



Brussels,  
C(2014)

**Subject: State Aid / Austria (Niederösterreich)**  
- **Aid No SA.38866 (2014/N)**  
- **Aid to make good damage caused by floods**

Sir,

The Commission wishes to inform Austria that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided to raise no objections to the aid in question, as it is compatible with the internal market pursuant to Article 107(2)(b) of the Treaty on the Functioning of the European Union (hereinafter: "TFEU").<sup>1</sup>

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

## **1. PROCEDURE**

- (1) The aid scheme was notified in accordance with Article 108(3) of the TFEU by letter from the Permanent Representation of the Republic of Austria to the European Union of 10 June 2014, registered on 11 June 2014. The Austrian authorities provided additional information on 1<sup>st</sup> September 2014, registered on the same day.
- (2) The notified scheme concerns aid to be granted in accordance with the *Richtlinien des Landes Niederösterreich für die Gewährung von Beihilfen zur Behebung von Katastrophenschäden im Bereich der landwirtschaftlichen Erzeugung* (hereinafter: "the framework scheme"). The Commission approved the framework scheme, as regards damages to agricultural production, by Decision C(2005)6036 of 26.12.2005 (State aid case N 564a/2004). Under the framework scheme, the Austrian authorities have given assurances that every exceptional emergency situation giving rise to compensation to agricultural producers under the framework scheme would be individually notified to the Commission.

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<sup>1</sup> 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 87 and 88 of the EC Treaty should be understood as references to Articles 107 and 108 of the TFEU, where appropriate.

H.E. Herrn Sebastian Kurz  
Bundesministerium für Europa, Integration und Äußeres  
Minoritenplatz 8  
Wien / Österreich

## **2. DESCRIPTION**

### **2.1. Title**

- (3) Aid to make good the damage caused by floods.

### **2.2. Budget**

- (4) € 2.1 Million.

### **2.3. Duration**

- (5) The aid measure will be implemented as a one-off measure from the date of the Commission's decision until 14 May 2015.

### **2.4. Recipients**

- (6) Up to 1000 beneficiaries, all firms in the agricultural sector.

### **2.5. Form of aid**

- (7) Aid under the present notified scheme will be granted in the form of direct grants.

### **2.6. Eligible costs**

- (8) Losses on crops.

### **2.7. Aid intensity**

- (9) The compensation will be 20% of the eligible costs; in cases where more than 50% of the cultivable land is damaged - up to 30%; and in cases of particular economic hardship – after a thorough examination of each individual case - up to 50%.

### **2.8. Aid measure**

- (10) The present scheme concerns compensation for the crops destroyed by flood, landslides and rockslides ('Vermurungen') as a consequence of certain exceptional emergency situations (see recitals (17)-(20) below). Compensation for damage caused directly by climatic events such as rain or hail is excluded.
- (11) In order to receive compensation, the agricultural producer whose production has been affected has to contact the local fact-finding commission, which verifies the damage and assesses whether the conditions for granting the aid are met. The commission then immediately transmits a detailed report ascertaining the damage to the responsible department of the office of the government of the Land Niederösterreich which may conduct sample checks before paying the aid.
- (12) The amount of compensation is calculated separately for each individual beneficiary.
- (13) The amount of compensation is calculated on the basis of the ascertained damage. This amount is corrected by deducting insurance payments and any other compensation for the same damage event.
- (14) In the case of losses on crops, the extent of damage is calculated on the basis that the compensation rates set by the Lower Austria Chamber of Agriculture are to be applied to each hectare of total yield loss. For losses of less than 100 %, the aforementioned

contributions are to be reduced accordingly. In the case of humus run-off and aggradation, the level of damage is calculated on the basis of forecast yield losses applied to the calendar year in which the damage occurs, taking account of the extent of humus run-off, the thickness of the humus layer and the usual crop rotation in the area. When setting the compensation rates, the Lower Austria Chamber of Agriculture uses the data gathered by itself as well as by the *Statistic Austria* (an independent and non-profit-making federal institution under public law responsible for federal statistics). It must adapt the compensation rates to the price situation at intervals of at least three years. The rates applicable in this case have been adapted in 2011 and are available on the internet.<sup>2</sup> The Austrian authorities provided assurances that the method used for calculation of the damage is representative, not based on abnormally high yields and does not result in the overcompensation of any beneficiary.

- (15) The aid is paid directly to the beneficiary.
- (16) The aid will be paid out within four years from the date of the natural disaster.

*The exceptional emergency situations in May 2014*

- (17) According to the Austrian authorities, continuous heavy and widespread rain in May 2014 caused several rivers in Lower Austria to flood and caused landslides and rockslides in many parts of the region.

The hydrological services of the government of the Land Niederösterreich (hereinafter: “the hydrological services”) reported extremely intensive rainfalls in the southern part of Lower Austria (*Mostviertel* and *Industrieviertel*) between 15 and 19 May 2014, with rain intensities reaching up to 300 mm throughout that period. The most affected administrative districts were Amstetten, Melk, Scheibbs, Lilienfeld, St. Pölten, Neunkirchen, Wiener Neustadt, Baden, Mödling Bruck/Leitha und Wien-Umgebung.

Furthermore, the hydrological services reported localised intensive rainfalls for 26 and 27 May 2014 (administrative districts of St. Pölten, Neunkirchen, Wiener Neustadt, Baden, Mödling, Korneuburg and Krems), with rain intensities reaching up to 60 mm/hour.

- (18) The reports of the hydrological services confirm that these exceptional conditions (intense rain, often accompanied by previous humidification and thunderstorms) resulted in landslides and rockslides in many parts of the region, and that they caused a great many rivers and brooks in Lower Austria to flood.
- (19) The existence of the above-mentioned exceptional emergency situations and their characterisation as natural disasters was confirmed by the hydrological services for the above mentioned administrative districts.
- (20) According to the Austrian authorities, these events directly caused losses for agricultural undertakings. The damage concerned cultivated land and grassland on a surface of approximately 2.100 ha. Given the timing of the event, virtually all common types of crop were affected (cereals, corn, sugar-beet, alternative field cultures and field vegetables).

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<sup>2</sup> <http://www.noel.gv.at/bilder/d1/Entsch%C3%A4digungss%C3%A4tze%202011.pdf>

## 2.9. Legal basis

- (21) §3 Katastrophenfondsgesetz 1996, BGBl. Nr. 201/1996 i.d.g.F;

*Richtlinien für die Gewährung von Beihilfen zur Behebung von Katastrophenschäden des Landes Niederösterreich;*

*Commission decision approving the framework scheme as regards damages to agricultural production, Decision C(2005)6036 of 26.12.2005 (State aid case N 564a/2004).*

## 2.10. Commitments by the Member State

- (22) The Austrian authorities provided assurance that the measures covered by the scheme at hand cannot benefit from co-financing under Regulation (EC) No 1698/2005<sup>3</sup> (including the transitional period until 2015) or Regulation (EU) No 1305/2013<sup>4</sup>.
- (23) The Austrian authorities provided assurance that aid under the scheme at hand will not be cumulated with aid received from other local, regional, national or European Union schemes to cover the same eligible costs.

## 3. ASSESSMENT UNDER STATE AID RULES

### 3.1. Presence of aid within the meaning of Article 107(1) TFEU

- (24) For Article 107(1) TFEU to apply, the measure must provide an economic benefit to an undertaking which it would not have received in its normal course of business, the aid must be selective, the benefit must be granted by the State or through State resources and the aid must threaten to distort competition and be capable of affecting trade between Member States.
- (25) The measure is financed out of State resources, from the budget of the *Bundesland Niederösterreich*. It benefits certain undertakings (agricultural producers in the *Bundesland Niederösterreich*). As these benefiting undertakings are active in a highly competitive international market<sup>5</sup>, the measure distorts or threatens to distort<sup>6</sup> competition and affects trade between Member States.
- (26) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed measure constitutes State aid within the meaning of that Article. It may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

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<sup>3</sup> OJ L 277, 21.10.2005, p. 1.

<sup>4</sup> OJ L 347, 20.12.2013, p. 487.

<sup>5</sup> In 2013, Austrian trade with all agricultural products with EU countries for exports amounted to EUR 7 965.3 million, and for imports amounted to EUR 9 558.4 million. Source: European Commission, Agricultural Policy Perspectives, Member States factsheet - June 2014, Austria. Available at: [http://ec.europa.eu/agriculture/statistics/factsheets/pdf/at\\_en.pdf](http://ec.europa.eu/agriculture/statistics/factsheets/pdf/at_en.pdf).

<sup>6</sup> According to the case law of the Court of Justice, improvement in the competitive position of an undertaking resulting from a State aid generally points to a distortion of competition compared with other competing undertakings not receiving such assistance, Case C-730/79, ECR 1980, p. 2671, paragraphs 11 and 12.

### **3.2. Compatibility with the aid scheme pursuant to Article 107(2)(b) TFEU**

- (27) In derogation from the general prohibition of State aid laid down in Article 107(1) TFEU, aid may be declared compatible if it can benefit from one of the derogations provided in the TFEU. For the present case, Article 107(2)(b) TFEU provides the appropriate basis for compatibility. Article 107(2)(b) TFEU declares: "The following shall be compatible with the internal market: [...] aid to make good the damage caused by natural disasters or exceptional occurrences".

### **3.3. Application of the Agricultural Guidelines**

- (28) As far as aids to the agricultural sector are concerned, the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 - 2020<sup>7</sup> (hereinafter: "Guidelines") apply.<sup>8</sup>

#### *3.3.1. Common assessment principles*

- (29) According to point 38 of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3) TFEU. They do not apply when granting aid in accordance with Article 107(2)(b) TFEU which is the case for aid to make good damages caused by natural disasters or exceptional occurrences under Section 1.2.1.1 of Part II of the Guidelines.
- (30) The transparency requirements (points 128-132 of the Guidelines) do not apply in the present case, given that the aid under the present aid scheme will be granted before 1<sup>st</sup> July 2016 (see point 131 with footnote 50 of the Guidelines).

#### *3.3.2. Incentive effect*

- (31) Point 75(d) of the Guidelines states that aid to make good the damage caused by natural disasters or exceptional occurrences in accordance with Section 1.2.1.1 of Part II are not required to have an incentive effect.

#### *3.3.3. Undertakings in difficulty*

- (32) According to point 26 of the Guidelines, undertakings in difficulty are in principle excluded from the scope of the Guidelines. This principle does not apply to compensatory aid for damage caused by natural disasters or exceptional occurrences referred to in Section 1.2.1.1 of Part II of the Guidelines which is compatible with the internal market under Article 107(2)(b) TFEU.

#### *3.3.4. Outstanding recovery order*

- (33) According to point 27 of the Guidelines, the Commission will take account of the amount of aid still to be recovered from an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market when assessing a new aid. This

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<sup>7</sup> OJ C 204, 1.7.2014, p.1.

<sup>8</sup> In accordance with point 732, first sentence, of the Guidelines, the Commission applies the Guidelines to all notified aid measures in respect of which it is called upon to take a decision after 1 July 2014, even where the aid was notified prior to that date.

does not apply to aid to make good the damage caused by natural disasters under Article 107(2)(b) TFEU.

*3.3.5. Aid to make good the damage caused by natural disasters or exceptional occurrences*

- (34) The Commission assesses the aid to make good the damage caused by natural disasters or exceptional occurrences on the basis of section 1.2.1.1 of the Guidelines.
- (35) As laid down in point 329 of the Guidelines, the notions of ‘natural disaster’ and ‘exceptional occurrence’ contained in Article 107(2)(b) TFEU must be interpreted restrictively. Point 330 of the Guidelines provides that the Commission will continue to evaluate proposals to grant aid in accordance with Article 107(2)(b) TFEU on a case-by-case basis, having regard to its previous practice in this field.
- (36) Furthermore, according to points 331-345 of the Guidelines, the Commission will consider aid to make good the damage caused by natural disasters or exceptional occurrences compatible with the internal market under Article 107(2) (b) TFEU if it complies with the following relevant conditions:
  - (a) The competent authority of the Member State must have formally recognized the character of the event as a natural disaster or as exceptional occurrence and there must be a direct causal link between the natural disaster or the exceptional occurrence and the damage suffered by the undertaking.
  - (b) Aid must be paid directly to the undertaking concerned or to a producer group or organization of which that undertaking is a member.
  - (c) The aid scheme must be established within three years from the date of the occurrence of the event, and the aid must be paid out within four years from that date.
  - (d) The eligible costs are the costs of the damage incurred as a direct consequence of the natural disaster or exceptional occurrence, as assessed either by a public authority, by an independent expert recognized by the granting authority or by an insurance undertaking.
  - (e) The damage must be calculated at the level of the individual beneficiary and it may include the following:
    - material damage to assets such as buildings, equipment, machinery, stocks and means of production;
    - loss of income resulting from the full or partial destruction of the agricultural production and the means of the agricultural production.
  - (f) The loss of income must be calculated by subtracting:
    - the result of multiplying the quantity of the agricultural products produced in the year of the natural disaster or the exceptional occurrence, or in each following year affected by the full or partial destruction of the means of production, by the average selling price obtained during that year; from

- the result of multiplying the average annual quantity of agricultural products produced in the three-year period preceding the natural disaster or the exceptional occurrence or a three year average based on the five-year period preceding the natural disaster or the exceptional occurrence, excluding the highest and lowest entry by the average selling price obtained.
- (g) That amount may be increased by other costs incurred by the beneficiary due to the natural disaster or the exceptional occurrence and it must be reduced by any costs not incurred because of the natural disaster or the exceptional occurrence which would otherwise have been incurred by the beneficiary.
  - (h) Indexes may be used in order to calculate the annual agricultural production of the beneficiary provided that the calculation method used permits the determination of the real loss of an individual beneficiary in a given year.
  - (i) The Commission will accept other methods for the calculation of damage provided it is satisfied that these are representative, not based on abnormally high yields and do not result in the overcompensation of any beneficiary.
  - (j) The aid and any other payments received to compensate the damage, including payments under insurance policies, must be limited to 100 % of the eligible costs.

*The existence of a natural disaster*

- (37) The Austrian authorities explained that the damage was caused by flooding, landslides and rockslides and provided hydrological reports confirming the exceptional character of the events (see recitals (17) to (20) above).
- (38) The Commission has previously accepted that floods<sup>9</sup>, landslides<sup>10</sup> and rockslides<sup>11</sup> constitute natural disasters in the meaning of Article 107(2)(b) TFEU (see also point 330 of the Guidelines).
- (39) For the above reasons, the events notified by the Austrian authorities should be considered natural disasters within the meaning of Article 107(2)(b) TFEU.

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<sup>9</sup> See State aid/Germany (Bavaria), Aid No SA.31144/N/10 (N 274/A/2010) Disaster Aid Scheme "Bayerischer Härtefonds Finanzhilfen" (beneficiaries in the agriculture and forestry sector) of 15 June 2011; State aid/Germany (Saxony), Aid No SA.33605 (2011/N) Framework scheme disaster aid Saxony (beneficiaries in the agriculture sector) of 25 January 2012; State aid/Poland, SA.33628 (2011-N) Aid scheme for compensation for damage caused by floods in Poland (beneficiaries in the agriculture sector) of 4 April 2012; State Aid/Hungary, Aid No SA.33418 (2011/N) Agricultural weather risk management scheme of 8 May 2012; State Aid/Germany, Aid No 36787 (2013/N) Guidelines for a national framework directive on state subsidies for compensation of losses by natural disasters in the agricultural sector of 27 June 2013; State Aid/Germany (Sachsen-Anhalt), Aid No SA.38334 (2014/N) Compensation for losses caused by floods 2013 (losses in the agricultural sector) of 21 May 2014.

<sup>10</sup> See State aid/Poland, Aid No N 364/2010 Aid scheme for compensation of damage caused by the floods in Poland of 4 October 2010; State aid/Poland, Aid No. N 235a/2010 Aid scheme for compensation for damage caused by the floods in Poland in May and June 2010 of 6 August 2010.

<sup>11</sup> State aid/Austria, Aid No N 424/2009 Aid scheme for the damage caused by natural disasters of 7 October 2009; State aid/Austria, Aid No SA.36852 (2013/N) Aid scheme for the damage caused by natural disasters of 11 July 2013.

### *Other conditions*

- (40) The competent authority formally recognized the character of the events as natural disasters (see recital (19)).
- (41) The Austrian authorities specified that only damage caused by floods, landslides and rockslides subject to the present notification is eligible for compensation. This excludes damage caused directly by climatic events such as rain or hail (recital (10)).
- (42) The damage will be verified and the conditions for granting the aid will be assessed by a local fact-finding commission and the relevant department of the office of the Lower Austria government, at the level of each individual applicant for aid (recital (11)). This ensures that only damage directly caused by the natural disasters in question (floods, landslides and rockslides) to a particular agricultural producer will be compensated.
- (43) Any payment due, for example under insurance policies, is deducted from the amount of aid (recital (13)). The maximum aid intensity for the measure is much less than 100% (it amounts to 20% and up to 50% in proven cases of individual hardship, recital (9)). Overcompensation is therefore ruled out.
- (44) The compensation covers loss of income resulting from the destruction of crops. As explained in recital (14), the method used by Lower Austria for the calculation of damage is to apply compensation rates per hectare of total yield loss. The compensation rates are applied to the loss of each undertaking concerned and the compensation is reduced accordingly where the loss is less than 100%. The compensation rates are set by the Lower Austria Chamber of Agriculture (lawful representation of farmers in Austria) and are regularly adapted to the price situation on the basis of statistics collected by that body as well as of official federal statistics. It can therefore be concluded that, as assured by the Austrian authorities (recital (14)), the method used for the calculation of damage is representative, not based on abnormally high yields and does not result in the overcompensation of any beneficiary.
- (45) The aid is paid directly to the beneficiary (recital (15)).
- (46) The present aid scheme is established within less than three years from the date of the occurrence of the event, and the aid will be paid out within four years from that date (recital (16)).
- (47) Based on this, the Commission concludes that the conditions in points 331-345 of the Guidelines are fulfilled.

### *No cumulation with other schemes*

- (48) The Commission notes that the Austrian authorities provided assurance that aid to make good damages caused by floods will not be cumulated with aid received from other local, regional, national or European Union schemes to cover the same eligible costs (recital (23)).

### *Duration of the scheme*

- (49) Austria confirmed that it will implement the notified measure only from the date of approval by the Commission (see recital (5) above).



- (50) According to point 719 of the Guidelines, schemes covering State aid measures that can also benefit from co-financing under Regulation (EU) No 1305/2013 should be limited to the duration of the programming period 2014-2020. Other aid schemes should not apply for more than seven years.
- (51) The aid scheme at hand will apply until 14 May 2015. As it cannot benefit from co-financing under Regulation (EU) No 1305/2013 (see recital (22) above), the duration of the measure is in line with the conditions laid down in point 719 of the Guidelines.

#### **4. CONCLUSION**

- (52) In line with the foregoing, the Commission considers that the relevant provisions of the Guidelines are complied with.
- (53) The Commission has accordingly decided not to raise objections to the scheme on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) of the Treaty on the Functioning of the European Union.
- (54) 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 disclosure to third parties and to publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

Your request should be sent via the secured e-mail system Public Key Infrastructure (PKI) to: [agri-state-aids-notifications@ec.europa.eu](mailto:agri-state-aids-notifications@ec.europa.eu).

Yours faithfully,

For the Commission

Dacian CIOLOȘ  
Member of the Commission