Embargo VISTA illimité(*)

Brussels,
C(2015)

Subject: State aid/ Spain
Aid No SA.40313 (2014/N) Aid towards the payment of agricultural insurance premiums

Sir,

The European Commission (hereinafter: 'the Commission') wishes to inform Spain 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 the scheme in question, as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union (hereinafter: 'TFEU').

This decision by the Commission is based on the following considerations:

1. Procedure

(1) Spain notified the above-mentioned aid scheme in accordance with Article 108(3) of the TFEU, by letter of 19 December 2014, registered by the Commission on the same day. The Commission sent a request for additional information to the Spanish authorities on 29 January 2015. The Spanish authorities' reply, dated 18 February 2015, was registered by the Commission on the next day.

2. Description

2.1. Title

(2) Aid towards the payment of agricultural insurance premiums.

Excmo. Sr. D. José Manuel García-Margallo y Marfil
Ministro de Asuntos Exteriores y de Cooperación
Plaza de la Provincia 1
E-28012 MADRID

(*) Ce timbre porte sur l'ensemble des documents qui composent le dossier.
2.2. Objective

(3) The Spanish authorities have explained that the objective of the notified scheme is to encourage agricultural primary producers to take out insurances to cover the risk of damages caused by natural disasters or exceptional occurrences, adverse climatic events which can be assimilated to a natural disaster, animal diseases and plant pests, the removal and destruction of fallen stock and damage caused by protected animals, as well as by other adverse climatic events. Providing aid to farmers, whose financing possibilities are often reduced, limits the cost of the insurance premiums and makes it affordable. This contributes to further develop the agricultural sector providing a basic guarantee of protection for the risks covered.

(4) The scheme consists of aid towards the payment of insurance premiums, and, thus, the Spanish authorities have confirmed that it has no impact on the environment.

(5) The Spanish authorities confirmed that the notified measure is consistent with rural development objectives under point (10) of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020\(^1\) (hereinafter: "Guidelines") and compatible with the rules on the common organisation of markets in agricultural products and is not provided for at the same time in the Rural Development Programme for Spain (2014-2020). Nonetheless, they have explained that the notified scheme fits in and is consistent with that Programme.

2.3. Budget

(6) The proposed overall budget is €274,54 million financed by the State budget.

2.4. Beneficiaries

(7) Over 1000 farmers, SME active in primary agricultural production according to the definition stated under point (35) 10 of the Guidelines.

(8) The Spanish authorities confirmed that undertakings in difficulty, as defined under point (35) 15 of the Guidelines, are excluded from aid under the notified scheme.

(9) The Spanish authorities have confirmed that they will suspend the payment of the notified aid if a beneficiary still has at its disposal any earlier unlawful aid that has been declared incompatible by a Commission decision (either concerning 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.

2.5. Legal basis

(10) - Ley 87/1978, de 28 de diciembre, de Seguros Agrarios Combinados.\(^2\)

---

2. BOE Núm. 11, of 12 January 1979.
- Real Decreto 2329/1979, de 14 de septiembre, por el que se aprueba el Reglamento para aplicación de la Ley 8711978, de 28 de diciembre, sobre Seguros Agrarios Combinados.  

- Resolución de 18 de noviembre de 2014, de la Subsecretaría, por la que se publica el Acuerdo del Consejo de Ministros de 14 de novembre de 2014, que aprueba el Plan de Seguros Agrarios Combinados para el ejercicio 2015.

2.6. Duration

(11) From the day of the Commission decision until 31.12.2015.

2.7. Incentive effect

(12) The Spanish authorities explained that farmers will submit an application for subsidised insurance to insurance companies (see recital (18)). On this basis, the insurance contracts will be concluded. Furthermore, the Spanish authorities confirmed that the content of the application will conform to point (71) of the Guidelines.

2.8. Aid instrument

(13) Direct grant.

2.9. Aid intensity

(14) Up to 90% of the eligible costs.

2.10. Description of the scheme

(15) The scheme in question consists of aid towards the payment of insurance premiums. Aid will be granted out of the State budget for premiums under insurance agreements to cover the risk of damages on Annex I of the TFEU vegetable products (crops in general, cereals, nuts, fruits, vegetables, trees, plants, flowers, etc.) and livestock species (cattle, horses, sheep, goats, swine, rabbits, poultry, birds, bees, etc.).

(16) The agricultural insurance system in Spain is based on the combined action of public and private entities as shown in the following chart:

---

3 BOE Núm. 242, of 9 October 1979.

4 BOE Núm. 294, of 5 December 2014.
The aid granted under this scheme will be managed by the State Agrarian Insurance Body (ENESA), an independent body reporting to the Ministry of Agriculture, Food and Environment, with the involvement of farmers' Organizations and Associations. It coordinates administrative activities towards the development of Agrarian Insurances. ENESA's major role is to draw up the agrarian insurance annual plan and to distribute subsidies to farmers to contribute to the payment of the insurance costs. It works together with the Autonomous Communities in these areas. ENESA's role and activities are regulated under Royal Decree 2329/1979 (see recital (10)).

Insurance policies are taken out with the Spanish Group of Insurance Companies (Agroseguro S.A.), a public limited company that groups insurance companies (27 at present) willing to provide these kind of insurance premiums to farmers. Insurance companies join for a year, on a voluntary basis and through shared capital, in this co-insurance pool. At the end of the year, insurance companies are free to join the pool again for another year, leave it or change their share hold. Insurance companies are responsible, according to their share in Agroseguro, for taking the risk transferred by producers through the insurance policy contract. When taking out the policy, the farmers may apply for aid towards its payment. Agroseguro then submits the requests for the aid to ENESA together with all data relating to the insurance policies for the latter to check the data of the insured farmers, the correct application of prices, income, fees, etc., and the intensity of the aid.

Only officially registered companies are allowed to join Agroseguro. Registration may be done with the Directorate General of insurances and pension funds if legal requirements to operate in the insurance sector are met. Registration is open to companies established in other Member States.

The Spanish authorities have confirmed that the eligible costs are the costs of insurance premiums for insurance to cover the damage caused by natural disasters or exceptional occurrences, adverse climatic events which can be assimilated to a natural disaster, animal diseases and plant pests, the removal and destruction of fallen stock and damage caused by protected animals, as well as by other adverse climatic events.

The Spanish authorities have confirmed that the insured risks are natural disasters or exceptional occurrences, adverse climatic events which can be assimilated to a natural disaster, animal diseases and plant pests, the removal and destruction of fallen stock and damage caused by protected animals, as well as by other adverse
climatic events, according to the relevant definitions stated under the Guidelines. As an example, risks related to the vegetable production described under recital (15) above are: wind, hurricanes, floods, heavy rain, rainstorm, hail, frost, fire, damage caused by protected animals, plant pests, drought and other adverse climatic effects. For livestock production described under recital (15) above, the insured risks include adverse climatic events (floods, thunderbolt, drought, heatstroke, hurricanes, rainstorm, snow, etc.), damages caused by protected animals, diseases, etc. and other adverse climatic events. Damage caused by environmental incidents is not covered by the present scheme.

(22) The Spanish authorities confirmed that the maximum gross aid intensity will not exceed 65% of the cost of the insurance premium, with the exception of aid for the removal and destruction of fallen stock, where the aid intensity will not exceed 90% of the cost of the insurance premium as regards insurance premiums for the removal of fallen stock and 75% of the cost of the insurance premium as regards insurance premiums for the destruction of such fallen stock.

(23) The maximum amounts for the insured value of each crop and each animal are defined each year by the Ministry of Agriculture, Food and Environment, having heard the farmers' Organizations and Associations.

(24) The Spanish authorities have confirmed that, according to the law regulating insurance contracts in Spain, the insurance payments shall not compensate for more than the cost of making good the damage caused by the events described under recital (21) above. Furthermore, insurance payments cover only current production and will not require or specify the type or quantity of future production.

2.11. Cumulation

(25) The aid cannot be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible costs.

2.12. Transparency

(26) The Spanish authorities have confirmed that they will comply, within a period of 6 months after granting the aid, with the transparency requirements under points (128) to (132) of the Guidelines.

3. ASSESSMENT

3.1. Existence of State aid within the meaning of Article 107(1) of the TFEU

(27) Pursuant to Article 107(1) of the TFEU, 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.

(28) The aid measure in question is financed out of State resources, from the State budget (recital (6)) and favours undertakings in the farming sector in Spain (see

recital (7) above). 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 competition\(^6\).

(29) The Court of Justice has also stated that aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade\(^7\). The sector concerned is the agriculture sector which is open to competition at EU level\(^8\) and therefore sensitive to any measure in favour of the production in one or more Member States.

(30) Therefore, the present measure is liable to distort competition and to affect trade between Member States.

(31) In light of the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed measure constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the common market if it can benefit from one of the derogations provided for in the TFEU.

3.2. Application of Article 107(3)(c) of the TFEU

(32) In the present case, Article 107(3)(c) of the TFEU provides the appropriate basis for compatibility. Under that provision, aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(33) In the agricultural sector, this derogation applies to aid which complies with the Guidelines.

3.3. Application of the Guidelines

(34) It follows from point (405) of the Guidelines that the Commission will consider aid for the payment of insurance premiums compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of the Guidelines and with the conditions set out in Section 1.2.1.6 of Part II of the Guidelines.

---


\(^7\) 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.

\(^8\) In 2013, Spanish trade with all agricultural products with EU countries for exports amounted to EUR 27 265.9 million, and for imports amounted to EUR 16 050.9 million. Source: European Commission, Agricultural Policy Perspectives, Member States factsheet-June 2014, Spain. Available at: http://ec.europa.eu/agriculture/statistics/factsheets/pdf/es_en.pdf
3.3.1. Conditions set out in Section 1.2.1.6 of Part II of the Guidelines

(35) Pursuant to point (406) of the Guidelines, the Commission will authorise aid for the payment of insurance premiums in favour of undertakings active in the primary agricultural production only. It follows from recital (7) above that this requirement is met.

(36) According to point (407) of the Guidelines, the aid must not constitute a barrier to the operation of the internal market for insurance services. In particular, the aid must not be limited to insurance provided by a single insurance company or group of companies, or be made subject to the condition that the insurance contract be taken out with a company established in the Member State concerned. The Spanish authorities have confirmed that the aid is not limited to insurance provided by a single insurance company or group of companies (recital (18)) and that the aid is not conditional on the insurance contract being concluded with a company established in Spain (recital (19)). Therefore, it can be concluded that the requirements stated under point (407) are met.

(37) Pursuant to point (409) of the Guidelines, the eligible costs are the costs of insurance premiums for insurance to cover the damage caused by natural disasters or exceptional occurrences, adverse climatic events which can be assimilated to a natural disaster, animal diseases and plant pests, the removal and destruction of fallen stock and damage caused by protected animals, as specified in Sections 1.2.1.1, 1.2.1.2, 1.2.1.3, 1.2.1.4 and 1.2.1.5, as well as by other adverse climatic events. As described in recital (21) above, the insurance covers damage caused by the aforementioned events and it can therefore be concluded that the notified scheme fulfils point (409) of the Guidelines.

(38) Pursuant to point (410) of the Guidelines, the insurance may compensate only the cost of making good the damage referred to in point (409) of the Guidelines and may not require or specify the type or quantity of future production. It follows from recital (24) above that this requirement is met.

(39) Pursuant to point (412) of the Guidelines, the gross aid intensity must not exceed 65% of the cost of the insurance premium, with the exception of aid for the removal and destruction of fallen stock, where the aid intensity must not exceed 100% of the cost of the insurance premium as regards insurance premiums for the removal of fallen stock and 75% of the cost of the insurance premium as regards insurance premiums for the destruction of such fallen stock. In the case at hand, the maximum aid intensity is 65% of the cost of the insurance premium, except for the cost of the insurance premium for the removal of fallen stock (90%) and for the destruction of such fallen stock (75%) (see recitals (14) and (22)). Therefore, the requirement of point (412) of the Guidelines is met.

(40) It can be concluded that the requirements of Section 1.2.1.6 of Part II of the Guidelines are met.

3.3.2. Common assessment principles

(41) According to points (38) to (132) and (405) of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3)(c) of the TFEU.
The notified aid scheme contributes to a common objective in line with points (43) and (44) of the Guidelines. As described in recital (3) above, the objective of the present notified scheme is risk management. The Spanish authorities demonstrated that the notified scheme is consistent with rural development objectives under point (10) of the Guidelines and compatible with the rules on the common organisation of markets in agricultural products and is not provided for at the same time in the Rural Development Programme for Spain (2014-2020). Nonetheless, the notified scheme fits in and is consistent with that Programme (see recital (5)). Therefore, it can be concluded that the scheme contributes to the objectives of rural development in line with points (47) and (48) of the Guidelines.

As demonstrated by the Spanish authorities (recital (4) above), no negative impact on the environment within the meaning of point (52) of the Guidelines can be identified.

Since the present scheme fulfils the specific conditions laid down in Section 1.2.1.6 of Part II of the Guidelines (recital(40)), the Commission considers, in line with points (55), (57) and (60) of the Guidelines, respectively, that the aid is necessary and that it is granted by means of an appropriate instrument to address the objective of common interest.

The Spanish authorities have confirmed that the aid granted under the present scheme has an incentive effect because the beneficiary will submit an application for subsidised insurance to insurance companies and, on this basis, the insurance contracts will be concluded. The Spanish authorities have confirmed that the content of the application will conform to point (71) of the Guidelines (see recitals (12) and (18)). Since the present aid scheme concerns an instrument of risk management, it must also be in line with point (69) of the Guidelines according to which State aid should not have as an effect to entice undertakings into taking unnecessary risk. In the present case, the aid aims at encouraging agricultural producers to take out insurance (recital (3)) and thus to minimise the potential need for the State to pay compensation for losses caused by unfavourable weather conditions. In addition, under the present aid scheme, the beneficiaries will still have to bear a part of costs of the insurance premium (at least 10% to 35%, cf. recital (22)). The aid scheme is therefore deemed to have an incentive effect in line with points (66) to (80) of the Guidelines.

The aid under this scheme does not exceed the eligible costs (recitals (20) and (37)). In addition, as described above (recitals (14), (22) and (39)), the maximum aid intensity is respected. The Commission also notes that the aid granted under the notified scheme will not be cumulated with any other aid (recital (25)). It can, therefore, be concluded that the requirement of proportionality according to point (84) of the Guidelines is met.

Since the present scheme fulfils the specific conditions laid down in Section 1.2.1.6 of Part II of the Guidelines (recital (40)) and in particular does not exceed the relevant maximum aid intensities laid down in that section (recitals (14), (22) and (39)), the Commission considers, in line with point (113) of the Guidelines, that any negative effect on competition and trade is limited to the minimum.

Points (128) to (132) of the Guidelines set out the transparency requirements under the Guidelines. According to these, the obligation to publish the relevant
data is not required before 1 July 2016 and the duration of this scheme ends on 31 December 2015. However, the Spanish authorities have committed to comply with these requirements before the statutory deadline (recital (26)).

3.3.3. Undertakings in difficulty

(49) According to point (26) of the Guidelines, undertakings in difficulty are excluded from the scope of the Guidelines. The notified scheme complies with this requirement (see recital (8) above).

3.3.4. Outstanding recovery order

(50) The Spanish authorities committed to suspend any payment of aid under the notified scheme 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 and the corresponding recovery interest (recital (9)).

3.3.5. Duration of the scheme

(51) As to the duration of the scheme, pursuant to point (719) of the Guidelines the Commission only authorizes schemes of limited duration. Aid schemes other than those benefiting from co-financing under Regulation (EU) No 1305/2013 and its implementing regulation should not apply for more than seven years. It follows from recital (11) above that this condition is met.

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 aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

(54) If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline Spain will be deemed to agree to the publication of the full text of this letter. If Spain 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.

(55) 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 794/2004, to the following address: agri-state-aids-notifications@ec.europa.eu
Yours faithfully,

For the Commission

Phil HOGAN
Member of the Commission