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Subject: State aid/Greece
Aid No N 89/09

Measures in favour of producers whose agricultural or livestock holdings suffered damages caused by fires during 2008

Sir,

The European Commission ("the Commission") wishes to inform Greece that, having examined the information supplied by your authorities on the State aid measure referred to above, it has decided not to raise any objections to the relevant measure, as it is considered compatible with the EC Treaty.

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

1. PROCEDURE

- (1) By letter of 16 February 2009, registered by the Commission on the same day, Greece notified, according to Article 88(3) of the EC Treaty, the above mentioned aid scheme. By letter of 5 March 2009, the Commission asked for supplementary information which the Greek authorities provided on 18 March 2009, registered on 19 March 2009, and on 30 March 2009, registered on the same day.

2. DESCRIPTION OF THE AID SCHEME

2.1 GENERAL INFORMATION ON THE SCHEME

- (2) The aid scheme in question aims at compensating Greek farmers, whose agricultural or livestock holdings suffered damages caused by fires during 2008. According to the Greek authorities, the proposed aid aims primarily at the reconstitution of the vegetal capital, not only for the continuation of agricultural activities in the regions that were hit by fires, but also for the protection of the environment, the preservation of biodiversity and of cultivated species, and the protection of soil and of the water quality and for the sustainable development.
- (3) The notification submitted by the Greek authorities makes reference to the framework scheme, which has already been approved by the Commission (Case No

N. 414/2007)¹ which provides the framework for compensation of farmers for damages caused by natural disasters, exceptional occurrences and adverse weather conditions. More concretely, according to para 8 of Commission Decision No 414/2007, compensations for fires would be the subject of *ad hoc* programmes which would be notified individually to the Commission.

- (4) In compliance with the above, the Greek authorities have provided to the Commission a draft Common Ministerial Decision (the "draft CMD"), laying down the details for the grant of aid to the Greek farmers.
- (5) The duration of the present scheme will be until 31.12.2012, whereas the overall budget of the scheme amounts to EUR 30 million. The Greek authorities estimate the number of beneficiaries to be over 1000. In line with the definition of a "fire" in Commission decision 414/2007 (para. 8), the draft CMD defines fire as a fire of important magnitude, that has burned more than 500 000 m² or more than 300 000 m² in an island (islands of Crete and Evoia excluded). One of the basic conditions for the grant of aid is that the level of damage for each beneficiary reaches a minimum threshold of 30%.
- (6) The Greek authorities confirm that the beneficiaries will have to comply with any control by the relevant national or Community authority. They also have to declare whether they are insured or not. In case they are insured, the compensation deriving from the present scheme, and the compensation received from the insurance company, cannot exceed 100% of the amount of the damage. In case this amount is exceeded, the amount of the aid will be reduced accordingly. Further, any expense that the farmer hasn't incurred, or any sum that the farmer has gained due to the natural disaster, will be deducted from the amount of the aid.
- (7) •n case a farmer has received aid from another public body for the same damages, if this aid is equal or higher from the present aid then this farmer will be excluded from the present aid. If on the other hand the amount of the aid from another public body is lower the amount of the present aid, he will receive the difference between the two amounts, so as the maximum amount of aid that the CMD provides is not exceeded. In this respect, even if cumulation with aid received from other sources is possible, the Greek authorities have provided adequate assurances that overcompensation will in any case be excluded. These assurances include the obligation for the beneficiary of the aid to declare if he has received aid from another public source and the collaboration of the relevant authorities to avoid overcompensation. In this respect, if for any reason a farmer has received aid without being entitled to (cases of submission of false information, grant of amounts higher than the ones that he was entitled to, damages below 30%, etc), he will be obliged to return the aid he has received.
- (8) The farmers that will be eligible for the aid will have to have concluded the relevant repairs/reconstitution/replacements within two years from the date of adoption of the CMD. If for whatever reason, the determination of the damages is delayed, the beneficiary will be obliged, within one year from the determination of the damage, to repair the damages, or else he will be precluded from the aid. According to the draft CMD, no aid will be granted more than four years from the generating event.

2.2 SPECIFIC INFORMATION FOR EVERY CATEGORY OF LOSS

¹ Commission Decision E(2007)5591 of 14.11.2007.

(9) More precisely, for every category of loss suffered, the draft CMD provides the following:

1. *For losses in the Vegetal Capital*

(10) The farmers, whose expected production has been destroyed by a minimum threshold of 30%, will have the right to receive aid, whose amount will be up to 80% of the expenditure for the restoration of the vegetal capital, reduced according to the capital capacity. 20% of the charge will be borne by the farmer, whereas the remaining 80% will be compensated by 80%. In addition, farmers will be entitled to compensation for losses of revenue due to the reconstitution of the vegetal capital.

1.1 *For reconstitution of vegetal capital*

(11) The maximum amounts of aid for the reconstitution of the vegetal capital will be as shown in the table below:

Table 1

Maximum Aid for Reconstitution of the Vegetal Capital

Type of Action	Unit	EUR
Grubbing and replanting		
Olive trees, Citrus trees, Fig trees and Earth-nut trees	Tree	22
Other fruiting trees	Tree	15
Vineyards	1000 m ²	1 250
Kiwis	1000 m ²	1 250
Cutting at the trunk base		
Olive trees, Citrus trees, Fig trees and Earth-nut trees	Tree	15
Other fruiting trees	Tree	11
Vineyards	1000 m ²	225
Kiwis	1000 m ²	225
Cutting of Principal branches		
Olive trees, Citrus trees, Fig trees and Earth-nut trees	Tree	8,5
Other fruiting trees	Tree	5
Vineyards	1000 m ²	150
Kiwis	1000 m ²	150
For the reconstitution of vegetal capital of cultivation of flowers etc.		
Without compensation for production losses for next years	1000 m ²	2 500

(12) These amounts are calculated on the basis of the costs for all works that can be undertaken. If some works are not undertaken, the amount of the aid will be reduced accordingly.

1.2 *For losses of revenue linked to the reconstitution of vegetal capital*

(13) The maximum amounts of aid for losses or revenue linked to the reconstitution of the vegetal capital will be as shown in the table below:

Table 2

Maximum Aid for Losses of Revenue Linked to Reconstitution of the Vegetal Capital

Type of Action	Unit	EUR
Grubbing and replanting		
Olive trees, Citrus trees, Fig trees and Earth-nut trees	Tree	40
Other fruiting trees	Tree	30
Vineyards (for wine)	1000 m ²	600
Vineyards (for table grapes) – Raisin grapes	1000 m ²	800
Kiwis	1000 m ²	1300
Cutting at the trunk base		
Olive trees, Citrus trees, Fig trees and Earth-nut trees	Tree	30
Other fruiting trees	Tree	26
Vineyards (for wine)	1000 m ²	300
Vineyards (for table grapes) – Raisin grapes	1000 m ²	400
Kiwis	1000 m ²	650
Cutting of Principal branches		
Olive trees, Citrus trees, Fig trees and Earth-nut trees	Tree	21
Other fruiting trees	Tree	17
Vineyards (for wine)	1000 m ²	200
Vineyards (for table grapes) – Raisin grapes	1000 m ²	250
Kiwis	1000 m ²	300

- (14) In order to avoid over-compensation, this aid will be granted in different instalments, as follows:

Table 3

Instalments for Aid for Losses of Revenue Linked to Reconstitution of the Vegetal Capital

Type of Action	Maximum EUR/tree or 1000 m ²	Instalment			
		1 st %	2 nd %	3 rd %	4 th %
Grubbing and replanting					
Olive trees, Citrus trees, Fig trees and Earth-nut trees	40/tree	30	30	25	15
Other fruiting trees	30/tree	26	26	25	23
Vineyards (for wine)	600/1000 m ²	38	35	27	
Vineyards (for table grapes) – Raisin grapes	800/1000 m ²	56	31	13	
Kiwis	1300/1000 m ²	38	34	28	
Cutting at the trunk base					
Olive trees, Citrus trees, Fig trees and Earth-nut trees	30/tree	38	38	24	
Other fruiting trees	26/tree	41	41	18	
Vineyards (for wine)	300/1000 m ²	60	40		
Vineyards (for table grapes) – Raisin grapes	400/1000 m ²	60	40		
Kiwis	650/1000 m ²	60	40		
Cutting of Principal branches					
Olive trees, Citrus trees, Fig trees and Earth-nut trees	21/tree	57	43		
Other fruiting trees	17/tree	60	40		
Vineyards (for wine)	200/1000 m ²	60	40		
Vineyards (for table grapes) – Raisin grapes	250/1000 m ²	60	40		
Kiwis	300/1000 m ²	60	40		

2. *For losses in the fixed capital*

- (15) The producers, whose fixed capital has been destroyed by a minimum threshold of 30%, will have the right to receive aid, whose amount will be up to 70% of the expenditure for the restoration, repair, or replacement of the damage, reduced according to the age of the capital in question. 20% of the charge will be borne by the farmer, whereas the remaining 80% will be compensated by 70%.

3. *For losses in the animal capital*

- (16) The producers, whose animal capital has been destroyed by a minimum threshold of 30%, will have the right to receive aid, whose amount will be up to 80% of the value of the animal capital that has been damaged and replaced. 20% of the charge will be borne by the farmer, whereas the remaining 80% will be compensated by 80%.

4. *For losses in the animal and vegetal production*

- (17) The producers, whose expected production was damaged by a minimum threshold of 30%, will have the right to receive aid, whose amount will be up to 50% of the Value of the Lost Production ("VLP"). 20% of the charge will be borne by the farmer, whereas the remaining 80% will be compensated by 50%. The VLP is determined on the basis of the following formula:

$$\text{VLP} = (\text{ARRP} \times \text{APRP}) - (\text{RYD} \times \text{PYD})$$

where:

- ARRP = Average Return during Reference Period (3 years)
- APRP = Average Price during same Reference Period
- RYD = Return during Year when Damage took place
- PYD = Price during Year when Damage took place

The abovementioned average prices and average returns derive from official statistic sources.

5. *For losses in stored agricultural products and animal feed*

- (18) The farmers whose stored agricultural products and animal feed have been destroyed by a minimum threshold of 30% as regards either their overall production (if they come from the same production), or their overall stock (if they come from the market), are entitled to an aid, whose amount will be up to 60% of the value of the production they lost, or the value of the stored products and animal feed that they bought. 20% of the charge will be borne by the farmer, whereas the remaining 80% will be compensated by 60%.

6. *For losses in the equipment*

- (19) The producers, whose equipment has been destroyed by a minimum threshold of 30%, will have the right to receive aid, whose amount will be up to 70% of the value the restoration, repair, or replacement of the damage. 20% of the charge will be borne by the farmer, whereas the remaining 80% will be compensated by 70%.

3. ASSESSMENT

- (20) Pursuant to Article 87(1) of the EC Treaty, any aid granted by a Member State or through state resources in any form whatsoever that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is prohibited, insofar as it affects trade between Member States.
- (21) The measure in question undoubtedly confers advantage on its recipients. This advantage is granted through State resources and it favours certain farmers in Greece, whose holdings have been damaged following the 2008 fires.
- (22) According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would otherwise not have received in the normal course of its business, points to a possible distortion of competition.²
- (23) Aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-Community trade.³ There is substantial intra-Community trade in agricultural products. Therefore, the present measure is liable to affect trade between Member States.
- (24) In light of the above, the conditions of Article 87(1) are, *prima facie*, fulfilled. It can therefore be concluded that the proposed measure constitutes State aid within the meaning of that Article.
- (25) 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 can apply. In the instant case, the derogation which potentially applies is the one laid down in Article 87(2)(b) of the EC Treaty, whereby aid to make good the damage caused by a natural disaster or an exceptional occurrence, is compatible with the common market.
- (26) The conditions of application of this derogation are laid down in Sections V.B.1 and V.B.2 of the Commission Guidelines for State aid in the agriculture and forestry sector 2007–2013 ("the Guidelines")⁴ (paragraphs 119-123). More specifically, para 123 of the Guidelines provides that (i) aid for damages caused by an exceptional occurrence, can cover 100% of the material damage and compensation should normally be calculated on the level of the individual beneficiary and (ii) in any case over-compensation should be excluded.
- (27) The same conditions are mentioned in case No N. 414/2007. As a reminder, the conditions of application were the following:
- In the case of an exceptional occurrence, the Commission will authorise the grant of an aid which can reach 100% of the cost of the material damage that the farmer suffered, and
 - In order to avoid any overcompensation, any payment made, e.g. due to an insurance contract, will have to be deducted from the aid.

² 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.

³ 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.

⁴ OJ C 319, 27.12.2006, p.1.

- (28) In the present case, the Commission finds that the draft CMD is in line with the conditions set in both the Commission guidelines, as well as the provisions of the framework-scheme, approved by the Commission in Case No N. 414/2007.
- (29) The Greek authorities have shown that only damages resulting from fires, will be compensated. As shown in paragraphs 10-19, the amount of compensation will be less than the 100% permitted according to point 123 of the guidelines. Also, the Greek authorities have provided adequate information (paragraphs 6 and 7), confirming that over-compensation will be excluded. Finally, it was confirmed that the compensation will be calculated at the level of the individual beneficiary.
- (30) Finally, in line with paragraph 119 of the Guidelines, the present notification is not being submitted by Greece more than three years after the occurrence of the damaging event, and also it has been established that no aid will be paid out more than four years following the event.

4. CONCLUSION

- (31) On the basis of the above considerations, the Commission concludes that the notified measure is compatible with Article 87(2)(b) of the EC Treaty.
- (32) If this letter contains confidential information, which should not be published, please inform the Commission within fifteen working days from the receipt of the present letter. If the Commission does not receive a reasoned request by this deadline, you will be deemed to have agreed to the publication of the full text of this letter in the authentic language on the following webpage:

http://ec.europa.eu/comunity_law/state_aids/index.htm/.

Any such request specifying the relevant confidential information should be sent by registered letter or fax to:

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Office: Loi 130 5/98A
B-1049 Brussels
Fax No: 0032 2 2967672

Yours faithfully,

For the Commission

Mariann FISCHER BOEL
Member of the Commission