



EUROPEAN COMMISSION

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C(2009)

PUBLIC VERSION

WORKING LANGUAGE

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**Subject: State aid N 386/A/2009 – Germany
Scheme on granting of State aid to compensate for damage caused by
natural disasters in *Rheinland-Pfalz***

Sir,

1. PROCEDURE

On 26 June 2009 Germany notified the prolongation of the expired schemes N 116/A/2002 – Germany - Guideline on granting of State aid to compensate for damage caused by adverse weather conditions in Rheinland-Pfalz¹ (beneficiaries in the agriculture and forestry sector) and N 116/B/2002 – Germany - Guideline on granting of State aid to compensate for damage caused by adverse weather conditions in Rheinland-Pfalz² (beneficiaries in trade and industry and private persons) under the simplified procedure, pursuant to Art. 4(2)(b) Implementing Regulation.³ The notification was registered under N 386/2009.

In the following the notification was split. The present decision concerns N 386/A/2009 – Germany - Scheme on granting of State aid to compensate for damage caused by natural disasters in Rheinland-Pfalz (beneficiaries in trade and industry and private

¹ Decision 2.09.2002 N 116/A/2002 – Germany – Guideline on granting of State aid to compensate for damage caused by adverse weather conditions in Rheinland-Pfalz, OJ C 238 of 3.10.2002, p. 9.

² Decision 28.02.2003 N 116/B/2002 – Germany – Guideline on granting of State aid to compensate for damage caused by adverse weather conditions in Rheinland-Pfalz, OJ C 127 of 29.05.2003, p. 31.

³ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140 of 30.04.2004, p.1.

Seiner Exellenz Herrn Dr. Guido Westerwelle
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persons), which in substance corresponds to the above mentioned expired scheme N 116/B/2002.

By letter dated 6 July 2009 the Commission rejected the applicability of the simplified procedure, for the following reason: Due to the term "prolongation" Art. 4(2)(b) Implementing Regulation could only be applied, if the scheme in question is still existing. Since the preceding scheme N 116/B/2002 expired in 2007 the present case could not be covered by the scope of application of the simplified procedure. At the same time, the Commission invited Germany to submit a complete notification. The submission of the complete notification within the standard procedure was registered on 7 September 2009 (A/19375). Germany submitted further information by letter dated 25 November 2009 (A/24712).

The scheme on granting of State aid to compensate for damage caused by natural disasters in Rheinland-Pfalz (hereinafter referred to as "the scheme") covers also financial assistance to private persons who are not commercially active. This assistance is excluded from the scope of the notification.

2. DESCRIPTION OF THE AID

2.1. Objective

The objective of the scheme is to grant support in exceptional emergency situations to compensate for damage caused by natural disasters (for example floods, hurricanes, thunderstorms).

2.2. Legal basis and duration

The measure is implemented on the basis of the administrative regulation on granting of State aid for damage due to natural disasters in *Rheinland-Pfalz* (in original language: "*Verwaltungsvorschrift der Landesregierung Rheinland-Pfalz über die Gewährung staatlicher Finanzhilfen bei Elementarschäden*").

The measure enters into force on 1 January 2010 and will expire on 31 December 2014. As a consequence the scheme will only be applicable in relation to natural disasters occurring during the mentioned period.

2.3. Beneficiaries

Aid under the present scheme aims at small and medium sized enterprises in all sectors, except the agricultural sector as covered by the scope of application of the Community guidelines for State aid in the agricultural sector.⁴

2.4. Eligible costs

The concept of damage as applied by the German authorities under the scheme includes refinancing costs of capital goods partially or wholly destroyed due to the

⁴ Community guidelines for State aid in the agriculture and forestry sector 2007-2013, OJ C 319 of 27.12.2006, p. 1.

natural disaster as well as costs to replace partially or wholly lost stocks of raw materials and intermediary goods.

Incurring losses and foregone profits associated with temporary interruptions of the production process, the loss of orders, customers or markets as well as other damages are excluded from compensation.

The aid is granted only if despite preventive measures the beneficiary is in an exceptional state of distress not attributable to anyone's negligence. An exceptional state of distress is assumed if the damage is so severe that it cannot be remedied by the party having suffered the damage out of his own financial resources.

2.5. Type and level of support

Aid is either granted in the form of direct grants or subsidised loans. The firms affected by the natural disaster can receive aid to the amount of maximal one third of the proven costs for repairs and replacement at buildings, equipment and warehouses.

The aid is awarded as a grant in cases where the established damage is less than € 25,000.

For damages exceeding €25,000 the aid is normally granted as a soft loan under the following conditions:

- maximum amount of the loan €100,000 for a period of 10 years,
- 2 years without back payment,
- interest rate 1.5% below the respective reference interest rate.

The German authorities confirmed that the maximum amount of the loan (in nominal terms) will not exceed one third of the proven costs. The German authorities confirmed further that the aid element will be calculated on the basis of the Communication on the revision of the method for setting the reference and discount rates.⁵

2.6. Budget

The measure is financed from resources of the Land *Rheinland-Pfalz*. Financing is only made available in the event of actual damages. Therefore, the total budget of the measure cannot be established yet.

2.7. Cumulation

The level of damages is determined in each individual case. Insurance payments or aid granted pursuant to other measures will be deducted.

⁵ Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.01.2008, p. 6.

2.8. Commitments of Germany

In the framework of the current notification the German authorities confirmed that they will respect all the commitments they already had accepted in regard to the expired scheme N 116/B/2002 – Germany - Guideline on granting of State aid to compensate for damage caused by adverse weather conditions in Rheinland-Pfalz.

Therefore, in particular, Germany is obliged to transmit to the Commission a detailed report on the circumstances and the measures taken to make good the damage caused by a flood.

Regarding other natural disasters or exceptional occurrences such as for example hurricanes and thunderstorms Germany will notify according to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU),⁶ such occurrences in order to prove the presence of a “natural disaster” in accordance with Article 107(2)(b) TFEU before carrying out the measure.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

Grants and soft-loans under the present scheme constitute State aid in the meaning of Article 107(1) TFEU and Article 61(1) EEA Agreement.

Grants and soft-loans under the scheme are granted from public resources of the *Land of Rheinland-Pfalz* and awarded to certain enterprises. The grants and soft-loans constitute an advantage for the beneficiaries and, as companies engaged in intra-Community trade are not excluded under the scheme, threaten to distort competition by favouring the beneficiaries. The measures thus affect trade between Member States.

3.2. Legality of aid

The Commission notes that the German authorities complied with their obligation under Article 108(3) TFEU.

3.3. Compatibility of aid

The Commission examined the notified scheme pursuant to Article 107(2)(b) TFEU.

3.3.1. Damage caused by natural disasters

Article 107(2)(b) TFEU states that aid to make good the damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market.

⁶ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

For the time being no common definition exists of a “natural disaster”, only a provision in the Community guidelines for State aid in the agriculture and forestry sector⁷ states under its paragraph 121 that earthquakes, avalanches, landslides and floods may constitute natural disasters.

Taking into account that the Commission has confirmed that floods can be considered to constitute natural disasters in the meaning of Article 107(2)(b) TFEU⁸, and in view of the specific eligibility criteria for the application of the present scheme, as well as the specific reporting obligations accepted by Germany, the Commission takes the view that the scheme can be applied to damages caused by floods without prior notification of the damage event.

Regarding other natural disasters or exceptional occurrences such as for example hurricanes and thunderstorms the Commission takes the view that the scheme can only be applied after Germany has notified such occurrence according to Article 108(3) TFEU in order to prove the presence of a “natural disaster” in accordance with Article 107(2)(b) TFEU before carrying out the measure.

3.3.2. *Mechanism to rule out overcompensation*

Only one third of the material damage can be compensated for. In order to prevent overcompensation, all payments received from other sources such as insurance payments or aid granted pursuant to other measures must be deducted and will diminish the eligible actual value of damages caused by the natural disaster. Overcompensation can therefore be excluded.

On the basis of the foregoing assessment the Commission concludes that the aid measure is compatible with the Internal market pursuant to Article 107(2)(b) TFEU.

4. DECISION

The Commission has accordingly decided that the aid awarded under the scheme on granting of State aid to compensate for damage caused by natural disasters in Rheinland-Pfalz meets the conditions to be compatible with the Internal Market pursuant to Article 107(2)(b) TFEU.

The Commission also reminds the German authorities that, in accordance with Article 108(3) TFEU, all plans to refinance, alter or change this scheme have to be notified to the Commission.

7 Community guidelines for State aid in the agriculture and forestry sector 2007-2013, OJ C 319 of 27.12.2006, p. 18.

8 State aid N 401/2008 – Slovenia – Aid to compensate for the damage caused by the storm and floods of 18.9.2007 (Ministry of Environment and Spatial Planning), OJ C 112 of 16.05.2009, p 2.

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

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B-1049 Brussels
Fax Nr.: +32 2 296 12 42

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission