



EUROPEAN COMMISSION

Brussels, 26.5.2015  
C(2015) 3456 final

**Subject: State aid–United Kingdom**  
**SA. 39687 (2014/N)**  
**AHDB Promotional measures scheme**

Sir,

The European Commission (hereinafter: "the Commission") wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to the relevant scheme as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union (hereinafter: "TFEU").

The Commission has based its decision on the following considerations:

## **1. PROCEDURE**

- (1) By letter of 23 October 2014, registered by the Commission on the same day, the United Kingdom notified, according to Article 108(3) TFEU, the above-mentioned aid scheme. The Commission sent requests for additional information to the UK authorities on 21 November 2014 and 4 March 2015, which the UK authorities provided by in letters of 15 December 2014, 16 January 2015, 30 January 2015 and 18 March 2015. A meeting between the Commission and the UK authorities was held on 16 March 2015.

## **2. DESCRIPTION**

### **2.1. Title**

- (2) AHDB Promotional measures scheme

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UNITED KINGDOM

## **2.2. Objective**

- (3) With the present notification the UK authorities wish to promote agricultural products for the benefit of farmers. The notified scheme will be a successor to similar schemes N 225/2009, approved by Commission decision C (2009) 6489 of 14.08.2009 and N 529/2007, approved by Commission decision C (2007) 6886 of 15.01.2008 while essentially extending the scope of the quality schemes covered.

## **2.3. Legal basis**

- (4) The legal basis is:
- Natural Environment and Rural Communities Act 2006
  - Agriculture and Horticulture Development Board Order 2008
  - AHDB Promotional Measures scheme

## **2.4. Duration**

- (5) From the date of approval by the Commission to 31 March 2021

## **2.5. Budget**

- (6) The overall budget is GBP 180 million (approximately EUR 245 million) and the annual budget is GBP 30 million (approximately EUR 41 million).

## **2.6. Beneficiaries**

- (7) Beneficiaries are the producers of agricultural products subject to levy under the Agriculture and Horticulture Development Board Order 2008.
- (8) Where aid is related to organisation of and participation in trade fairs, exhibitions and similar events, only small and medium-sized enterprises (hereinafter: "SMEs") are beneficiaries.
- (9) Undertakings in difficulty and undertakings subject to outstanding recovery orders are excluded from the scope of the beneficiaries.

## **2.7. Description of the aid scheme**

### Agriculture and Horticulture Development Board

- (10) The promotional activities will be administered and undertaken by the Agriculture and Horticulture Development Board (hereinafter: "AHDB"), which is a non-departmental public body operating at arm's length from but under the supervision of the Department for Food, Environment and Rural Affairs (hereinafter: "Defra").
- (11) The UK authorities have submitted the names and logos of AHDB and of its subsidiary companies that may be used for promotional purposes. The names and logos will only be used in so far as their use is necessary to inform consumers about the origin of the information and the responsible body. In promotion campaigns, the logos will be used in a peripheral way (e.g. in small characters

legible at short distances, in the corner of the poster/screen) and without any origin, national or geographical reference. The UK authorities have stated that any published website addresses will contain no reference to origin in so far as a territory code is a feature of higher-level domains (e.g. .eu or .co.uk or .uk.com).

- (12) AHDB's activities encompass the cereal and oilseed sectors in the United Kingdom, the dairy, potato and horticulture sectors in Great Britain, and the English pig, cattle and sheep sectors.
- (13) The Board of AHDB consists of members appointed by the UK Government following a fair and open appointments procedure in accordance with the code of the Office of the Commissioner for Public Appointments. The Board consists of a Chair, three independent members and six members representing the interests of the agricultural sectors subject to levy under the Agriculture and Horticulture Development Board Order 2008.
- (14) The UK Government controls the expenditures of AHDB and its subsidiary companies by exercising a right of approval of the business plan for all its activities. An agreement between the UK Government and AHDB ensures that the latter will act in accordance with the public sector requirements. AHDB is required to lay consolidated Annual Reports and Accounts before Parliament.
- (15) The promotional activities may be provided by AHDB itself but where value for money can be obtained outside the AHDB structure, the activities may be procured from private sector organisations. Contracts will be awarded on the basis of market principles in line with the public procurement rules.
- (16) AHDB may engage in commercial activities via a wholly-owned subsidiary company which is equally required to operate in the public interest and to act in accordance with public sector requirements.
- (17) AHDB's governmental duties include the collection and administration of levy. AHDB also determines how the levy revenue should be spent, in line with AHDB's statutory functions.

#### Levy system

- (18) The aid scheme will be funded from a statutory parafiscal levy. The levy system operates under the Agriculture and Horticulture Development Board Order 2008.
- (19) The following agricultural sub-sectors are subject to levy:
  - (a) cattle, sheep and pigs,
  - (b) cereals and oilseeds;
  - (c) dairy;
  - (d) horticulture;
  - (e) potato.

#### (a) Cattle, sheep and pigs

- (20) Levy will be raised on a monthly basis on:
- pigs, cattle and sheep slaughtered in England;
  - exports of live pigs, cattle and sheep that were raised in England.
- (21) The levy will be based on the number of animals slaughtered or exported, and will be in two parts: the producer levy and the slaughter or export levy. The slaughterhouses or exporters will act as collection agents for the producer levy, which will be deducted from the price paid to the producer for an animal, and held on trust until it is paid to AHDB.
- (22) The following maximum rate of levy is permitted by the Agriculture and Horticulture Development Board Order 2008:

	<i>Levy rate (£/head), payable by</i>	
	<i>Producers</i>	<i>Slaughterers and Exporters</i>
Cattle	5.25	1.75
Calves	0.50	0.50
Sheep	0.60	0.60
Pigs	1.075	0.275

(b) Cereals and oilseeds

- (23) A levy will be raised on cereals (wheat, barley, oats, rye, maize, triticale) and oilseeds (rapeseed, linseed, soyabean, sunflower seed) grown in the United Kingdom. It will be collected from growers of cereals and oilseeds in the UK and from buyers and processors of UK-produced cereals.
- (24) The following maximum rate of levy is permitted by the Agriculture and Horticulture Development Board Order 2008:
- 60 pence per tonne for cereal growers;
  - 5 pence per tonne for cereal buyers;
  - 98 pence per tonne for oilseed growers;
  - 12 pence per tonne for cereal processors producing food for human consumption;
  - 6 pence per tonne for cereal processors producing feedingstuffs.

(c) Dairy

- (25) All producers of cow's milk in Great Britain will be liable to pay a levy based on the volume in litres of liquid milk sold off-farm.
- (26) The maximum rate of levy permitted by the Agriculture and Horticulture Development Board Order 2008 is 0.08 pence per litre of milk.

(d) Horticulture

- (27) A levy will be raised on any person or partnership in Great Britain who grows the horticultural products listed in the Agriculture and Horticulture Development Board Order 2008, who sells those products or anything derived from them, and

whose annual sales from those products or derivatives (adjusted to exclude certain permitted costs) are £ 60 000 or more.

- (28) The maximum rate of levy permitted by the Agriculture and Horticulture Development Board Order 2008 is:
- 0.75 % of the adjusted sales figure for the general horticultural growers' levy;
  - 20 pence per litre of agaricus spawn used or sold;
  - 8 pence per litre for non-agaricus spawn used or sold.

#### (e) Potato

- (29) Grower levy will be collected, based on the area planted, from any person or partnership that grows 3 hectares or more of potatoes in any calendar year.
- (30) Buyer levy — Any person who buys 1 000 tonnes or more of potatoes grown in Great Britain (excluding seed potatoes) in a year must pay a levy based on the weight of potatoes bought ('tonnage levy'). Any person buying potatoes to sell by retail or catering establishments (including fish friers) will be excluded from paying levy unless they buy the potatoes directly from the grower.
- (31) The maximum rate of levy permitted by the Agriculture and Horticulture Development Board Order 2008 is:
- £ 50 per hectare for growers of potatoes;
  - £0.25 per tonne for buyers of potatoes.

#### Levy on imported and exported products

- (32) The levy will not apply to imported products, except to imported livestock at the time of slaughter only if the animals have been reared in the United Kingdom for at least two months in the case of pigs and sheep, and three months in the case of cattle.
- (33) Levy will apply to exported products.
- (34) The UK authorities have explained that imported and exported products subject to levy will benefit to the same extent from the activities financed under the notified scheme.
- (35) With respect to the relevant case law on discriminatory internal taxation<sup>1</sup>, the UK authorities are committed to ensuring that if importers/exporters can show they do receive less benefit from the activities under this scheme than operators selling their products on the domestic market, AHDB will refund the levy at an appropriate rate. Alternatively, since the Agriculture and Horticulture Development Board Order 2008 provides for a maximum rate of levy, a lower actual rate of levy could be set in relation to imports/exports.

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<sup>1</sup> Niels Nygård v Svineafgiftsfonden (Case C-234/1999) and Freskot AE v Elliniko Diomosio (Case C-355/00).

- (36) The UK authorities have further undertaken to send to the Commission every second year during the implementation of the current scheme information on the amount of parafiscal levy collected in that period from the payers of each type of levy and the distribution of the funds among the types of promotional activities described in the notification.

Aided activities

- (37) The measures consist of four types of activities:
- (i). Organisation of competitions and organisational or participatory activities relating to trade fairs, exhibitions and similar events;
  - (ii). Publication of factual information about producers from a specified region or of a specified product or type of product;
  - (iii). Dissemination of scientific knowledge and factual information;
  - (iv). Promotional campaigns intended to encourage economic operators or consumers to purchase agricultural products.
- (38) The aid will be granted to the final beneficiaries indirectly, in kind, by means of subsidised services, and will be paid to the provider of the promotion measure. However, in relation to measures for organisation of competitions, trade fairs and exhibitions, the aid may be granted through reimbursement of real costs incurred by the SME beneficiary.
- (39) If any producer group or other organisation is involved in the provision of the promotion measure, participation will not be subject to membership of that group or organisation and any administrative fee payable to that group or organisation will not exceed the cost of providing the promotion measure.
- (40) The maximum aid intensity can be up to 100% of the eligible costs. This also applies to promotion campaigns focused on products covered by quality schemes, as the sector contributes at least 50% of the costs, by way of parafiscal levy paid to AHDB.

Organisation of competitions and organisational or participatory activities relating to trade fairs, exhibitions and similar events

- (41) The promotion activity will be designed to inform about the characteristics of agricultural products and the aid will be accessible to all eligible persons and organisations in the area concerned, based on objectively defined conditions. The eligible beneficiaries are SMEs as described in recital 8 above.
- (42) The beneficiaries will therefore be selected through appropriate selection procedures, primarily on a first-come, first-served basis, but taking into consideration also other objective factors, such as participation in any similar previous opportunity and the benefit obtained therefrom and geographical spread within the relevant parts of the United Kingdom. This will be in order to maximise the general benefit to producers, taking resource limitations into account.

- (43) Symbolic prizes will not exceed €1 000 per prize and per winner of a competition, and will be paid to the provider of the promotion measure if the award and presentation of the prize is properly demonstrated.
- (44) The following costs are eligible:
- participation fees;
  - travel costs and transportation costs for animals;
  - costs of publications and websites announcing the event;
  - the costs of erecting, dismantling and renting premises and stands,
  - symbolic prizes for competitions.
- (45) The UK authorities have confirmed that beneficiaries of aid shall submit an application form with the minimum content required by point (71) of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020<sup>2</sup> (hereinafter: "the Guidelines") in advance, before the organisation of the event.

Publication of factual information about producers from a specified region or of a specified product or type of product

- (46) The promotion activity will be designed to inform about the characteristics of agricultural products. The information will be neutral and will give all eligible producers an equal opportunity to be represented in the publication.
- (47) The eligible costs are the costs of publications in any medium.
- (48) In particular, AHDB will develop and maintain databases that list the variety of produce available from the UK market, and the suppliers of such produce. These databases will be used to produce objective catalogues aimed at interested parties in Member States and outside the EU, and will be made available in print and/or electronically. The databases and catalogues will be factual and neutral in presentation. All producers concerned will have equal opportunities to be represented in the publications. The eligible costs are as follows:
- the costs of obtaining and compiling the information (e.g. communicating with all potentially eligible operators and enquiring whether they are eligible and, if so, whether they wish to be included in catalogues);
  - the costs of producing and disseminating the compiled information, electronically (e.g. on websites) or in hard copy (e.g. in the trade press, in booklets or on posters in trade fair exhibits).

Dissemination of scientific knowledge and factual information

- (49) The promotion activity will be designed to inform about the characteristics of agricultural products and will relate to:

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<sup>2</sup> OJ C 204 of 1.7.2014, p. 1.

- Quality schemes, in particular:
    - i. EU-recognised denomination for the Protected Geographical Indication ‘West Country beef’;
    - ii. EU-recognised denomination for the Protected Geographical Indication ‘West Country lamb’;
    - iii. quality schemes recognised by the UK authorities: BPEX Quality Standard, EBLEX Quality Standard and the Red Tractor quality scheme (a detailed description of the national quality schemes is provided below in recital 56(b));
  - Generic agricultural products and their nutritional benefits and suggested uses for them.
- (50) The eligible costs are the costs of dissemination, as follows:
- costs of obtaining and compiling the information on the properties of the products;
  - costs of producing and disseminating the compiled information, electronically or in hard copy.
- (51) In particular, AHDB will provide factual information on the properties of the products covered by the statutory levy. This will be specifically aimed at consumers, and will include information on the nutritional qualities of the products, printed material on uses for the products, and the provision of educational programmes to increase understanding of the products and their role in a balanced diet.
- Promotion campaigns intended to encourage economic operators or consumers to purchase agricultural products
- (52) These promotion campaigns may be either focused on products covered by quality schemes or may be generic in character and for the benefit of all producers of the product concerned.
- (53) The UK authorities have provided samples of the promotional materials to be used. They will provide additional samples of materials that were not available at the time of notification in accordance with point (457) of the Guidelines.
- (54) The annual budget of the promotional campaigns will not exceed EUR 5 million.
- (55) The promotion campaigns will satisfy Article 2 of Directive 2000/13/EC<sup>3</sup> and the requirements of Regulation (EU) No 1169/2011<sup>4</sup> and specific EU labelling rules, in each case as are in force at the appropriate time.

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<sup>3</sup> Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, OJ L 109, 06/05/2000, p 29.

<sup>4</sup> Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, OJ L 304, 22.11.2011, p. 18.



- (56) The quality schemes on which the promotion campaigns will focus are:
- (a) EU-recognised denominations: Protected Geographical Indications ‘West Country beef’ and ‘West Country lamb’;
  - (b) Nationally recognised quality schemes:
    - (i). The quality scheme recognised by the UK authorities as complying with point (282)(b) of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020<sup>5</sup> (‘the Guidelines’), commonly known as the BPEX Quality Standard managed by AHDB. This scheme provides quality specifications for pigmeat and pigmeat products and controls are carried out to ensure compliance with these specifications;
    - (ii). The quality scheme recognised by the UK authorities as complying with point (282)(b) of the Guidelines, commonly known as the EBLEX Quality Standard managed by AHDB. This scheme provides quality specifications for meat from cattle and sheep and products containing these meats, and controls are carried out to ensure compliance with these specifications;
    - (iii). The quality scheme recognised by the UK authorities as complying with point (282)(b) of the Guidelines, commonly known as the Red Tractor scheme managed by Assured Food Standards. This scheme provides quality specifications for several agricultural products subject to the levy and controls are carried out to ensure compliance with these specifications.
- (57) As regards those nationally recognised schemes the UK authorities have submitted additional information to demonstrate compliance with the conditions set out in point (282)(b) of the Guidelines. In particular, the UK authorities sent information about the specifications of the schemes, analysis showing that those specifications go beyond the obligatory standards laid down for public and animal health and animal welfare, controls and traceability mechanisms, as well as information that the schemes are open to all producers.
- (58) The promotion activities described in recitals 46 and 49 and the generic promotion campaigns referred to in recital 52 above will not mention any particular undertaking, brand name or origin.
- (59) The promotion campaigns focused on quality schemes mentioned in recital 52 above and described further in recital 56 will not be earmarked for products of one or more particular undertakings. However, such campaigns may refer to the origin of the product as follows:
- (60) Promotion activities focused on EU-recognised denominations may refer to the origin of the products in a way that corresponds exactly to that denomination. The logos to be used are:

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<sup>5</sup> OJ C 204 of 1.7.2014, p. 1.



- (61) Promotion activities based on national quality schemes may refer to the origin of products, provided it is secondary in the message, i.e. secondary to the part of the promotion that is not focused on origin.
- (62) The logos to be used will include a main symbol related to the quality scheme and a secondary symbol related to the origin expressed by way of a national or regional flag or the EU flag. The logos will be similar to these:

(a) BPEX Quality scheme – samples:



(b) EBLEX Quality scheme – samples:



(c) Red tractor – AFS Quality scheme – samples



- (63) In the case of promotion activities focused on national quality schemes, the following measures will be taken by the UK authorities:
- (64) A promotion web page and a similar promotion leaflet will be developed and it will include the relevant quality logos with the national flags of each Member State, as secondary messages of product origin, together with a similar logo with the EU flag. These will together indicate that the quality scheme is available to producers from all Member States in a non-discriminatory manner. These measures will also include a comprehensive statement to the same effect. This will provide assurance to all producers that the quality scheme is available to them, including in cases where production occurs in more than one Member State.
- (65) Promotion materials will be developed which will include the relevant quality logos with an appropriate national, regional or EU flag to provide a secondary indication of product origin. At least two different origin logos will have to be indicated: for example the logo with the UK flag and the logo with the EU flag. The promotion materials will also include a link to the web page mentioned above. Thus, the main message conveyed to consumers will be that the different logo variants stand for the same level of product quality.
- (66) With those two measures the UK authorities aim to make sure that the promotion activities concerning each of the national quality schemes contained within this aid scheme are intended to inform the public about the characteristics of agricultural products complying with quality specifications and to encourage economic operators and consumers to purchase such products. Those national quality schemes are intended to benefit all producers of the type of product concerned without discriminating between them.
- (67) The eligible costs for promotion of a quality scheme comprise:
- placing of printed advertisements in newspapers and magazines, or securing promotional activity space, e.g. on promotional activity hoardings;
  - securing slots for promotional activity on radio, TV, cinema or internet;
  - distribution of printed material, such as placing printed fliers in newspapers or magazines and displaying material at point of sale;
  - hiring consultants in promotional activity, e.g. advertisement designers;
  - administering promotional activity.
- (68) The generic promotion activity will involve both printed and media-based materials such as posters, fliers and advertisements in targeted magazines and newspapers, or internet, television, cinema and radio advertising. Promotional materials will also be available at the point of sale.
- (69) The promotion activities will convey the following types of messages:
- The generic promotion material in the red meat sector will focus on the health and nutritional aspects of consuming pork, beef and lamb as part of a balanced diet. Promotional activity material will include uses for red meat such as recipes and cooking guidance, and will highlight their convenience.

- The generic promotion material in the potato sector will focus on the health and nutritional benefits of consuming potatoes. It will highlight the convenience and versatility of potatoes.
  - Other generic promotional messages having similar characteristics will be disseminated.
- (70) The eligible costs for generic promotion comprise:
- Production of printed materials, including advertisements, leaflets, posters, fliers, information sheets, recipe cards, wall charts, and school information packs;
  - Production of electronic information, including advertisements for radio, TV, cinema and the internet, DVDs and CD-ROMs;
  - Costs of placing printed promotional material in newspapers and magazines, or securing promotional space, eg on advertisement hoardings;
  - Costs of securing slots for promotional activity on radio, TV, cinema or the internet;
  - Costs of placing printed fliers in newspapers and magazines and displaying material at point of sale;
  - Distribution of printed material, such as information packs to schools;
  - Hiring consultants in generic promotional activity or PR work, e.g. designers or consultants to assist with PR work;
  - Arranging and running presentations to assist with PR work, e.g. presentations in schools;
  - Administering promotional activity and PR work.

Specialised and combined activities:

Events

- (71) Events to induce consumers to buy agricultural products will be held. These events may take the form of roadshows that visit locations where stakeholders will be present. The promotion activities undertaken at the roadshows will be specifically tailored to the types of stakeholders present, and will focus on delivering messages aimed at raising consumption of the products amongst the stakeholders present. Celebrities may be asked to appear at these events and to endorse promotion materials. Promotion materials may be used on websites and provided to the media, including radio, television, newspapers and magazines. Such events may be held on an international, national, regional or local scale.
- (72) The eligible costs for holding such events are:
- Hiring space at locations, e.g. space in shopping centres;
  - Administering, setting up and running of events;
  - Producing materials for the event, e.g. advertisements or printed material;
  - Securing promotional activity space or publicity for the event in the media;
  - Involving consultants in events, e.g. to help run events or distribute materials;

- Hiring celebrities to assist with the event or to endorse media-published material.

#### Defending products from adverse publicity

- (73) AHDB will defend products from the relevant sectors from adverse publicity where this threatens to impact negatively on consumers, so as to provide appropriate reassurance about the safety, quality or other characteristics of a product, leading to continuing consumer satisfaction and consumption of such products. It is not excluded that the media give negative messages about such products, and fail to provide a balanced view of the issue concerned. Where AHDB feels that there is lack of balance, and in particular where this could have a negative effect on the consumption of a product, it may join the debate and put across a balanced view of the issue. It will also act as a focal point in communicating balanced messages to the public, including via the media to ensure that consumers are properly informed.
- (74) The following costs are eligible:
- One-to-one contact with media;
  - Press releases;
  - Use of experts/celebrities;
  - Making spokesmen available.

#### Encouraging consumption through education and by highlighting the uses of products

- (75) AHDB will provide educational material to the public that informs them of the specific nutritional qualities and characteristics of products from the sectors covered by the statutory levy. This will be either printed material such as wall-charts, leaflets and information sheets, or internet-based material such as websites dealing with specific issues concerning the benefits to health of consuming the products. AHDB may also use health pages in newspapers or other media to communicate information to consumers.
- (76) AHDB will produce materials that highlight the uses of the products covered by the statutory levy. All materials will be designed with the aim of increasing consumption. The materials will take the form of recipe cards, leaflets, fliers or posters. AHDB may produce other materials designed to raise consumption, such as ideas for parties or barbecues that are based on the products covered by the statutory levy. The materials will be displayed at points of sale, or in the case of cards or leaflets, as fliers in targeted magazines or newspapers. All materials will be generic in nature and will not refer to the origin of the products. Moreover, they will not directly relate to any products produced by particular undertakings.
- (77) The eligible costs are the costs of preparing and disseminating promotion and other information materials.

#### Educational programmes

- (78) AHDB considers that encouraging pupils to eat the products covered by statutory levy as part of a balanced diet will lead to consumption of the products in adult

life, securing a lifetime of good eating habits, and it will therefore undertake various programmes in schools to promote consumption of these products as part of a healthy lifestyle. The measures will include:

- production and dissemination of printed material;
  - production of electronic material;
  - presentations and/or events aimed at schoolchildren.
- (79) The materials produced will be generic in nature and will not refer to individual companies, brands or the origin of products.
- (80) AHDB will produce educational packs for use in schools. These packs will tie in with the school curriculum, and will promote the consumption of products covered by the statutory levy by educating pupils on the origins and the nutritional characteristics of the products, and their role as part of a healthy balanced diet. The packs will consist of materials that are designed to appeal to pupils, teachers and parents. The materials will include information sheets, wall-charts, materials for practical activities to develop health, fitness and knowledge of the products, educational games, DVDs and CD-ROMs.
- (81) In addition to producing packs specifically aimed at pupils, AHDB will produce packs for teachers. These will include background information on the products covered by the statutory levy as well as guidance on their nutritional qualities and their role in healthy eating. The packs will also include lesson plans and teaching resources such as equipment and ideas for cookery lessons and demonstrations, as well as ideas for holding a ‘themed’ day and games centred around specific products and healthy eating. The objective will be to encourage pupils to enjoy the products from the sectors covered by the statutory levy as part of a healthy balanced diet.
- (82) AHDB may also set up a website dedicated to developing knowledge of the products covered by the statutory levy in schools and raising uptake among pupils. The websites will tie in with the pupil and teacher educational packs and will include electronic games, ideas for practical activities such as growing plants or recipes that can be made in the classroom, and links to other websites. They will also include advice, support and downloadable resources for teachers.
- (83) AHDB may visit schools and communicate information or distribute educational material to pupils. As above, the information and material will have the aim of increasing consumption among the school age groups.
- (84) AHDB will produce material that school caterers can use to promote the products from the sectors covered by the statutory levy. This will include ideas for holding product ‘theme days’ in the school canteen, where a step-by-step guide will be produced including recipe ideas, posters and stickers. The material will tie in with the school curriculum.
- (85) The following costs are eligible:
- Production and dissemination of printed and electronic material;
  - Presentations and events aimed at schoolchildren;

- Educational packs for use in schools (information sheets, wall-charts, materials for practical activities to develop health, fitness and a knowledge of the products, educational games, DVDs and CD-ROMs);
- Packs for teachers (lesson plans and teaching resources such as equipment and ideas for cookery lessons and demonstrations, ideas for holding a themed day and games centred around specific products and healthy eating);
- Websites devoted to developing knowledge of products in schools and increasing uptake among pupils (electronic games, ideas for practical activities such as growing plants, or recipes that can be made in the classroom, and links to other websites);
- Costs of visiting schools and communicating or distributing educational material to pupils and teachers;
- Costs for materials enabling school caterers to promote the products, linked to the school curriculum (ideas for holding product-themed days in the school canteen, recipe ideas, posters and stickers).

#### Promotion in third countries

- (86) Promotion measures in third countries will respect the conditions laid down in Regulation (EC) No 3/2008<sup>6</sup>.
- (87) The aid will not be granted to particular undertakings or commercial brands.
- (88) The promotion will not risk endangering sales of products from other Member States, nor denigrate such products.
- (89) In relation to publicity campaigns in third countries, the UK authorities will ensure that these campaigns comply with the following:
- all the actions are decided in the common interest and in such a way that all the eligible beneficiaries are able to benefit from them. In addition, no publicity campaign will be organised for the benefit of an individual undertaking. The UK authorities guarantee that the messages of the campaigns do not risk endangering sales of products of other Member States or to denigrate these;
  - the actions will be as referred to in Article 2(1) of Regulation (EC) No 3/2008; these can take the form of participation in events, fairs and exhibitions of international importance, in particular by means of stands intended to develop the image of the products concerned; new market research, necessary for enlargement of outlets; and commercial missions at a high level;

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<sup>6</sup> Council Regulation (EC) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and in third countries, OJ L 3, 5.1.2008, p. 1.

- the actions will be carried out only in relation to the products and the countries listed in Annex II to Regulation (EC) No 501/2008<sup>7</sup>, as established by the Commission;
  - the actions will respect the conditions laid down in Regulation (EC) No 501/2008.
- (90) The measures will moreover be applied in relation to beef, veal and pigmeat, milk products, fresh and processed fruit and vegetables, cereals, live plants and ornamental horticulture products. That is, products intended for direct consumption or for processing, for which there are existing export possibilities or new outlets in third countries (in particular without grant of support funds). They may be typical products or quality products with increased added value.
- (91) The actions may be undertaken in Australia, Bosnia and Herzegovina, China, Croatia, India, Japan, Kosovo, Former Yugoslav Republic of Macedonia, Montenegro, New Zealand, Norway, Russia, Serbia, South Africa, South Korea, Switzerland, Turkey, Ukraine, and in the Middle East, Latin America, North Africa, North America and South-east Asia, taking account of the markets concerned.
- (92) The range of agricultural products and the territories described above will be amended in the light of any changes to the relevant EU laws.

#### Additional information

- (93) The UK authorities have clarified that Regulation (EU) No 1407/2013<sup>8</sup> and Regulation (EU) No 1408/2013<sup>9</sup> will be applied in cases where the Guidelines do not permit the provision of aid under this scheme. In particular, such aid for large (i.e. non-SME) primary producers for participation in fairs and similar events will be paid in line with Regulation (EU) No 1408/2013. Aid for large enterprises active in the processing and marketing of Annex I products will be paid in line with Regulation 1407/2013. The regulatory conditions applicable to such use of de minimis aid will be respected.
- (94) The UK authorities have further clarified that EU-financed advertising programmes related to lamb and potatoes are being carried out in accordance with Regulation (EC) No 3/2008 and that further programmes may be in the pipeline. Since these are essentially EU schemes operated by Member States and co-funded by them, if AHDB is a participant it will provide administrative and operational services and co-funding, complying with the EU scheme's rules and with this State aid scheme. AHDB may undertake similar activities using its parafiscal

<sup>7</sup> Commission Regulation (EC) No 501/2008 of 5 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries, OJ L 147, 6.6.2008, p. 3

<sup>8</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.

<sup>9</sup> Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector, OJ L 352, 24.12.2013, p. 9.



funding alone, to complement the activities of the EU scheme; these would again satisfy the conditions of this State aid scheme.

### Transparency

- (95) The UK authorities have shown that the text of the aid measure and the granting authority are published on the internet site of AHDB. Additionally, the UK authorities have undertaken to ensure that individual aid awards above EUR 60 000 will be published in accordance with point (128) of the Guidelines.

## **3. ASSESSMENT**

### **3.1. Existence of aid — Application of Article 107(1) TFEU**

- (96) For Article 107(1) TFEU to apply, the scheme must provide an economic benefit to an undertaking which it would not have received in its normal course of business, the aid must be granted to certain undertakings, the benefit must be granted by a Member State or through State resources, and the scheme must be capable of affecting trade perceptibly between Member States.
- (97) As regards the question of whether or not revenue from parafiscal levies can be regarded as State resources, it should be noted that for State resources no distinction needs to be made between cases in which the aid is being granted directly by the State or by public or private bodies that have been appointed or created by the State.<sup>10</sup>
- (98) In its *Pearle* judgment<sup>11</sup> the Court of Justice gave indications as to when obligatory contributions collected by an intermediary body from all enterprises of a certain business sector could be regarded as not being State resources, namely if the following conditions were met:
- the measure in question is established by the professional body that represents the enterprises and the employees of a business sector and does not serve as an instrument for the implementation of policies established by the State;
  - the goals of the measure in question are fully financed by the contributions of the enterprises of the sector;
  - the way of financing and the percentage/amount of the contributions are established by the professional body of the business sector, by representatives of employers and employees, without any State interference;
  - the contributions are obligatorily used for the financing of the measure, without the possibility for the State to intervene.

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<sup>10</sup> Judgments of 13 March 2001 in case C-379/98 *PreussenElektra AG v Schleswag AG* point 58, and 20 November 2003 in case C-126/01 *Ministre de l'économie, des finances et de l'industrie v GEMO SA* point 23.

<sup>11</sup> Judgment of the Court (First Chamber) of 15 July 2004 in Case C-345/02 *Pearle BV, Hans Prijs Optiek Franchise BV and Rinck Opticiëns BV v Hoofdbedrijfschap Ambachten*.

- (99) In addition, in its *Doux Élevage* judgment<sup>12</sup> the Court of Justice stated that neither the State's power to recognise an inter-trade organisation, nor the power of that State to extend an inter-trade agreement to all the traders in an industry permit the conclusion that the activities carried out by the inter-trade organisation are imputable to the State.
- (100) The Commission considers that the present aid scheme does not fulfil all of the conditions referred to above. The levy is imposed by virtue of a statutory instrument (Agriculture and Horticulture Development Board Order 2008), which was adopted by the responsible governmental bodies based on the provisions of the Natural Environment and Rural Communities Act 2006 and approved by the Parliament. This Order introduces the parafiscal levy on certain agricultural products, determines the persons liable for paying the levy and sets also the maximum rate of levy.
- (101) Furthermore, the Order establishes the AHDB as a non-departmental public body operating under the supervision of the UK Government and defines its statutory structure and functions, including the right to impose and collect the levy; AHDB also manages the aid scheme.
- (102) For these reasons, the revenues from the parafiscal levies to be used for financing the notified aid scheme do constitute State resources and are imputable to the State.
- (103) It is clear that the scheme in question confers an advantage on its recipients. This advantage is granted through State resources and it favours the producers of the agricultural products covered by the scheme. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.<sup>13</sup>
- (104) Pursuant to the case law of the Court of Justice, aid to an undertaking is likely to affect trade between Member States where that undertaking operates in a market open to intra-EU trade.<sup>14</sup> The beneficiaries of the current aid operate indeed on a market for agricultural products where intra-EU trade takes place. The volumes of intra-EU trade in 2012 expressed in terms of arrivals/ dispatches are as follows:<sup>15</sup>

Product	Arrivals (in 1000 t)	Dispatches (in 1000 t)
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<sup>12</sup> Judgment of the Court (Fifth Chamber) of 30 May 2013 in Case C-677/11 *Doux Élevage SNC, Coopérative agricole UKL-ARREE v Ministère de l'Agriculture, de l'Alimentation, de la Pêche, de la Ruralité et de l'Aménagement du territoire, Comité interprofessionnel de la dinde française (CIDEF)*.

<sup>13</sup> Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980] ECR 2671.

<sup>14</sup> See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities* [1988] ECR 4067.

<sup>15</sup> EU agriculture - Statistical and economic information - 2013 report, [http://ec.europa.eu/agriculture/statistics/agricultural/2013/index\\_en.htm](http://ec.europa.eu/agriculture/statistics/agricultural/2013/index_en.htm)

Beef and veal	2965	3003
Pigmeat	7934	8371
Sheepmeat and goatmeat	241	269
Milk and milk products	13642	13976
Cereals	46789	51554
Potatoes	7512	6483
Vegetables	11694	11325

- (105) The sectors concerned are open to competition at EU level and therefore sensitive to any measure in favour of production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.
- (106) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the common market if it can benefit from one of the derogations provided for in the TFEU.

### **3.2. Compatibility of the aid**

#### *3.2.1. Application of Article 107(3)(c) TFEU*

- (107) Under Article 107(3)(c), aid may be considered compatible with the internal market if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (108) For this derogation to be applicable, the aid must fulfil the requirements of the relevant EU State aid legislation.

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

- (109) As regards the notified aid scheme, Part II, Chapter 1.3.2. ‘Aid for promotion measures in favour of agricultural products’ of the Guidelines is applicable.

##### **3.2.2.1. Common assessment principles**

###### **Contribution to a common objective**

- (110) According to point (48) of the Guidelines, the Commission considers that the principle of contribution to the objectives of rural development is met regarding the aid measures in Sections 1.2, 1.3, 2.8 and 2.9 of Part II of these Guidelines, which are outside the scope of rural development, since the Commission has gained sufficient experience as to the contribution of those measures to the rural

development objectives. The current scheme falls within Section 1.3. and is outside the scope of rural development. Therefore, the requirements under (48) of the Guidelines are complied with.

#### Need for State intervention

- (111) According to point (55) of the Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid measures fulfilling the specific conditions laid down in Part II of these Guidelines. Therefore, such aid should be considered necessary to achieve the objectives of common interest specified under Section 3.1. of Part I of these Guidelines. The current aid scheme fulfils the specific conditions laid down in Chapter 1.3.2 of Part II of the Guidelines, as shown in recitals 121 to 148, and therefore the requirements under point (55) of the Guidelines are complied with.

#### Appropriateness of aid

- (112) According to point (57) of the Guidelines, the Commission considers that aid granted in the agricultural and forestry sectors and in rural areas, which fulfils the specific conditions laid down in the relevant Sections of Part II of these Guidelines, is an appropriate policy instrument. The current aid scheme fulfils the specific conditions laid down in Chapter 1.3.2 of Part II of the Guidelines, as shown in recitals 121 to 148, and therefore the requirements under point (57) of the Guidelines are complied with.
- (113) The aid is granted in kind by way of subsidised services as required by points (460)(a), (461) and (462) of the Guidelines and thus by an appropriate aid instrument. Therefore the requirement under point (60) of the Guidelines is complied with.

#### Incentive effect and need for aid

- (114) As explained by the UK authorities (recital 45 above), an aid application is submitted by the applicant before the relevant activity, notably organisation of and participation in the competitions, trade fairs, and exhibitions, has started. The content of the aid application meets the minimum requirements laid down in point (71) of the Guidelines. Therefore the requirement for incentive effect is complied with.
- (115) As regards aid for the other promotional measures (publication of neutral information about the agricultural products and producers, dissemination of scientific and factual information and promotion campaigns), the incentive effect is not required or it is deemed to be present as stipulated in point (75)(m) of the Guidelines.

#### Proportionality of the aid

- (116) Points (82) and (84) of the Guidelines stipulate that if the aid amount does not exceed the eligible costs and the aid intensity stays within the ceilings set out in Part II of the Guidelines, the aid is deemed to be proportionate. The current aid scheme fulfils the specific conditions regarding eligible costs and aid intensity laid down in Part II, Chapter 1.3.2 of the Guidelines, as shown in recitals 121 to 148, and therefore points (82) and (84) of the Guidelines are complied with.

## Cumulation

- (117) Activities under the current scheme may be combined with activities under EU co-financed advertising programmes. By virtue of Article 13(6) of Regulation (EC) No 3/2008 and Article 27 of Regulation (EU) No 1144/2014, State aid rules do not apply to such EU co-financed advertising activities as they concern agricultural products within the scope of Annex I to the TFEU. Nevertheless, the UK authorities have explained (see recital 96 above) that such activities will be complementary to the activities undertaken under the current State aid scheme. Therefore, the aid granted under the current State aid scheme and the aid granted under the EU co-financed advertising programmes will not cover the same eligible costs and there will be no cumulation.
- (118) The UK authorities have explained (see recital 95 above) that activities under the current scheme may be combined with activities financed under Regulation (EU) No 1407/2013 and Regulation (EU) No 1408/2013. However, the aid under those two regulations will only cover costs related to organisation of trade fairs, exhibitions and similar events, and participation of large enterprises therein, which are not eligible under the current notified scheme. Therefore there will be no cumulation as regards the same eligible costs.
- (119) Avoidance of undue negative effects on competition and trade

According to point (113) of the Guidelines, the Commission considers that where an aid fulfils the conditions and does not exceed the relevant maximum aid intensities laid down in the applicable Sections of Part II of these Guidelines, the negative effect on competition and trade is limited to the minimum. The current aid scheme fulfils the conditions laid down in Chapter 1.3.2 of Part II of the Guidelines, as shown in recitals 121 to 148, and therefore point (113) of the Guidelines is complied with.

- (120) Transparency

As stated in recital 95 above, the information required under point (128) (a) and (b) of the Guidelines is published online. The UK authorities have confirmed that the transparency requirement will be fully complied with as from 1 July 2016.

### 3.2.2.2. Specific assessment according to the category of aid

- (121) According to point (453) of the Guidelines, Part II, Section 1.3.2 applies to the whole agricultural sector and the beneficiaries of aid for the organisation of competitions, trade fairs or exhibitions, referred to in point (464)(a), must be limited to SMEs. As explained in recital 7 above, the beneficiaries of the aid are the producers of agricultural products subject to the parafiscal levy, notably cattle, sheep and pigs, cereals and oilseeds, dairy, horticulture and potato. As explained in recital 8, the aid related to organisation of and participation in trade fairs, exhibitions and similar events is limited to SMEs. Therefore the conditions of point (453) of the Guidelines are fulfilled.
- (122) According to point (454) of the Guidelines, the promotion activity must be designed either to inform the public about the characteristics of agricultural products, for example by organising competitions, by participating in trade fairs

and public relations activities, by the vulgarisation of scientific knowledge, or by publishing factual information or encouraging economic operators or consumers to buy the agricultural product in question by way of promotion campaigns.

- (123) As described in recital 37 above, the current scheme consists of promotion activities related to organisation of competitions and organisational or participatory activities relating to trade fairs, exhibitions and similar events; publication of factual information about producers from a specified region or of a specified product or type of product; dissemination of scientific knowledge and factual information; and promotional campaigns intended to encourage economic operators or consumers to purchase agricultural products. Therefore the conditions of point (454) of the Guidelines are fulfilled.
- (124) According to point (455) of the Guidelines, the promotion campaign must be focused on products covered by quality schemes as referred to in point (282) of the Guidelines or it must be generic in character and for the benefit of all producers of the type of product concerned.
- (125) As stated in recital 52 above, the promotion campaigns under the notified scheme may be focused on quality schemes or be generic in character and for the benefit of all producers of the type of product concerned. As described in recital 56, the quality schemes in question are two EU-recognised denominations and three nationally recognised quality schemes. The UK authorities have proved that the nationally recognised quality schemes comply with the requirements of point (282)(b) of the Guidelines, as described in recital 57. Therefore the conditions of point (455) of the Guidelines are fulfilled.
- (126) According to point (456) of the Guidelines, the promotion campaign must comply with Article 2 of Directive 2000/13/EC and, where appropriate, with specific labelling rules. The UK authorities have undertaken to ensure that the promotion campaigns will satisfy these rules as well as the requirements of Regulation (EU) No 1169/2011<sup>16</sup> and specific EU labelling rules, in each case as they are in force at the time concerned, as stated in recital 55. Therefore the conditions of point (456) of the Guidelines are fulfilled.
- (127) According to point (457) of the Guidelines, Member States must send representative samples of promotion material when notifying an aid scheme for a promotion campaign. As stated in recital 53, the UK authorities sent samples of the promotional materials with the notification and additionally in reply to the Commission's requests for more information. They also undertook to send new samples in accordance with point (457) of the Guidelines. Therefore the conditions of point (457) of the Guidelines are fulfilled.
- (128) According to point (458) of the Guidelines, promotion campaigns exceeding the notification threshold referred to in point (37)(b) of the Guidelines must be notified individually. As explained in recital 54, the UK authorities have stated that the annual budget of the promotion campaigns will not exceed EUR 5 million. Therefore point (458) of the Guidelines is not applicable.

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<sup>16</sup> Directive 2000/13/EC has been repealed by Regulation (EU) No 1169/2011. According to Article 53(2) of that Regulation, references to the repealed acts shall be construed as references to the Regulation.

- (129) According to point (459) of the Guidelines, the provision of promotion measures may be undertaken by producer groups or other organisations subject to the conditions laid down therein. As described in recital 39 above, if any producer group or other organisation is undertaking the provision of measures under the notified scheme, participation will not be subject to membership of that group or organisation and any administrative fee payable to that group or organisation will not exceed the cost of providing the measure. Therefore the conditions of point (459) of the Guidelines are fulfilled.
- (130) According to points (460), (461) and (462) of the Guidelines, the aid must be granted in kind or on the basis of reimbursement of real costs incurred by the beneficiary; aid for promotion campaigns must be granted only in kind by means of subsidised services; where the aid is granted in kind, it must not include direct payments to the beneficiaries but must be paid to the provider of the promotion measures. As described in recital 38 above, these conditions are fulfilled.
- (131) According to point (463) of the Guidelines, aid for symbolic prizes may only be paid to the provider of promotion measures if the prize has been actually granted and upon presentation of proof of the award. As described in recital 43 above, that condition is fulfilled.
- (132) According to point (464)(a) of the Guidelines, the eligible costs concerning the organisation of and participation in competitions, trade fairs and exhibitions are the costs specified in point (i) to (v). That aid is accessible to all those eligible in the area concerned, based on objectively defined conditions. The UK authorities have listed the eligible costs for that category of aid as described in recital 44 above and they comply with point (464)(a)(i) to (v) of the Guidelines. The UK authorities also explained, as described in recitals 41 and 42 above, that the aid will be accessible to all eligible persons, selected through an appropriate objective procedure. Therefore the conditions of point 464(a) of the Guidelines are fulfilled.
- (133) According to point (464)(b) of the Guidelines, the following costs are eligible: the costs of publications in print- and electronic media, websites, and spots in electronic media, on radio or television, aimed at presenting factual information about producers from a given region or producers of a given product, provided that the information is neutral and that all producers have equal opportunities to be represented in the publication.
- (134) As described in recitals 46 and 47 above, the activities undertaken under the notified scheme will be designed to provide information about the characteristics of agricultural products, will be neutral and will give all eligible producers an equal opportunity to be represented. The eligible costs will be the cost of publication in any medium. In addition, the UK authorities explained that a database will be developed and catalogues will be produced, as described in recital 48. The conditions and the eligible costs of these activities comply with point (464)(b) of the Guidelines.
- (135) According to point (464)(c) of the Guidelines, eligible costs are those incurred for the dissemination of scientific knowledge and factual information on quality schemes and generic agricultural products and their nutritional benefits and suggested uses. As described in recitals 49 to 51 above, the activities included in the notified scheme will cover both quality schemes and generic agricultural products. The eligible costs involve obtaining, compiling, producing and

disseminating information using diverse media. The conditions and the eligible costs of these activities comply with point (464)(c) of the Guidelines.

- (136) According to point (464)(d) of the Guidelines, eligible costs are those incurred for consumer-targeted promotion campaigns organised in the media or at retail outlets as well as for all promotion material which is distributed directly to consumers. The activities envisaged under the notified scheme in this regard are of a wide variety and they are described in recitals 52 et seq. They comply with the conditions of point (464)(d) of the Guidelines.
- (137) In addition, several activities planned under the notified scheme may combine different eligible costs under point (464) of the Guidelines as described in recitals 74 et seq.
- (138) Points (465) and (466) of the Guidelines set out conditions on references to a particular undertaking, brand name or origin. Point (465) of the Guidelines prohibits any mention of a particular undertaking, brand name or origin in respect of generic promotion measures. The UK authorities have confirmed that this condition will be met as stated in recital 58 above. Further, point (466) allows the origin to be mentioned as regards products covered by a quality scheme. As described in recitals 59 and 60 above, the promotion campaigns focused on quality schemes will not be earmarked for products of one or more particular undertakings but may refer to the origin of the product.
- (139) As regards EU-recognised denominations, point (466)(a) of the Guidelines allows the origin to be mentioned provided that the reference corresponds exactly to that registered by the European Union. This condition is met as stated in recital 61 above.
- (140) As regards nationally recognised quality schemes, point (466)(b) of the Guidelines allows the origin of the products to be mentioned provided it is secondary in the message. This condition is satisfied for the following reasons:
- (141) As presented in recital 63 above, the size of the symbols referring to the origin is proportionally smaller compared to the whole logo image and thus it is secondary to the main symbol representing the quality scheme.
- (142) As described in recital 66 above, the UK authorities undertook to place on all promotion materials at least two logos with different origin symbols emphasising the main quality message, thus not focused on the origin but on the quality of the product.
- (143) In addition, as described in recital 65 above the UK authorities undertook to develop a consumer-targeted internet page in order to explain the quality characteristics of the products covered by a given quality scheme, emphasising that the quality characteristics are equally satisfied independent of the origin. Reference to this internet page will also be placed on the promotional materials.
- (144) Consequently, the conditions governing reference to a particular undertaking, brand name or origin prescribed in points (465) and (466) of the Guidelines are fulfilled.
- (145) According to points (467), (468) and (469) of the Guidelines, the aid intensity may cover up to 100% of the eligible costs of organisation and participation in



trade fairs and similar events, publication of factual information, dissemination of scientific knowledge and generic promotion campaigns, as well as promotion campaigns focused on quality schemes, provided that the sector contributes at least 50% of the costs, including in the form of special taxes.

- (146) As stated in recital 40 above, the aid intensity of all promotion activities will be up to 100% of the eligible costs. The conditions of points (467), (468) and (469) of the Guidelines are fulfilled as the sectors concerned contribute at least 50% to the costs by way of parafiscal levy paid to AHDB as described in recitals 18 to 35 above.
- (147) According to point (470) of the Guidelines, there are special conditions which apply to promotion in third countries. Such promotion must be in line with the conditions laid down in Regulation (EC) No 3/2008 and must not be granted to particular undertakings or to commercial brands or risk endangering sales of or denigrate products from other Member States. As described in recitals 88 to 94 above, those conditions are fulfilled.
- (148) The notified scheme excludes from the scope of the beneficiaries undertakings in difficulties and undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market. Therefore the conditions of points (26) and (27) of the Guidelines are fulfilled.
- (149) According to point (29) of the Guidelines, Member States are requested to notify a parafiscal levy used for financing an aid measure if this forms an integral part of the aid measure. In compliance with this the UK authorities notified the parafiscal levy being used to finance the current scheme as described in recitals 18 to 36 above.
- (150) Parafiscal levies imposed on imported or exported products can be regarded as discriminatory internal taxation prohibited by Article 110 TFEU if the levy revenue is used for the benefit of domestic products only, so that the advantages accruing from it fully or partly offset the charge borne by those products. In the current case, the levy used to finance the notified aid scheme is, in general, charged on domestic production, but also on imported live animals and on exported products as described in recitals 32 and 33 above.
- (151) For the owners of those products, the UK authorities affirm that they will have opportunities to benefit from the scheme equivalent to those available to the owners of domestic products. In this regard the UK authorities undertook to collect and send to the Commission every second year during the implementation of the current scheme information on the amount of parafiscal levy collected in that period from the payers of each type of levy and the distribution of the funds among the types of promotional activities described in the notification. The information has to be structured in such a way as to show, in particular, the proportion of the levy paid on imported/exported products as well as the proportion of the expenditure on the different types of activities as described in recital 37.
- (152) In the event that a payer of levy on an imported or exported product demonstrates to AHDB that he has not had a reasonable opportunity to obtain an equivalent

benefit from the scheme, a proportional part of the levy will be repaid to him. Alternatively, the level of the parafiscal levy can be adapted.

- (153) Therefore, on the basis of the information provided by the UK authorities, the financing of the notified aid scheme through a parafiscal levy raises no objections.

#### **4. CONCLUSION**

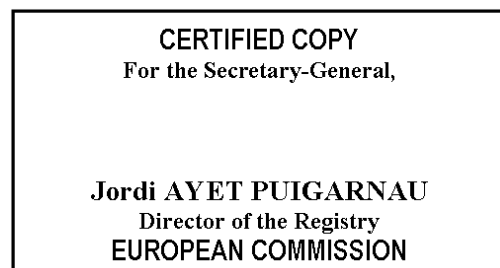
The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline, the United Kingdom will be deemed to agree to the publication of the full text of this letter. If the United Kingdom wishes certain information to be covered by the obligation of professional secrecy, please indicate the relevant parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secure e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004<sup>17</sup>, to the following address: [agri-state-aids-notifications@ec.europa.eu](mailto:agri-state-aids-notifications@ec.europa.eu).

For the Commission

Phil Hogan  
Member of the Commission



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<sup>17</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).