



EUROPEAN COMMISSION

Brussels,

C (....)

Subject: State aid/Germany
Aid SA. 32134N/2010
Framework of the Common Task "Improvement of Agricultural Structures and Coastal Protection" (GAK); Forestry measures

Sir,

The European Commission (hereinafter: "the Commission") wishes to inform Germany that, having examined the information supplied by your authorities on the State aid measure referred to above, it has decided not to raise any objections to the relevant measure as it is compatible with the Treaty on the Functioning of the European Union (hereinafter: "TFEU").¹

In taking this decision the Commission has relied on the following considerations:

PROCEDURE

- (1) By letter of 22 December 2010, registered by the Commission on the same date, Germany notified, according to Article 108(3) of the TFEU, the above mentioned aid measure.
- (2) By letter of 2 February 2011, the Commission asked for supplementary information which the German authorities provided on 8 February 2011, registered the same day.

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 87 and 88 of the EC Treaty should be understood as references to Articles 107 and 108 of the TFEU, where appropriate.

H.E. Dr Guido Westerwelle
Federal Minister for Foreign Affairs
Werderscher Markt 1
D - 10117 BERLIN

DESCRIPTION

Title

- (3) Forestry measures as part of Framework of the Common Task "Improvement of Agricultural Structures and Coastal Protection".

Beneficiaries

- (4) Beneficiaries are according to the Federal Forest Act (*Bundeswaldgesetz*) natural and legal persons of private and public law as owners of agricultural and forestry land, recognised forestry associations and equated associations. Federal and regional governments and its companies with at least 25% public capital share are excluded.

Legal Basis

- (5) Measures are based on the Common Task Framework "Improvement of Agricultural Structures and Coastal Protection" (*Gemeinschaftsaufgabe "Verbesserung der Agrarstruktur und des Küstenschutzes 2007-2014*) (*hereinafter: GAK*).

Duration

- (6) From the date of the Commission Decision until 31.12.2013.

Budget

- (7) 60 million Euros per year. Total budget of 180 million Euros.

Aid measure

- (8) This Commission decision concerns only the programme "Forestry" of the GAK (GAK, Principles of the promotion of forestry measures).
- (9) The GAK programme "Forestry" provides for support for measures promoting the ecological, protective and recreational functions of the forests and a healthy forest ecosystem, the afforestation of agricultural or non-agricultural land, non-productive investments and the use of environment-friendly forestry technology through various sub-measures. The measure has been approved until 31 December 2010 by Commission Decision C(2007) 3384 final as State aid No N 67/2007.
- (10) The notification at hand concerns the prolongation of all currently approved forestry measures until 31 December 2013 and the modifications of the granting conditions of one sub-measure.
- (11) The planned modification does concern the maintaining and improving of the soil quality. The formerly notified modification concerning the use of environment-friendly forestry technology was withdrawn by the German authorities by letter of 8 February 2011.
- (12) As regards the maintaining and improving of the soil quality the framework does foresee support of up to 90% of costs to be provided for soil protection lime washing, if thereby a structural improvement of the resistance of stocks can be expected. Expert advice must confirm the usefulness and harmlessness of this measure. Following the planned modification of this sub-measure the aid intensity can be up to

100% of proven eligible costs for private forestry owners with less than 30 hectare of forestry in the lime washing area. In areas with mixed ownership forestry plots that represent not more than 20% of the whole liming area and that do not fulfil these conditions can benefit from the higher aid intensity in case this facilitates the joint implementing of the measure. As far as recognised forestry associations, private forestry owners and public municipalities share the implementing of this measure the higher aid intensity may be authorised if 80% of the participants do fulfil the above-mentioned conditions. As a consequence the measure will convert and include the support for lime washing foreseen in the model project "Programme for the revitalisation of forests" that was approved until 2010 by Commission Decision C (2008) 857 of 28 February 2008 in State aid No N 758/2007.

- (13) All other aid measures remain unchanged as approved in State aid No N 67/2007.
- (14) The German authorities have confirmed that the measure contributes to maintaining, restoring or improving ecological, protective and recreational functions of forests, biodiversity and a healthy forest ecosystem and that it concerns the eligible costs mentioned in points 175-181 of the Community guidelines for State aid in the agriculture and forestry sector 2007-2013 (hereinafter: the guidelines)².
- (15) The German authorities confirmed that the measures under the present scheme exclude aid to forest based industries or for commercially viable extraction of timber, transportation of timber or for the processing of wood or other forestry resources into products or for energy generation.
- (16) The German authorities confirmed that the measures do not reduce biodiversity, cause nutrient leaching or adversely affect natural water ecosystems or water protection zones.
- (17) According to § 14 of the Federal Forest Act (Bundeswaldgesetz), forests are open to the public at no cost for recreational purposes subject to restrictions by the *Länder* due to important reasons (forestry protection, visitor protection or prevention of substantial costs).
- (18) Furthermore, the German authorities confirmed that the scheme at hand complies with point 16 of the guidelines. Aid under the present scheme will only be granted in respect of activities undertaken or services received after the aid scheme has been set up and declared compatible with the treaty by the Commission. If the aid scheme requires an application to be submitted to the competent authority concerned, the aid itself will only be granted for activities undertaken or services received after the following conditions have been fulfilled: the aid scheme has been set up and declared compatible with the Treaty by the Commission; an application for aid has been properly submitted to the competent authority concerned; the application has been accepted by the competent authority concerned in a manner which obliges that authority to grant the aid, clearly indicating the amount of aid to be granted or how this amount will be calculated; such acceptance by the competent authority will only be made if the budget available for the aid scheme is not exhausted.
- (19) Co-financing of some of the measures is possible whereas a decision is the competence of the *Länder* in compliance with the respective regional Rural Development Programmes. The German authorities have given assurances that

² OJ C 319, 27.12.2006, p. 1

double support will be excluded by the implementing rules of this aid schemes and the implementing rules concerning the German Rural Development Programmes.

ASSESSMENT

Application of Article 107(1) of the TFEU

- (20) Pursuant to Article 107(1) of the TFEU, aid granted by a Member State or through state resources in any form whatsoever that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is prohibited, insofar as it affects trade between Member States.
- (21) The measure at hand confers advantage on its recipients. This advantage is granted through State resources and it favours the undertakings in the forestry sector in Germany.
- (22) 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.³
- (23) Aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-Community trade.⁴ The beneficiaries of the aid at issue operate on the timber market, which appears to be a market with significant intra-Union trade.⁵ Therefore, the present measure is liable to affect trade between Member States.
- (24) In the light of the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed measure constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the Treaty.

Application of Article 107(3)(c) of the TFEU

- (25) The prohibition of State aid in Article 107(1) of the TFEU is subject to certain exceptions. Article 107(3)(c) of the TFEU provides that aid may be considered compatible with the internal market if it aims 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.

Application of the Guidelines

- (26) Aid to the forestry sector has to be examined against the background of the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 2013⁶, in particular Chapter VII thereof. The aid measure in question cannot be

³ 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.

⁴ 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.

⁵ In 2007 intra-EU imports of timber into Germany amounted to ca 5.7 million tonnes and intra-EU exports from Germany to ca 6.8 million tonnes.

⁶ OJ C 319, 27.12.2006, p. 1.

exempted in line with Commission Regulation (EC) No 1857/2006 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001⁷ since it falls outside of the scope of that Regulation (forestry measures are not Annex I activities and are therefore not covered by that Regulation).

- (27) Point 16 of the Guidelines provides conditions that must be fulfilled for the aid to have an incentive effect. As stipulated under point 18, these conditions are met.
- (28) Chapter VII of the Guidelines allows Member States to grant support for the forestry sector, subject to a number of conditions.
- (29) Point 175 of the guidelines states that in order to contribute to the maintenance and improvement of forests and to promote their ecological, protective and recreational function the Commission will declare State aid up to 100% compatible with Article 107(3)(c) of the TFEU for the following eligible costs where the member State can demonstrate that these measures are directly contributing to maintaining or restoring ecological, protective and recreational functions of forests, biodiversity and a healthy forest ecosystem.
- (30) According to point 176 of the guidelines the Commission will declare State aid for afforestation of agricultural and non-agricultural land, establishment of agro forestry systems on agricultural land, Natura-2000 payments, forest-environment payments, restoration of forestry potential and introduction of prevention actions as well as non-productive investments compatible with Article 107 (3) (c) TFEU if the aid meets the conditions laid down in Articles 43 to 49 of Regulation (EC) No 1698/2005 and does not exceed the maximum intensity stipulated therein.
- (31) According to point 177 of the guidelines the Commission authorises State aid for the additional costs and income foregone due to the use of environmental-friendly forestry technology going beyond the relevant mandatory requirements if the forest owners enters into a voluntary commitment concerning the use of such technology and the commitment satisfies the conditions of Article 47 of Regulation (EC) No 1698/2005. Aid exceeding the amounts fixed in the Annex to this Regulation shall in principle only be declared compatible with Article 107 (3) c TFEU if granted for demonstrated additional costs and/or income foregone in exceptional cases taking into account specific circumstances to be duly justified, in favour of commitments which lead to a demonstrable and significant positive effect on the environment.
- (32) As regards the measures that will be subject only to prolongation reference is made to the assessment made in the decision on State aid No N 67/2007 where the measures were found to fulfil the conditions of Chapter VII of the Guidelines and were found to be compatible with the internal market.
- (33) As the applicable rules on assessment of forestry measures under the Guidelines have not changed in substance as far as the evaluation of the present case is concerned the Commission does not see any necessity to change its opinion regarding the compatibility of these measures with the internal market.

⁷ OJ L 358, 16.12.2006, p. 3.

- (34) As regards to the planned modification of the conditions of the support for lime-washing reference is made to the assessment made in the decision on State aid No N 758/2007, where the measure was found to fulfil the conditions of point 175 (b) of the Guidelines and was found to be compatible with the internal market. As the planned modification does only foresee an increase of aid intensities for certain beneficiaries in accordance with the conditions of point 175 and 175 (b) of the guidelines without other substantial modifications, the Commission does also not see a necessity to change its opinion regarding the compatibility of this sub-measure with the internal market.
- (35) The Commission concludes that its assessment in the two decisions referred to in point 32 and 34 is still valid and that the measures do comply with the conditions set in Chapter VII of the Guidelines.

4. CONCLUSION

- (36) On the basis of the above considerations, the Commission has accordingly decided to consider the aid to be compatible with Article 107(3)(c) the TFEU.
- (37) If this letter contains confidential information, which should not be published, please inform the Commission within fifteen working days from the receipt of the present letter. If the Commission does not receive a reasoned request by this deadline, you will be deemed to have agreed to the publication of the full text of this letter in the authentic language on the following webpage:

http://ec.europa.eu/eu_law/state_aids/state_aids_texts_de.htm.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate Agricultural Legislation
Office: Loi 130 5/98A
B-1049 Brussels
Fax No: 0032 2 2967672

Yours faithfully,

For the Commission

Dacian CIOLOȘ
Member of the Commission