



EUROPEAN COMMISSION

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PUBLIC VERSION

WORKING LANGUAGE

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Subject: State Aid N 442/2005 - Germany
**Assistance towards firms and liberal professionals to make good
damage caused by the August 2005 flood in Bavaria**

Dear Sir,

1. PROCEDURE

By letter dated 9 September 2005, which was the same day registered at the Secretariat General (A/37083), the German authorities notified the above mentioned aid measure (in original language: "*Unterstützung der vom August-Hochwasser 2005 geschädigten gewerblichen Unternehmen und Angehörigen Freier Berufe in Bayern*", hereinafter referred to as 'the aid measure') pursuant to Article 88(3) of the EC Treaty.

The Commission requested additional information by letter dated 21 September 2005 which was provided by Germany by letter dated 30 September 2005.

2. DESCRIPTION OF THE AID

2.1. Objective

The heavy rainfalls in Bavaria occurring from 21-23 August 2005 resulted in very high water levels for the Danube and its side rivers which caused a flooding of those streams (e.g. *Argen, Iller, Mindel, Zusam, Schmitter, Lech, Loisach, Isar, Mangfall* und *Inn*) in the Bavarian provinces of *Niederbayern*,

Seiner Exzellenz Herrn Joschka Fischer
Bundesminister des Auswärtigen
Werderischer Markt 1
D – 11017 Berlin

Oberbayern, Oberpfalz and Schwaben. In some provinces the local authorities measured water levels which had not been experienced within the past 50–300 years.

The flooding has caused considerable damages to enterprises located in the affected provinces. The aid measure intends to partially make good the damage caused by this natural disaster.

2.2. Legal basis and duration

The aid measure is based on Articles 23 and 44 „*Bayrische Haushaltsordnung*“, „*Verwaltungsvereinbarung zwischen der Bundesrepublik Deutschland und dem Freistaat Bayern*“ and „*Vollzugshinweise für die Unterstützung der vom August-Hochwasser 2005 geschädigten gewerblichen Unternehmen und Angehörigen freier Berufe*“.

The aid measure applies only to the damages caused by the flooding in August 2005. Disbursement of the compensation can only take place after the approval of this aid measure by the European Commission. All claims have to be introduced before 31 December 2005.

2.3. Beneficiaries

Liberal professionals and companies with up to 500 employees which suffered direct material damage caused by the flooding in Bavaria are entitled to apply for aid under the measure. The German authorities' estimate that between 101-500 undertakings will file a claim.

2.4. The mechanics of aid provision

Responsible for the disbursement of the aid are the local authorities (*Kreisverwaltungen*) which receive the necessary funding and administrative assistance from the governments of the affected provinces (*Regierungsbezirke*). A beneficiary has to provide factual evidence of the damages incurred. The local authorities verify the damage and determine to what extent the damage might be covered by insurance. Only non-insurable damage will be compensated for under the present aid measure.

In order to receive the aid the beneficiary has to engage to repair the damages incurred. To prevent a circumvention of this engagement the beneficiary has to provide written evidence that the aid was used as foreseen. In case that a beneficiary received more than € 25,000 a tax accountant or an auditor is required to confirm that funds were used only to repair damages caused directly by the flood and that no over-compensation took place.

2.5. Eligible costs and aid intensity

The concept of damage applied by the German authorities includes refinancing costs of capital goods partially or wholly destroyed due to the natural disaster as well as cost to replace partially or wholly lost stocks of raw materials and intermediary goods. The total of damage is calculated on the basis of the replacement value for the destroyed goods.

Incurred losses and foregone profits associated with temporary interruptions of the production process, the loss of orders, customers or markets as well as other damages which would be classified as indirect forms of damage shall not be compensated for under the aid measure.

The aid is awarded in the form of direct grants. Firms or liberal professionals affected by the natural disaster can receive up to 50% of the proven repairs and replacement for accepted damages on buildings, equipment and machinery. Aid amounts are limited to the amount of €100,000, unless the beneficiary is suffering from a particular case of hardship, i.e. the undertaking is in an exceptional state of financial distress caused by the flood and has to file bankruptcy without the disbursement of the aid.⁽¹⁾ In those particular cases of hardship aid can be increased up to €200,000.

2.6. Budget

Within the framework of the aid measure, grants up to the value of €15 million in total can be granted.

2.7. Cumulation

A cumulation of the aid from the present aid measure with other public means is permissible if it is guaranteed that such a cumulation does not exceed the value of the accepted non-insurable damage resulting from the flood catastrophe. The responsibility to rule out such over-compensation lies with the local administration (*Kreisverwaltungsbehörde*). The beneficiary has to declare all other aid received, non-compliance will be prosecuted under § 264 German Penal Law (*Strafgesetzbuch*).

3. ASSESSMENT OF THE AID MEASURE

3.1. Existence of aid

Grants under the proposed aid measure are awarded from public Federal and *Länder* resources and granted to certain undertakings that were affected by the Bavarian flood in August 2005. The grants constitute an advantage for the beneficiaries and, as undertakings engaged in intra-Community trade are not excluded from the scope of the measure, threaten to distort competition by favouring the beneficiaries. The aid measures envisaged under the measure thus affect trade between Member States and therefore constitute State aid in the meaning of Article 87(1) EC Treaty and Article 61(1) of the EEA Agreement.

3.2. Legality of aid

By notifying the scheme, Germany respected its obligations under Article 88(3) EC Treaty.

¹ Firms in difficulty in the meaning of the 'Community guidelines on State aid for rescuing and restructuring firms in difficulty' (OJ C 244, 1.10.2004, p. 2) are not included in the scope the present measure.

3.3. Compatibility of aid

The Commission examined the notified scheme pursuant to Article 87(2)(b) of the EC Treaty.

3.3.1. *Ascertainment of a 'natural disaster'*

Article 87(2)(b) EC Treaty states that aid to make good the damage caused by natural disasters or exceptional occurrences shall be compatible with the common market. The Commission has already accepted that flooding can be qualified as natural disasters.⁽²⁾

Given the very high water levels of the Danube and its side rivers which had not been experienced within the last 50 years, that were caused by the exceptionally heavy rain falls in Bavaria in the period 21-23 August 2005, it is possible to qualify the resulting flooding in the Bavarian provinces *Niederbayern, Oberbayern, Oberpfalz* and *Schwaben* as a natural disaster.

3.3.2. *Mechanism to rule out overcompensation*

In order to be compatible with Article 87(2)(b) EC Treaty the aid must be proportional to the damage caused by the exceptional occurrence and the material destruction of goods claimed by the beneficiaries for compensation must be a proved direct consequence of the former. Aid must not result in overcompensation of damage; it should only make good the damage caused by the natural disaster.

The assessment of the claims is to be carried out by the competent local authorities (*Kreisverwaltungsbehörde*) entrusted with this task. They will verify the compliance of each claim with the requirements laid down in the aid measure.

In order to receive the aid the beneficiary has to engage to repair the damages incurred. To prevent a circumvention of this engagement the beneficiary has to provide written evidence that the aid was used as foreseen and has to declare all other aid received. In case that a beneficiary received more than € 25,000 a tax accountant or an auditor is required to confirm that funds were used only to repair the damage caused directly by the flood and that no over-compensation took place.

Taking into account that in the context of this measure only non-insurable damage will be compensated for and that the grants are limited to 50% of these damages caused directly by the natural disaster, and that even taking into account the possibility to obtain aid from other sources, the beneficiary may not under any

² See for example: State aid N 42/B/2003 - The Netherlands, "Compensation of damages of the flooding of the Maas in January 2003; State aid N 629/2002 - Austria, "Austrian measures for the victims affected by the Flood 2002", State aid N 554/2002 - Germany, "German measures for the establishment of a fund "Aufbauhilfe" - Solidarity law for the victims affected by the flood 2002.

circumstances obtain more than the value of the non-insured damage, the Commission is of the opinion that overcompensation under the present measure is ruled out.

On the basis of the foregoing assessment, the Commission concludes that the aid measure is compatible with the common market pursuant to Article 87(2)(b) EC Treaty as aid to make good the damage caused by natural disasters or exceptional occurrences.

4. DECISION

The Commission has accordingly decided to consider the aid awarded to beneficiaries active in trade and industry under the German “*Unterstützung der vom August-Hochwasser 2005 geschädigten gewerblichen Unternehmen und Angehörigen Freier Berufe in Bayern*” to be compatible with the Common Market pursuant to Article 87(2)(b) EC Treaty.

The Commission also reminds the German authorities that, in accordance with Article 88(3) EC Treaty, all plans to refinance, alter or change this scheme have to be notified to the Commission.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

Your request should be sent by registered letter or fax to:http://europa.eu.int/comm/secretariat_general/sgb/state_aids

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Fax No: 32.2.296.98.15

In all your correspondence, please specify the name of the case and the case number.

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission

