



EUROPEAN COMMISSION

Brussels,
C (...)

Subject: State aid/Czech Republic
Aid number SA.36649 (2013/N)
Aid for selected activities aimed at reviving swine-breeding

Sir,

The European Commission ("the Commission") wishes to inform the Czech Republic 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 ("TFEU").

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

I. PROCEDURE

- (1) By letter of 8 May 2013, registered by the Commission on 14 May 2013, the Czech Republic notified, according to Article 108(3) TFEU, the above mentioned aid scheme.
- (2) By letter of 31 May 2013, the Commission asked for supplementary information which the Czech Republic authorities provided by letter of 27 June 2013, registered on 28 June 2013.

II. DESCRIPTION

2.1 Title

- (3) Aid for selected activities aimed at reviving swine-breeding.

2.2 Objective

- (4) To provide partial support, in a form of a subsidized service, to farmers active in the pig breeding, aiming at increasing prevention of diseases and better food safety.

2.3 Duration of the scheme

- (5) From 1 January 2014 or from the approval of the scheme by the Commission, should that take place later, until 31 December 2020.

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2.4 Budget and aid intensity

- (6) Overall budget: CZK 3017.00 million (around € 125 million), annual budget: CZK 431.00 million (around € 17.9 million).
- (7) The Czech authorities have confirmed that the aid intensity will not exceed 100% of eligible costs.

2.5 Beneficiaries and intermediaries

- (8) The ultimate beneficiaries of aid will be to pig breeders. The estimated number of beneficiaries is from 51 to 100.
- (9) Eligible activities will be provided by specialized companies operating in the field of disinfection, disinsectization and disinfestation.
- (10) The Czech authorities committed to not grant aid to companies in difficulty within the meaning of the Community guidelines on state aid for rescuing and restructuring firms in difficulty. Likewise, the Czech authorities undertook to suspend payments to undertakings that have benefitted from the earlier unlawful aid declared incompatible by the Commission, until the total amount of such aid and the corresponding interests will have been reimbursed.

2.6 Legal Basis

- (11) The legal basis for granting the aid is:
 - *Zákon č. 252/1997 Sb., o zemědělství* (Law No 252/1997 Coll. on Agriculture);
 - *Zákon č. 166/1999 Sb., o veterinární péči a o změnách některých souvisejících zákonů* (Law No 166/1999 Coll. on Veterinary Activities);
 - *Zásady, kterými se stanovují podmínky pro poskytování dotací na základě § 2 a § 2d zákona č. 252/1997 Sb., o zemědělství* (Rules for granting the aid pursuant to Articles 2 and 2d of Law No 252/1997 Coll. on Agriculture).

2.7 Description of the aid measure

- (12) With the present notification the Czech authorities wish to amend the existing aid scheme SA. 32899 approved on 20 September 2011 by the Commission Decision C (2011) 6447). The amendment consists of enlarging the list of diseases and of activities eligible under this aid measure, as further detailed in recitals 13 & 14 below. Further modification is the proposed extension of the duration of the original scheme until 31 December 2020, the original aid measure having been proposed until 31 December 2017.
- (13) The present aid scheme envisages to finance the measures to prevent the following pig diseases: porcine brucellosis, swine vesicular disease, classical swine fever, Aujeszky's disease, Porcine Reproductive and Respiratory Syndrome Virus (PRRS) and it is proposed to add *Salmonella* sp.. These diseases, including the newly added *Salmonella* sp. are all on the list of animal diseases established by the World

Organization for Animal Health (OIE)¹ and/or in Annex to Council Decision 2009/470/EC².

- (14) Eligible costs:
- (a) mechanical cleaning and washing, disinfection, disinsectization and disinfestations of the animals and of stalls and their components, especially the feedstuff supply chains and storages as well as the equipment storage rooms other related premises;
 - (b) cleaning and disinfection of distribution systems for safe drinking and service water;
 - (c) optimisation of controlled ventilation and the operation of microbial filters;
 - (d) reconstruction of sanitary facilities;
 - (e) treatment of internal areas with a sanitising agent;
 - (f) veterinary services (such as veterinary controls, health checks and tests, screening measures and analysis)
 - (g) treatment of weed and water (newly added).
- (15) Aid will be paid out in the amount of up to CZK 1000.00 per breeding place per animal. According to the Czech authorities such aid will be conditional on a presence of a healthy animal on such place.
- (16) The Czech authorities declared that all the respective conditions approved for the existing aid scheme SA. 32899 will remain unchanged, in that:
- (17) The above-listed eligible activities can only be included in eligible costs if they are recognised as prevention measures within the framework of an eradication plan approved by the relevant Regional Veterinary Authority and are not part of standard maintenance.
- (18) No compensation for losses is foreseen under the present scheme.
- (19) There is no risk of overcompensation as aid will be paid out for the service rendered to the service providing intermediary (cf. recital 9), and it will involve no direct payments to farmers.
- (20) The Czech authorities has confirmed that under this aid scheme no aid will be granted to companies active in the processing and marketing of agricultural products.
- (21) According to Czech authorities the aid will not relate to a disease in respect of which the EU legislation provides for specific charges for control measures. In addition, the Czech authorities confirmed that the aid will not relate to measures in respect of which the EU legislation provides that the cost of such measures is to be borne by the agricultural holdings. The Czech authorities also confirmed that the payments will be

¹ http://www.oie.int/Eng/maladies/en_classification.htm

² OJ L 224, 18.8.1990, p. 19-28

a part of public programme at national level for the prevention, control or eradication of the disease or pest concerned.

- (22) The Czech authorities further confirmed that the normal costs no longer faced by a farmer and the insurance payments, in case the animals were insured against transmissible diseases, will be deducted from the overall aid amount.
- (23) The Czech authorities gave their assurance that the aid under the present scheme cannot be cumulated with aid received from other local, regional, national or EU schemes to cover the same eligible costs.
- (24) The Czech authorities confirmed that the aid will be granted only towards activities that will begin after the Commission will have authorised this aid scheme and after the competent authority has accepted the application by a binding decision indicating the amount of aid.
- (25) Furthermore, the Czech authorities confirmed that the aid will be introduced within three years following the occurrence of the expense and that the aid under the notified measure will be paid out within four years following the occurrence.

III. ASSESSMENT

3.1 Application of Article 107(1) TFEU

- (26) Pursuant to Article 107(1) 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.
- (27) The measure in question confers an advantage on pig breeders in the Czech Republic which shall be paid from the State budget. Therefore, the measure is selective and it involves State resources.
- (28) According to the case law of the Court of Justice, aid to an undertaking is deemed to affect trade between Member States where that undertaking operates in a market open to trade at EU level.³ The mere fact that the competitive position of an undertaking is strengthened compared with other competing undertakings, by giving it an economic benefit which it would not otherwise have received in its normal course of business, points to a possible distortion of competition.⁴ Therefore an aid granted by a Member State to an undertaking may help to maintain or increase domestic activity, with the result that undertakings established in other Member States have less chance of penetrating the market of the Member State concerned.⁵

³ See in particular Judgment of the Court of 13 July 1988, Case 102/87, French Republic v Commission of the European Communities, ECR 1988, p. 4067.

⁴ Judgment of the Court of 17 September 1980, Case 730/79, Philip Morris Holland BV v Commission of the European Communities, ECR 1980, p. 2671.

⁵ See in particular Judgement of the Court of 15 December 2005, Case C-66/02, Italy v Commission, ECR 2005, p. I-10968, para 117 and Judgment of the Court of 15 June 2006, Joined Cases C-393/04 and C-41/05, Air Liquide Industries Belgium, ECR 2006, p. I-5332, para 35.

- (29) Aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade.⁶ There is an extensive intra-EU trade in agricultural products⁷, therefore, the present measure is liable to affect trade between the Member States.
- (30) In the light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed measure constitutes State aid within the meaning of that Article.

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

- (31) It must be examined whether derogation from the general principle of the incompatibility of State aid under Article 107 of the TFEU might be granted.
- (32) In this case, taking into account the nature of the measures envisaged, the derogation pursuant to Article 107(3) (c) of the TFEU may be invoked, whereby 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.
- (33) The compatibility of the present scheme was assessed pursuant to section V.B.4. of the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007-2013⁸ (hereafter "the Guidelines") setting out the rules for 'aid for combating animal and plant diseases'.
- (34) Point 133 of the Guidelines states that the Commission will declare State aid for combating animal and plant diseases compatible with Article 107(3)(c) TFEU if it fulfils all the conditions of Article 10 of Commission Regulation No 1857/2006.
- (35) Article 10(1) thereof enumerates the eligible expenses for state support in relation to the eradication of animal diseases. The expenses as described above in recital 14 are all covered by Article 10(1) of the Regulation 1857/2006. The Czech authorities have given their assurances that the aid would be granted only for costs in relation to the eradication and prevention of animal diseases and by means of subsidised services and that it would not involve direct payments of money to producers (cf. recitals 8 & 9).
- (36) The proposed aid intensity of 100% towards the expenses eligible under the present scheme (cf. recital 7) is in compliance with Article 10 (1)(a) of the Regulation 1857/2006.
- (37) Article 10(3) of the Regulation 1857/2006 stipulates that the maximum amount of costs or loss eligible for aid pursuant to Article 10(1) and 10(2) should be reduced by any amount received under insurance schemes. Furthermore, normal costs not incurred by the farmer should also be taken into account. The Czech authorities confirm that the normal costs no longer faced by the farmer and the insurance

⁶ 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.

⁷ In 2009 the intra-EU trade between Czech Republic and other MS amounted to EUR 4 759 million for exports and EUR 3 431 million for imports (source: EUROSTAT). [update](#)

⁸ OJ C 319/1

payments, in case the animals were insured against transmissible diseases, would be deducted from the overall aid amount (cf. recital 22).

- (38) According to Article 10(4) of the Regulation 1857/2006 payments should be made in relation to diseases or pests for which EU or national provisions exist, whether laid down by law, regulation or administrative action. Payments must be thus made as a part of a public programme at EU, national or regional level for the prevention, control or eradication of the disease or pest concerned. The diseases or pest infestations must be clearly identified in the programme, which must also contain a description of the measures concerned. The conditions stated in Article 10(4) can be considered to be met as the Czech authorities demonstrated the existence of national legal provisions empowering the authorities to act against the disease (cf. recital 21).
- (39) Article 10(5) of the Regulation 1857/2006 states that the aid must not relate to a disease in respect of which EU legislation provides for specific charges for control measures. In addition, Article 10(6) states that the aid must not relate to measures in respect of which EU legislation provides that the cost of such measures is to be borne by the agricultural holding, unless the cost of such aid measures is entirely offset by compulsory charges on producers. These conditions are met for the diseases covered by the notified scheme. (cf. recital 21)
- (40) Article 10(7) of the Regulation 1857/2006 stipulates that as regards animal diseases, the aid must be granted in respect of diseases mentioned in the list of animal diseases established by the World Organisation for Animal Health and/or in the Annex to Council Decision 2009/470/EC⁹. The diseases for which compensation could be paid under the present scheme are clearly identified in Annex to Council Decision 2009/470/EC and/or in the list of animal diseases established by the World Organization for Animal Health (cf. recital 13). Therefore, this condition is complied with.
- (41) According to Article 10(8) of the Regulation 1857/2006 the aid schemes must be introduced within three years following the occurrence of the expense or loss. Aid must be paid out within four years following the occurrence. The Czech authorities gave appropriated commitments in this regard (cf. recital 25). Thus, the requirements of Article 10(8) of the Regulation 1857/2006 are fulfilled.
- (42) Based on the above considerations, the aid scheme complies with the conditions of point 133 of the Guidelines further referring to conditions of Article 10 of Commission Regulation (EC) No 1857/2006.
- (43) Point 136 of the Guidelines states that where aid is provided under EU and/or national/or regional aid schemes, the Commission will require evidence that there is no possibility of overcompensation through the cumulation of different schemes. The Czech authorities gave commitment to assure that the present scheme will not be cumulated with aid received from other local, regional, national or EU schemes to cover the same eligible costs (cf. recital 23) and that the financial support under this scheme cannot be granted to undertakings in difficulty¹⁰ (cf. recital 10).
- (44) The Czech authorities committed to suspend the payment of any aid under the notified aid scheme to any undertaking that has benefited from earlier unlawful aid

⁹ As of 25 May 2009 this decision replaces the repealed Council Decision 90/424/EEC.

¹⁰ The definition of firms in difficulty corresponds to the definition provided in the Community guidelines on rescue and restructuring of firms in difficulty.

declared incompatible by a Commission Decision, until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid with the corresponding recovery interest (cf. recital 10).

- (45) Pursuant to points 15 and 16 of the Guidelines, for an aid to be compatible it must have an incentive effect. The Czech authorities have given assurances that this requirement will be met (cf. recital 24).
- (46) On the basis of the above considerations it may be concluded that the aid scheme in question complies with the relevant provisions of the Guidelines. However, since the present aid scheme is proposed to be in place from 1 January 2014 until 31 December 2020, the Commission would like to remind the Czech authorities that the current Guidelines are due to expire at the end of 2013 and the Commission may, if necessary, propose appropriate measures to ensure that the existing schemes are adapted to the new applicable rules.

4. CONCLUSION

- (47) The Commission has therefore decided not to raise objections to the measure as it is considered compatible with the internal market on the basis of Article 107(3)(c) TFEU.
- (48) 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/competition/elojade/isef/index.cfm>

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

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

Yours faithfully,

For the Commission

Dacian CIOLOȘ
Member of the Commission