Subject:   State Aid/Germany (Bavaria)  
- Aid No SA.33516 (N/2011)  
- Compensation for damages caused by beavers

Sir,

The Commission wishes to inform Germany that, after examining the information supplied by your authorities on the aid referred to above, it has decided to raise no objections to the aid in question, as it is compatible with the Treaty on the Functioning of the European Union (TFEU)\(^1\).

The Commission has taken this decision on the basis of the following considerations:

1.  PROCEDURE

   (1) In accordance with Article 108(3) TFEU, Germany notified this measure to the Commission by e-mail of 16 August 2011, registered as received on the same day. Additional information was provided by e-mail of 4 November 2011, by e-mail of 21 November 2011 and by e-mail of 29 November 2011.

2.  BACKGROUND

   (2) Pursuant to Council Directive 92/43/EEC\(^2\) (hereafter referred to as FFH Directive) the beaver is an animal species of Union interest in need of strict protection. As a

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 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

consequence of this protection status hunting, possession and marketing of beavers is forbidden, whereas exceptions can be allowed in particular cases.

(3) Currently in the Free State of Bavaria live between 12 000 and 14 000 beavers. Since the natural resettlement of beavers in Bavaria, the number of damages caused by these animals mainly to agricultural, fisheries and forestry undertakings has increased.

(4) This sheds a negative light on the image of the beaver amongst the population.

(5) Due to the high protection status of the beaver defence or prevention measures are allowed only in particular cases. As a consequence of this special situation, Bavaria elaborated the "Beaver management guidelines". Pursuant to these guidelines, the Bavarian beaver management is based on four pillars: 1. distribution of information, 2. preventive measures for the protection from beaver damages, 3. intervention measures (live capture and killing of beavers) and 4. compensation measures.

1. Under the first pillar the local authorities, beaver advisors and beaver managers provide information to the undertakings concerned regarding the beaver management. According to article 16(1) of the FFH Directive an exception to the prohibition of capturing and killing of beavers should be made subject to special strict conditions. The provision of information to the concerned parties in each individual case aims, in applying the above provision, to establish whether the above mentioned conditions regarding intervention measures are fulfilled or whether there are other satisfying solutions such as preventive measures. Thereby the protection of species required by the FFH Directive is guaranteed.

2. The preventive measures under the second pillar include the setting of electric fences, beaver drainages, conversion of arable farmland into grassland, set-aside of arable land, grassland and riparian strips. Pursuant to the German authorities support for these preventive measures are granted in the context of the Bavarian Rural Development Programme3.

3. The intervention measures can be carried out only in exceptional cases after an application and subsequent authorisation by the competent local authorities for the prevention of substantial economic damage as well as for reasons of public security. The geographical scope is limited to purification plants, engine channels of hydroelectric power plants, dams and flood protection facilities, irrigation ditches, drainage channels, public roads and commercially used fish ponds. Entitled to execute the intervention measures are only persons who have the necessary hunting abilities. The applicant has to carry the respective costs.

4. The compensation measures under the fourth pillar are designed to partially compensate for damages caused to agricultural, fishery and forestry undertakings by beavers (see Section 3 below).

(6) The measures under the first three pillars are not subject to the present notification.

(7) Pursuant to the beaver management guidelines, preventive measures and intervention measures have priority over compensation measures. Especially in areas with recurring beaver damages compensation will be granted only if respective preventive measures are not possible, proportional and reasonable.

3. DESCRIPTION OF THE AID SCHEME

3.1. Compensation measures

(8) Under the proposed scheme aid will be granted to partially compensate for damages caused to primarily agricultural, fishery and forestry undertakings by beavers. The following costs are eligible: feeding and rewetting damages to crops including field crops, but also fruit crops, vegetables and special crops, such as Christmas trees; field damages, caused for instance by river bank break of; damages on agriculture machinery; damages on ponds/aquaculture; forestry damages.

(9) Pursuant to the German authorities the aid scheme has been designed in accordance with the risk management principles of the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 2013 (Chapter V).

(10) Aid will be granted up to 80% of eligible costs.

(11) No compensation will be granted for damages, which were compensated under insurance schemes. No compensation will be paid for amounts below EUR 50 and above EUR 30 000.

(12) The aid scheme is limited to damages caused by beavers. Damages caused by other animals are not covered.

(13) Beneficiaries have to report a damage event within one week at the competent district authority (Kreisverwaltungsbehörde). The beneficiary has to prove the damage. In simple cases an inspection by a beaver advisor and the submission of invoices, cost estimates and pictures can be sufficient. The compensation amount is determined on the basis of respective estimation guidelines: estimation guidelines by the Bavarian farmer association (Schätzungsrichtlinien des Bayerischen Bauernverbandes) regarding field crops, guidelines "Estimate beaver damages – forestry damages" by the Bavarian State Institute for Forest and Forestry (Leitfaden „Biberschäden Forstwirtschaftliche Schäden bewerten“ der Bayerischen Landesanstalt für Wald und Forstwirtschaft) as regards forestry damages and Cost rates by the board of trustees of the Bavarian machinery and assistance rings (Verrechnungssätze des Kuratoriums Bayerischer Maschinen- und Betriebshilfsringe e.V. (KBM e. V.)).

(14) Aid under this scheme cannot be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible costs.
3.2. Title

Beaver management guidelines

3.3. Budget

The scheme will have an overall budget of € 700 000.

3.4. Duration


The German authorities confirmed that aid can be granted only after authorisation of the notified scheme by the Commission.

3.5. Beneficiaries

Undertakings active in the production of agricultural products, in fisheries and in forestry affected by the damages caused by beavers.

3.6. Legal basis

Draft of beaver management guidelines of the Bavarian State Ministry for Environment and Health (Richtlinien zum Bibermanagement des Bayerischen Staatsministeriums für Umwelt und Gesundheit).

4. ASSESSMENT UNDER COMPETITION RULES

4.1. Legality of measure

By notifying the aid measure before putting it into effect, the German authorities respected their obligations under Article 108 (3) of the TFEU.

4.2. Presence of aid within the meaning of Article 107(1) of the TFEU

Under Article 107(1) of the TFEU, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, is incompatible with the internal market.

The aid at issue is granted out of State resources as the compensation measures are financed by Bavaria. It favours certain (agricultural, fisheries and forestry) enterprises in Bavaria (cf. point 3.5). As these benefiting undertakings are active in competitive international markets\(^4\), the measure distorts or threatens to distort\(^5\)

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\(^4\) Germany’s intra-EU imports and exports of agricultural products in 2009 stood at € 47 797 million and € 39 599 million respectively (Source: EUROSTAT).

\(^5\) According to the case law of the Court of Justice, improvement in the competitive position of an undertaking resulting from a State aid generally points to a distortion of competition compared with other competing undertakings not receiving such assistance, Case C-730/79, ECR 1980, p. 2671, paragraphs 11 and 12.
competition and affects trade between Member States. Therefore, it can be concluded that the compensation measures of the scheme constitute an aid under Article 107(1) of the TFEU.

4.3. Compatibility

(24) The prohibition of State aid in Article 107(1) is subject to certain exceptions.

Applicability of Article 107(2)(b) of the TFEU

(25) Article 107(2)(b) of the TFEU states that aid to make good the damage caused by natural disasters shall be compatible with the internal market. For the time being there is no common definition of a “natural disaster” for all sectors. The Community guidelines for State aid in the agriculture and forestry sector 2007-20136 (hereinafter: the Guidelines) states under its paragraph 121 that earthquakes, avalanches, landslides and floods may constitute natural disasters. Furthermore, the Commission has already confirmed in several decisions that earthquakes7, landslides8, floods9 and avalanches10 constitute natural disasters in the meaning of Article 107(2)(b) of the TFEU.

(26) The proposed aid measure does not seem to constitute a natural disaster in the meaning of Article 107(2)(b) since damages caused by beavers do not fall under the above catastrophic events.

Compatibility under Article 107(3)(c) of the TFEU

(27) Pursuant to Article 107(3)(c) of the TFEU, aid may be considered compatible with the internal market if it aims to facilitate 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.

(28) At present there are no frameworks or guidelines which can be applied to assess state aid measures such as the one under review. In particular, regarding beneficiaries


7 State aid N 459a/2009 – Italy – Aid scheme for compensation for damage caused by the earthquake in Abruzzo of 6 April 2009 (OJ C 278, 18.11.2009, p. 3.).


in the agricultural sector, the proposed aid measure does not seem to be covered by any of the provisions foreseen in the Guidelines. Chapter V (risk and crisis management) of the Guidelines foresees aid to make good the damage caused by natural disasters, aid to compensate farmers for losses caused by adverse weather conditions and aid for combating animal and plant diseases. It, however, does not cover the possibility of aid to (partially) compensate farmers for damages caused by wild animals. Likewise, in the fisheries sector such a compensation measure does not fall under the scope of point 4.4. of the Guidelines for the examination of State aid to fisheries and aquaculture which provides for aid to make good damage caused by natural disasters, exceptional occurrences or specific adverse climatic events.

(29) Hence, the Commission considers that it is more appropriate to examine the measure directly under Article 107(3)(c) of the TFEU.

Common interest

(30) According to the German authorities the notified measure aims not only at supporting certain undertakings in Bavaria who are facing a specific risk (by partially compensating damage caused by beavers) but also at protecting the species beaver by improving the acceptance of this animal amongst affected local undertakings and therefore reducing the risk of (illegal) assaults.

(31) The Commission acknowledges that damages caused by wild animals are a growing problem, and that the success of EU conservation policy depends partly on the effective management of conflicts between wild animals and affected undertakings. In this context the Commission has already approved two German State aid measures to compensate farmers for damages caused by carnivores.

Necessity and proportionality

(32) Pursuant to the German authorities the aid scheme has been designed in accordance with the risk management principles of Chapter V (“risk and crisis management”) of the Guidelines.

(33) The Commission recognises in point 112 of the Guidelines that good risk and crisis management measures are a key tool for a sustainable and competitive agriculture sector in the Union. Pursuant to point 113 of the Guidelines, a minimum contribution from producers to losses or the cost of such measures or some other adequate counterpart should be foreseen to mitigate the risk of distortions of competition and to provide an incentive for minimising risk.

(34) Point 115 of the Guidelines stipulates that State aid should be limited to helping farmers facing various difficulties despite having undertaken reasonable efforts to

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minimise such risks. State aid should not have as its effect to entice farmers into taking unnecessary risk. Farmers should themselves bear the consequences of imprudent choices of production methods or products.

(35) Pursuant to the Bavarian beaver management guidelines, undertakings within the beaver area have to take reasonable preventive and intervention measures (electric fences, beaver drainages, conversion of arable farmland into grassland, set-aside of arable land, grassland and riparian strips) (cf. para. (7)).

(36) Eligible costs of the damages are under the notified scheme compensated at 80% (cf. para. (10)). The German authorities explicitly confirmed that the aid cannot be cumulated with any other aid in respect of the same damage event (cf. para. (14)). Therefore the affected undertakings have to bear the remaining 20% of the cost of the damage themselves.

(37) Given that beneficiaries of the scheme have to take adequate measures to mitigate the risk and in view of the fact that damages are only compensated up to a level of 80% it can be reasonably expected that the risk of distortion of competition resulting from the notified scheme is limited.

(38) It can furthermore be reasonably expected that the positive effects on the protection of beavers (animal species of Union interest in need of strict protection, cf. para. (2)) will outweigh this possible distortions of competition.

(39) Based on the above considerations, it can be concluded that the notified aid scheme has a substantial positive impact for the development of the agriculture, forestry and fisheries sectors, a positive environmental impact for animal species protected by European law (beavers) and it does not adversely affect trading conditions to an extent contrary to the common interest. As a result, the positive impact of the measure on the development of the sector and the contribution to the Union policy on species protection (see above) clearly outweighs the risks of distortion of competition.

(40) Consequently, it may be concluded that the proposed aid measure complies with the principles of Article 107(3)(c) of the TFEU.

5. DECISION

(41) In view of the foregoing, the Commission has accordingly decided to consider the compensation aid for beaver damages granted under the beaver management plan compatible with the internal market under Article 107(3)(c) of the TFEU.

(42) If this letter contains confidential information that 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 disclosure to third parties and to publication of the full text of this letter in the authentic language on the Internet site: http://ec.europa.eu/eu_law/state_aids/state_aids_texts_de.htm

Any such request specifying the relevant confidential information should be sent by registered letter or fax to:
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Directorate M
Office: Loi 130 5/140
B-1049 Brussels
Fax No: 0032 2 2967672

Yours faithfully,

For the Commission

Dacian CIOLOȘ
Member of the Commission