



Brussels, 14.9.2018
C(2018) 5922 final

**Subject: State aid / United Kingdom (England)
SA.48810 (2017/N)
Forestry aid scheme England**

Sir,

The European Commission (hereinafter: "the Commission") wishes to inform the United Kingdom (UK) 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 that scheme as it is compatible with the internal market pursuant to Article 107(2)(b) and Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By letter of 10 November 2017, registered by the Commission on the same day, UK (England) notified, according to Article 108(3) TFEU, the Forestry aid scheme England. The Commission made requests for further information on 7 December 2017, 2 February 2018, 8 May 2018 and 9 July 2018, in response to which the UK authorities provided additional information on 15 December 2017, 2 March 2018, 26 March 2018 (following a meeting between the UK authorities and the Commission services held in Brussels on 22 March 2018), 14 May 2018, 18 July 2018 and 23 July 2018.

2. DESCRIPTION

2.1. Title

- (2) Forestry aid scheme (England)

2.2. Objective

- (3) The objective of the aid scheme is to support the creation and management of woodland areas in England and to deliver enhanced environmental, cultural or social benefits. Whilst each of the seven aid measures has slightly different

objectives or is applicable to discrete geographic areas, all seek to deliver environmental or social enhancement through woodland creation or improved management of existing woodland areas.

2.3. Legal basis

- (4) The following national documents provide guidance on the implementation of the forestry aid scheme England:
- "Forestry act 1979";
 - "Natural Environment and Rural Communities Act 2006";
 - "National Heritage Act 1997";

2.4. Duration

- (5) From the date of the approval by the Commission until 31 March 2022.
- (6) Since the United Kingdom (UK) notified on 29 March 2017 its intention to leave the European Union, pursuant to Article 50 of the Treaty on European Union, the Treaties will cease to apply to the UK from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council in agreement with the UK decides to extend this period. As a consequence, and without prejudice to any provisions of the withdrawal agreement, the present decision only applies if (i) the UK is still a Member State on the first day of the period for which the notified scheme applies, and (ii) to individual aid granted under the notified scheme until the UK ceases to be a Member State.

2.5. Budget

- (7) Overall budget provided by the General budget of the State and by the National Lottery is GBP 150 000 000 (approximately EUR 170.3 million). The annual budget is GBP 30 000 000 (approximately EUR 34.1 million).

2.6. Beneficiaries

- (8) The beneficiaries of the aid scheme are all forest holders in England – both public and private actors, most of them are SMEs. Some forest holders may meet the definition of a 'large enterprise' but as the objectives of all the measures is to provide environmental or social benefit rather than to benefit the productivity of beneficiaries, it is considered appropriate that they should be eligible for support.

2.7. Description of the aid scheme

- (9) The purpose of the aid scheme is to support the creation and management of woodland areas in England and to deliver enhanced environmental, cultural or social benefits. Whilst each aid measure has slightly different objectives or applicable to discrete geographic areas, all seek to deliver environmental or social enhancement through woodland creation or improved management of existing woodland areas and thus enhancing biodiversity by securing stable habitats.

- (10) In the vast majority of cases, support will be provided for non-productive investments to provide environmental or social benefits within the framework of commitments which the beneficiaries will undertake voluntarily. In these cases, it is considered appropriate to use grants as use of other potentially less distorting forms of aid will not result in the necessary investment for achieving the objectives of the scheme. However, the UK Authorities commit to capitalise on the experience acquired and to explore new financial and funding mechanisms to encourage a greater level of institutional investment in afforestation and in mobilising wood supply from the existing private forest estate. In the cases of support for productive investments, the beneficiaries will most commonly be micro-enterprises and evidence has shown that, even with the historically low interest rates that are available, such micro-enterprises cannot access commercial loans at favourable rates. One of the key factors for this inability to access finance is the lack of collateral that such enterprises have; by offering grant support of up to 40% of the eligible costs, that constraint will be overcome.
- (11) The UK authorities commit to grant the aid only for activities undertaken after an aid application including at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs, together with all necessary documents is properly submitted to the competent authority and accepted by the latter. In addition, large enterprises will provide in the application a counterfactual scenario and submit documentary evidence in support of the counterfactual described in the application.
- (12) According to the UK authorities, the scheme has an incentive effect, as it changes the behaviour of undertakings in the forestry sector, engaging them in additional activity contributing to the development of the forestry sector, in which they would have normally not engaged. This is due to the fact that forestry has very long rotation cycles of 30 to 40 years, which discourages investors, given the time lag between investment and harvest. The situation is similar for thinning of forests. Statistics show that in 2012, 23% of the national estate had reached thinning stage but had not been thinned.
- (13) The aid scheme is expected to provide similar outcomes and build on those delivered through the last two Rural Development Programmes for England (RDPE) and thus to have a positive impact on the environment.
- (14) Payments will be made only on the basis of income forgone and additional costs incurred. The payments will be based on the economic disadvantage resulting for the concerned farmers. VAT is not eligible for aid even if it is not recoverable under national VAT legislation. The notified scheme does not include any transaction costs.
- (15) The maximum aid intensity and aid amount will be calculated by the UK authorities when granting the aid. The eligible costs will be supported by documentary evidence, which will be clear, specific and contemporary. For the purposes of calculating the aid intensity and the eligible costs, all figures used will be taken before any deduction of tax or other charge.
- (16) The UK authorities undertook that the aid amount will not exceed the minimum necessary to render the project sufficiently profitable. A system of risk based *in-*

situ checks will be introduced to ensure that investments have taken place in accordance with the approved aid application.

- (17) For the measures involving investment aid to large enterprises, the UK authorities will ensure that the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual scenario in the absence of aid. The method explained in point (96) of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020¹ (hereinafter "the Guidelines") will be used together with maximum aid intensities as a cap.

Measure 1: Woodland creation

- (18) Woodland creation has significant environmental impacts, many of which are positive particularly in England which has very low forest cover. In the case of this measure the primary objectives will be to enhance environmental or social benefits that arise from woodland creation. It is, however, recognised that if afforestation is undertaken without due consideration of site-specific factors adverse environmental impacts may occur. As initial afforestation is included in Annex II to Directive 2011/92/EU², subsequently forestry specific Environmental Impact Assessment regulations have been enacted in England and Wales (Statutory Instrument 1999 No 2228 The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (EIA). Within sensitive areas (Natura 2000, Sites of Special Scientific Interest, World Heritage Sites, Scheduled Ancient Monuments) all applications will be assessed to determine whether consent is required, in National Parks and Areas of Outstanding Natural Beauty the threshold will be 2ha and elsewhere the threshold will be 5ha (however if any woodland creation has been undertaken on land adjacent to the proposed site within the previous five years, that will also be taken into account). In most cases, any adverse impact that may be apparent at the initial application stage can be resolved through modification of proposals but if this is not possible a full Environmental Statement will be required.
- (19) The measure aims to provide financial support for compensatory woodland planting and management in relation to the High Speed Rail (HS2) (London) project. This major infrastructure project will result in the loss of some woodland areas. Therefore, as part of the compensatory and mitigation measures woodland creation and enhanced management on private land close to the proposed line will be undertaken with an aid. This will be administered by the Forestry Commission. Eligible beneficiaries include all land holders (some of which would meet the criteria of being a large enterprise). Support for land owned and managed by the State will not be eligible for maintenance or income foregone payments.
- (20) In order to ensure that there is no inappropriate afforestation, all afforestation cases shall be strictly followed in accordance with the requirements of the UK

¹ OJ C 204 of 1.7.2014, p. 1. Amended by the Notice published in OJ C 390, 24.11.2015, p. 4.

² Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1)

Forestry Standard, subject to the EIA Regulations and consistent with the Habitats Directive³, as follows:

- species shall be adapted to the environmental and climatic conditions of the area to be planted. The Ecological Site Classification Decision Support System (ESC-DSS), produced by Forest Research (<http://www.forestry.gov.uk/esc>), shall be used to ensure this is the case. ESC-DSS is a PC-based system to help guide forest managers and planners to select ecologically suited species to sites. This software has recently been upgraded to address likely climate change scenarios;
 - no more than 75% of an individual forest management unit shall be allocated to a single species, at least 5% shall consist of native broadleaves, at least 10% shall be open space and 10% shall be other species;
 - inappropriate afforestation of sensitive habitats, including peatlands and wetlands, shall be avoided;
- (21) The potential impact on priority habitats shall be considered as part of the planning process. All newly planted areas shall be adequately maintained for a period of at least 5 years (in keeping with the durability requirements for productive investments given in Article 71(1) of Regulation (EU) No 1303/2013⁴ to ensure full establishment. If establishment has failed at year 5, the granted support will be reclaimed. No aid may be granted for the planting of trees for short rotation coppicing, Christmas trees or fast growing species for energy production.
- (22) Whilst conditions on early maintenance can only be imposed for a maximum of 5 years, the woodland should remain in perpetuity. Although, in the UK, there is no statutory definition of 'forest' nor anything that requires that land use shall remain unchanged, the current policy in England is that conversion of forest to other land uses shall not occur except in exceptional circumstances. The established forest shall meet the definition of 'forest' used in the EIA regulations. Moreover the forest established shall immediately become subject to the EIA Regulations in case it relates to an application for deforestation. Under the EIA such application is subject to a screening process by the Forestry Commission (FC), who as competent authority decides whether forestry related projects, afforestation, deforestation, forestry roads and quarries are likely to have significant effects on the environment by virtue of its nature, size or location. In case of such effects the projects need the consent of the FC.
- (23) Eligible costs cover establishment and maintenance costs (per hectare) as listed below.

³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p.7) ('Habitats Directive').

⁴ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006. OJ L 347, 20.12.2013, p. 320–469

- (24) Establishment costs may include:
- cost of plantation and propagation material;
 - plantation and other necessary costs directly linked to the plantation, such as preparation of afforestation plan, soil examination, soil preparation and protection;
 - other related operations, such as storing and treatments of seedlings with necessary prevention and protection materials (for example, inoculation with mycelium or nitrogen collecting bacteria);
 - protection carried out either individually or by fencing the afforested area;
 - necessary treatment connected to the establishment and planting, including watering and cutting;
 - replanting in case of biotic or abiotic calamity causing a large scale failure (during the first year of afforestation). In this case the relevant public authority will have acknowledged officially that such a calamity has occurred and replanting shall be adapted to any changed need, for example if failure was due to a disease the restocking shall be with an alternative species unaffected by that disease.
- (25) Maintenance costs are set at £200 (~EUR 226) per hectare for a period which shall not exceed 12 years. The maintenance costs may include:
- necessary actions in order to ensure the planted trees survive in terms of quantity and quality; these actions are normally composed of weeding, early and late cleaning and may include early thinning (release cutting), depending on tree species and the type of forest;
 - prevention actions against game, browsing animals, pests and diseases in order to ensure long-term results and to avoid unnecessary failure.
- (26) Eligible beneficiaries will be public and private land-holders and their associations. The measure will cover State land managed by a private body or a municipality. Aid for afforestation of land owned by public authorities or for fast growing trees will cover only the costs of establishment. Support for State owned and managed land will not be provided.
- (27) The maximum aid intensity is 100%.

Measure 2: Establishment of agro-forestry systems

- (28) The measure is aimed at development of woodland close to towns particularly within Community Forest Areas. This will take account of the higher costs generally associated with afforestation in peri-urban areas and the need to provide recreational infrastructure. Those costs associated with improvement of immovable property will be considered eligible, specifically the costs of the creation of an agro-forestry systems. The minimum number of trees per hectare will be 20 and the maximum 1000. Aid will be granted for establishing land use systems in which trees are grown in combination with agriculture on the same

land. Actual planting density will be dependent on the particular agro-forestry system. In some cases, trees will be evenly distributed over the area, particularly in silvo-pastoral systems, or tightly grouped in rows or blocks, mainly in silvo-arable systems.

(29) The measure contains two elements: establishment of agro-forestry systems and maintenance of agro-forestry systems.

(30) The establishment costs may include:

- establishment of agroforestry systems by planting trees: costs of the plantation material and plantation, including transport, storing and treatments of seedlings with necessary prevention and protection materials;
- establishment of agroforestry systems by converting existing forests or other wooded land: costs of felling trees, thinning, pruning and protection of trees against grazing animals, if applicable;
- complementary investments connected to the establishment (such as fences or individual protection guards);
- any other costs directly linked to the creation of the agroforestry system (e.g. preparation of the feasibility studies, establishment plan, soil examination, soil preparation and protection, preparation of existing forest or other wooded land, including thinning and pruning in order to convert to agroforestry system);
- in silvopastoral systems, watering and protective facilities (e.g. on site sheds);
- necessary treatment connected to the establishment, including watering and pruning;
- replanting in case of biotic or abiotic calamity causing failure (during the first year after afforestation); in this case the relevant public authority will have acknowledged officially that such a calamity has occurred and replanting shall be adapted to any changed need, for example if failure was due to a disease the restocking shall be with an alternative species unaffected by that disease;
- the plantation of forest tree species may be accompanied by plantation of other tree species, such as fruit trees.

(31) The maintenance costs may include:

- maintenance of the agroforestry system for a maximum period of 5 years through annual premium per hectare established; costs related to assisted regeneration during this period could be accepted particularly for suitable native species and varieties;
- necessary actions in order to ensure the planted trees survive in terms of quantity and quality; these actions are normally composed of weeding, depending on tree species and the type of agro-forestry system;
- prevention actions against game, browsing animals, pests and diseases in order to ensure long-term results and to avoid unnecessary failure;

- protective actions and/or maintenance of watering and protective facilities.
- (32) Eligible beneficiaries will be private land-holders, municipalities and their associations. The measure will cover State land managed by a private body or a municipality. However, in the case of afforestation, for land owned by public authorities, aid will only cover the costs of establishment. Support for State owned and managed land will not be provided.

- (33) The maximum aid intensity is 80%.

Measure 3: Woodland management

Sub-measure under Chapter 2.1.3 of the Guidelines - Aid for the prevention and restoration of damage to forests from forest fire, natural disasters, adverse climatic events which can be assimilated to natural disaster, other adverse climatic events, plant pests and catastrophic events

- (34) The aim of this sub-measure is enhanced woodland management oriented towards better response to climate change, pests, diseases, fire and natural disaster. Those costs associated with improvement of immovable property will be considered eligible, specifically the costs of woodland management aimed to:

- establishment of protective infrastructure which in the case of firebreaks may also cover maintenance costs. No aid will be granted for agricultural related activities in areas covered by agri-environment-climate commitments;
- local, small scale prevention activities against fire or other natural hazards, including the use of grazing animals;
- establishing and improving forest fire-, pest- and diseases-monitoring facilities and communication equipment;
- restore forest potential in those areas adversely impacted by pest, diseases, fire and other natural disasters where at least 20% of potential has been destroyed (before aid for restorative action can be provided the Forestry Commission must confirm that destruction of at least 20% of the forest potential of the individual forest area has been destroyed);

- (35) The eligible costs for this sub-measure include: the establishment of protective infrastructure (in the case of firebreaks it may also cover maintenance costs); local, small scale prevention activities against fire or other natural hazards, including the use of grazing animals; establishing and improving forest fire-, pest- and diseases- monitoring facilities and communication equipment; restoring forest potential damaged by fires, natural disasters, adverse climatic events which can be assimilated to a natural disaster, other adverse climatic events, plant pests, catastrophic events and climate change related events. All plant pests and diseases are included in the UK National Plant Health Risk Register. This register is regularly updated as new pests and diseases are discovered. According to the UK authorities they have implemented the provisions of Article 14(1) of Directive 2009/128/EC⁵ establishing a framework for Community action to achieve the

⁵ Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (text with EEA relevance), OJ L 309, 24.11.2009, p. 71–86.

sustainable use of pesticides and Article 55 of Regulation (EC) No 1107/2009⁶ concerning the placing of plant protection products on the market via the UK National Action Plan for the Sustainable Use of Pesticides (Plant Protection Products) 2012. The UK authorities confirmed that no aid will be granted for agricultural related activities in areas covered by agri-environment-climate commitments.

- (36) All actions under this measure will be in accordance with the UK forest protection plan (UK Tree Health Action Plan) which has been prepared using latest scientific recommendations.
- (37) A fire risk register for England is being prepared and will be taken into account before the current sub-measure is applied.
- (38) Eligible beneficiaries will be public and private land-holders and their associations.
- (39) The maximum aid intensity is 100%. No aid will be granted for the loss of income resulting from fires, natural disasters, an adverse climatic events, which can be assimilated to a natural disaster, other adverse climatic events, plant pests, catastrophic events and climate change related events. In order to prevent overcompensation, the aid is limited to direct costs associated with the prevention of, or restoration from, damage. No aid will be provided as compensation for damage to tree crops as a result of natural disaster, climatic event, fire, pest or disease. Where aid is provided for the restoration of damage following pest or disease, a declaration will be sought from beneficiaries that this is not covered by an insurance policy, if such a policy does exist they will be ineligible for aid. Experience in the UK is that where forest owners do have insurance cover other than third-party liability, this purely covers compensation for any loss of value, primarily as a result of wind-blow or fire, and not restoration costs. Many insurance services specifically exclude damage caused by pest and disease. Where aid is provided based on standard costs, these will be substantiated by a body independent of that body setting the rate to confirm they are equitable, fair and subject to a verifiable calculation method, they will also be regularly reviewed to ensure they remain applicable. Where aid is granted based on actual costs, a minimum of three quotes will be required at the time of grant offer and payment will be based on invoiced costs. Where an invoiced cost varies from the sum offered, actual payment will be whichever is lower - offer or invoice. A system of risk based *in-situ* checks will be introduced for all measures to ensure investments have taken place in accordance with approved offer of aid.

Sub-measure under Chapter 2.1.4 of the Guidelines – Aid for investments improving the resilience and environmental value of forest ecosystems

- (40) The aim of this sub-measure is improving the resilience and environmental value of forest ecosystems. The latter could result in improved silvicultural management with a consequent improvement in the quality and hence marketability of the timber produced, this is particularly the case in forest areas

⁶ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, OJ L 309, 24.11.2009, p. 1–50.

that are currently not subject to any silvicultural management. The measure also aims to enhance the provision of ecosystem services, particularly biodiversity, flood mitigation and carbon sequestration.

- (41) Eligible beneficiaries will be public and private land-holders and their associations.
- (42) The eligible operations and costs may include:
- Conversion of forest structure through one-off or infrequent (more than five years between) intervention:
 - (a) site-specific conversion of forest from stands with simple structural elements to make them more diverse, enhancing biodiversity by diversifying the forest structure and species composition;
 - (b) site-specific maintenance of historic coppice systems;
 - (c) site-specific conversion of plantation forest (particularly on ancient woodland sites) to native species;
 - (d) removing non-native and/or invasive species.
 - Planting may include:
 - (e) planting broadleaves species in order to improve water quality (e.g. on acidic soils covered by coniferous forest);
 - (f) introducing alternative species or provenances, where it is desirable for climate adaptation reasons;
 - (g) establishment of bio-diverse forest edge structure with appropriate forest tree and shrub species which also can serve for better microclimate creation purposes.
 - Investments in public amenity, environmental and protective functions may include:
 - (h) creation or maintenance of recreational paths, small scale recreation facilities, signposting and information boards;
 - (i) investments in special "one-off" treatments , technologies or actions which primarily serve environmental and/or public amenity purposes.
 - Protection of habitats and biodiversity-related actions may include:
 - (j) protection of certain habitats, species and areas against damage caused by wildlife, domestic animals or human action. These actions may include fences or appropriate individual protection facilities;
 - (k) creation of non-wooded habitats for biodiversity interests (e.g. clearing of heath, rhododendron, clearings for butterfly recolonization) and removal of unwanted non-native or invasive species;

(l) creation of niche habitats for Protected Species.

Eligible costs:

- Compensation for the difference of investments costs between normal and environmentally adapted species.
- The costs of forest propagation material (seeds, seedlings) used for structural changes, planting, under-planting, forest edge etc., and the related plant protection (e.g. fencing or individual plant protection as appropriate), including storage, transport and labour costs.
- The costs of materials and/or services, labour used for the above mentioned investments for improving the environmental or public amenity value of forests.
- Felling trees, thinning and pruning if the main purpose of the investment is to improve the ecological value of forests, such as improving the species composition for environmental (removing of non-indigenous, invasive or not habitat specific tree or shrub species) or recreational interests.
- Regeneration of forests where the purpose is to change the species structure of the forests primarily for ecological or climate change related interest.
- Support for the preparation of a Forest Management Plan either as part of an investment or as self-standing funding opportunity.

(43) The maximum aid intensity is 100%.

Measure 4: Investments in forest technologies

(44) The aim of this measure is to provide support for the introduction of technologies to enhance the environmental or social value of woodland areas. Whilst no aid will be provided with the main objective of improving the economic value of forest areas, any investments for soil and resource friendly harvesting machinery and practices or extraction equipment (recital (50)) may enhance the economic potential of forest area benefiting from the use of such machinery. The justification for such aid is therefore improved health and safety and productivity, rather than improvement in economic value.

(45) Aid will be granted to private forest holders, municipalities and their associations and SMEs directly involved in forest technology, mobilizing, processing or marketing of forest products.

(46) The UK Authorities have undertaken to ensure that the accepted investment proposals contribute to enhancement of the environmental or social value of woodland areas.

(47) Eligible types of operations costs may include:

development and rationalization of the marketing and processing of wood, including investments in machinery and/or equipment related to felling, dismembering, stripping, cutting up, chipping, storing as well as protective treatments, drying of wood and other working operations prior to industrial sawing of wood at a saw-mill; investments in mobilising of wood which include support for machinery, or other investments for sustainable and effective use of forest resources.

- (48) No support will be provided for industrial processing i.e. saw-mills that exceed an annual capacity of 10,000m³. Under the notified scheme aid may be granted to small-scale saw mills, which are primarily on site mobile mills with a maximum of 10 000m³/year input round wood capacity, of which the sawn timber produced will be used on the holding or within the immediate vicinity. Furthermore, no support will be provided for production of material for energy generation. No support will be available for installations whose purpose is electricity generation or for bioenergy projects.
- (49) Eligible are investment costs in machinery, equipment and second-hand equipment provided it has at least three-year's usable life.
- (50) Support will be provided for investments enhancing forestry potential and for soil and resource friendly harvesting machinery and practices. These investments may improve the potential of a forest area to be managed by making harvesting and extraction of timber more economically viable, however, the extent to which this may increase the actual value of the forest is unclear. The primary economic value of the forest in England lies in the value of the land rather than the trees so any reduction in costs associated with timber production is likely to have only a minor impact on the overall value. Whilst subject to great variability, for typical broadleaved woodland in England around 25% of the total value would lie in the trees. It may be possible, through mechanisation, to reduce felling and extraction costs by 15%-20% and if these reductions in costs resulted in a simple increase in the value of the growing timber that would increase the value of the forest by about 4%-5% for the period the machinery was operable, possibly up to ten years. Also enabling the economic management of a forest area may, in the long-term, improve the quality of timber being grown through improved silviculture, which is likely to lead to an increase of the value of the forest but again by probably no more than 5% to 10% when potential income has been subject to discounting calculations. However, to achieve that would necessitate continued management over and above simple felling so any resultant increase in the value of the forest could only partly be attributed to the investment in harvesting and extraction equipment.
- (51) The maximum aid intensity is 40% and 50% for Cornwall where the GDP per capita for the period from 1 January 2007 to 31 December 2013 was less than 75% of the average of the EU-25 for the reference period but whose GDP per capita is above 75% of the GDP average of the EU-27.

Measure 5: Woodland infrastructure

- (52) The measure aims to provide support for the creation of access infrastructure to facilitate woodland management, harvesting and extraction or enable fire control. One of the main reasons for the lack of management of broadleaved forests in England is the lack of suitable access. Support may therefore be provided to

improve access for management where such management can clearly be seen to be needed to provide enhanced environmental or social benefits.

- (53) The measure is addressed to all forest holders - private and public.
- (54) Eligible types of operations cover investments in operations like construction or improvement of access roads, bridges, footbridges and cable way infrastructure for forest management and wood mobilisation purposes as well as protection and consolidation works.
- (55) The eligible costs covered are related to the construction of the means of access and associated protection and consolidation works, general costs linked to expenditure referred to above such as architect, engineer and consultation fees, fees relating to advice on environmental and economic sustainability.
- (56) The maximum aid intensity is 40% and 50% for Cornwall where the GDP per capita for the period from 1 January 2007 to 31 December 2013 was less than 75% of the average of the EU-25 for the reference period but whose GDP per capita is above 75% of the GDP average of the EU-27.
- (57) In cases where forest roads are open to the public free of charge and the purpose of the road is to facilitate the multifunctional aspects of the forest aid may be provided up to 100% of eligible costs. Where the forest roads are solely or primarily to facilitate timber mobilization and extraction, aid will be limited to 40% (50% for the Cornwall county) of eligible costs.

Measure 6: Co-operation in the forestry sector

- (58) The measure aims to support the development of co-operation within the forestry sector where it can be shown that such co-operation (between at least two entities in the forestry sector) will help the achievement of the objectives of the measure - achieving the objectives and priorities of rural development policy, including producer groups, cooperatives and inter-branch organisation and the creation of clusters and networks in the forestry sector where the cooperation benefits forestry. Aid for establishing and developing short supply chains will only cover supply chains involving no more than one intermediary between farmers in the forestry sector and consumer/s. Aid for the creation of clusters and networks will be provided only to newly formed clusters and networks and those commencing an activity that is new to them. Where aid is granted to individual actors, the results of the supported project or activity will be disseminated.
- (59) The eligible type of operations under this measure may include:
 - pilot projects;
 - the development of new products, practices, processes and technologies in the forestry sector;
 - co-operation among small operators in organising joint work processes and sharing facilities and resources;
 - joint action undertaken with a view to mitigating or adapting to climate change;

- joint approaches to forest management and protection;
 - horizontal and vertical co-operation among supply chain actors in the sustainable provision of biomass for use in production if the result is a forestry product and energy production for own consumption;
 - drawing up of forest management plan or equivalent instrument;
- (60) Eligible costs may include the service for establishment of the co-operation plan, studies, animation of the area concerned in order to make feasible a collective territorial project, costs of promotion activities and running costs of the co-operation such as the salary of a "co-ordinator". The aid is limited to a maximum period of seven years except for collective environmental action in duly justified cases. Nevertheless, the UK authorities stated that to achieve many environmental enhancements that require co-operative activity can take in excess of seven years. In these cases limiting aid to seven years may result in complete or partial failure to achieve desired outcome. The UK authorities confirmed that the aid will comply with the relevant provisions of competition law, in particular with Articles 101 and 102 of the Treaty.
- (61) The maximum aid intensity for cooperation activities in the forestry sector is 100%. Where aid is provided to establish or support horizontal and vertical co-operation among supply chain actors in the supply of biomass, primarily wood, the primary objective of such co-operation will be to achieve environmental enhancement from improved forest management. Aid will only be provided to cover some of the costs of the act of co-operation and not production itself. Aid will only be provided where there is a clear market failure that may be overcome through co-operative activity. In this case of aid for cooperation activities in favour of rural areas, aid intensity will not exceed 50%.

Measure 7: Forest-environmental and climate services and forest conservation

- (62) The commitments under this measure will be tailored to enhance the environmental or social benefits that individual forest areas provide. In all cases they will go beyond the mandatory requirements established by the Forestry Act 1967 and other relevant national law and are likely to cover, for example, detailed management prescriptions for individual protected or locally important species, conversion of conifer plantations back to broadleaves or enhancing recreational provision close to centres of population. There will be in all cases a Woodland Management Plan and individual agreements with beneficiaries will include full details of the commitments that are to be met. Such a plan will ensure that commitments that an applicant enters into are appropriate for the individual forest area concerned. The level of detail included within such plans will however vary - those related to areas under 20 hectares requiring significantly less details than for larger areas, but in all cases the management plan shall be in accordance with the UK Forestry Standard and going beyond the mandatory requirements clearly explained in the UK notification. It is not anticipated that woodland areas of less than 10 hectares will benefit from this type of aid. Failure to meet the commitments will result in a reclaim, in full or part, of any support payments made.
- (63) The support will be used where the more general prescriptions included in the Rural Development Programme for England (RDPE) do not address the specific

requirements of the woodland in question. The commitments under this measure do not overlap with the RDPE.

- (64) The aid is limited to maximum EUR 200 per hectare of forest per year. There may be individual cases where the costs associated with the achievement of specific commitments exceed EUR 200/ha/annum. Within the RDPE payments are available to help meet the costs of the most commonly sought changes to forest management or structure; conversion of exotic plantations on ancient forest sites to native species, management activity to help conserve relict red squirrel populations and conversion to low-impact silvicultural systems. The RDPE does not however include support for management primarily for public recreation; the purpose of the measures covered by this notification is to address this shortcoming within the RDPE. Management costs to address such issues are frequently considerably in excess of EUR 200/ha/annum due primarily to the additional labour costs associated with safety inspections and maintenance of trees, facilities and infrastructure, which are necessary if large numbers of people are using forest areas for recreational purposes. In such cases, the UK would be making payments of EUR 375/ha/annum which is considered less than the estimated cost which should prevent any over-compensation. Examples may also include work on priority habitats where highly complex management activity is required and the labour costs are therefore higher. The actual rate (in both scenarios - within and above the EUR 200 maximum limit) will be calculated depending on a detailed work programme for five years with costs calculated additional to those that could be expected as 'normal' management, payment will then cover all or some of those calculated additional costs. The elements used in the calculation of additional costs will be additional input costs such as the use of small-scale, bespoke machinery rather than that associated with 'normal' forest management and additional time by both forest management operatives and managers where very detailed management prescriptions need to be met (these may be particularly associated with protected species of animal and plant where particular care is needed to minimise disturbance or damage). Payments shall compensate beneficiaries for all or part of the additional costs resulting from the commitments made.
- (65) The maximum compensation will be calculated before a particular call for applications is made so that potential beneficiaries will know how much they may receive. It is not anticipated that there will be different rates for individual applications. These costs will be verified by a body independent from the aid awarding body.
- (66) The duration of the commitments is five years.
- (67) The eligible type of operations and costs under this measure may include:

Payments for forest-environment and climate service commitments that shall cover:

- ensuring the persistence of specific forest habitats with high species and genetic diversity;
- conversion of forest stands including:

- (a) provoking or allowing natural regeneration and broader species diversity in order to improve biodiversity and climate resilience,
 - (b) the restructuring of monoculture and even aged plantations into multi-species and multi-aged stands through advance or delayed felling and restocking with alternative species,
 - (c) maintenance of diverse typical forest edge vegetation or understory to preserve forest microclimate and preserve the carbon content of the forest soil,
 - (d) developing continuous cover forestry instead of clear-felling.
- habitat improvement interventions, including the improvement of wildlife corridors, e.g. maintenance of micro-habitats, small open areas, leaving behind decaying and dead trees for biodiversity reasons;
 - transition to mosaic-character forest with complex structures by leaving groups of trees after final felling in homogeneous stands, postponement of final felling to protect habitats, soil and water sources, preservation of wetland habitats, suppression of invasive non-indigenous tree and shrub species.

Environmental management for recreation:

- Improvement to forest habitat to encourage recreation by maintaining internal structural diversity, clear access paths and regular inspections of trees and infrastructure to ensure visitor safety.

Payments for conservation of genetic resources that may include:

- targeted actions: actions promoting the ex situ and in situ conservation of genetic diversity, characterisation of gene pools, collection and utilisation of genetic resources, including inventories of genetic resources currently conserved in situ, in situ/on-holding conservation, and ex situ collections (gene banks) and databases;
- concerted actions: exchange of information for conservation, characterisation, collection and utilisation of genetic resources.

- (68) Actions in conserving genetic resources can cover various activities adapted to the local conditions and specific needs, such as:
- (a) in the case of specific forest stands designated as "seed orchards" as source for production of verified reproductive material: costs of approval/concession including the related administrative costs and official declaration, maintenance, and management plan, conservation and breeding of rare tree species and shrubs for seed production and harvest,
 - (b) for forest stands designated to conserve important genetic resources: maintenance of stands for production of verified reproductive material, including maintenance and harvest of reproductive material (in particular seedlings and vegetative cuttings direct from forest rather than from

nursery), forest genetic library and natural regeneration with suitable provenances to conserve and enhance genetic resources,

- (c) use of seeds/plants of certified/verified provenance, including use of suitable seeds, cuttings and seedlings from own production for seeding/planting,
 - (d) in situ conservation:
 - prevention of development of other species than the conserved species,
 - harvesting seeds, growing seedlings and completion of natural regeneration by additional planting with own genetic resources from the in-situ units of conservation, when natural regeneration is not sufficient,
 - silvicultural works required by the management plan,
 - conservation and breeding of rare tree species and shrubs, such as die-back resistant ash provenances for seed production and harvesting of cuttings.
 - (e) ex-situ conservation: inventory, harvest of forest genetic resources, creation and maintenance of ex-situ units of conservation.
- (69) Aid may be provided to any private and public forest holder and their association Also to forest holders who have any particular forest genetic resource that is deemed to be in need of conservation or promotion, including State land managed by a private body or a municipality. Support for State owned and managed land will not be provided.
- (70) All agreements will include a revision clause so that they can be amended, should there be any change in standards, mandatory requirements or obligations. This revision clause will allow amendment or closure without penalty should the beneficiary not accept the changes. Although not part of the rural development programme, in cases where aid extends beyond 2020 and under the conditions stipulated in recital (6), any agreed operations will be adjusted to meet and changes in the legal State aid framework and the following programming period.
- (71) Maximum aid intensity is 100% for genetic resources or up to EUR 375/ha/annum as described in recital (64).

Common features to all measures

- (72) Aid provided under this programme will not exceed the aid ceilings laid down in the Guidelines. Other forms of State aid are not envisaged to fund the eligible costs described in this scheme. Therefore "double financing" with other public funds is not considered possible.
- (73) The aid is granted only for commitments that start after the submission of the aid application form. The aid application for the scheme will include the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it

out and the eligible costs. In the case of large companies, a counterfactual scenario will be provided and a credibility check performed.

- (74) The UK authorities committed to suspend the payment of the aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of the unlawful and incompatible aid including the corresponding recovery interest.
- (75) The UK authorities have confirmed that companies which are in difficulty within the meaning of the Guidelines for rescuing and restructuring non-financial undertakings in difficulty are specifically excluded from receiving any aid under the present scheme.⁷

2.8. Other commitments

- (76) The UK authorities confirm that aid granted under the notified scheme cannot be cumulated with aid received from other local, regional, national or EU schemes to cover same eligible costs, nor with "*de minimis*" aid.
- (77) The UK authorities inform the Commission that in order to comply with the transparency requirements, the publication of the notified aid scheme will be done through the following web page: <https://www.forestry.gov.uk/england>. The UK authorities commit to keep the information about the notified aid scheme available for the general public without restrictions for at least 10 years.

3. ASSESSMENT

3.1. Existence of aid - Application of Article 107(1) TFEU

- (78) According to Article 107(1) of the TFEU, "[s]ave as otherwise provided in the Treaties, any 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market".
- (79) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (80) The scheme in question is imputable to the State and financed through State resources (recital (7)). The notified scheme is selective because undertakings in a comparable legal and factual situation, in the light of the objective pursued by the scheme, within the forestry sector or other sectors which are outside England, are

⁷ The definition of undertakings in difficulty applied under the European Union Guidelines for State aid in the agricultural and forestry sectors, OJ C 204 of 1.7.2014, p. 1., is covered by the one that applies in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249 of 31.07.2014).

not eligible for aid and thus will not receive the same advantage (recital (8)) by strengthening their competitive position on the market. 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 competition⁸.

- (81) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade.⁹ The beneficiaries of aid operate in the forestry sector, which is a market sector where intra-EU trade takes place. In 2015 the EU-28 produced a total of 446,8 million m³ of roundwood¹⁰. The forestry sector is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.
- (82) In light of the above, the conditions of Article 107(1) of the 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 internal market if it can benefit from one of the derogations provided for in the TFEU.

3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

- (83) The aid scheme was notified to the Commission on 10 November 2017. It has not been implemented yet. Therefore, the UK has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Application of Article 107(2)(b) and Article 107(3)(c) TFEU

- (84) Under Article 107(2)(b) TFEU, an aid shall be considered compatible with the internal market if it is found to make good the damage caused by natural disasters or exceptional occurrences.
- (85) Under Article 107(3)(c), an 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.
- (86) For these derogations to be applicable, the aid must fulfil the requirements of the relevant Union State aid rules.

⁸ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

⁹ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

¹⁰ EUROSTAT: Forestry database - Roundwood production and trade.

3.3.2. Application of the Guidelines

- (87) As regards the notified aid scheme, Part II, Chapter 2 of the Guidelines is applicable.
- (88) According to point (496) of the Guidelines, the Commission will consider the aid for the forestry sector compatible with the internal market under Article 107(3)(c) TFEU if it complies with *the common assessment principles* and with the relevant specific conditions set out in Part II, Chapter 2 of the Guidelines.

3.3.2.1. Common Assessment Principles

Contribution to a common objective

- (89) Pursuant to recitals (3), (9) and (10) the scheme contributes to a common objective, i.e. to support the creation and management of woodland areas in England and to deliver enhanced environmental, cultural or social benefits. Whilst each aid measure has slightly different objectives or is applicable to discrete geographic areas, all seek to deliver environmental or social enhancement through woodland creation or improved management of existing woodland areas. The provisions of points 43 and 44 of the Guidelines are thus complied with.

Rural development objectives

- (90) In line with point (10) of the Guidelines whilst in many cases the measures, which are the subject of this decision may be supporting activity that is very similar to that supported under the Rural Development Programme for England (RDPE) the funds come from different sources with differing priorities. In most cases, the scheme seeks to address very local issues which do not fit neatly with the national targeting framework of the RDPE. The funds disbursed by the Heritage Lottery Fund, for example, seek to address local heritage issues of which the forestry component is only a very small part and assessment criteria for applications relate to that funding objective rather than the RDPE. Therefore, the aid measures included in this decision will indeed provide similar outcomes and build on those delivered through the last two RDPE. The current notified aid scheme is hence coherent with the Rural Development policy and overlapping of public support is excluded. The provisions of points (10) and (47) of the Guidelines are thus complied with.

Environmental objectives

- (91) Pursuant to recital (13) and, given its objectives (recital (3)), the scheme is expected to have a positive impact on the environment. The provisions of point (52) of the Guidelines are thus complied with.

Need for State intervention

- (92) State intervention is required on grounds of market failure in afforestation and woodland management in the UK. The UK has a low level of forest cover (13%) compared to the rest of Europe (37%), so State support is required in order to encourage reluctant land owners to convert their land forever to an alternative land use. 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 the Guidelines, which are analysed below under section 3.4.2.2 Specific assessment. As it appears from the analysis in that chapter, the specific conditions are fulfilled. Therefore, such aid is considered necessary to achieve the objectives of common interest specified in this section.

Appropriateness of aid

- (93) Pursuant to point (57) of the Guidelines, the scheme is an appropriate policy instrument to address forest management in the UK since it fulfils the specific conditions laid down in the relevant Section of Part II of the Guidelines (recitals (105)-(160)).
- (94) As provided for in point (62) of the Guidelines, where the aid is granted as direct grant the Member State must demonstrate why other potentially less distortive forms of aid are less appropriate. In view of the objectives of the scheme, the UK Authorities inform (recital (10)) that other potentially less distortive forms of aid do not exist at the moment. The Commission considers that the grant is the most appropriate instrument for achieving the objectives of the scheme because it avoids long lasting reimbursements by the beneficiaries that would have to take a loan. The provisions of point (62) are therefore complied with.

Incentive effect

- (95) The aid is granted only for commitments that start after the submission of the application form, which contains data on the beneficiary, the activity, the commitment period and the eligible costs (see recital (11)). Therefore, the incentive effect requirements under points (70) and (71) of the Guidelines are complied with. Large enterprises will provide in the application a counterfactual scenario and submit documentary evidence in support of the counterfactual described in the application (recital (11)) therefore point 72 of the Guidelines is met.

Proportionality

- (96) Points (82) and (84) of the Guidelines stipulate that if the aid amount does not exceed the eligible costs and if the aid intensity respects the ceilings set out in Part II of the Guidelines, the aid is deemed to be proportionate. In that regard it should be noted that the Guidelines establish certain maximum aid amounts but which may be increased in accordance with the Guidelines in duly substantiated cases taking into account specific circumstances to be justified to the Commission. Some of the maximum aid amounts in the present scheme go beyond the maximum aid amount established in particular in points (550 and 562) of the Guidelines. The UK would be making payments under measure 7 (recitals (62) to (71)) of EUR 375/ha/annum while the maximum limit according to the Guidelines is EUR 200/ha/annum. However, the UK authorities provided justification (recital (65)) for the increased amount, as required under point 550 and 562 of the Guidelines. For the rest, the current scheme fulfils the specific conditions regarding the eligible costs and the aid intensity laid down in the relevant sections of Part II and therefore the provisions of points (82) and (84) are complied with.

- (97) No aid is granted for value added tax even if it is not recoverable under national VAT legislation (recital (14)). The provisions of point (86) of the Guidelines are thus complied with.
- (98) With regard to point (85) of the Guidelines, the maximum aid amount is calculated by the granting authority when granting the aid (recital (15)) and the eligible costs will be supported by documentary evidence which is clear, specific and contemporary.
- (99) Points (96) of the Guidelines stipulate that the aid amount should not exceed the minimum necessary to render the project sufficiently profitable and introduce specific rules for the calculation of the aid for large enterprises. Point (97) requires that large enterprises shall provide counterfactual scenario for investment aid. The current scheme fulfils the specific conditions regarding the aid amount and counterfactual scenario (recitals (16) and (17)) and therefore the provisions of points (96) and (97) are complied with.
- (100) According to recital (76) there is no possible cumulation of aid. The rules on cumulation and avoidance of double funding described in points (99) and (104) of the Guidelines are therefore respected.
- (101) In light of the above, the Commission considers that the aid is proportionate.

Effects on distortion of competition

- (102) According to point (113) of the Guidelines, the Commission considers that where an aid fulfils the conditions laid down in the applicable Sections of Part II of the Guidelines, the negative effect on competition and trade is limited to the minimum as described in recitals (105) – (160) below point (113) of the Guidelines is complied with.
- (103) As provided for in point (113) of the Guidelines, the Commission considers that where an aid fulfils the conditions and does not exceed the relevant maximum 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 scheme fulfils the specific conditions laid down in Part II (recitals (27), (33), (40), (44), (52), (58), (62), (65) and (72)) and therefore the provisions of point (113) are complied with.

Transparency

- (104) Pursuant to point (128) and (131) of the Guidelines, the UK Authorities specify (recital (77)) that the relevant information will be published on www.forestry.gov.uk/england where there is currently a list of all the various forestry related aid scheme in England. The UK authorities commit to keep the information about the notified aid scheme available for the general public without restrictions for at least 10 years.

3.3.2.2. Specific assessment according to the category of aid (Part II of the Guidelines)

- (105) The scheme (recitals (9) to (75)) is to be assessed on the basis of Part II, Sub-Chapters 2.1, 2.3 and 2.6 of the Guidelines, referring in the present case to aid for the forestry sector which is granted as a pure State aid.

Measure 1: Woodland creation

- (106) The measure is to be assessed on the basis of Part II, Section 2.1.1. of the Guidelines, points 504-512 (Aid for afforestation and creation of woodland).
- (107) In accordance with point 505 and 506 of the Guidelines, aid may be granted to public and private land-holders and their associations. Aid for afforestation of land owned by public authorities or for fast growing trees shall cover only the costs of establishment. As provided for in recital (26) the conditions of point 505 and 506 are complied with.
- (108) In accordance with point 507 of the Guidelines, aid will be granted in the form of an establishment aid and premium for income foregone and maintenance. The eligible costs under the measure (recitals (23) to (25)) are in line with point 507.
- (109) The conditions set out in point 508 of the Guidelines are met, as no aid may be granted for the planting of trees for short rotation coppicing, Christmas trees or fast growing trees for energy production (recital (21)).
- (110) The conditions of points 509 and 511 of the Guidelines concerning minimum environmental requirements are met, as set out in recitals (20) to (22) of the description above. Species planted will be adapted to the environmental and climatic conditions of the area and comply with minimum environmental requirements.
- (111) Recital (27) relates to the condition that aid is allowed up to 100% of the eligible costs, therefore point 512 of the Guidelines is met.

Measure 2: Establishment of agro-forestry systems

- (112) The measure is to be assessed on the basis of Part II, Section 2.1.2. of the Guidelines, points 513-518 (Aid for establishment, regeneration or renovation of agro-forestry systems).
- (113) In line with point 514 of the Guidelines, aid may be granted for establishing land use systems in which trees are grown in combination with agriculture on the same land. Pursuant to recital (28) this requirement is met.
- (114) The conditions for eligibility of the beneficiaries pursuant to point 515 of the Guidelines are complied with (recital (32)) (i.e. private land holders, municipalities and their associations). The measure will cover State land managed by private bodies or municipalities. However, in the case of establishment of agro-forestry systems on land owned by public authorities, aid will only cover the costs of establishment.

- (115) The eligible costs for the creation and the maintenance of an agro-forestry system, the operations and the special requirements under the measure are in line with points 516 (recitals (30) and (31)) and 517 (recital (28)) of the Guidelines.
- (116) Recital (33) relates to the condition that aid is allowed up to 80% of the eligible costs, therefore point 518 of the Guidelines is met.

Measure 3: Woodland management

- (117) The measure is to be assessed on the basis of Part II, Section 2.1.3. Aid for the prevention and restoration of damage to forests from forest fire, natural disasters, adverse climatic events which can be assimilated to natural disasters, other adverse climatic events, plant pests and catastrophic events and 2.1.4. (for the resilience aspect) of the Guidelines.

Sub –measure under Chapter 2.1.3 of the Guidelines

- (118) The conditions for eligibility of the beneficiaries pursuant to point 520 are complied with (recital (38)).
- (119) In line with point 522 of the Guidelines, the aid will be subject to the formal recognition by the competent UK authorities and it will be granted under condition that at least 20 % of the relevant forest potential was damaged (recital (34)).
- (120) Pursuant to recital (34) of the description above, the eligible costs meet the conditions set out in point 521 of the Guidelines. In line with point 522 of the Guidelines, the aid is will be subject to the formal recognition by the competent UK authorities and it will be granted under condition that at least 20 % of the relevant forest potential was damaged (recital (34)).
- (121) In the case of aid for prevention of damage to a forest from plant pests, the risk of the occurrence of the plant pest will be supported by scientific evidence and acknowledged by a scientific public organisation (recitals (35) and (36)), therefore the conditions set out in point 523 of the Guidelines are met.
- (122) Only forest areas which are classified as a medium to high forest risk according to the forest protection plan established by the competent UK authorities will be eligible for aid for prevention of fire. The forest protection plan will be taken into account for the application of the current sub-measure (recital (37)), therefore the conditions set out in point 524 of the Guidelines are met.
- (123) Pursuant to recital (39) no aid will be granted for the loss of income resulting from fires, natural disasters, an adverse climatic event which can be assimilated to a natural disaster, other adverse climatic events, plant pests, catastrophic events and climate change related events, therefore the conditions set out in point 526 of the Guidelines are met.
- (124) The maximum aid intensity is 100%. The conditions set in points 527 and 528 of the Guidelines are met as described in recital (39).

Sub –measure under Chapter 2.1.4 of the Guidelines

- (125) The conditions for eligibility of the beneficiaries pursuant to point 530 are complied with (recital (41)).
- (126) Pursuant to recitals (40) and (42), the conditions set out in point 531 of the Guidelines, referring to the achievement of commitments for environmental aims for the provision of ecosystem services and for the enhancement of the public amenity value of forests and wood land, and for the improvement of the climate change mitigation potential of ecosystems, without excluding economic benefits in the long term, are met.
- (127) Recital (43) relates to the condition that aid is allowed up to 100% of the eligible investment costs in line with point 532 of the Guidelines.

Measure 4: Investments in forest technologies

- (128) The measure is to be assessed on the basis of Part II, Section 2.1.5. of the Guidelines, points 533-541, referring to aid for investments in forestry technologies and in processing, in mobilising and in marketing of forest products.
- (129) Points 534 to 536 are not applicable since the UK declared they will not provide aid for investments in renewable energy infrastructure, installations whose purpose is electricity generation and for bioenergy projects (recital (48)).
- (130) The conditions for eligibility of the beneficiaries pursuant to point 537 are complied with (recital (45)).
- (131) Eligible operations (points (47), (48) and (50)) under the measure are in line with points 538, 539 and 540 of the Guidelines. Small-scale saw mills are primarily on site mobile mills with a maximum of 10 000m³/year input round wood capacity, of which the sawn timber produced will be used on the holding or within the immediate vicinity. (recital (48)). For these reasons they are considered not to be industrial scale, but as eligible investments linked to operations prior to industrial processing. Therefore, point 540 of the Guidelines is complied with.
- (132) Recital (51) relates to the condition that aid is allowed up to 40% (50% for Cornwall) of the eligible investment costs, therefore points 541(d) and 541(c) of the Guidelines are met.

Measure 5: Woodland infrastructure

- (133) The measure is to be assessed on the basis of Part II, Sub-Chapter 2.1.6 of the Guidelines, points 542-545, referring to aid for investments in infrastructure related to the development, modernisation or adaptation of forestry.
- (134) The measure is addressed to all forest holders - private and public, which is in line with Part II, Section 2.1.6. of the Guidelines, which provides no limitations towards the beneficiaries.
- (135) Aid covers (recitals (54) and (55)) investment in tangible and intangible assets, which concern infrastructure related to the development, modernisation or adaptation of forests, in particular the access to forest land, therefore the conditions of point 543 of the Guidelines are met.

- (136) Under the conditions described in recital (57) a maximum of 100% of eligible costs of building forest roads will be funded, as set out in point 544 of the Guidelines. Special construction works, primarily aimed at facilitating the construction of forest roads in less developed regions and in all regions whose GDP per capita for the period from 1 January 2007 to 31 December 2013 was less than 75% of the average of the EU-25 for the reference period but whose GDP per capita is above 75% of the GDP average of the EU-27, will be supported at a maximum of 50 % aid intensity of eligible costs (limited to Cornwall). For all other regions of the UK the aid intensity shall be 40% of the amount of the eligible costs, in line with point 545 of the Guidelines (recital (56)).

Measure 6: Co-operation in the forestry sector

- (137) The measure is to be assessed on the basis of Sections 2.6 and 3.10 - applies only to actors in sustainable provision of biomass for energy production and industrial processing -respectively of Part II of the Guidelines.
- (138) Aid under the notified measure will be granted for co-operation in the forestry sector, the cooperation will involve, at least, two entities in the forestry sector or one entity in the forestry sector and one in the agricultural sector (recital (58)). Aid under the measure will be granted also to promote forms of cooperation among undertakings active in the agricultural sector, undertakings active in the food chain and other actors that contribute to achieving the objectives and priorities of rural development policy, including producer groups, cooperatives and inter-branch organisations, where the cooperation benefits rural areas, therefore, point (573) in relation to Section 1.1.11. and point (700) of the Guidelines are complied with.
- (139) The cooperation activities envisaged under the measure (recital (59)) fall within the activities listed in points (316), (575) and (702)(h) respectively of the Guidelines.
- (140) As regards the creation of clusters and networks, the UK authorities confirmed that the aid will only be granted to newly formed clusters and networks and those commencing an activity that is new to them (recital (58)). This is in line with points (317) and (703) of the Guidelines.
- (141) The UK authorities undertook to disseminate the results of the supported project or activity when aid for pilot projects and the development of new products, practices, processes and technologies is granted to individual actors (recital (58)). This is in line with point (318) of the Guidelines.
- (142) Aid for the establishing and developing of short supply chains will only cover supply chains involving no more than one intermediary between forester and consumer (recital (58)). Therefore the conditions of point (319) of the Guidelines are fulfilled.
- (143) The UK has committed to comply with the applicable competition rules (recital (60)). Therefore, the conditions of points (320) and (706) of the Guidelines are fulfilled.

- (144) The eligible costs envisaged under the measure (recital (60)) fall within the scope of eligible costs listed in point (321), point (575) and point (708) respectively of the Guidelines.
- (145) The aid is limited to a maximum period of seven years except for collective environmental action in duly justified cases (recital (60)). Therefore the conditions of points (322) and (707) of the Guidelines are fulfilled.
- (146) The aid intensity for cooperation activities in the forestry sector is limited to 100% of eligible costs (recital (61)), which is in line with point (323) of the Guidelines.
- (147) The aid intensity for cooperation activities in favour of rural areas is limited to 50% of eligible costs (recital (61)), which is in line with point (710) of the Guidelines.

Measure 7: Forest-environmental and climate services and forest conservation

- (148) The measure is to be assessed on the basis of Part II, Sub-Chapter 2.3 of the Guidelines, points 551-563, referring to aid for forest-environment and climate services and forest conservation.
- (149) According to point (552) of the Guidelines, aid under the measure must be granted per hectare of forest and for forest holdings above a certain threshold and the aid must be conditional on the presentation of relevant information from a forest management plan. Pursuant to recitals (62) and (64), the Commission considers that the provisions of point (552) are complied with.
- (150) According to point (553) of the Guidelines, the voluntary commitments must go beyond the relevant mandatory requirements established by the national forestry act. Pursuant to recitals (62) and (63), the Commission considers that the provisions of point (553) are complied with.
- (151) According to point (554) of the Guidelines, commitments must be undertaken for a period between five and seven years. However, where necessary and duly justified, Member States may determine a longer period for particular types of commitments. Pursuant to recital (66), the Commission considers that the provisions of point (554) are complied with.
- (152) According to point (556) of the Guidelines, aid may be granted to public and private forest holders. Pursuant to recital (69) the Commission considers that the provisions of point (556) are complied with since the aid measure is foreseen for private forest holders.
- (153) According to point (558) of the Guidelines, the aid compensates beneficiaries for all or part of the additional costs and income foregone resulting from the commitments made. Pursuant to recital (64) the aid under this measure will compensate beneficiaries for all or part of the additional costs, therefore point (558) is complied with.
- (154) According to point (560) of the Guidelines aid may be provided for the conservation and promotion of forest genetic resources for the operations listed in point (561). Pursuant to recitals (67) last two bullet points and (68)(a) to (68)(e),

the Commission considers that the provisions of points (560) and (561) are complied with.

- (155) According to point (562) of the Guidelines, aid must be limited to the following maximum amount: EUR 200/ha per annum. This amount may however be increased in duly substantiated cases taking into account specific circumstances to be justified in the notification to the Commission (point (562) of the Guidelines). The UK authorities provided detailed calculation and conveyed detailed justification for the additional aid exceeding the maximum amounts (recitals (64) and (65)) linked to various factors mainly due to elevated labour costs. In such cases the UK calculated that they would be making payments of EUR 375/ha/annum which is still considered less than the estimated cost which will prevent any over-compensation. Examples of such elevated labour costs may include work on priority habitats where highly complex management activity is required and the labour costs are therefore higher. Taking into account the specific circumstances and the provided justifications, the Commission considers that the condition concerning the increase of certain aid amounts is fulfilled.
- (156) According to recital (71) the aid intensity is up to 100 % of the eligible costs for genetic resources or up to EUR 375/ha/annum as described in recital (64), which meets the conditions set out in points (562) and (563) of the Guidelines.
- (157) Revision clauses as required in points (724) and (725) of the Guidelines are included in all agreements for aid under this measure – recital (70).

3.4. Other conditions

- (158) The Commission takes note that according to settled case law¹¹, the UK Authorities will suspend the payment of the notified aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid including the corresponding recovery interest.
- (159) The Commission takes note of the commitment by the UK authorities that aid will not be granted to firms in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.
- (160) Consequently, it may be concluded that the notified aid scheme complies with the relevant provisions of the Guidelines.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified aid scheme on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) TFEU, for the restoration of the forest potential and Article 107(3)(c) TFEU for the other measures under the notified scheme.

¹¹ See Judgment of the General Court of 13 September 1995, joined cases T-244/93 and T-486/93, *Textilwerke Deggendorf GmbH v. Commission*, p. II-2288, paras 51 and 56 et seq.; confirmed by the judgment of the Court of Justice of 15 May 1997, case C-355/95 P, p. I-2575, paras 22 and 26 et seq.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy in State aid decisions¹² and should not be published, please inform the Commission within 15 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 parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004¹³, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN
Member of the Commission



¹² Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C 297, 9.12.2003, p. 6.

¹³ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).