipment (such as cranes) located in a port for the provision of transport related port services;
- (159) “access infrastructure” means any type of infrastructure necessary to ensure access and entry from land or sea and river by users to a port, or in a port, such as roads, rail tracks, channels and locks;
- (160) “dredging” means the removal of sediments from the bottom of the waterway access to a port, or in a port;
- (161) “alternative fuel infrastructure” means a fixed, mobile or offshore port infrastructure allowing a port to supply vessels with energy sources such as electricity, hydrogen, biofuels as defined in point (i) of Article 2 of Directive 2009/28/EC, synthetic and paraffinic fuels, natural gas, including biomethane, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural gas (LNG)), and liquefied petroleum gas (LPG) which serve, at least partly, as a substitute for fossil oil sources in the energy supply to transport and which have the potential to contribute to its decarbonisation and enhance the environmental performance of the transport sector;
- (162) “vessels” mean floating structures, whether self-propelled or not, with one or more surface displacement hulls;
- (163) “sea-going vessels” mean vessels other than those which navigate solely or mainly in inland waterways or in waters within, or closely adjacent to, sheltered waters;
- (164) “inland waterway vessels” mean vessels intended solely or mainly for navigation on inland waterways or in waters within, or closely adjacent to, sheltered waters;

(165) “infrastructure for the collection of ship-generated waste and cargo residues” means fixed, floating or mobile port facilities capable of receiving ship-generated waste or cargo residues as defined in Directive 2000/59/EC of the European Parliament and of the Council (**).

(*) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

(**) Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36).

(***) Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332, 28.12.2000, p. 81).;

(3) paragraph 1 of Article 4 is amended as follows:

(a) point (z) is replaced by the following:

‘(z) for investment aid for culture and heritage conservation: EUR 150 million per project; operating aid for culture and heritage conservation: EUR 75 million per undertaking per year;’

(b) point (bb) is replaced by the following:

‘(bb) for investment aid for sport and multifunctional recreational infrastructures: EUR 30 million or the total costs exceeding EUR 100 million per project; operating aid for sport infrastructure: EUR 2 million per infrastructure per year;’

(c) the following points (dd), (ee) and (ff) are added:

‘(dd) for aid for regional airports: the aid intensities and aid amounts laid down in Article 56a;

(ee) for aid for maritime ports: eligible costs of EUR 130 million per project (or EUR 150 million per project in a maritime port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council (*)); as regards dredging a project is defined as all dredging carried out within one calendar year;

(ff) for aid for inland ports: eligible costs of EUR 40 million per project (or EUR 50 million per project in an inland port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013); as regards dredging a project is defined as all dredging carried out within one calendar year.

(*) Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).;

(4) in Article 5(2), the following point (k) is added:

‘(k) aid in the form of the sale or the lease of tangible assets below market rates where the value is established either by an independent expert evaluation prior to the transaction or by reference to a publicly available, regularly updated and generally accepted benchmark;’

(5) in Article 6, paragraph 5 is amended as follows:

(a) point (a) is replaced by the following:

‘(a) regional operating aid and regional urban development aid, where the relevant conditions laid down in Articles 15 and 16 are fulfilled;’

(b) point (d) is replaced by the following:

‘(d) aid compensating for the additional costs of employing workers with disabilities and aid for compensating the costs of assistance provided to disadvantaged workers, where the relevant conditions laid down in Articles 34 and 35 are fulfilled;’

(6) Article 7 is amended as follows:

(a) in paragraph 1, the following sentence is added:

‘The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council (*), provided that the operation is at least partly financed through a Union fund that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision.

(*) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).’;

(b) in paragraph 3, the first sentence is replaced by the following:

‘Aid payable in the future, including aid payable in several instalments, shall be discounted to its value at the moment it is granted.’;

(c) paragraph 4 is deleted;

(7) in Article 8, the following paragraph 7 is added:

‘7. By way of derogation from paragraphs 1 to 6, in determining whether the ceilings for regional operating aid in outermost regions, as set out in Article 15(4), are respected, only regional operating aid in outermost regions implemented under this Regulation shall be taken into account.’;

(8) Article 12 is replaced by the following:

‘Article 12

Monitoring

1. In order to enable the Commission to monitor the aid exempted from notification by this Regulation, Member States, or alternatively, in the case of aid granted to European Territorial Cooperation projects, the Member State in which the Managing Authority is located, shall maintain detailed records with the information and supporting documentation necessary to establish that all the conditions laid down in this Regulation are fulfilled. Such records shall be kept for 10 years from the date on which the *ad hoc* aid was granted or the last aid was granted under the scheme.

2. In the case of schemes under which fiscal aid is granted automatically, such as those based on tax declarations of the beneficiaries, and where there is no *ex ante* verification that all compatibility conditions are met for each beneficiary, Member States shall regularly verify, at least *ex post* and on a sample basis, that all compatibility conditions are met, and draw the necessary conclusions. Member States shall maintain detailed records of the verifications for at least 10 years from the date of the controls.

3. The Commission may request, from each Member State, all the information and supporting documentation which the Commission considers necessary to monitor the application of this Regulation, including the information mentioned in paragraphs 1 and 2. The Member State concerned shall provide the Commission with the requested information and supporting documents within a period of 20 working days from receipt of the request or such longer period as may be fixed in the request.’;

(9) Article 13 is replaced by the following:

‘Article 13

Scope of regional aid

This Section shall not apply to:

(a) aid which favours activities in the steel sector, the coal sector, the shipbuilding sector or the synthetic fibres sector;

- (b) aid to the transport sector as well as the related infrastructure, and aid for energy generation, distribution and infrastructure, except for regional investment aid in outermost regions and regional operating aid schemes;
- (c) regional aid in the form of schemes which are targeted at a limited number of specific sectors of economic activity; schemes aimed at tourism activities, broadband infrastructures or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity;
- (d) regional operating aid granted to undertakings whose principal activities fall under Section K “Financial and insurance activities” of the NACE Rev. 2 or to undertakings that perform intra-group activities whose principal activities fall under classes 70.10 “Activities of head offices” or 70.22 “Business and other management consultancy activities” of NACE Rev. 2.;

(10) Article 14 is amended as follows:

- (a) in the second subparagraph of paragraph 6, the first sentence is replaced by the following:

‘In the case of acquisition of the assets of an establishment within the meaning of point 49 or point 51 of Article 2, only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration.’;

- (b) in paragraph 7, the first sentence is replaced by the following:

‘For aid granted to large undertakings for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years.’;

- (c) the following paragraphs 16 and 17 are added:

‘16. The beneficiary shall confirm that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two years preceding the application for aid and give a commitment that it will not do so up to a period of two years after the initial investment for which aid is requested is completed.

17. In the fisheries and aquaculture sector, aid shall not be granted to undertakings that have committed one or more of the infringements set out in Article 10(1)(a) to (d) and Article 10(3) of Regulation (EU) No 508/2014 of the European Parliament and of the Council (*) and for operations of Article 11 of that Regulation.

(*) Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).’;

(11) Article 15 is replaced by the following:

‘Article 15

Regional operating aid

1. Regional operating aid schemes in outermost regions, sparsely populated areas and very sparsely populated areas shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. In sparsely populated areas, the regional operating aid schemes shall compensate for the additional transport costs of goods which have been produced in areas eligible for operating aid, as well as additional transport costs of goods that are further processed in those areas, under the following conditions:

- (a) the aid is objectively quantifiable in advance on the basis of a fixed sum or per tonne/kilometre ratio or any other relevant unit;
- (b) the additional transport costs are calculated on the basis of the journey of the goods inside the national border of the Member State concerned using the means of transport which results in the lowest costs for the beneficiary.

The aid intensity shall not exceed 100 % of the additional transport costs as set out in this paragraph.

3. In very sparsely populated areas, the regional operating aid schemes shall prevent or reduce depopulation under the following conditions:

- (a) the beneficiaries have their economic activity in the area concerned;
- (b) the annual aid amount per beneficiary under all operating aid schemes does not exceed 20 % of the annual labour costs incurred by the beneficiary in the area concerned.

4. In outermost regions, the operating aid schemes shall compensate for the additional operating costs incurred in those regions as a direct result of one or several of the permanent handicaps referred to in Article 349 of the Treaty, where the beneficiaries have their economic activity in an outermost region provided that the annual aid amount per beneficiary under all operating aid schemes implemented under this Regulation does not exceed any of the following percentages:

- (a) 35 % of the gross value added annually created by the beneficiary in the outermost region concerned;
- (b) 40 % of the annual labour costs incurred by the beneficiary in the outermost region concerned;
- (c) 30 % of the annual turnover of the beneficiary realised in the outermost region concerned.;

(12) in Article 21, paragraph 16 is amended as follows:

- (a) The introductory phrase is replaced by the following:

‘A risk finance measure providing guarantees or loans to eligible undertakings or providing quasi-equity investments structured as debt in eligible undertakings, shall fulfil the following conditions:’;

- (b) point (b) is replaced by the following:

‘(b) in the case of loans and quasi-equity investments structured as debt, the nominal amount of the instrument is taken into account in calculating the maximum investment amount for the purposes of paragraph 9;’;

(13) in Article 22, paragraph 2 is replaced by the following:

‘2. Eligible undertakings shall be any unlisted small enterprise up to five years following its registration, which fulfils the following conditions:

- (a) it has not taken over the activity of another enterprise;
- (b) it has not yet distributed profits;
- (c) it has not been formed through a merger.

For eligible undertakings that are not subject to registration, the five year eligibility period may be considered to start from the moment when the enterprise either starts its economic activity or is liable to tax for its economic activity.

By way of derogation from point (c) of the first subparagraph, enterprises formed through a merger between undertakings eligible for aid under this Article shall also be considered eligible undertakings up to five years from the date of registration of the oldest enterprise participating in the merger.;

(14) in Article 25, paragraph 1 is replaced by the following:

‘1. Aid for research and development projects, including projects having received a Seal of Excellence quality label under the Horizon 2020 SME-instrument, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.;

(15) in Article 31(3), point (b) is replaced by the following:

‘(b) trainers’ and trainees’ operating costs directly relating to the training project such as travel expenses, accommodation costs, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project;’

(16) in Article 52, the following paragraph 2a is inserted:

‘2a. As an alternative to establishing the eligible costs as provided for in paragraph 2, the maximum amount of aid for a project may be established on the basis of the competitive selection process as required by paragraph 4.’

(17) Article 53 is amended as follows:

(a) in paragraph 2, point (a) is replaced by the following:

‘(a) museums, archives, libraries, artistic and cultural centres or spaces, theatres, cinemas, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;’

(b) paragraph 8 is replaced by the following:

‘8. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 6 and 7.’

(c) in paragraph 9, the first sentence is replaced by the following:

‘For the activities defined in paragraph 2(f), the maximum aid amount shall not exceed either the difference between the eligible costs and the project’s discounted revenues or 70 % of the eligible costs.’

(18) in Article 54(4), the second subparagraph is replaced by the following:

‘In both cases, the maximum expenditure subject to territorial spending obligations shall in no case exceed 80 % of the overall production budget.

For projects to be eligible for aid, a Member State may also require a minimum level of production activity in the territory concerned, but that level shall not exceed 50 % of the overall production budget.’

(19) in Article 55, paragraph 12 is replaced by the following:

‘12. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 10 and 11.’

(20) the following sections 14 and 15 are inserted after Article 56:

‘SECTION 14

Aid for regional airports

Article 56a

Aid for regional airports

1. Investment aid to an airport shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in paragraphs 3 to 14 of this Article and in Chapter I are fulfilled.

2. Operating aid to an airport shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in paragraphs 3, 4, 10 and 15 to 18 of this Article and in Chapter I are fulfilled.

3. The airport shall be open to all potential users. In the case of physical limitation of capacity, the allocation shall take place on the basis of pertinent, objective, transparent and non-discriminatory criteria.

4. The aid shall not be granted for the relocation of existing airports or for the creation of a new passenger airport, including the conversion of an existing airfield into a passenger airport.

5. The investment concerned shall not exceed what is necessary to accommodate the medium-term expected traffic on the basis of reasonable traffic forecasts.
6. The investment aid shall not be granted to an airport located within 100 kilometres or 60 minutes travelling time by car, bus, train or high-speed train from an existing airport from which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008, are operated.
7. Paragraphs 5 and 6 shall not apply to airports with average annual passenger traffic of up to 200 000 passengers during the two financial years preceding the year in which aid is actually granted if the investment aid is not expected to result in the airport increasing its average annual passenger traffic to above 200 000 passengers within two financial years following the granting of the aid. Investment aid granted to such airports shall comply either with paragraph 11 or with paragraphs 13 and 14.
8. Paragraph 6 shall not apply where the investment aid is granted to an airport situated within 100 kilometres from existing airports from which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008, are operated, provided the route between each of these other existing airports and the airport receiving the aid necessarily involves either a total travelling time by maritime transportation of at least 90 minutes or air transportation.
9. The investment aid shall not be granted to airports with average annual passenger traffic of more than three million passengers during the two financial years preceding the year in which aid is actually granted. The investment aid shall not be expected to result in the airport increasing its average annual traffic to above three million passengers within two financial years following the granting of the aid.
10. The aid shall not be granted to airports with average annual freight traffic of more than 200 000 tonnes during the two financial years preceding the year in which aid is actually granted. The aid shall not be expected to result in the airport increasing its average annual freight traffic to above 200 000 tonnes within two financial years following the granting of the aid.
11. The investment aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
12. The eligible costs shall be the costs relating to the investments in airport infrastructure, including planning costs.
13. The investment aid amount shall not exceed:
- (a) 50 % of eligible costs for airports with an average annual passenger traffic of one to three million passengers during the two financial years preceding the year in which aid is actually granted;
 - (b) 75 % of the eligible costs for airports with average annual passenger traffic of up to one million passengers during the two financial years preceding the year in which aid is actually granted.
14. The maximum aid intensities set out in paragraph 13 may be increased by 20 percentage points for airports located in remote regions.
15. Operating aid shall not be granted to airports with average annual passenger traffic of more than 200 000 passengers during the two financial years preceding the year in which aid is actually granted.
16. The amount of operating aid shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. The aid shall be granted either in the form of periodic instalments fixed *ex ante*, which shall not be increased during the period for which the aid is granted, or in the form of amounts defined *ex post* based on the observed operating losses.
17. Operating aid shall not be paid out in respect of any calendar year during which the annual passenger traffic of the airport exceeds 200 000 passengers.

18. The granting of the operating aid shall not be made conditional upon the conclusion of arrangements with specific airlines relating to airport charges, marketing payments or other financial aspects of the airlines' operations at the airport concerned.

SECTION 15

Aid for ports

Article 56b

Aid for maritime ports

1. Aid for maritime ports shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs shall be the costs, including planning costs, of:

- (a) investments for the construction, replacement or upgrade of port infrastructures;
- (b) investments for the construction, replacement or upgrade of access infrastructure;
- (c) dredging.

3. Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops, as well as for port superstructures shall not be eligible costs.

4. The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment or dredging. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

5. The aid intensity per investment referred to in point (a) of paragraph 2 shall not exceed:

- (a) 100 % of the eligible costs where total eligible costs of the project are up to EUR 20 million;
- (b) 80 % of the eligible costs where total eligible costs of the project are above EUR 20 million and up to EUR 50 million;
- (c) 60 % of the eligible costs where total eligible costs of the project are above EUR 50 million and up to the amount laid down in point (ee) of Article 4(1).

The aid intensity shall not exceed 100 % of the eligible costs determined in point (b) of paragraph 2 and point (c) of paragraph 2 up to the amount laid down in point (ee) of Article 4(1).

6. The aid intensities laid down in points (b) and (c) of the first subparagraph of paragraph 5 may be increased by 10 percentage points for investments located in assisted areas fulfilling the conditions of point (a) of Article 107(3) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of point (c) of Article 107(3) of the Treaty.

7. Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.

8. The aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.

9. For aid not exceeding EUR 5 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4, 5 and 6.

Article 56c

Aid for inland ports

1. Aid for inland ports shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs shall be the costs, including planning costs, of:
 - (a) investments for the construction, replacement or upgrade of port infrastructures;
 - (b) investments for the construction, replacement or upgrade of access infrastructure;
 - (c) dredging.
3. Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops, as well as for port superstructures shall not be eligible costs.
4. The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment or dredging. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
5. The maximum aid intensity shall not exceed 100 % of the eligible costs up to the amount laid down in point (ff) of Article 4(1).
6. Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.
7. The aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.
8. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4 and 5.;

(21) Article 58 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. This Regulation shall apply to individual aid granted before the respective provisions of this Regulation have entered into force where the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 9.;

- (b) the following paragraph 3a is inserted:

‘3a. Any individual aid granted between 1 July 2014 and 9 July 2017 in accordance with the provisions of this Regulation as applicable at the time of granting the aid shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty. Any individual aid granted before 1 July 2014 in accordance with the provisions of this Regulation, with the exception of Article 9, as applicable either before or after 10 July 2017 shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty.;

- (c) the following paragraph 5 is added:

‘5. If this Regulation is amended, any aid scheme exempted under this Regulation as applicable at the time of the entry into force of the scheme shall remain exempted during an adjustment period of six months.;

(22) In Annex II, Part II is replaced by the text in the Annex to this Regulation;

(23) Annex III is amended as follows:

- (a) footnote 2 is replaced by the following:

‘(2) Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).;

- (b) the first sentence of footnote 3 is replaced by the following:

‘Gross grant equivalent, or for measures under Articles 16, 21, 22 or 39 of this Regulation, the amount of the investment.’.

Article 2

In Article 7(1) of Regulation (EU) No 702/2014 the following sentence is added:

‘The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council (*), provided that the operation is at least partly financed through the EAFRD and that the category of costs is eligible according to the relevant exemption provision.

(*) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).’.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 June 2017.

For the Commission
Margrethe VESTAGER
Member of the Commission

ANNEX

PART II

to be provided through the established Commission IT application as laid down in Article 11

Please indicate under which provision of the GBER the aid measure is implemented.

Primary objective — General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME — bonuses in %
Regional aid — investment aid ⁽¹⁾ (Art. 14)	<input type="checkbox"/> Scheme	... %	... %
	<input type="checkbox"/> Ad hoc aid	... %	... %
Regional aid — operating aid (Art. 15)	<input type="checkbox"/> Transport costs of goods in eligible areas (Art. 15(2)(a))	... %	... %
	<input type="checkbox"/> Additional costs in outermost regions (Art. 15(2)(b))	... %	... %
<input type="checkbox"/> Regional urban development aid (Art. 16)		... national currency	... %
SME aid (Art. 17-18 - 19-20)	<input type="checkbox"/> Investment aid to SMEs (Art. 17)	... %	... %
	<input type="checkbox"/> Aid for consultancy in favour of SMEs (Art. 18)	... %	... %
	<input type="checkbox"/> Aid to SMEs for participation in fairs (Art. 19)	... %	... %
	<input type="checkbox"/> Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects (Art. 20)	... %	... %
SME aid — SMEs' access to finance (Art. 21-22)	<input type="checkbox"/> Risk finance aid (Art. 21)	... national currency	... %
	<input type="checkbox"/> Aid for start-ups (Art. 22)	... national currency	... %
<input type="checkbox"/> SME aid — Aid to alternative trading platforms specialised in SMEs (Art. 23)		... %; in case the aid measure takes the form of start-up aid: ... national currency	... %
<input type="checkbox"/> SME aid — Aid for scouting costs (Art. 24)		... %	... %
Aid for research, development and innovation (Arts. 25-30)	Aid for research and development projects (Art. 25)	<input type="checkbox"/> Fundamental research (Art. 25(2)(a))	... %
		<input type="checkbox"/> Industrial research (Art. 25(2)(b))	... %
		<input type="checkbox"/> Experimental development (Art. 25(2)(c))	... %
		<input type="checkbox"/> Feasibility studies (Art. 25(2)(d))	... %
	<input type="checkbox"/> Investment aid for research infrastructures (Art. 26)		... %

Primary objective — General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME — bonuses in %
	<input type="checkbox"/> Aid for innovation clusters (Art. 27)	... %	... %
	<input type="checkbox"/> Innovation aid for SMEs (Art. 28)	... %	... %
	<input type="checkbox"/> Aid for process and organisational innovation (Article 29)	... %	... %
	<input type="checkbox"/> Aid for research and development in the fishery and aquaculture sector (Art. 30)	... %	... %
<input type="checkbox"/> Training aid (Art. 31)		... %	... %
Aid for disadvantaged workers and workers with disabilities (Arts. 32-35)	<input type="checkbox"/> Aid for the recruitment of disadvantaged workers in the form of wage subsidies (Article 32)	... %	... %
	<input type="checkbox"/> Aid for the employment of workers with disabilities in the form of wage subsidies (Art. 33)	... %	... %
	<input type="checkbox"/> Aid for compensating the additional costs of employing workers with disabilities (Art. 34)	... %	... %
	<input type="checkbox"/> Aid for compensating the costs of assistance provided to disadvantaged workers (Art. 35)	... %	... %
Aid for Environmental protection (Arts. 36-49)	<input type="checkbox"/> Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards (Art. 36)	... %	... %
	<input type="checkbox"/> Investment aid for early adaptation to future Union standards (Art. 37)	... %	... %
	<input type="checkbox"/> Investment aid for energy efficiency measures (Art. 38)	... %	... %
	<input type="checkbox"/> Investment aid for energy efficiency projects in buildings (Art. 39)	... national currency	... %
	<input type="checkbox"/> Investment aid for high-efficiency cogeneration (Art. 40)	... %	... %
	<input type="checkbox"/> Investment aid for the promotion of energy from renewable sources (Art. 41)	... %	... %
	<input type="checkbox"/> Operating aid for the promotion of electricity from renewable sources (Art. 42)	... %	... %
	<input type="checkbox"/> Operating aid for the promotion of energy from renewable sources in small scale installation (Art. 43)	... %	... %
	<input type="checkbox"/> Aid in the form of reductions in environmental taxes under Directive 2003/96/EC (Art. 44)	... %	... %

Primary objective — General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME — bonuses in %
	<input type="checkbox"/> Investment aid for remediation of contaminated sites (Art. 45)	... %	... %
	<input type="checkbox"/> Investment aid for energy efficient district heating and cooling (Art. 46)	... %	... %
	<input type="checkbox"/> Investment aid for waste recycling and re-utilisation (Art. 47)	... %	... %
	<input type="checkbox"/> Investment aid for energy infrastructure (Art. 48)	... %	... %
	<input type="checkbox"/> Aid for environmental studies (Art. 49)	... %	... %
<input type="checkbox"/> Aid schemes to make good the damage caused by certain natural disasters (Art. 50)	Maximum aid intensity	... %	... %
	Type of natural disaster	<input type="checkbox"/> earthquake <input type="checkbox"/> avalanche <input type="checkbox"/> landslide <input type="checkbox"/> flood <input type="checkbox"/> tornado <input type="checkbox"/> hurricane <input type="checkbox"/> volcanic eruption <input type="checkbox"/> wild fire	
	Date of occurrence of the natural disaster	dd/mm/yyyy to dd/mm/yyyy	
<input type="checkbox"/> Social aid for transport for residents of remote regions (Art. 51)		... %	... %
<input type="checkbox"/> Aid for broadband infrastructures (Art. 52)		... national currency	... %
<input type="checkbox"/> Aid for culture and heritage conservation (Art. 53)		... %	... %
<input type="checkbox"/> Aid schemes for audiovisual works (Art. 54)			
		... %	... %
<input type="checkbox"/> Aid for sport and multifunctional recreational infrastructures (Art. 55)		... %	... %
<input type="checkbox"/> Investment aid for local infrastructures (Art. 56)		... %	... %
<input type="checkbox"/> Aid for regional airports (Art. 56a)		... %	... %
<input type="checkbox"/> Aid for maritime ports (Art. 56b)		... %	... %
<input type="checkbox"/> Aid for inland ports (Art. 56c)		... %	... %

(¹) In the case of *ad hoc* regional aid supplementing aid awarded under aid scheme(s), please indicate both the aid intensity granted under the scheme and the intensity of the *ad hoc* aid.

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1085**of 19 June 2017****amending Regulation (EC) No 891/2009 opening and providing for the administration of certain Community tariff quotas in the sugar sector**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 187 thereof,

Whereas:

- (1) An Agreement in the form of an Exchange of Letters between the European Union and the Federative Republic of Brazil pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedule of the Republic of Croatia in the course of its accession to the European Union ⁽²⁾ ('the Agreement') was signed on 25 November 2016. Its signature on behalf of the European Union was authorised by Council Decision (EU) 2016/1995 ⁽³⁾ and its conclusion by Council Decision (EU) 2017/730 ⁽⁴⁾.
- (2) Under the terms of the Agreement, the European Union is to allocate an additional 78 000 tonnes to the present allocation for Brazil under the EU tariff rate quota 'Raw Cane sugar, for refining', tariff item 1701.13.10 and 1701.14.10, maintaining the present in quota rate of EUR 98 per tonne, and to allocate an additional 36 000 tonnes to the present allocation under the 'Any third country' part of the EU tariff rate quota 'Raw Cane sugar, for refining', tariff item 1701.13.10 and 1701.14.10, maintaining the present in quota rate of EUR 98 per tonne.
- (3) As regards the volume of 78 000 tonnes allocated to Brazil under the EU tariff rate quota, the Agreement further provides that the European Union is to autonomously apply an in quota rate of no more than EUR 11 per tonne for the first six years during which this volume is available and an in quota rate of no more than EUR 54 per tonne in the seventh year.
- (4) Commission Regulation (EC) No 891/2009 ⁽⁵⁾ provides for the opening and the administration of tariff quotas in the sugar sector, including those originating in Brazil and Any third country. To implement the tariff quotas for sugar laid down in the Agreement, it is therefore necessary to amend that Regulation accordingly.
- (5) The proposed amendments should apply from the date of entry into force of the Agreement.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of Agricultural Markets,

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Agreement in the form of an Exchange of Letters between the European Union and the Federative Republic of Brazil pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedule of the Republic of Croatia in the course of its accession to the European Union (OJ L 108, 26.4.2017, p. 3).

⁽³⁾ Council Decision (EU) 2016/1995 of 11 November 2016 on the signing, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Federative Republic of Brazil pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedule of the Republic of Croatia in the course of its accession to the European Union (OJ L 308, 16.11.2016, p. 1).

⁽⁴⁾ Council Decision (EU) 2017/730 of 25 April 2017 on the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and the Federative Republic of Brazil pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedule of the Republic of Croatia in the course of its accession to the European Union (OJ L 108, 26.4.2017, p. 1).

⁽⁵⁾ Commission Regulation (EC) No 891/2009 of 25 September 2009 opening and providing for the administration of certain Community tariff quotas in the sugar sector (OJ L 254, 26.9.2009, p. 82).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 891/2009 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date of entry into force of the Agreement.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 June 2017.

For the Commission
The President
Jean-Claude JUNKER

ANNEX

In Annex I to Regulation (EC) No 891/2009, Part I: CXL concessions sugar is replaced by the following:

Part I: CXL concessions sugar

Third country	Order number	CN code	Quantities (tonnes)	In quota rate (EUR/tonne)
Australia	09.4317	1701 13 10 and 1701 14 10	9 925	98
Cuba	09.4319	1701 13 10 and 1701 14 10	68 969	98
Any third country	09.4320	1701 13 10 and 1701 14 10	289 977 ⁽¹⁾	98
India	09.4321	1701	10 000	0

⁽¹⁾ For the marketing year 2016/2017, the quantity shall be 262 977 tonnes.

Third country	Order number	CN code	Marketing Year	Quantities (tonnes)	In quota rate (EUR/tonne)
Brazil	09.4318	1701 13 10 and 1701 14 10	2016/2017 until 2023/2024	334 054	98
	09.4318	1701 13 10 and 1701 14 10	From 2024/2025	412 054	98
	09.4329	1701 13 10 and 1701 14 10	2016/2017	19 500	11
			2017/2018	78 000	11
			2018/2019	78 000	11
			2019/2020	78 000	11
			2020/2021	78 000	11
			2021/2022	78 000	11
			2022/2023	58 500	11
	09.4330	1701 13 10 and 1701 14 10	2022/2023	19 500	54
			2023/2024	58 500	54'

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1086**of 19 June 2017****amending Regulation (EC) No 634/2007 as regards the characterisation of selenomethionine produced by *Saccharomyces cerevisiae* NCYC R397****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾ and in particular Article 13(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 634/2007 ⁽²⁾ as amended by Commission Implementing Regulation (EU) No 427/2013 ⁽³⁾ authorises selenomethionine produced by *Saccharomyces cerevisiae* NCYC R397 as a feed additive.
- (2) The Commission received an application requesting a modification of the conditions of the authorisation as regards the characterisation of the feed additive. That application was accompanied by the relevant supporting data. The Commission forwarded that application to the European Food Safety Authority ('the Authority'). The applicant initially requested the inclusion of the selenocysteine content in the characterisation of the additive but finally withdrew this change; thus the application concerns merely an increase of the maximum selenium content in the current authorisation of the additive.
- (3) The Authority concluded in its opinion of 20 October 2016 ⁽⁴⁾ that the requested modification would not affect the safety and efficacy of the product, recalling the risk for user safety of the product. The current authorisation act contains a provision to adequately address this risk.
- (4) The assessment of the modified preparation shows that it satisfies the conditions for authorisation, provided for in Article 5 of Regulation (EC) No 1831/2003.
- (5) Regulation (EC) No 634/2007 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EC) No 634/2007

In the fourth column of the Annex to Regulation (EC) No 634/2007, the text between the heading 'Characterisation of the additive' and the heading 'Analytical method' is replaced by the following:

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Regulation (EC) No 634/2007 of 7 June 2007 concerning the authorisation of selenomethionine produced by *Saccharomyces cerevisiae* NCYC R397 as a feed additive (OJ L 146, 8.6.2007, p. 14).

⁽³⁾ Commission Implementing Regulation (EU) No 427/2013 of 8 May 2013 concerning the authorisation of selenomethionine produced by *Saccharomyces cerevisiae* NCYC R646 as a feed additive for all animal species and amending Regulations (EC) No 1750/2006, (EC) No 634/2007 and (EC) No 900/2009 as regards the maximum supplementation with selenised yeast (OJ L 127, 9.5.2013, p. 20).

⁽⁴⁾ EFSA Journal 2016;14(11):4624.

‘Organic selenium mainly selenomethionine (63 %) content of 2 000 to 3 500 mg Se/kg (97 to 99 % of organic selenium)’.

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation is binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

DECISIONS

COUNCIL DECISION (CFSP) 2017/1087

of 19 June 2017

amending Decision 2014/386/CFSP concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 23 June 2014, the Council adopted Decision 2014/386/CFSP ⁽¹⁾.
- (2) The Council does not recognise and continues to condemn the illegal annexation of Crimea and Sevastopol by the Russian Federation and will remain committed to fully implement its non-recognition policy.
- (3) On the basis of a review of Decision 2014/386/CFSP, the restrictive measures should be renewed until 23 June 2018.
- (4) Decision 2014/386/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The second paragraph of Article 5 of Decision 2014/386/CFSP is replaced by the following:

‘This Decision shall apply until 23 June 2018.’.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 19 June 2017.

For the Council

The President

F. MOGHERINI

⁽¹⁾ Council Decision 2014/386/CFSP of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (OJ L 183, 24.6.2014, p. 70).

COMMISSION DECISION (EU) 2017/1088**of 24 March 2017****on State aid SA. 35484 (2013/C) (ex SA. 35484 (2012/NN)) regarding certain research sub-measures financed pursuant to the Milk and Fat Law***(notified under document C(2017) 1863)***(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 observations pursuant to the provision cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By letters dated 28 November 2011 and 27 February 2012, 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 26 of Council Regulation (EU) 2015/1589 ⁽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 Milk and Fat Law (Gesetz über den Verkehr mit Milch, Milcherzeugnissen und Fetten, hereinafter: '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 the 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 ⁽³⁾ the Commission informed Germany that it had decided to initiate with regard to certain sub-measures under the MFG the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) (hereinafter: 'the opening Decision'). In the same letter, the Commission came to the conclusion that other sub-measures were compatible with the internal market, either during the period from 28 November 2001 to 31 December 2006 or in the period starting 1 January 2007 or in both periods, or that further sub-measures did not constitute State aid within the meaning of Article 107(1) TFEU or that they fell outside the scope of State aid rules.
- (4) As regards the sub-measures that are subject to this Decision, namely the research sub-measures referred to in the opening Decision as sub-measures BY2, BY11, BY12 and BY13 (hereinafter 'the sub-measures') the Commission stated that those sub-measures appeared to have all the characteristics of State aid and that the eligible costs corresponded to the eligible costs allowed under the applicable State aid rules (see recitals 203 and 209 of the opening Decision).
- (5) However, the Commission had not received sufficient information from Germany on the aid intensity, in particular whether the aid intensity corresponded to the rates allowed pursuant to the applicable State aid rules (see recitals 204, 205, 210 and 211 of the opening Decision) and consequently expressed doubts on the compatibility of the sub-measures with the internal market (see recitals 206 and 212 of the opening Decision). Therefore, the Commission requested Germany to submit its comments and to provide all information which may be helpful for the assessment of the aid concerning the period as from 28 November 2001 (see recital 276 of the opening Decision).

⁽¹⁾ OJ C 7, 10.1.2014, p. 8.

⁽²⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

⁽³⁾ C(2013) 4457 final, corrected by letter of 16 December 2013 (C(2013) 9021 final).

- (6) By letter dated 20 September 2013, Germany submitted comments concerning the opening Decision. By letters dated 22 September 2016 and 25 October 2016 the Bavarian Ministry of Agriculture submitted additional explanations.
- (7) The opening Decision was published in the *Official Journal of the European Union* ⁽⁴⁾. The Commission invited interested parties to submit their comments within one month. The Commission did not received specific comments from interested parties on the sub-measures.

2. DESCRIPTION OF THE SUB-MEASURES

- (8) The MFG is a German Federal law which entered into force in 1952. It is a framework law and its validity is unlimited in time.
- (9) Section 22(1) of the MFG authorises the German Federal States (hereinafter: 'Länder') to impose a milk levy on dairies based on the quantities of delivered milk.
- (10) Section 22(2) of the MFG provides that the revenues obtained from the milk levy may be used solely for:
 - (a) improving and sustaining quality on the basis of certain implementing provisions;
 - (b) improving hygiene during milking and the delivery, processing and distribution of milk and milk products;
 - (c) milk yield recording;
 - (d) advice to operators on matters relating to the dairy industry and ongoing training of young employees;
 - (e) advertising aimed at increasing the consumption of milk and milk products;
 - (f) performance of the tasks conferred by the MFG.
- (11) Section 22(2a) of the MFG provides that, by derogation from paragraph 2, the revenues obtained from the milk levy may also be used for:
 - (a) reducing increased structural collection costs in respect of the supply of milk and cream from the producer to the dairy,]
 - (b) reducing 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 dairy's sales area, and
 - (c) improving quality regarding the central distribution of milk products.
- (12) In Bavaria the collection and use of the milk levy was regulated in the Bavarian Regulation on a milk levy (Bayerische Milchumlageverordnung).
- (13) In Bavaria the milk levy was used to finance the research sub-measures referred to in recital 4, namely:

BY 2 — 'Die Erhöhung des Milchproteingehaltes durch Management und Züchtung: Eine Perspektive für Milcherzeuger, Verbraucher und Industrie' (The increase in milk protein content by Management and Breeding: A perspective for dairy farmers, consumers and industry);

BY 11 — 'Förderung der Anpassung von Untersuchungsmethoden zur Bearbeitung spezifischer Fragestellungen sowie der Methodenentwicklung in Kooperation mit Forschungseinrichtungen und der Nutzbarmachung und des Transfers wissenschaftlicher Erkenntnisse für die bayerische Milchwirtschaft' (Promoting the adaptation of investigative methods to process specific issues and the development of methods in cooperation with research institutions and transfer of scientific knowledge for the Bavarian dairy industry)

⁽⁴⁾ See reference in footnote 1.

BY 12 — Entwicklung einer anti-listeriellen, frühen Oberflächenreifungskultur für geschmierte Käse (Development of an anti-listerial maturation substance for cheese);

BY 13 — ‘Überwachung von antimikrobiellen Rückständen der Milch — Etablierung des neuen Biosensor-Systems MCR3 für Routineuntersuchungen in der Praxis’ (Monitoring of antimicrobial residues in milk — establishment of the new biosensor system MCR3 for routine testing in practice).

The last sub-measure was also financed from the Bavarian State budget.

(14) The specific legal basis for the implementation of the sub-measures included also:

- the Budget Rules of Bavaria (Bayerische Haushaltsordnung), in particular Articles 23 and 44 as well as the relevant administrative provisions (Verwaltungsvorschriften);
- the biannual budget plan of the Bavarian Ministry of Agriculture, including the chapter for the expenditure from the ‘Special Fund Milk and Fat’ (Sondervermögen Milch und Fett);
- the administrative legal acts of the Bavarian Ministry of Agriculture to authorise the research projects and the expenditures (Ausgabeermächtigung).

(15) The decisions as to what kind of research projects are to be performed and financed with the milk levy were adopted by a special decision-making procedure involving different decision making levels: The board of the State Association of the Bavarian Dairy Industry (Vorstand der Landesvereinigung der bayerischen Milchwirtschaft) issues a list of pre-selected projects and submits it to the vote of the general assembly (Mitgliederversammlung) of that association. The general assembly votes also on the planned project’s budget. Based on that vote and on the biannual Budget plan of the Bavarian Ministry of Agriculture the Ministry issues administrative legal acts to authorise the expenditures for the selected research projects (Ausgabeermächtigung). A separate decision is taken for each project.

3. COMMENTS FROM GERMANY

(16) Germany provided the following information as regards the compatibility conditions requested in the opening Decision:

BY 2 — ‘Die Erhöhung des Milchproteingehaltes durch Management und Züchtung: Eine Perspektive für Milcherzeuger, Verbraucher und Industrie’ (The increase in milk protein content by Management and Breeding: A perspective for dairy farmers, consumers and industry):

(17) The project was carried out between 2008 and 2012. The beneficiary was the Technische Universität München.

(18) The overall budget of the project was 600 000 EUR. The financial means are broken down as follows:

Table 1

Source	EUR per year	EUR overall	% of the total
Own recourses of the beneficiary	20 000	100 000	16,67
Group of undertakings Theo Müller	75 000	350 000	58,33
Milk Levy (MFG)	35 000	150 000	25

- (19) The aid amount coming from the milk levy was EUR 150 000 and represented 25 % of the overall budget for the research project.

BY 11 — 'Förderung der Anpassung von Untersuchungsmethoden zur Bearbeitung spezifischer Fragestellungen sowie der Methodenentwicklung in Kooperation mit Forschungseinrichtungen und der Nutzbarmachung und des Transfers wissenschaftlicher Erkenntnisse für die bayerische Milchwirtschaft' (Promoting the adaptation of investigative methods to process specific issues and the development of methods in cooperation with research institutions and transfer of scientific knowledge for the Bavarian dairy industry):

- (20) The aim of the project was to modernise the existing milk analysis methods and questionnaires for specific milk related questions. The results of the research project were meant to be used by the milk undertakings in Bavaria in the milk production and processing of milk products.
- (21) The project was carried out between 2002 and 2011. The aid was granted annually.
- (22) The budget of the project and the aid amount were as follows:

Table 2

Period 2002-2006

Year	2002	2003	2004	2005	2006
Project budget (EUR)	332 505,30	416 945,14	616 483,19	812 433,90	587 072,90
Aid amount(EUR)	222 261,52	288 240,39	423 429,64	564 887,80	391 124,32
Aid intensity (%)	66,84	69,13	68,68	69,53	66,62

Table 3

Period 2007-2012

Year	2007	2008	2009	2010	2011	2012
Project budget (EUR)	378 169,60	324 134,53	376 916,07	369 009,52	409 803,32	343 753,57
Aid amount(EUR)	273 898,60	240 292,53	274 014,01	268 866,52	301 076,32	257 259,72
Aid intensity (%)	72,43	74,13	72,70	72,86	73,47	74,84

- (23) The beneficiary was Milchwirtschaftlicher Verein Allgäu-Schwaben e. V., a medium-sized enterprise ⁽⁵⁾ (hereinafter: 'SME'). The results of the research were presented on various national and international events as well as in numerous national and international scientific journals ⁽⁶⁾.

⁽⁵⁾ According to the information submitted by Germany the beneficiary employed in 2011 154 employees and had an annual turnover of EUR 9,05 Mio.

⁽⁶⁾ The list with publications submitted by the Bavarian Ministry of Agriculture is registered with the Commission under Ref. Ares(2016)5503557 — 22 September 2016.

BY 12 — Entwicklung einer anti-listeriellen, frühen Oberflächenreifungskultur für geschmierte Käse
(Development of an anti-listerial maturation substance for cheese):

- (24) In its letter dated 20 September 2013 Germany explained that initially it made wrong description of the project which was considered for the purposes of the opening Decision. This mistake resulted from confusion with another project with similar title that was entirely privately financed. Germany provided new information on the project that was financed from the milk levy as follows:
- (25) The aim of the project was to search for interlinks between listeria monocytogens and red lubrication maturation bacteria. The project served basic microbial research. As a result, an extraordinary inhibitory potential of some strains of *Pichia norvegensis* against *Listeria monocytogenes* was demonstrated — a finding that had not been previously described scientifically. The result could not be immediately used in the production of cheese as the underlying molecular nature of the inhibitory principle had to be further clarified.
- (26) The project was carried out between 2006 and 2008. The budget of the project was 30 000 EUR. It was financed entirely from the milk levy.
- (27) The beneficiary was Technische Universität München, a public non-profit making higher education entity.

BY 13 — 'Überwachung von antimikrobiellen Rückständen der Milch — Etablierung des neuen Biosensor-Systems MCR3 für Routineuntersuchungen in der Praxis' (Monitoring of antimicrobial residues in milk — establishment of the new biosensor system MCR3 for routine testing in practice):

- (28) The project was carried out in years 2010 and 2011. The eligible costs amounted to 73 234,58 EUR. The aid was granted in 2010 and originated from two sources: from the milk levy and from the Bavarian State budget (Cluster Ernährung). The aid amount paid from the milk levy was 26 500 EUR, and the aid amount paid from Cluster Ernährung was 26 500 EUR. Thus, the aid intensity was 72,4 %.
- (29) The beneficiary was Milchprüfing Bayern e. V., an SME ⁽⁷⁾. The results of the research were presented on various national and international events as well as in numerous national and international scientific journals ⁽⁸⁾.

4. ASSESSMENT OF THE EXISTENCE OF STATE AID

- (30) In the opening Decision the Commission has taken the view that the sub-measures appeared to have all the characteristics of State aid.
- (31) Article 107(1) TFEU lays down that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between Member States is incompatible with the internal market.

4.1. Aid granted by the State or through State resources

- (32) The aid was granted predominantly from the milk levy. In the case of sub-measure BY13 aid was also granted from the State budget of Bavaria.
- (33) The financial resources coming from the State budget of Bavaria constitute State resources. The financial resources coming from the milk levy are also considered State resources within the meaning of Article 107(1) TFEU for the following reasons:

⁽⁷⁾ According to the information submitted by Germany the beneficiary employed in 2011 158 employees and had a turnover of EUR 14,6 Mio.

⁽⁸⁾ The list with publications submitted by the Bavarian Ministry of Agriculture is registered with the Commission under Ref. Ares(2016)5503557 — 22 September 2016.

- (34) 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. 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.
- (35) With regard to the measures described above, it is apparent that the levy is collected on the basis of a Federal law, the MFG, in conjunction with the Bavarian regulation on a milk levy.
- (36) Specifically, the first sentence of Section 22(1) of the MFG provides that the governments of the Länder, acting in consultation with the Land association or professional organisations, may collect levies jointly from dairies, milk collection centres and creameries in order to promote the dairy industry.
- (37) Under the second sentence of Section 22(1) of the MFG, the governments of the Länder may, if requested to do so by association or professional organisations, collect joint levies of up to 0,2 cents per kilogram of delivered milk. Therefore, the sovereignty over the levy lies clearly with the governments of the Länder.
- (38) The legal basis for the collection of a milk levy in Bavaria is provided by the Bavarian regulation on a milk levy which governs the detailed arrangements, including the amount of the levy. As a consequence, the collection of a milk levy is regulated by the Bavarian government, ergo by the State. That conclusion is not altered by the fact that the regulation in question is issued in consultation with the respective Land association representing the dairy industry.
- (39) In the case at hand, a levy is collected from private undertakings — dairies. The revenue from this levy flows into the Bavarian budget before being used for financing the research sub-measures. Therefore, it is considered as being under public control.
- (40) The Commission concludes that the measures financed by the milk levy fund are granted by State resources and are imputable to the State.

4.2. Undertakings/Selective advantage

- (41) The beneficiaries were the following: Technische Universität München (sub-measure BY 2 and BY 12), Milchwirtschaftlicher Verein Allgäu-Schwaben e. V. (sub-measure BY 11) and Milchprüfing Bayern e. V. (sub-measure BY 13).
- (42) The Technische Universität München is a public research organisation. In case of sub-measure BY 2 it has to be considered as an undertaking because it performed an economic activity, namely contract research in the agricultural field with the objective to deliver practical results to be used in the milk production by milk farmers and the dairies. The economic nature of the activity is underlined by the fact that private undertakings (group of undertakings Theo Miller, see recital 18) were also involved in the financing of the research project. It can be concluded that the research organisation performed contract research and supplied research results to business undertakings.
- (43) In case of sub-measure BY 12 the Technische Universität München has to be considered as not being an undertaking because it performed a non-economic activity, namely the conduct of independent research for more fundamental knowledge in the microbial field. As pointed out in recital 24 Germany submitted new information on this sub-measure that was not evaluated in the opening Decision. According to the new information the research project under sub-measure BY 12 relates to independent research, namely basic microbial research with no direct practical implementation.
- (44) Milchwirtschaftlicher Verein Allgäu-Schwaben e. V. (sub-measure BY 11) and Milchprüfing Bayern e. V. (sub-measure BY 13) are forms of organisations of the representatives of the milk production and industry in Bavaria having a private legal nature that perform different economic activities and services under contact of interest for the Bavarian milk producers, milk processors and other business operators in the dairy sector. In the context of sub-measures BY 11 and BY 13 they performed contract research in the agricultural field with the objective to deliver practical results to be used in the milk production by the milk farmers and the dairies. They are qualified as SMEs by Germany.

- (45) The three selected beneficiaries in their capacity as undertakings received a selective advantage as project costs that form part of their economic activity and that normally had to be borne by their own budget were covered by means originating from the state budget and the milk levy.

4.3. Distortion of competition and effect on trade

- (46) 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 ⁽⁹⁾. Aid for an undertaking that operates in a market open to intra-Union trade is likely to affect trade between Member States ⁽¹⁰⁾. There was substantial intra-Union trade in agricultural products in the period 2001-2012. For example, imports and exports of products falling under heading 0401 of the Combined Nomenclature (milk and cream, not concentrated nor containing added sugar or other sweeteners) ⁽¹¹⁾ were worth EUR 1,2 billion and EUR 957 million respectively in 2011 ⁽¹²⁾.
- (47) The sub-measures assessed in this Decision are aimed at supporting industrial contract research activities in the agricultural sector, in particular the dairy sector. 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.

4.4. Conclusion on the existence of aid

- (48) It can be concluded therefore that sub-measures BY2, BY11 and BY13 qualify as State aid within the meaning of Article 107(1) TFEU, whereas sub-measure BY12 does not qualify as State aid because the beneficiary did not perform an economic activity.

5. ASSESSMENT OF THE LAWFULNESS OF AID

- (49) Pursuant to Article 108(3) TFEU Member States have the obligation to inform the Commission about any plan to grant aid and shall not put such aid into effect until the Commission authorise it as compatible (stand still obligation). Germany has not notified sub-measures BY2, BY11 and BY13 to the Commission prior to their implementation.
- (50) Sub-measures BY2, BY11 and BY13 constitute new aid within the meaning of point (c) of Article 1 of Regulation (EU) 2015/1589. None of the criteria of existing aid are fulfilled. In particular, the aid is not existing within the meaning of point (b)(i) of Article 1 of Regulation (EU) 2015/1589 because it was put into effect after the entry into the force of the TFEU (sub-measure BY 2 was put into effect in 2008, sub-measure BY 11 was put into effect in 2002 and sub-measure BY 13 was put into effect in 2010) and the limitation period of 10 years has not expired (the limitation period was interrupted on 28 November 2011, see recital 152 of the opening Decision).
- (51) Consequently, as these new aids were not notified to the Commission prior to their implementation they are unlawful.

6. ASSESSMENT OF THE COMPATIBILITY OF THE SUB-MEASURES

- (52) 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 common interest.
- (53) In accordance with the Commission notice on the determination of the rules applicable to the assessment of unlawful aid ⁽¹³⁾, any unlawful aid, i.e. aid put into effect in contravention of Article 108(3) TFEU, is to be assessed in accordance with the rules applicable at the time the aid was granted.

⁽⁹⁾ Judgment of 17 September 1980, Philip Morris Holland BV v Commission, 730/79, EU:C:1980:209, paragraphs 11 and 12.

⁽¹⁰⁾ See, in particular, Judgment of 13 July 1988, French Republic v Commission, 102/87, EU:C:1988:391.

⁽¹¹⁾ 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.

⁽¹²⁾ Source: Eurostat.

⁽¹³⁾ Commission notice on the determination of the applicable rules for the assessment of unlawful State aid (OJ C 119, 22.5.2002, p. 22).

- (54) Specific guidelines have been adopted for research aid. Aid granted during the period between 28 November 2001 and 31 December 2006 is to be assessed in the light of the Community framework for state aid for research and development ⁽¹⁴⁾ (hereinafter: 'Community Framework 1996'). Aid granted after 1 January 2007 is to be assessed in the light of the Community framework for state aid for research and development and innovation ⁽¹⁵⁾ (hereinafter: 'Community Framework 2007-2013').
- (55) The sub-measures BY2, BY11 and BY13 qualify as industrial research as defined under the second indent of Annex I to the Community Framework 1996 and in point 2.2(f) of the Community Framework 2007-2013 as those sub-measures were aimed at significant improvements and acquisition of knowledge on dairy products and production processes and had practical implications for the dairy sector. The results of these research projects were directly useable by the undertakings in the dairy sector in their production cycles as they aimed to achieve better quality of the produced milk products. For example the research project under sub-measure BY 2 related to increase in milk protein content and private undertakings were directly involved in this project; the research project under sub-measure BY 11 related to modern milk quality analysis and the research project under sub-measure BY 13 related to establishment of the new biosensor system for routine testing in practice.
- (56) The compatibility of the eligible costs has already been positively assessed in the opening Decision (see recitals 203 and 209 of the opening Decision). Therefore, the aid intensity remains to be assessed (see recitals 204, 205, 210 and 211 of the opening Decision) (see recital 5 of this decision).

Sub-measure BY 2

- (57) Sub-measure BY 2 has to be assessed in the light of the Community Framework 2007-2013 since the aid was granted for the period 2008-2012.
- (58) Pursuant to point 5.1.2(b) of the Community Framework 2007-2013, an aid intensity of up to 50 % is allowed for industrial research. The aid intensity for sub-measure BY 2 was 25 % (see recital 19 of this Decision) and thus within the allowed legal limit.
- (59) It can therefore be concluded that the sub-measure BY 2 is compatible with the internal market as the aid intensity specified in point 5.1.2(b) of the Community Framework 2007-2013 is complied with.

Sub-measure BY 11

- (60) Since sub-measure BY 11 was granted between the year 2002 and the year 2011, that aid has to be assessed in the light of both guidelines for research aid: the Community Framework 1996 for the period of implementation from 28 November 2001 to 31 December 2006 and the Community Framework 2007-2013 for the period of implementation from 1 January 2007 to 31 December 2011.
- (61) Over the period of implementation from 28 November 2001 to 31 December 2006 the aid intensity allowed for industrial research was 50 % (point 5.3 of the Community Framework 1996). Additional 10 percentage points were allowed where the aid was given to a SME (point 5.10.1 of the Community Framework 1996). Another increase of 10 percentage points was allowed where the project results were widely disseminated and published (point 5.10.4(c) of the Community Framework 1996). The aid granted under sub-measure BY 11 complies with those aid intensity rules as that aid was granted to SMEs and the results were presented at different international and national scientific events and publications and amounted to less than 70 % of the eligible costs (see recital 22 and table 2 of this Decision).
- (62) Over the period of implementation from 1 January 2007 to 31 December 2011 the aid intensity allowed for industrial research was 50 % (point 5.1.2(b) of the Community Framework 2007-2013). Additional 10 percentage points were allowed where the aid was given to an SME (point 5.1.3(a) of the Community Framework 2007-2013). Another increase of 15 percentage points up to a maximum aid intensity of 80 % was allowed where the project results were widely disseminated and published (point 5.1.3(c) of the Community Framework 2007-2013). The aid granted under sub-measure BY 11 complies with those aid intensity rules as that aid was granted to SMEs and the results were presented at different international and national scientific events and publications and amounted to less than 75 % of the eligible costs (see recital 21 and table 3 of this Decision).

⁽¹⁴⁾ Community framework for state aid for research and development (OJ C 45, 17.2.1996, p. 5).

⁽¹⁵⁾ Community framework for state aid for research and development and innovation (OJ C 323, 30.12.2006, p. 1).

- (63) The beneficiary, Milchwirtschaftlicher Verein Allgäu-Schwaben e. V, qualifies as SME as its number of employees and annual turnover are below the thresholds established in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽¹⁶⁾ (see recital 23). The list of different international and national scientific events and publications referred to in the same recital mentions about 38 public lectures and 29 publications.

Sub-measure BY13

- (64) Sub-measure BY 13 has to be assessed in the light of the Community Framework 2007-2013 since the aid was granted in 2010.
- (65) The aid intensity allowed for industrial research was 50 % (point 5.1.2(b) of the Community Framework 2007-2013). Additional 10 percentage points were allowed where the aid was given to an SME (point 5.1.3(a) of the Community Framework 2007-2013). Another increase of 15 percentage points up to a maximum aid intensity of 80 % was allowed where the project results were widely disseminated and published (point 5.1.3(c) of the Community Framework 2007-2013). The aid granted under sub-measure BY 13 complies with those aid intensity rules as that aid was granted to SMEs and the results were presented at different international and national scientific events and publications and amounted to less than 75 % of the eligible costs (see recitals 26 and 27 of this Decision).
- (66) The beneficiary, Milchprüfing Bayern e. V, qualifies as SME as its number of employees and annual turnover are below the thresholds established in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽¹⁷⁾ (see recital 29). The list of different international and national scientific events and publications referred to in the same recital mentions about 12 public lectures and 12 publications.

Conclusion on the compatibility of the aid sub-measures

- (67) It can be concluded therefore that sub-measures BY 2, BY 11 and BY 13 are compatible with the internal market,

HAS ADOPTED THIS DECISION:

Article 1

Sub-measure BY 12 does not constitute State aid within the meaning of Article 107(1) TFEU.

Article 2

State aid granted unlawfully by Germany for the period between 28 November 2001 and 31 December 2012 for sub-measures BY 2, BY 11, and BY 13 in breach of Article 108(3) TFEU is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 24 March 2017.

For the Commission
Phil HOGAN
Member of the Commission

⁽¹⁶⁾ OJ L 124, 20.5.2003, p. 36.

⁽¹⁷⁾ OJ L 124, 20.5.2003, p. 36.

COMMISSION IMPLEMENTING DECISION (EU) 2017/1089**of 16 June 2017****amending Annex II to Decision 2006/766/EC as regards the inclusion of the former Yugoslav Republic of Macedonia, Georgia and the Republic of Kiribati in the list of third countries and territories from which imports of certain fishery products for human consumption are permitted***(notified under document C(2017) 4049)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽¹⁾, and in particular Article 11(1) thereof,

Whereas:

- (1) Regulation (EC) No 854/2004 lays down specific rules for the organisation of official controls on products of animal origin. In particular, it provides that products of animal origin are to be imported only from a third country or part of a third country that appears on a list drawn up in accordance with that Regulation.
- (2) Regulation (EC) No 854/2004 also provides that when drawing up and updating such lists, account is to be taken of Union controls in third countries and guarantees by the competent authorities of third countries as regards compliance or equivalence with Union feed and food law and animal health rules specified in Regulation (EC) No 882/2004 of the European Parliament and of the Council ⁽²⁾.
- (3) Commission Decision 2006/766/EC ⁽³⁾ lists those third countries which satisfy the criteria referred to in Regulation (EC) No 854/2004 and are therefore able to guarantee that those products meet the sanitary conditions laid down in Union legislation to protect the health of consumers and can accordingly be exported to the Union. In particular, Annex II to that Decision sets out a list of third countries and territories from which imports into the Union of fishery products for human consumption are permitted. That list also indicates restrictions concerning such imports from certain third countries.
- (4) The competent authorities of the former Yugoslav Republic of Macedonia and Georgia asked the Commission for the authorisation of imports of fishery products into the Union. Union controls in the former Yugoslav Republic of Macedonia and in Georgia have taken place and demonstrate that the competent authorities provides appropriate guarantees as specified in Article 48(3) of Regulation (EC) No 882/2004. On the basis of the available information and guarantees, the former Yugoslav Republic of Macedonia and Georgia can be included in the list of Annex II to Decision 2006/766/EC for fishery products.
- (5) The competent authorities of the Republic of Kiribati asked the Commission for the authorisation of imports of fishery products into the Union. The competent authorities of the Republic of Kiribati provided written guarantees that are considered appropriate as specified in Article 48(3) of Regulation (EC) No 882/2004. On the basis of the available information and on the basis of those guarantees, the Republic of Kiribati can be included in the list of Annex II to Decision 2006/766/EC for fishery products.
- (6) Decision 2006/766/EC should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 139, 30.4.2004, p. 206.⁽²⁾ Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1).⁽³⁾ Commission Decision 2006/766/EC of 6 November 2006 establishing the lists of third countries and territories from which imports of bivalve molluscs, echinoderms, tunicates, marine gastropods and fishery products are permitted (OJ L 320, 18.11.2006, p. 53).

HAS ADOPTED THIS DECISION:

Article 1

In Annex II to Decision 2006/766/EC, the following entries are inserted:

(1) between the entry for Grenada and the entry for Ghana:

'GE	Georgia'	
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(2) between the entry for Kenya and the entry for South Korea:

'KI	Republic of Kiribati'	
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(3) between the entry for Madagascar and the entry for Myanmar:

'MK	the former Yugoslav Republic of Macedonia (*)	
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(*) The former Yugoslav Republic of Macedonia: the definitive nomenclature for this country will be agreed following current negotiations at UN level.'

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 16 June 2017.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

CORRIGENDA

Corrigendum to Commission Implementing Decision 2011/850/EU of 12 December 2011 laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality

(Official Journal of the European Union L 335 of 17 December 2011)

On page 94, Annex I, Part (B), in the table on 'Pollutants for which only validated data have to be reported':

for:

'Nickel	Health	TV	1 calendar year	Annual average	10 ng/m ³
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read:

'Nickel	Health	TV	1 calendar year	Annual average	20 ng/m ³
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on page 95, Annex I, Part (C), in the table on 'PM_{2.5} Speciation':

for:

'1047	SO ₄ ²⁺ in PM _{2.5}	Sulphate in PM _{2.5}	µg/m ³
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read:

'1047	SO ₄ ²⁻ in PM _{2.5}	Sulphate in PM _{2.5}	µg/m ³
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on page 95, Annex I, Part (C), in the table on 'Heavy Metals':

for:

'5012	Pb	Lead in PM ₁₀	µg/m ³
5014	Cd	Cadmium in PM ₁₀	ng/m ³
5018	As	Arsenic in PM ₁₀	ng/m ³
5015	Ni	Nickel in PM ₁₀	ng/m ³

read:

'5012	Pb in PM ₁₀	Lead in PM ₁₀	µg/m ³
5014	Cd in PM ₁₀	Cadmium in PM ₁₀	ng/m ³
5018	As in PM ₁₀	Arsenic in PM ₁₀	ng/m ³
5015	Ni in PM ₁₀	Nickel in PM ₁₀	ng/m ³

on page 95, Annex I, Part (C), in the table on 'Heavy Metals Deposition':

for:

'2012	Pb deposition	wet/total Pb deposition	µg/m ² .day
2014	Cd deposition	wet/total Cd deposition	µg m ² .day
2018	As deposition	wet/total As deposition	µg/m ² .day
2015	Ni deposition	wet/total Ni deposition	µg/m ² .day'

read:

'7012	Pb deposition	wet/total Pb deposition	µg/m ² .day
7014	Cd deposition	wet/total Cd deposition	µg/m ² .day
7018	As deposition	wet/total As deposition	µg/m ² .day
7015	Ni deposition	wet/total Ni deposition	µg/m ² .day'

on page 95, in Annex I, Part (C), in the table on 'Mercury':

for:

'5013	Particulate Hg	particulate Mercury	ng/m ³ '
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read:

'5013	Hg in PM ₁₀	Mercury in PM ₁₀	ng/m ³ '
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on page 96, Annex I, Part (C), title of the table on 'Volatile Organic Components':

for: 'Volatile Organic Components',

read: 'Volatile Organic Compounds';

on page 96, Annex I, Part (C), in the table on 'Volatile Organic Components':

for:

'316	H ₃ C-CH ₂ -CH(CH ₃) ₂	2-methylbutane (i-pentane)	µg/m ³ '
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read:

'450	H ₃ C-CH ₂ -CH(CH ₃) ₂	2-methylbutane (i-pentane)	µg/m ³ '
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on page 97, Annex I, Part (C), in the table on 'Volatile Organic Components':

for:

'21	C ₆ H ₅ -C ₂ H ₅	Toluene	µg/m ³
431	m,p-C ₆ H ₄ (CH ₃) ₂	Ethyl benzene	µg/m ³
464	o-C ₆ H ₄ (CH ₃) ₂	m,p-xylene	µg/m ³
482	C ₆ H ₃ -(CH ₃) ₃	o-xylene	µg/m ³ '

read:

'21	C ₆ H ₅ -CH ₃	Toluene	µg/m ³
431	C ₆ H ₅ -C ₂ H ₅	Ethyl benzene	µg/m ³
464	m,p-C ₆ H ₄ (CH ₃) ₂	m,p-xylene	µg/m ³
482	o-C ₆ H ₄ (CH ₃) ₂	o-xylene	µg/m ³ '

Corrigendum to Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements

(Official Journal of the European Union L 11 of 17 January 2015)

On page 51, in Article 3(27):

for: “promotional bank’ means any undertaking or entity set up by a Member State, central or regional government, which grants promotional loans on a non-competitive, not for profit basis in order to promote that government’s public policy objectives, provided that that government has an obligation to protect the economic basis of the undertaking or entity and maintain its viability throughout its lifetime, or that at least 90 % of its original funding or the promotional loan it grants is directly or indirectly guaranteed by the Member State’s central or regional government;’

read: “promotional bank’ means any undertaking or entity set up by a central or regional government of a Member State, which grants promotional loans on a non-competitive, not for profit basis in order to promote that government’s public policy objectives, provided that that government has an obligation to protect the economic basis of the undertaking or entity and maintain its viability throughout its lifetime, or that at least 90 % of its original funding or of the promotional loan it grants is directly or indirectly guaranteed by that government;’.

