



EUROPEAN COMMISSION

Brussels, 04.02.2016

C(2016) 485 final

**State Aid / Germany (Bavaria)**

**SA.41935 (2015/N) Village renewal and infrastructure projects in rural areas**

Sir,

The European Commission ("the Commission") wishes to inform the Federal Republic of Germany that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided that this scheme does not constitute State aid in the sense of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

**1. PROCEDURE**

- (1) By letter of 20 May 2015, registered by the Commission on the same day, the Permanent Representation of the Federal Republic of Germany notified, according to Article 108(3) TFEU, the above mentioned aid scheme. The Commission sent requests for additional information to the German authorities on 16 July, on 10 September and on 24 November 2015 which the German authorities answered by letters of 24 July, 25 September and 4 December 2015 respectively, all registered by the Commission on the day of receipt.

Seiner Exzellenz Herrn Dr. Frank-Walter Steinmeier  
Bundesminister des Auswärtigen  
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10117 Berlin  
DEUTSCHLAND

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

## **2. DESCRIPTION**

### **2.1. Title**

- (2) Village renewal and infrastructure projects in rural areas

### **2.2. Objective**

- (3) With the present notification the German authorities notify under State aid rules, as non-State aid, a scheme related to a measure (measure 7) that is part of the Rural Development Programme for 2014 to 2020. It concerns projects which serve for sustainable improvements of the living, working and housing conditions in the countryside and infrastructure projects for the development of rural areas.

### **2.3. Legal basis**

- (4) Guidelines for village renewal and infrastructure projects in order to implement the EAFRD Programme in Bavaria (*Richtlinie Dorferneuerungs- und Infrastrukturprojekte zur Umsetzung des ELER-Programms in Bayern*)

### **2.4. Duration**

- (5) From the date of the Commission decision to 31 December 2019

### **2.5. Budget**

- (6) Overall budget: 120 million €

### **2.6. Beneficiaries**

- (7) Beneficiaries are exclusively Bavarian communes.

### **2.7. Description of the aid scheme**

- (8) The scheme has two parts:

**(a) *Projects for village renewal***

- (9) The objective of these projects is sustainable improvement of the living, housing and working conditions of the village citizens. Internal development of the villages and a more economical use of land should be supported and the particular character of the settlements and the landscape maintained.
- (10) Under village renewal, support for the following investment projects will be granted:
- i. small infrastructures within the village to improve the local traffic conditions, creation of open spaces and squares including measures regarding transition areas from public surfaces to neighbouring private plots (see recital 11 below);

- ii. public facilities providing the necessary infrastructure for basic services for the rural population including leisure time and culture activities with the purpose to encourage the village community and culture;
  - iii. maintenance, conversion and designing of buildings for community or commune purposes and public buildings of particular value regarding village planning, cultural history and monument conservation.
- (11) As regards support for transition areas from public to neighbouring private plots, the German authorities confirm that these measures serve to adapt the private spaces to the modified public surfaces. This can for example be the case when adaptations of the height level on the private space become necessary as consequence of the public investment in order to assure access to the private area. The German authorities explain that the measure prevents that the private owners of the plots concerned have disadvantages due to the public investments and that it is also in the public interest since it helps that these areas are designed in a way that they fit in the overall village context.
- (12) As regards investments in public facilities (point ii. of recital 10 above) and investments in buildings (point iii. of recital 10 above) the German authorities confirm that these projects serve for the needs of the commune concerned in order to encourage social activities of the village citizens and to preserve cultural heritage and that they are not exploited commercially.
- (13) In cases of buildings the commune is bound to use it at least for 12 years for the supported purpose. In cases of other goods (e.g. equipment) the commune is bound for at least 5 years. If the supported project is sold or used for another purpose, total or partial reimbursement of the support will be requested.
- (14) It is a condition for the support that the part of the commune concerned may not have more than 2000 inhabitants.
- (15) Excluded from support are:
- projects for developing traffic infrastructure for new buildings and improvement of local traffic infrastructure;
  - planning costs;
  - works done by the communes under their own direction.

**(b) *Infrastructure projects adapted to rural areas***

- (16) The German authorities explain that the objective of this support is to assure and develop rural spaces as living, working, recreation and nature spaces through infrastructure projects adapted to the rural character. The projects also aim to contribute to a sustainable strengthening of the economy in general including the agricultural structures.
- (17) The German authorities confirm that field and forest roads may only be supported if they are part of a global concept. This concept must be designed in a way covering several communes. It has to be worked out commonly by

the communes concerned. Based on an analysis of the existing network a new network structure has to be established which serves as basis for the future network to be implemented in several steps.

- (18) It is the intention to improve the connections within and between the communes concerned rather than improving the accessibility to agricultural holdings, and to take into account the need of the local economy in general. Furthermore it is also aimed at reducing the overall density of field and forest roads.
- (19) In the context of such global concepts (see recital 17 above) support to investments for creation, improvement and enlargement of different kinds of small infrastructure can be granted. This may also include connection roads to farms and groups of farms whilst being freely available for all potential users (agriculture, forestry, landscape preservation services, tourism ...). They are dedicated to the public in general and not restricted in use to specific economic operators. The communes are in charge of their maintenance.
- (20) The German authorities confirm that the provisions of European Union environment legislation in force will be respected when implementing the projects.
- (21) The German authorities state that in the case of infrastructure projects outside of villages interventions in nature and landscape with negative consequences are often unavoidable. According to the provisions of German nature protection law (*Bundesnaturschutzgesetz*) these negative consequences have to be compensated by the communes themselves through measures for nature protection and landscape maintenance which will not be supported under the notified scheme.
- (22) In addition to the infrastructure works (e.g. building of new roads) a "green" infrastructure such as the planting of trees and bushes along the roads can be supported. These measures are additional and may not serve as compensation for interventions in nature and landscape demanded by the nature protection authorities (see recital 21 above).
- (23) Excluded from support are:
- projects for development of new housing, commercial or industrial areas;
  - planning costs;
  - works done by the communes under their own direction.

**(c) *General conditions for eligibility for support***

- (24) The following conditions apply:
- The projects have to be located in rural areas;
  - Only projects in communes with less than 10 000 inhabitants may be supported.

- (25) The maximum amount for eligible costs of small infrastructures is 1,5 million €
- (26) The projects must be in accordance with the development plans of the communes or villages if these exist or in accordance with other relevant local development strategies.
- (27) The measures under this scheme will be financed at 100% by public expenditure: The EU participation is 50 %, 10 % are federal or regional resources; the remaining 40 % are public resources of the communes concerned.
- (28) The communes have to submit an application to the regional authorities. The communes which fulfil the eligibility criteria are selected for receiving support according to a ranking based on several selection criteria.
- (29) The projects may not be started before approval of the application.

### 3. ASSESSMENT

#### **Existence of aid - Application of Article 107(1) TFEU**

- (30) The overall objective of the scheme is the sustainable improvement of the living, working and housing conditions on the countryside in order to prepare villages and rural areas for future challenges, in particular as concerns demographic developments (see recital 3). This will be achieved by developing the villages whilst maintaining their rural character and preserving the landscape. The intention is to make the villages more attractive as living areas for their citizens and as a place for economic activities.
- (31) For Article 107(1) TFEU to apply, the scheme must provide an economic benefit to an undertaking which it would not have received in its normal course of business, the aid must be granted to certain undertakings, the benefit must be granted by a Member State or through State resources and the scheme must be capable of affecting trade between Member States.
- (32) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: *(i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.*
- (33) The scheme in question is financed through State resources (EU, federal, regional and local). The beneficiaries are communes in the sense of public authorities providing public services and not as undertakings carrying out economic activities. The scheme constitutes a transfer between different levels of public authorities.

- (34) The communes receive these transfers for partial financing of tasks which are under their public remit competence, namely the creation and improvement of local infrastructures for public needs.
- (35) In order to raise the attractiveness of villages as living and workplace, public investments in infrastructure play an important role. In the context of this scheme, infrastructure is understood in a large sense, including its social dimension. No infrastructure envisaged under this scheme will be exploited commercially, as explained below.
- (36) The scheme has two parts, i) village renewal and ii) infrastructures adapted to rural areas. Hereafter, the first part (village renewal) will be assessed by distinguishing between:
- a. *investments in public buildings* in order to encourage community life and preserve cultural heritage (recital 10, ii. and iii.);
  - b. investments in *small infrastructures within the villages* (recital 10, i.).
- (37) With *investments in public buildings* the communes intend to serve their citizens' needs by facilitating social activities or to preserve the communes' cultural heritage. These buildings are used in the general interest of the village concerned (see recitals 12 and 13) and are not exploited commercially. This is underlined by the condition that the buildings have to be kept by the communes for twelve years and may not be rented.
- (38) In these cases the communes act as a public body providing basic services for its citizens on a non-commercial basis and not as an undertaking.
- (39) Investments in *small infrastructures within the villages* serve in particular for improving the living conditions of the inhabitants of the commune; for enterprises located in the villages there can potentially be an economic advantage, if they are plot owners and improve access to their plots.
- (40) This can in particular be the case if public support for the transition areas from the private plot to the public space is granted. However, as set out in recital 11, this support is only given to compensate disadvantages to private owners of neighbouring plots as a consequence of the public investments.
- (41) It cannot be excluded that in the context of these projects economic advantages for individual undertakings in the agricultural and forestry sector and other sectors can occur. However, these advantages have to be considered in the overall context of the measure which serves for the general interest of the citizens.
- (42) These infrastructure projects are designed to develop the village as a whole and not to favour certain undertakings. All citizens, in particular owners of private plots and buildings benefit from these measures. Therefore, any possible advantages to individual undertakings would be ancillary to the public investment measures.
- (43) In the case of the second part of the scheme, *infrastructure projects adapted to rural areas* (see recitals 16 to 19), the supported projects serve for

improving the infrastructure outside the villages in general, including the improvement of infrastructures between villages. Furthermore these projects have to be integrated in a global concept and are part of a network covering several communes (see recitals 17 and 18).

- (44) Even if these infrastructure projects contribute to a positive development of agricultural and forestry structures, they are not exclusively designed for these sectors. They serve all potential users (see recital 19) and their use is free for everybody.
- (45) It cannot be excluded that in the context of these projects economic advantages for individual undertakings in the agricultural and forestry sector and other sectors can occur which can benefit from a better access to their holding or to certain parts of their land. This applies in particular if also access to farms and groups of farms is supported (see recital 19).
- (46) However, these advantages have to be considered in the overall context of the measures as well. Their objective is to improve the road infrastructure outside the village in general. These advantages are not selective since the infrastructure projects are not focused on individual undertakings. Therefore, possible advantages to individual undertakings are to be considered as ancillary, too.
- (47) Based on the above reasoning it can be concluded that the supported infrastructures are established in the general interest and are not meant for commercial exploitation, but rather used for recreational purposes for the citizens as well. Any potential commercial use is ancillary and open to all owners.
- (48) The aspects of environmental protection are taken into account adequately. The provisions of European and national legislation are respected (recitals 20 and 21). In addition, with the support of "green" infrastructure (recital 22), contributions to maintenance of the landscape are also supported.
- (49) The European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020<sup>1</sup> (Section 3.2, footnote on p. 87) stipulate that *"Articles 107, 108 and 109 of the Treaty apply to aid for basic services in rural areas, in so far as they constitute State aid within the meaning of Article 107(1) of the Treaty"*.
- (50) Based on the above, it can be concluded that the scheme constitutes essentially a financial transfer between public authorities and is meant for creation and improvement of local infrastructures for public needs, within the tasks falling under their public remit competence. Therefore, this scheme does not constitute State aid in the sense of Article 107(1) of the TFEU.

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

#### 4. CONCLUSION

The Commission has accordingly decided that this scheme does not constitute State aid in the sense of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU").

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 Germany will be deemed to agree to the publication of the full text of this letter. If Germany 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.

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<sup>2</sup>, to the following address: [agri-state-aids-notifications@ec.europa.eu](mailto:agri-state-aids-notifications@ec.europa.eu).

For the Commission

Phil HOGAN  
Member of the Commission

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<sup>2</sup> 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, 30.4.2004, p. 1).