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PUBLIC VERSION

WORKING LANGUAGE

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**Subject: State aid / United Kingdom (England)
Aid No N 346/2007
Woodland Management Grant for Access**

Dear Foreign Secretary,

I have the honour to inform you that, having examined the information supplied by your authorities, the Commission has decided to raise no objection to the State aid scheme mentioned above.

In reaching this decision, the Commission based itself on the following considerations:

I. PROCEDURE

- (1) The measure was notified by letter dated 22 June 2007, registered as received on the same day. Additional information was provided by letters of 30 August 2007, 10 September 2007 and 16 October 2007, registered as received on the same days.

II. DESCRIPTION

The Rt Hon David Miliband MP
Secretary of State for Foreign and Commonwealth Affairs Foreign and
Commonwealth Office
King Charles Street
LONDON SW1A 2AH
United Kingdom

2.1. Title

- (2) Woodland Management Grant for Access (hereinafter: 'WMG for Access').

2.2. Budget

- (3) Annual amount: £300 000 (approximately €440 000).

Overall amount: £2.10 million (approximately €3.08 million).

2.3. Duration

- (4) Date of Commission approval until 31 December 2013.
- (5) The WMG for Access is a component of the English Woodland Grant Scheme (EWGS), which is principally funded through the Rural Development Plan (RDP). The duration of the present scheme should therefore match that of the new financial framework.

2.4. Beneficiaries

- (6) Over 1 000 SMEs (woodland owners and lessees).

2.5. Measure

- (7) The objective of the scheme is to encourage recreational functions of and grant public access to forests and woodland areas in England. The scheme will be administered by the Forestry Commission, which manages all components of the English Woodland Grant Scheme (EWGS).
- (8) The UK authorities provide that the subsidy may only be paid where there is a demand for public access. In general, this is deemed to exist where there is, at the time of application, less than 1 ha of free public access woodland for every 500 residents within 8 km. In exceptional circumstances, access projects that cannot satisfy this criterion may still be justified subject to Forestry Commission discretion.
- (9) The Forestry Commission must approve all applications for grants before any supported work is undertaken; the funds available each year are strictly limited and published on the Forestry Commission website. Furthermore, the UK authorities gave their assurances that the conditions set out in point 16(a), (b) and (c) of the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013¹ will be met.

¹ OJ C 319, 27.12.2006, p. 1.

- (10) According to the information provided, each of the operations that may be grant-aided is voluntary; the aid will be granted for additional operations that will be undertaken as necessary to address the needs of improved recreational provision within the woodland.
- (11) Support will be provided for improving and maintaining visitors' infrastructure. The grant covers the following costs:
- General vegetation management to facilitate access; this includes activities such as thinning, pruning, clearing of fallen trees and reduction of excessive vegetation density. The UK authorities gave their commitments that these works will be carried out solely for the purpose of enhancing the amenity value of the forests, e.g. for opening up and maintaining a viewpoint, clearing fallen trees where these adversely impact on the recreational potential of the woodland or to facilitate access to a viewpoint;
 - Recurrent costs associated with public access such as maintenance work, litter picking, regular safety inspections and costs of maintaining car-parking and visitors' facilities.
- (12) The UK authorities committed themselves to ensuring that normal operating costs will not be supported under this scheme but only those additional operations required to enhance public access, or arising as a consequence of such access.
- (13) In case of felling the UK authorities have given their assurance that no aid would be granted for felling whose primary purpose is commercially viable extraction of timber.
- (14) To be eligible for financial support applicants must confirm that free public access to infrastructures and forests will be permitted for the full five-year period of the grant agreement. Occasional short-term restrictions may occur for duly justified reasons, such as execution of potentially hazardous operations (tree felling etc.). In such cases the UK authorities undertake to ensure that clear notices will be erected detailing the reason for temporary access restrictions and the period for which it applies.
- (15) WMG for Access is an area-based standard grant fixed at £30/ha/annum, paid in five annual instalments. The fixed rate is calculated on the basis of standard costs. The UK authorities provided a list of standard costs associated with public access together with information on the method of their calculation as well as the commitment that these costs will be periodically reviewed.
- (16) The UK authorities committed themselves to ensuring that there will be no overcompensation. To this end the UK authorities explained that all applicants must clearly identify the activities they intend to undertake, all of which have standard costs associated with them. If it becomes evident from the application that the payment of the fixed rate would result in an aid intensity exceeding 70% of eligible costs, the application will be excluded from the grant assistance. Moreover, each contract concluded with the beneficiary will provide for a mechanism to reclaim grant already paid (interest included) should the

beneficiary fail to comply with the contractual terms, including failure to carry out the works agreed.

- (17) According to the information provided, the control procedures for the EWGS, including WMG for Access as one of its components, will be in accordance with the requirements of Commission Regulation (EC) No 1975/2006². WMG for Access payments will be subject to a mix of random and risk-based selection in all five years of the agreement.
- (18) The UK authorities undertake to ensure that no overlapping with other publicly funded measures to cover the same eligible costs will be possible. In particular, as regards the demarcation between the activities funded under the Woodland Improvement Grant Scheme and under the scheme at hand, the former will support individual major infrastructure developments for public access that may not be grant-aided under the present scheme. The UK authorities have explained that as the Forestry Commission administers all components of the EWGS on a single IT system, the risk of dual funding will be minimised.

2.6. Legal basis

- (19) The Forestry Act 1979.

2.7. Aid intensity

- (20) Up to 70% of eligible expenditures.
- (21) The rate of support will typically range from 14% to 37% of eligible expenditures depending on the size of woodland supported. The UK authorities have given their assurances that in no case would the aid intensity exceed 70%.

2.8. Cumulation

- (22) The UK authorities have confirmed that the aid under the present scheme will not be cumulated with any aid received from other public resources to cover the same eligible costs.

III. ASSESSMENT

- (23) Under Article 87(1) of the EC Treaty, 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 is prohibited, insofar as it affects trade between Member States.

² OJ L 368, 23.12.2006, p. 74.

- (24) The aid measure is financed from the Forestry Fund by the Forestry Commission England. The involvement of State resources is therefore presumed.
- (25) It favours the forestry sector - woodland owners and lessees - in the United Kingdom (England).
- (26) According to the case law of the Court of Justice, 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 the normal course of its business, points to a possible distortion of competition³.
- (27) Aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-Community trade⁴. There is substantial intra-Community trade in forestry products⁵. Therefore, the present measure is liable to affect trade between Member States.
- (28) In the light of the above the conditions of Article 87(1) are, *prima facie*, fulfilled. It can be concluded that the proposed support measure constitutes State aid within the meaning of that Article.
- (29) Consequently, it should be examined whether a derogation from the general principle of prohibition of State aid under Article 87(1) of the EC Treaty might be granted.
- (30) The Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 (hereinafter: the Community guidelines)⁶, Section VII of which comprises provisions on aids for the forestry sector, are applicable in the present case.
- (31) Point 16 of the Community guidelines lays down the conditions that must be fulfilled for the aid to be considered to have incentive effect. As described in point 9 above and taking into account the assurances provided by the UK authorities in this respect, the incentive requirement appears to be met.
- (32) According to point 175 of the Community guidelines, the Member State has to demonstrate that such measures are directly contributing to maintaining or restoring ecological, protective and recreational functions of forests, biodiversity and a healthy forest ecosystem. As described in Section 2.5 above, the UK authorities have provided relevant information and given appropriate assurances.

³ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980] ECR 2671.

⁴ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities* [1988] ECR 4067.

⁵ Trade in timber in the rough (round, cut or in particles) between the United Kingdom and other Member States in 2004: imports €434 million, exports €322 million (source: Eurostat).

⁶ OJ C 319, 27.12.2006, p. 1.

- (33) Measures eligible for aid with an aid intensity of up to 100% under point 175 of the Community guidelines are: (a) restoring the forest ecosystem and biodiversity or the traditional landscape; ecologically valuable afforestation to increase forest cover, to promote biodiversity, to create recreational wooded areas, to combat erosion and desertification or to promote the protective function of the forest; (b) maintaining and improving the soil quality in forests and ensuring balanced and healthy tree growth; (c) preventing, eradicating and treating pests, pest damage and tree diseases and restoration and maintenance of natural pathways; (d) landscape elements and features and the natural habitat for animals; (e) forest roads and visitors' infrastructures; (f) general information on forestry; and (g) creation of nature protection areas.
- (34) The eligible costs listed in point 11 above may be regarded as costs of improving and maintaining visitors' infrastructures covered under points 175(a) and (e) of the Community guidelines. The UK authorities provided necessary assurances that the eligible expenses will cover only the costs of increasing the amenity value of the forests and wooded areas (see Section 2.5 above).
- (35) The aid may not be provided for felling the primary purpose of which is the commercially viable extraction of timber. The UK authorities provided necessary commitments in this respect (see point 13 above).
- (36) Pursuant to points 175(a) and (e) of the Community guidelines, the support for public access is allowed provided the forests and infrastructure are open to the public at no cost for recreational purposes. Access to forests and infrastructures may be restricted if this is necessary to protect sensitive areas or to ensure the proper and safe use of the infrastructures. The UK authorities have given their assurances that this condition will be met (see point 14 above).
- (37) According to the provisions of point 175 of the Community guidelines, aid with an intensity of up to 100% may be granted for the above-mentioned activities. In the present case the aid intensity is up to 70% (see point 20 above). The UK authorities have provided information on the methodology and relevant calculations (see point 15 and Section 2.7 above).
- (38) Based on these calculations and the relevant commitments provided by the UK authorities as regards prohibition of cumulation (see point 22 above), ex ante and ex post control mechanisms (see points 16 and 17 above) and coordination with other publicly financed and EU co-financed measures (see point 18 above), overcompensation or double-funding appear to be avoided.
- (39) For these reasons it appears in the present case that the conditions of point 175 of the Community guidelines are met.

IV. DECISION

- (40) As the measure complies with the provisions of Section VII.C of the Community guidelines for State aid in the agriculture and forestry sector, it can be considered compatible with the common market in accordance with Article

87(3)(c) of the EC Treaty. The Commission has accordingly decided to regard the aid as compatible with the EC Treaty.

- (41) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and publication of the full text of the letter in the authentic language on the Internet site http://ec.europa.eu/community_law/state_aids/. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural
Development
Directorate H
Office: Loi 130 5/98A
B-1049 Brussels

Fax No: 0032.2.296 7672

Yours faithfully,
For the Commission

Mariann FISCHER BOEL
Member of the Commission