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*Embargo VISTA illimité(\*)*

**Subject: State aid/Germany  
SA.42333 (2015/N)  
Niedersachsen – Drinking water protection – Voluntary agreements**

Sir,

The European Commission ("the Commission") wishes to inform Germany 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 relevant scheme as it is compatible with the internal market pursuant to Article 107(3)(c) 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 26 June 2015, registered by the Commission on the same day, Germany notified, according to Article 108(3) TFEU, the above mentioned aid scheme.
- (2) The Commission has sent requests for additional information to the German authorities on 18 August 2015, 16 November 2015 and 4 February 2016 which the German authorities provided on 21 September 2015, 15 December 2015 and 19 February 2016.

## **2. DESCRIPTION**

### **2.1. Title**

- (3) Niedersachsen – Drinking water protection – Voluntary agreements

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

H.E. Frank-Walter Steinmeier  
Federal Minister for Foreign Affairs  
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## **2.2. Objective**

- (4) With the present notification the German authorities wish to introduce an aid scheme with agricultural and forestry environmental measures, as well as forest investment measures consisting in the preservation and the promotion of changes to agricultural practices that make a positive contribution to the environment and the climate. The scheme promotes protective measures with ways of using agricultural land and forest land, as well as forestry investments in drinking water protection areas which go beyond the relevant mandatory standards and which are compatible with the protection and improvement of the environment, the landscape and its features, natural resources, the soil and the quality of surface water and groundwater. It is also planned to promote the environmentally friendly extensification of farming and management of low-intensity pasture systems, and to improve and redeploy production.
- (5) The German authorities have explained that the measures for the protecting of drinking water covered by the present aid scheme will not result in an infringement of applicable environmental legislation. The scheme is in conformity with environmental requirements of the European Union and only provides positive effects for the environment in the areas concerned. The support will help to prevent impairment of the groundwater caused by nitrates, plant treatment products, pest control products and sediments. The drinking water protection measures also provide a positive contribution to the implementation of the Water Framework Directive (Directive 2000/60/EC) to safeguard good quality of surface waters and to Directive 91/676/EEC (Nitrates Directive) by reducing the use of organic and mineral fertilizer and of plant protection products.

## **2.3. Legal basis**

- (6) Paragraph 28 of the Lower Saxony Water Act (Niedersächsisches Wassergesetz (NWG)).  
Regulation regarding aid for co-operative protection in drinking-water-protection areas.  
Measure catalogue for voluntary agreements in sensible areas with regard to water protection, in particular in water protection areas.

## **2.4. Duration**

- (7) From the date of the Commission decision until 31 December 2021.

## **2.5. Budget and aid intensity**

- (8) Overall budget is EUR 84 million, financed from national budgetary resources. The annual budget is estimated at around EUR 14 million.
- (9) The aid intensity is up to 100 % of the eligible costs.

## **2.6. Beneficiaries**

- (10) Aid may be granted to farmers and their associations voluntarily undertaking to implement the planned agri-environmental measures. The undertakings are micro, small and medium-sized enterprises (SME) in accordance with point 35(13) of the

European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020<sup>1</sup> (the "Guidelines").

The aid for the forestry activities may be granted to private or public land-holders and their associations (measure "*V First afforestation*" ), private or public forest holders and their associations (measures "*IV Forest erosion protection*" and "*VI-a Forest conversion*"), who are voluntarily undertaking to implement the planned forestry investments, activities and forest environmental measures. Large undertakings fall outside the scope of eligible beneficiaries.

- (11) In case of state-owned land in measure "*V First afforestation*" and state-owned forests in measure "*VI-a Forest conversion*" the aid is only granted if the managing body of the land is a private body or a municipality.
- (12) The number of beneficiaries is estimated to be more than 1000.
- (13) The aid scheme notified by the German authorities provides that the aid will not be granted to undertakings in difficulty within the meaning of point 35(15) of the Guidelines.
- (14) The notified aid scheme stipulates that the payment of the notified aid is suspended 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 including the corresponding recovery interest.

## **2.7. Aid instrument**

- (15) Direct grant, as an amount per hectare or as a percentage of eligible costs.
- (16) Depending on the type of measure, the aid is calculated either (1) as an amount per hectare on the basis of the difference of gross margins (proceeds minus variable costs) and/or as compensation for the additional costs resulting from the participation in the measure concerned, or (2) as a percentage of eligible costs.

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

- (17) The aid scheme in question concerns compensation to farmers and forest holders for the limitations of the agricultural use of land and for related additional costs in the framework of voluntary agreements in drinking-water-protection-areas following § 28 of the "Niedersächsisches Wassergesetz". Thus the aid scheme provides enhanced protection for groundwater, thereby exceeding the mandatory standards and standards laid down in best practice.
- (18) Primary agricultural production activities and forestry activities can cause a burden on surface water and groundwater. The continuing protection of the quality of surface water and of groundwater for the purpose of drinking water supply requires especially in areas with reduced natural protection potential,

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<sup>1</sup> OJ C 204, 1.7.2014, p. 1, as amended by Commission Notice amending the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (OJ C 390, 24.11.2015, p.5).

limitations of the use of the soil which go beyond the mandatory standards and usual agricultural practise.

- (19) It is therefore necessary to compensate the farmers and forest holders, which use the land and enter into the voluntary agreements regarding the limited activities, for the related economic disadvantages and/or additional costs.
- (20) The voluntary agreements are concluded between the farmers, forest landowners, and the water supply companies ("Wasserversorgungsunternehmen", hereinafter: "WVU") following § 28(3) of the Lower Saxony Water Act to cover the type of measure and the sparing methods of soil use for the protection of the natural drinking water reserves. In particular damage of the groundwater by nitrates, plant treatment products and pest control products needs to be prevented. The measures in the drinking water protection areas are accompanied by water protection consultancy services, in order to ensure that the participants in the voluntary agreements have all the information needed to fulfil the obligations of the measures concerned. The WVU examines the fulfilment of the agreed commitments regarding completeness, situation on the spot, compliance with the requirements of the measure catalogues, as well as factual and mathematical accuracy. The controls include annual audits on the spot in the undertakings.
- (21) In addition the results of the measures are examined at the level of the undertakings, at the control measure points and at water control measuring points in the drinking water extraction areas. Detailed results can be found in the NLWKN<sup>2</sup> report "*Drinking water cooperation in Lower Saxony*"<sup>3</sup>). In summary these controls show in average the following evolution of indicators from 1998 to 2012 in water abstraction areas, to which the voluntary commitments contributed:
- Reduction of nitrogen excesses of impact balance of 3,100 tons N\*a, or around 10 kg N/ha\*a LF;
  - Reduction of the "autumn- Nmin-value of 3,400 tons N\*a, or 11 kg N/ha\*a LF;
  - Decrease of the "Nitrogen (N) farm-gate balance" from 95 kg N/ha LF to 64 kg N/ha LF;
  - Decrease of the purchase of N mineral fertilizers from 139 kg N/ha LF to 116 kg N/ha LF, while farmyard manure spreading rose from 91 kg N/ha LF to 103 kg N/ha LF, resulting in a net decrease of 11 kg N/ha;
  - The levels of nitrate concentration at control measuring points decreased from 72 mg/l in 2000 to 60 mg/l in 2012;
  - In the raw water the nitrate levels of raw water at measuring points slightly decreased from 24 mg/l in 2000 to 22 mg/l in 2012.
- (22) The measures for which voluntary agreements can be entered into and the respective bases for the calculation of the aid are described in the "Measure catalogue for voluntary agreements in sensible areas with regard to water protection, in particular in water protection areas" ("*Massnahmenkatalog für Freiwillige Vereinbarungen in für Gewässerschutz sensibelen Gebieten, insbesondere Trinkwasserschutzgebieten*").

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<sup>2</sup> NLWKN. Niedersächsischer Landesbetrieb für Wasserwirtschaft, Küsten- und Naturschutz.

<sup>3</sup> Report "Trinkwasserkoooperationen in Niedersachsen" of February 2015.

- (23) Under the aid scheme at hand support can be granted for the following measures (aid amounts in EUR per ha per year):
- I.A. Time limits on the spreading of farm livestock manure (13)
  - I.B. Non-use of farm livestock manure (584)
  - I.C. Spreading of farmyard manure in a manner which protects water (66)
  - I.D. Farmyard manure and soil tests (87)
  - I.E. Active greening (249)
  - I.F. Use of crop rotation systems in a manner which protects water (588 and 1 185))
  - I.G. Extensive management of grassland (377)
  - I.H. Reseeding of grassland without ploughing (97)
  - I.I. Reduced use of nitrogen fertilisers (280)
  - I.J. Reduced tilling (104)
  - I.K. Use of stabilised N fertilisers / Cultan-procedures (92)
  - I.L. Plant protection in a manner which protects water (64)
  - II Conversion from arable crops to extensive grassland/extensive pasture grass (773)
  - III Management of arable land and grassland which protects groundwater with success oriented compensatory payment (589)
  - IV Forest erosion protection (max. 100% of costs)
  - V First afforestation (817.50 up to 9.810.06 EUR/ha during a 12 years period)
  - VI Improvement of groundwater creation
    - a) Forest conversion (maximum 700)
    - b) Conservation of extensively used sand heats (145.90).
- (24) Previously, measures similar to those under the aid scheme at hand, were implemented under State aid scheme N 67/2006 – "*Protection of drinking water (GAK) (Niedersachsen)*", which has been approved by Commission Decision K(2006)4248 of 18.09.2006.
- (25) The aid scheme is financed purely from national funds and has been notified to the Commission as a State aid scheme. The measures foreseen under the scheme in specific drinking water abstraction areas are not implemented in the Rural Development Programme 2014-2020 (RDP) of Lower Saxony. The measures are consistent with this RDP programme because they are complementary in nature and pursue the same objective.
- (26) The aid application must be submitted to the competent national authority before the start of the work on the relevant project or activity and will include the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs.
- (27) The aid is paid annually upon the submission of a payment claim by the beneficiary.
- (28) The scheme provides that double financing of aid will be excluded. The aid may not be cumulated with aid received from other local, regional, national or EU schemes to cover the same eligible costs. In this regard the authorities of Lower Saxony perform a comparison check of the aid amounts by means of a "combination table" showing all possible combinations of aid measures on the

same area. The German authorities have submitted the relevant “combination table”, which is also available on their webpage<sup>4</sup> in the internet for all land users and advisors. In case aid under the present scheme is combined with other agricultural environmental aid or compensatory allowances, double financing will thus be prevented. The applicant requesting aid under the current scheme has to commit to the comparison check to exclude double financing.

*2.8.1. Agri-environment-climate commitments (Section 1.1.5.1. of the Guidelines)*

- (29) The voluntary commitments under the agri-environment-climate measures under the notified scheme (i.e. measures I.A, I.B, I.C, I.D, I.E, I.F, I.G, I.H, I.I, I.J, I.K, I.L, II, III and VI-b as mentioned in recital (23)), are taken for a duration of five to seven years.
- (30) The German authorities have provided sufficient evidence that the proposed reduction of fertiliser and renunciation of plant protection products significantly prevent fertiliser nutrients to pass into the water. Notably with regard to the measures I.A, I.C, I.D, I.E, I.G, I.I, I.K, I.L, and III the German authorities have provided additional information demonstrating the reductions of nitrate values ("*autumn- N<sub>min</sub>-value*", in German: "*Herbst- N<sub>min</sub>-Gehalt*") of surfaces with measures, in comparison to surfaces without measures. The analysis of this comparison has been made in 2010 by the "*Thunen Institut*"<sup>5</sup> on the basis of around 23.000 soil tests on these two types of surfaces in water abstraction areas. The comparison "*with measures – without measures*" has been performed on surfaces having similar use and site characteristics. The statistical analysis largely confirmed the already known estimates of experts<sup>6</sup>. The effectiveness of each measure mentioned above is quantified by means of the reduction of the "*autumn- N<sub>min</sub>-values*" and the "*N-excess values*" (in German: "*N-Überschuss*") measured in kg N/ha. The average reductions of the "*autumn- N<sub>min</sub>-values*" and "*N-excess values*" vary per measure from 0 to 50 kg N/ha. The largest effects with regard to the reduction of Nitrate values in surfaces with measures were achieved by the measures: conversion from arable crops to extensive grassland, active greening, crop rotation systems, reduced plant protection, reduced use of herbicides (as a result of extensive management of grassland) and reduced tilling.
- (31) The purpose of the measures under the aid scheme at hand is to clearly exceed best practice requirements on minimising nitrate and plant protection product leaching for the protection of the water.
- (32) The German authorities have notified that the relevant mandatory standards are those established pursuant to Chapter I of Title VI of Regulation (EU) No 1306/2013, the relevant criteria and minimum activities as established pursuant to

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<sup>4</sup> Combination table established by NLWKN and Niedersächsisches Ministerium für Ernährung, Landwirtschaft und Verbraucherschutz. Webaddress: <http://www.niedersachsen.de/portal/>

<sup>5</sup> Schmidt, T.&B. Osterburg (2010): Wirkung von Wasserschutzmassnahmen auf den mineralischen Stickstoffgehalt von Boden.

<sup>6</sup> OSTERBURG, B., RÜHLING, I., SCHMIDT, T.G., SEIDEL, K., ANTONY, F., GÖDECKE, B. & WITT-ALTFELDER, P. (2007): Kosteneffiziente Maßnahmenkombinationen nach Wasserrahmenrichtlinie zur Nitratreduktion in der Landwirtschaft. In: OSTERBURG, B. & RUNGE, T. (Hrsg.) (2007): Maßnahmen zur Reduzierung von Stickstoffeinträgen in Gewässer – eine wasserschutzorientierte Landwirtschaft zur Umsetzung der Wasserrahmenrichtlinie. Landbauforschung Völkenrode, Sonderheft 307. Braunschweig

points (c)(ii) and (c)(iii) of Article 4(1) of Regulation (EU) No 1307/2013. In particular the relevant standards are SMR 1 (related to water), GAEC 4 and GAEC 5 (related to soil) and GAEC 10 (related to plant protection products) of Annex II to Regulation (EU) No 1306/2013. The German authorities have explained that these standards have been transformed into national law, which sets the mandatory requirements for the use of fertiliser in the German regulation on fertilisers ("Düngeverordnung - DüV") and for plant protection products in the German plant protection law ("Pflanzenschutzgesetz - PflSchG").

- (33) The German authorities confirmed that the measures undertaken by farmers active in the primary agricultural production are voluntary commitments which go beyond the relevant mandatory requirements mentioned in recital (32) above, as well as beyond the usual agricultural practice.
- (34) The German authorities demonstrated in the format of a table the individual voluntary commitments under each measure of the notified scheme in comparison to the corresponding requirements of the baseline, showing clearly that the commitments go beyond the mandatory standards. Exceeding these standards, in order to minimise nitrate and plant protection product leaching is achieved amongst others by:
- providing year-round green cover as far as possible,
  - reducing the cultivation of crops which generate excess nitrogen as a result of their physiology (e.g. rape),
  - using the most up-to-date application technology (e.g. trailing shoes or injectors to spread liquid manure),
  - reduced use and more strict time limits on the use of farmyard manure, as well as abandoning of use of farmyard manure;
  - non-use or reduced use of mineral fertilizer;
  - none or reduced tilling,
  - non-use of plant protection products, only mechanical weeds control.
- (35) As regards commitments related to these agri-environmental measures in drinking water protection areas the German authorities confirmed and demonstrated by means of calculations that the aid is granted to compensate beneficiaries for income foregone and for additional costs resulting from the voluntary commitments they make and in comparison to the ordinary land management. The aid is calculated as the lost difference of the gross-margin (proceeds minus variable costs), or as compensation for additional costs, resulting from the comparison of the situations "with" and "without" participation of the farmer in the measure concerned. Where applicable saved costs are deducted from the aid amount.
- (36) Aid provided under this scheme will normally not exceed the aid ceilings laid down in the Guidelines and in annex II of the Regulation (EU) Nr. 1305/2013. Only in duly substantiated cases the Guidelines allow derogation from the set ceilings. The German authorities have submitted that the set aid ceilings of the Guidelines are not respected if the economical disadvantages according to the calculations of the expert authority of Niedersachsen exceed the ceilings set by the Guidelines. The German authorities have submitted for all measures detailed calculations of the aid amounts. The aid amounts are fixed on the basis of standard assumptions of the additional costs and the income foregone. All

elements contained are verifiable, based on figures established by appropriate expertise indicating clearly the source, are differentiated to take account of regional or local site conditions and actual land use, and do not contain investment costs. The calculations<sup>7</sup> show that the majority of the measures do not exceed the aid ceilings. With regard to two measures ("*I.F - Use of crop rotation systems in a manner which protects water*" and "*II - Conversion from arable crops to extensive grassland/extensive pasture grass*") of the agricultural environmental voluntary commitment explanations are given in the measure catalogue of the aid scheme, as to the excess of the aid ceiling per ha per year for annual crops. The calculations presented by the German authorities regarding these measures demonstrate that the environmental commitments result in a considerable loss of income, which is compensated by the aid and consequently results to an excess of the aid ceiling for annual crops of EUR 600 per ha per year as set in point 228 of the Guidelines. The loss of income of EUR 1 185 of measure I.F. has been calculated on the basis of the gross margin which is normally obtained from the usual local crop rotation (winter barley, winter wheat and winter oilseed rape). Saved labour costs are deducted from the compensation. Under this measure the farmer refrains from any crop on the land concerned in order to achieve the desired environmental objectives. The loss of income of EUR 773 of measure II is established as the difference between the gross margin of the usual local crop rotation (winter barley, winter wheat and winter oilseed rape) and the income from the grassland. The German authorities conclude that the aid to compensate the loss of income is justified and explained that such excess of the ceilings only occurs in these very far reaching extensification measures, generating insufficient or no income at all for the farmer, which are tailored with the help of the consultancy services and realised in prioritised areas, i.e. in the inner catchment area of the drinking water abstraction sources.

- (37) The aid will cover compensation to beneficiaries for all or part of the additional costs and income foregone resulting from the commitments they made and it will be granted annually. Transaction costs are not covered by the aid scheme at hand. The aid amounts are determined according to standardised calculation models based on data gathered by the "*Chamber of Agriculture of Lower Saxony*" ("*Landwirtschaftskammer Niedersachsen*") and the independent experts' body, the "*Association for Technology and Structures in Agriculture*" ("*Kuratorium für Technik und Bauwesen in der Landwirtschaft*"), taking into account several factors, e.g. in terms of quantitative input, producer and purchase prices, production costs, machine rates, revenues and market price evolution.

#### 2.8.2. *Investments in forest area development and improvement of the viability of forests*

- (38) The German authorities have confirmed that aid granted under the measures "*V First afforestation*" and sub measures, "*IV-a Stopping or reducing of erosion processes*" and "*IV-b Sparing land management operations i.e. slope parallel forestry roads*" relates to eligible investment costs and not to working capital.

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<sup>7</sup> For all measures of the aid scheme (recital (23)) the calculation of the aid amount is made in detail and included in the annex "*Calculation basis with explanations*" ("*Berechnungsgrundlagen mit Erläuterungen*") to the measure catalogue (version "*Hannover in September 2015*"). The outcome of the calculations are the amounts of the aid per hectare, per year as mentioned in recital (23).



Costs connected to leasing contracts, such as lessor's margin, interest refinancing costs, overheads and insurance charges are not eligible for aid.

#### 2.8.2.1. *First afforestation (Section 2.1.1. of the Guidelines)*

- (39) The measure "*V First afforestation*" aims to increase forest cover through afforestation of land no longer in agricultural use, taking account of the interests of nature protection and countryside conservation in water abstraction areas. In comparison to land in agricultural use, forest land leads to much lower nitrate leaching. Also the use of plant protection products and therefore the potential risk of pollution are minimised. The afforestation increases the public value of the landscape in water abstraction areas. The afforested areas are protected by German forest law against re-conversion into other forms of use. Therefore the one-time investment measure achieves a sustainable advantage regarding the water management.
- (40) The afforestation of former arable land does not concern fast growing trees and does not provide any revenues in the first 20 years, instead the forest financial contributions are rather negative because of necessary interventions. The eligible costs are based on the income foregone, calculated as the gross-margin difference between the usual farming crop rotation and the forestry use for the first twelve year period. In this way for a period of twelve years the income of usual crops like winter barley, winter wheat and winter rapeseed is compared with the income from the newly created forest with the largest possible share of broad leaved trees (at least 70%). The aid is calculated as an annual hectare premium of EUR 817.50 limited to a maximum capitalised amount of EUR 9 810.06 per ha for the entire twelve years period.
- (41) The German authorities have confirmed that for land owned by public authorities the aid only covers the costs of establishment. Excluded from aid are the planting of trees for short rotation coppicing, Christmas tree plantations and the planting of fast growing trees for energy production.
- (42) Aid may be granted only when site-appropriate tree species are used, when a forest site assessment has been made and when propagating material which is of known origin and appropriate for the site is used. The German authorities furthermore notified that tree species are to be considered site-appropriate where their known ecological requirements correspond as widely as possible to the predefined environmental conditions. Afforestation with the participation of black locust or alder is not possible due to the binding of atmospheric nitrogen. Permanent grassland should not be afforested because of their regular high humus content. Support is conditional to duly up-keeping of the conditions regarding the management of the afforested areas.
- (43) Peat lands and wetlands are excluded from afforestation. Before afforestation the land owner has to apply for a permit of reforestation at the competent district authority ("Landkreis"). In the context of the examination of the application by the district authority also the nature protection authority of the district is involved, which checks the compatibility of the measure with the needs of nature and environmental protection.
- (44) For afforestation only tree species may be used, which concern the site appropriate types of forest development. Regarding the forest planting only plant

species may be used, which are suitable. Appropriate plant species which are from local and neighbouring origin or from elsewhere when their fitness is proven. The inclusion in the origin recommendation of the North West German forest experimental station ("Herkunftsempfehlung der Nord-westdeutschen forstlichen Versuchsanstalt" (NW-FVA)) is considered as evidence. Forest owners are obliged to ensure and maintain the afforestation for the duration of the measure.

- (45) The German authorities mentioned, that the possibility that afforestation is made difficult due to environmental or climatic conditions, or severe pedo-climatic conditions is not applicable as such conditions do not occur in water protection areas in Niedersachsen, consequently that the environmental requirements under points 509(c) and 510 of the Guidelines are not relevant to the current aid scheme. The German authorities have furthermore confirmed that the requirement under point 509(d)(ii) of the Guidelines applies and is fulfilled, as the afforestation of agricultural land leads to the creation of forests with site-appropriate tree species including at least 70% broad-leaved trees by area.
- (46) The aid intensity is up to 100 % of the eligible expenditure, limited to a maximum of 9.810,06 EUR/ha for a 12 years period.

*2.8.2.2. Aid for investments improving the resilience and environmental value of forest ecosystems (Section 2.1.4. of the Guidelines)*

- (47) The drinking water abstraction is seriously affected by the entry of sediments from erosion processes from the forests on the mountain slopes. The measure "IV Forest erosion protection" in its sub measure "IV-a Stopping or reducing of erosion processes" aims to provide financial support for the implementation of investment measures, like plantation and constructions, which effectively prevent or delay erosion processes, or which contribute to the storage of the sediments before their entry into the surface water.
- (48) The investments are aimed to achieve environmental commitments and to improve the value of forest ecosystems.
- (49) Eligible costs cover investment operations for protection against erosion like planting and constructions. A cost estimate has to be delivered prior to the conclusion of the voluntary agreement.
- (50) Maximum aid intensity is 100% of the proven eligible costs, limited to the amount mentioned in the cost estimate.

*2.8.2.3. Aid for investments in infrastructure related to the development, modernisation or adaptation of forestry (Section 2.1.6. of the Guidelines)*

- (51) The drinking water abstraction is seriously affected by the entry of sediments from erosion processes from the forests on the mountain slopes. The measure "IV Forest erosion protection", in its sub measure "IV-b Sparing land management operations i.e. slope parallel forestry roads" aims to provide financial support for the implementation of particularly sparing and non-productive investment measures, reducing the impact of erosion processes in forests.

- (52) The aid covers investments in tangible assets concerning infrastructure related to the adaptation of forests, including access to forest land. The investments are non-productive, are exclusively aimed at improving the environmental value of forests and concern forest roads, which are open to the public free of charge and serve the multifunctional aspects of the forest.
- (53) Eligible costs cover the investments protecting against erosion, like the adaptation of slope-parallel forestry roads. A cost estimate has to be delivered prior to the conclusion of the voluntary agreement.
- (54) Maximum aid intensity is 100% of the proven eligible costs, limited to the amount mentioned in the cost estimate.

*2.8.3. Aid for forest-environment and climate services and forest conservations (Section 2.3. of the Guidelines)*

- (55) The measure "VI-a Forest conversion" aims at the realisation of mixed forests or forests with broad-leaved trees, which have significant water management advantages compared to pure coniferous forests. On the one hand, the litter has a lower acidifying effect on the soil, which counteracts the transfer of toxic heavy metals and aluminium in the groundwater. On the other hand, the leachate donation is significantly higher than with coniferous trees due to the lower interception of deciduous trees. Therefore the forest conversion increases in particular the public value of forests in water extraction areas.
- (56) In existing forest (old stock), the aim of the voluntary commitments, at rejuvenation, is to reduce the conifer share depending on the location to 40 to 0% of the surface, by increasing the proportions of deciduous forest. It is aimed to reach the highest proportion of the surface of deciduous trees, of at least 60% to 100%. A Forest Development Type (FDT) (in German: "*Waldentwicklungstyp*" (WET)) with the highest proportion of the area with deciduous trees should be chosen, instead of a primarily recommended FDT. Forests with black locust or alder are not possible due to their binding of atmospheric nitrogen.
- (57) The basis for mapping of FDT and the share of tree species is found in the Lower Saxony Program for long-term ecological forest development (in German: "*niedersächsisches Programm zur langfristigen ökologischen Waldentwicklung*" (LÖWE)), which goes beyond the requirements on the basis of the Forestry law (in German: "*Waldgesetz*"), and which is not binding to private forest. There are thus no legal limitations as to the share of conifer plantation.
- (58) Environmental aid can be granted if the forest owner enters into a voluntary contract with the water supply company (the competent authority) to undertake measures going beyond mandatory legal requirements in order to promote biodiversity in the forests concerned. The mandatory legal requirements are laid out in the guideline on the granting of aid for the promotion of forestry measures in Lower Saxony (in German: "*Richtlinie über die Gewährung von Zuwendungen zur Förderung forstlicher Massnahmen in Niedersachsen*").
- (59) The environmental aid and its commitments will be entered into for ten years. During this period the possibility of (partly) recovery of the aid, in case of non-compliance, exists. The German authorities explain that duration of ten years of the voluntary commitment is justified by sustainable and long term measures in

the forestry sector, in order to come to a solid establishment of the young broad-leaved trees under this measure. Their growth is slower than as usual due to shading from existing trees and poor nutritious locations.

- (60) Under this measure aid may be paid for justified additional costs and income foregone in comparison to the normal rejuvenation planning (higher share of coniferous trees), due to the environmental commitments taken following the environmental aid contract.
- (61) The aid is paid per hectare. The environmental aid will be calculated on the area of the site, the income forgone on the basis of actual wood prices and additional costs in case of special requirements regarding water protection. The income loss is calculated as the difference between the capitalised income of the respective shares of coniferous trees and deciduous trees. Transaction costs are not covered by the aid scheme at hand.
- (62) The aid is paid as a one-off amount, usually between 2 500 EUR/ha and 3 500 EUR/ha for a ten years period. In specific individual cases the compensation may be higher up to a maximum amount of 7 000 EUR/ha for ten years. Consequently the annual amount exceeds the ceiling of EUR 200/ha per year of annex 2 of Regulation (EU) n° 1305/2013. The German authorities explained that the actual loss of income can even be considerably higher, as income from deciduous trees is generated only in the long term, not before their 40th year. Nevertheless, experience shows that a certain willingness to participate in the measure exists only if at least a major part of the costs in the conversion phase is compensated. The German authorities therefore consider the maximum amount appropriate and suitable. In addition the German authorities have explained that the positive effects of the measure with regard to the water management (ground water creation and less pollution in ground water) clearly last beyond the period of commitments, which justifies the compensatory amount.
- (63) The German authorities have confirmed that the commercial use of the planted trees is excluded.

## **2.9. Other commitments**

- (64) Germany has confirmed that the rules for area related payments laid down in Article 47 of Regulation (EU) No 1305/2013 are complied with.
- (65) The German authorities have confirmed that for the operations undertaken pursuant to the measures "*agri-environment-climate commitments*" and "*forest-environment and climate services and forest conservation*", a revision clause is provided in order to ensure their adjustment in the case of amendments of the relevant mandatory standards, requirements or obligations referred to in this Section, beyond which the commitments referred to in this Section have to go.
- (66) The German authorities have confirmed that the operations undertaken pursuant to the measures agri-environment-climate commitments and forest-environment and climate services and forest conservation, subject to the present State aid scheme, which extend beyond the rural development programming period 2014-2020, contain a revision clause in order to allow for their adjustment to the legal framework of the following programming period.

- (67) The German authorities undertook a commitment to reduce the aid amount in accordance with point 726 of the Guidelines if the adjustments referred to in recitals (65) and (66) are not accepted or not implemented by the beneficiary.
- (68) The foreseen duration of the aid scheme exceeds the end date of the currently applicable Guidelines. In this regard, the German authorities have committed to adapt the notified scheme in conformity with any future amendments of the Union rules applicable to State aid in the agriculture sector.
- (69) The German authorities undertook a commitment with regard to the publication of the information required under point 128 of the Guidelines latest by 30. June 2016.

### 3. ASSESSMENT

#### 3.1. Existence of State aid - Application of Article 107(1) TFEU

- (70) 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.
- (71) The scheme in question confers an advantage on its recipients, as it favours only farmers in Lower Saxony by strengthening their position on the market. (see recital (17)) This advantage is granted through State resources (recitals (8) and (25)). 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<sup>8</sup>.
- (72) Pursuant to the case law of the Court of Justice, aid to an undertaking is likely to affect trade between Member States where that undertaking operates in a market open to intra-Union trade.<sup>9</sup> The beneficiaries of aid operate in the agricultural and forestry sectors which is a market sector where intra-trade takes place. Statistical data show that in 2013 German trade with all agricultural products with EU countries amounted to EUR 52 570.5 million for exports and to EUR 60 552.7 million for imports<sup>10</sup> and that in 2013 in the European Union 434 998 370 cubic metres of round wood were produced, out of which around 36 330 000 cubic metres were traded between EU Member States<sup>11</sup>. The sectors concerned are open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to affect trade between Member States.

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<sup>8</sup> Judgment of the Court of 17 September 1980, Case 730/79, *Philip Morris Holland BV v. Commission of the European Communities*, ECLI:EU:C:1980:209.

<sup>9</sup> See in particular the judgment of the Court of 13 July 1988 in Case 102/87, *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

<sup>10</sup> Source: European Commission, Agricultural Policy Perspectives, Member States factsheet-January 2015, Germany. Available at: [http://ec.europa.eu/agriculture/statistics/factsheets/pdf/de\\_en.pdf](http://ec.europa.eu/agriculture/statistics/factsheets/pdf/de_en.pdf).

<sup>11</sup> EUROSTAT database, Roundwood production and trade, update from 12.08.14

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

### **3.2. Lawfulness of the aid – Application of Article 108(3) TFEU**

- (74) The aid scheme was notified to the Commission on 26 June 2015. It has not been implemented. Therefore, Germany has complied with its obligation under Article 108(3) TFEU.

### **3.3. Compatibility of aid**

#### *3.3.1. Application of Article 107(3)(c) TFEU*

- (75) Under Article 107(3)(c) TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (76) For this derogation to be applicable, the aid must fulfil the requirements of the relevant Union State aid legislation.

#### *3.3.2. Application of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020*

- (77) It follows from point 207 of the Guidelines that the Commission will consider aid for agri-environment-climate commitments compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of these Guidelines and with the conditions set in Section 1.1.5.1. of Part II of the Guidelines.
- (78) It follows from point 504 of the Guidelines that the Commission will consider aid for afforestation and creation of woodland compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of these Guidelines and with the conditions set in Section 2.1.1. of Part II of the Guidelines.
- (79) It follows from point 529 of the Guidelines that the Commission will consider aid for investments improving the resilience and environmental value of forest ecosystems compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of these Guidelines and with the conditions set in Section 2.1.4. of Part II of the Guidelines.
- (80) It follows from point 542 of the Guidelines that the Commission will consider aid for investments in infrastructure related to the development, modernisation or adaptation of forestry compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of these Guidelines and with the conditions set in Section 2.1.6. of Part II of the Guidelines.
- (81) It follows from point 551 of the Guidelines that the Commission will consider aid for forest-environment and climate services and forest conservation compatible

with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of these Guidelines and with the conditions set in Section 2.3. of Part II of the Guidelines.

### *3.3.3. Common assessment principles*

#### *Contribution to a common objective*

- (82) As described in recital (4), the objective of the present notified scheme is to introduce agri-environmental-climate, forest-environment-climate and forest investment measures comprising highly sustainable practices on agricultural and forestry land in drinking water protection areas in order to positively contribute to the environment and the climate, thus promoting efficient and sustainable use of resources in order to achieve sustainable growth. The notified aid scheme contributes to a common objective in line with points 43 and 44 of the Guidelines. The scheme contains rural development-like measures, which are not included in the Lower Saxony's Rural Development Programme for 2014-2020. Therefore, there is no risk of overlap and double funding is excluded. As described in recital (25), the notified aid scheme can be regarded as fitting into and consistent with the Lower Saxony's RDP for 2014-2020. The Commission thus considers that the conditions of point 47 of the Guidelines are met and that the scheme contributes to the objectives of rural development.
- (83) As demonstrated by the German authorities (recitals (4) and (5)), the aid serves the purposes of nature conservation and only a positive environmental impact is expected. Therefore, no negative impact on the environment within the meaning of point 52 of the Guidelines has been identified.

#### *Need for State intervention – Appropriateness of aid*

- (84) Since the present scheme fulfils the specific conditions laid down in Sections 1.1.5.1., 2.1.1., 2.1.4., 2.1.6. and 2.3. of Part II of the Guidelines (recitals (102), (110), (115), (118) and (128)) and the aid respects the specific forms foreseen for it (recital (15)), the Commission considers, in line with points 55, 57 and 60 of the Guidelines that the aid is necessary and that it is granted by means of an appropriate instrument to address the objective of common interest. The aid for forestry investments compensates eligible costs for operations which do not generate income for a considerable period (recital (40)), concerns non-productive investments (recital (52)) and contributes to the objective of common interest of environmental value of forest and their ecosystems. Therefore, the Commission considers aid in the form of direct grants for these measures, in line with point 62 of the Guidelines, as an appropriate instrument with limited negative effect on competition and trade.

#### *Incentive effect*

- (85) It follows from recital (26) above that work on the relevant project will only start after the beneficiary has submitted an aid application to the competent national authorities. It also follows from recital (26) that the content of the aid application meets the minimum requirements laid down in point 71 of the Guidelines. The requirement of incentive effect is therefore complied with.

### *Proportionality and cumulation of the aid*

- (86) Pursuant to point 82 of the Guidelines, in principle, in order for the aid to be proportionate the Commission considers that the aid amount should not exceed the eligible costs. In that regard it is noted that the Guidelines establish certain maximum aid amounts which may be increased in duly substantiated cases taking into account specific circumstances to be justified to the Commission. The German authorities have submitted for all measures detailed calculations of the aid amounts showing that the aid intensities are respected and that in the majority of the measures the eligible costs do not exceed the ceilings and maximum aid intensities (recitals (35) to (37), (46), (50), (54) and (62)). The aid amounts are fixed either on proven incurred expenditure or on the basis of standard assumptions of the additional costs and the income foregone. All elements contained are verifiable, based on figures established by appropriate expertise indicating clearly the source, are differentiated to take account of regional or local site conditions and actual land use, and do not contain investment costs (recitals (36) and (37)), pursuant to the relevant requirements of point 93 of the Guidelines. The notified aid amounts are therefore deemed to be justified and thus in line with point 84 of the Guidelines, according to which, if the eligible costs are correctly calculated and the maximum aid intensities and aid amounts are respected, the aid is to be considered proportionate.
- (87) With respect to three measures of the scheme (measures I.F, II and VI-a) exceeding the maximum thresholds of the Guidelines, the German authorities have provided a justification in the notification. The increased aid amounts concern duly substantiated cases and take account of the specific circumstances (recitals (36) and (62)) in accordance with points 229 and 562 of the Guidelines. In particular, the compensation is for the loss of income, which the farmers/landowners undergo when entering into the voluntary agreements. The compensation does not exceed the eligible costs (point 82 of the Guidelines) and in measure VI-a the compensation is only partial. The eligible costs are correctly calculated (point 84 of the Guidelines) on the basis of verifiable standard assumptions of income foregone and additional costs (point 93 of the Guidelines). The compensation is in proportion in order to achieve the (long term) objective of a positive effect on the environment (point 81 of the Guidelines). Therefore, the aid is considered proportional to the needs of the scheme in order to achieve its environmental objectives.
- (88) Points 99 and 100 of the Guidelines contain rules on cumulation. As the German authorities have confirmed that aid cannot be cumulated with aid received from other local, regional, national or EU schemes to cover same eligible costs (recital (28)), these points are not applicable to the scheme at hand.

### *Avoidance of undue negative effects on competition and trade*

- (89) According to point 113 of the Guidelines the Commission considers that where an aid fulfils the conditions and does not exceed the relevant maximum aid intensities, laid down in the applicable Sections of Part II of these Guidelines, the negative effect on competition and trade is limited to the minimum. The present scheme fulfils the conditions laid down in Sections 1.1.5.1., 2.1.1., 2.14., 2.16. and 2.3. of Part II of the Guidelines (recitals (102), (110), (115), (118) and (128)). The aid amounts of three measures of the scheme (n° I.F, II and VI-a) exceed the maximum thresholds of the Guidelines. Nevertheless, as demonstrated by the



German authorities, they are substantiated and justified in line with points 229 and 562 of the Guidelines (recitals (36), (62) and (87)). Therefore, the Commission considers that the negative effect on competition and trade is limited to the minimum.

#### *Transparency*

- (90) Germany has committed to comply with the transparency requirements set out in point 128 of the Guidelines (recital (69)).

#### *3.3.4. Specific assessment according to aid for agri-environment-climate commitments (Section 1.1.5.1. of Part II of the Guidelines)*

- (91) The farmers undertake the agri-environment commitments on a voluntary basis and in addition to their usual agricultural activities. This is the reason they are compensated for the additional costs and the income foregone. The voluntary agri-environment commitments are implemented on arable land. Based on the information provided in recitals (10) and (33) payments are granted to farmers active in the primary agricultural production who undertake agri-environment-climate commitments on a voluntary basis on agricultural land. Therefore, the conditions set out in points 206 and 208 of the Guidelines are met.
- (92) The German authorities have described the environmental benefit of the measure and demonstrated that the measure aims to promote agricultural practices that make a positive contribution to the environment (recitals (4) and (5)). Therefore, the conditions of point 209 of the Guidelines are fulfilled.
- (93) The German authorities have demonstrated that the voluntary commitments go beyond the relevant mandatory standards which are identified and described in the notification. As explained in recital (32), the commitments of the farmers go beyond the mandatory standards SMR 1 (related to water), GAEC 4 and GAEC 5 (related to soil) and GAEC 10 (related to plant protection products) of Annex II to Regulation (EU) No 1306/2013 and beyond the standards set in national law regarding requirements for the use of fertiliser in the German regulation on fertilisers ("Düngeverordnung - DüV") and plant protection products in the German plant protection law ("Pflanzenschutzgesetz - PflSchG"). Therefore, the conditions of point (210) of the Guidelines are complied with.
- (94) The German authorities explained (recital (20)) that the undertakings which carry out the operations under the present scheme will be provided with the necessary knowledge and information as required under point 211 of the Guidelines. That condition is therefore fulfilled.
- (95) The commitments are undertaken by the beneficiaries for a period of five to seven years (recital (29)). The requirement laid down in point 212 of the Guidelines is therefore met.
- (96) The German authorities have confirmed that, in line with point 213 of the Guidelines, the rules for area related payments laid down in Article 47 of Regulation (EU) No 1305/2013 are complied with (recital (64)). The requirement of this point of the Guidelines is therefore met.
- (97) Points 214 to 220 of the Guidelines are not applicable to the present aid scheme.

- (98) The aid will cover compensation to beneficiaries for all or part of the additional costs and income foregone resulting from the commitments they made and it will be granted annually (recital (37)). The requirements laid down in point 221 of the Guidelines are therefore complied with.
- (99) Since the scheme does not include transaction costs (recital (37)), the points 223 to 225 of the Guidelines are not applicable.
- (100) The scheme does not cover aid for organic farming or genetic resources pursuant to points 226 and 227 of the Guidelines.
- (101) According to point 228 of the Guidelines, aid for annual crops and for perennial crops must be limited to respectively EUR 600 and EUR 900 per hectare. Point 229 provides that in duly substantiated cases taking into account specific circumstances these amounts may be increased. Germany intends to grant to the majority of the measures annual amounts per hectare which do not exceed the threshold mentioned above. However, in two agri-environmental measures (n° I.F and II) the annual amount per hectare exceeds those ceilings. Germany has provided evidence for the specific circumstances, which justify the aid for the measures concerned (recitals (36) and (87)). The conditions of point 228 and 229 of the Guidelines concerning the aid amounts are therefore complied with.
- (102) The specific conditions set out in Section 1.1.5.1. of the Guidelines are therefore met.

*3.3.5. Specific assessment aid for afforestation and creation of woodland (Section 2.1.1. of Part II of the Guidelines)*

- (103) Aid for first afforestation is covered by measure "*V First afforestation*".
- (104) Point (505) of the Guidelines provides that public and private land-holders and their associations may be granted aid for establishment costs and the annual premium. As described in recital (10) the aid for the first afforestation may be granted to private or public land-holders and their associations. Therefore, this condition is met.
- (105) Point 506 of the Guidelines specifies that aid for afforestation of land owned by public authorities or for fast growing trees covers only the costs of establishment and that in the case of State-owned land, aid may be granted if the body managing such land is a private body or municipality. Since the German authorities have confirmed the requirements with regard to point 506 of the Guidelines to support only establishments costs when land is owned by public authorities (recital (41)), that the aid measure does not cover fast growing trees (recital (40)) and that in the case of state-owned land aid may be granted if the body managing such land is a private body or municipality (recital (11)), the conditions of point 506 are met.
- (106) According to point 507 of the Guidelines, aid can cover the costs of establishment of forest and woodland on agricultural and non-agricultural land and aid in the form of an annual hectare premium may be granted to cover the costs of income foregone for a maximum period of twelve years. It follows from recital (40) that the eligible costs of the measure are in line with point 507 of the Guidelines.
- (107) In line with point 508 of the Guidelines, the planting of trees for short rotation coppicing, Christmas trees and fast growing trees for energy production is

excluded (recital (41)). The measure supports the planting of species adapted to the environmental and climatic conditions of the area (recital (42)) and complying with the minimum environmental requirements mentioned in point 509 of the Guidelines as specified in recital (108).

(108) The German authorities explained in the notification of the aid scheme that the following minimum environmental requirements of point 509(a), (b) and (d)(ii) of the Guidelines are fulfilled by the measure at hand and that points 509(c) and 510 do not apply:

- a) the selection of species to be planted, of areas and of methods to be used must avoid the inappropriate afforestation of sensitive habitats such as peat lands and wetlands and negative effects on areas of high ecological value including areas under high natural value farming. On sites designated as Natura 2000 only afforestation consistent with the management objectives of the sites concerned and agreed with the Member State's authority in charge of implementing Natura 2000 must be allowed (recitals (42 and (43));
- b) the selection of species, varieties, ecotypes and provenances of trees must take account of the need for resilience to climate change and to natural disasters and the pedologic and hydrologic condition of the area concerned, as well as of the potential invasive character of the species under local conditions as defined by Member States (recital (44)). As fast growing trees are not supported by the scheme (recitals (40) and (41), the conditions laid down in point 509(b) fourth and fifth sentences, are not applicable;
- c) The German authorities mentioned in recital (45) that the possibility that afforestation is made difficult due to environmental or climatic conditions, or severe pedo-climatic conditions is not applicable as such conditions do not occur in water protection areas in Niedersachsen. Therefore the points the requirements of points 509(c) and 510 of the Guidelines are not applicable.
- d) in the case of afforestation operations leading to the creation of forests of a size exceeding a certain threshold, to be defined by Member States, the operation must consist of a mix of tree species which includes either at least 10 % of broad-leaved trees by area, or a minimum of three tree species or varieties, with the least abundant making up at least 10 % of the area (recital (45)).

(109) The aid is limited to 100% of the eligible costs. The condition of point 512 of the Guidelines is complied with.

(110) The specific conditions set out in Section 2.1.1 of the Guidelines are therefore met.

3.3.6. *Specific assessment aid for investments improving the resilience and environmental value of Forest ecosystems (Section 2.1.4. of Part II of the Guidelines)*

- (111) Under measure "*IV Forest erosion protection*", in its sub measure "*IV-a Stopping or reducing of erosion processes*" the aid covers forestry investments.
- (112) In accordance with point 530 of the Guidelines, aid may be granted to private and public forest holders and their associations. As described in recital (10) the beneficiaries concerned by the aid scheme are such forest holders. Therefore this condition is met.
- (113) Pursuant to points (48) and (49), the conditions set out in point 531 of the Guidelines, referring to the achievement of commitments for environmental aims for the provision of ecosystem services, are met.
- (114) The aid is limited to 100% of the eligible costs. The condition of point (532) of the Guidelines is complied with.
- (115) The specific conditions set out in Section 2.1.4. of the Guidelines are therefore met.

3.3.7. *Aid for investments in infrastructure related to the development, modernisation or adaptation of forestry (Section 2.1.6 of Part II of the Guidelines)*

- (116) Under measure "*IV Forest erosion protection*", in its sub measure "*IV-b Sparing land management operations i.e. slope parallel forestry roads*" the aid covers investment in tangible assets which concern infrastructure related to the development, modernisation or adaptation of forests, including the access to forest land (recital (51)). The measure is in line with point 543 of the Guidelines.
- (117) According to point 544 of the Guidelines, for non-productive investments for forest roads which are open to the public free of charge and which serve the multifunctional aspects of the forest the aid intensity is limited to 100% of the eligible costs. As described in recitals (51) to (53), the relevant measure complies with the conditions of point 544 of the Guidelines.
- (118) The specific conditions set out in section 2.1.6 of the Guidelines are therefore met.

3.3.8. *Aid for forest-environment and climate services and forest conservation (Section 2.3. of Part II of the Guidelines)*

- (119) Pursuant to point 552 of the Guidelines, aid under measure "*VI-a Forest conversion*" must be granted per hectare of forest. As shown in recital (61) this condition is complied with. The aid is exclusively financed by State resources. Therefore, pursuant to point 501 of the Guidelines, the requirement with regard to a forest management plan does not apply.
- (120) According to point 553 of the Guidelines, aid can only cover voluntary commitments going beyond the relevant mandatory requirements established in national legislation. For aid measures financed exclusively from national funds, the relevant mandatory requirement should be identified and described in the

State aid notification. As shown in recitals (56) to (58), these conditions are complied with.

- (121) According to point 554 of the Guidelines, commitments must be undertaken for a period between five and seven years. However, where necessary and duly justified, Member States may determine a longer period for particular types of commitments. As described in recital (59) the German authorities have duly justified a duration of ten years, which is required in order to establish a sustainable and long term forest plantation. The conditions of point 554 of the Guidelines are therefore met.
- (122) The German authorities have confirmed that, in line with point 555 of the Guidelines, the rules for area related payments laid down in Article 47 of Regulation (EU) No 1305/2013 are complied with (recital (64)). The requirement of this point of the Guidelines is therefore met.
- (123) As regards the beneficiaries of aid, point 556 of the Guidelines foresees that aid may be granted to public and private forest holders and other private law and public bodies and their associations. In the case of state-owned forests, aid may only be granted if the body managing such a forest is a private body or a municipality. As shown above in recitals (10) and (11), these conditions are fulfilled.
- (124) According to point 558 of the Guidelines, the aid can compensate beneficiaries for all or part of the additional costs and income foregone resulting from the commitments made. Transaction costs are not covered by the aid scheme at hand (recitals (60) and (61)). The scheme provides compensation in line with the provisions of point 558 of the Guidelines.
- (125) According to point 559 of the Guidelines, in duly justified cases for operations concerning environmental conservation, aid may be granted as a flat-rate or one-off payment per unit for commitments to renounce the commercial use of trees and forests, calculated on the basis of additional costs incurred and income foregone. As shown above in recitals (62) and (63), these conditions are complied with.
- (126) Points 560 and 561 of the guidelines are not applicable, as the aid scheme at hand does not cover aid for operations regarding forest genetic resources.
- (127) According to point 562 of the Guidelines, the aid must be limited to the maximum amount of EUR 200 per hectare per year. That amount may be increased in duly substantiated cases taking into account specific circumstances to be justified in the rural development programmes or otherwise in the notification to the Commission. The aid per hectare for this measure for a commitment period of 10 years is usually calculated at EUR 2.500 to EUR 3.500, with a maximum of EUR 7 000 in the form of a one-off payment. Thus the yearly amount exceeds the maximum of EUR 200 per hectare. The German authorities duly justified the necessity for the increased amount. The absence of income for the first 40 years of the measure, which is only partially compensated by the aid, and the long lasting positive effect of the measure on water management and pollution justifies the amount of aid. (recitals (62) and (87)). Therefore the requirements of point 562 of the Guidelines are met.

(128) Taking the above into consideration, the Commission considers that the requirements regarding set out in section 2.3. of the Guidelines are fulfilled.

### *3.3.9. Other commitments*

(129) Point 724 of the Guidelines requires a revision clause to be provided for operations undertaken pursuant to Sections 1.1.5.1. and 2.3. of Part II of the Guidelines, in order to ensure their adjustment in the case of amendments of the relevant mandatory requirements. As mentioned in recital (65) the German authorities undertook a commitment regarding such adjustments. The condition of point 724 of the Guidelines is therefore met.

(130) Point 725 of the Guidelines requires a revision clause to be provided for operations undertaken pursuant to Sections 1.1.5.1. and 2.3 of Part II of the Guidelines which extend beyond the rural development programming period 2014-2020, in order to allow for their adjustment to the legal framework of the following programming period. It follows from recital (66) that the German authorities undertook a commitment with regard to adjustments required by point 725 and that the conditions of this point of the Guidelines have been fulfilled.

(131) Point 726 of the Guidelines requires the aid amount to be accordingly reduced in cases where the beneficiary does not accept these adjustments. The German authorities have assured that such adjustments are provided for (recital (67)). The requirement of point 726 of the Guidelines is therefore complied with.

(132) The Commission notes that undertakings in difficulty are excluded from any support (recital (13)) and that Germany will suspend the payment of the notified aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision (recital (14)) in line with points 26 and 27 of the Guidelines.

### *3.3.10. Duration of the scheme*

(133) Pursuant to point 719 of the Guidelines, the Commission only authorises 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 (7) that this requirement is met.

(134) The foreseen duration of the aid scheme exceeds the end date of the currently applicable Guidelines. In this regard, the German authorities have committed to adapt the notified scheme in conformity with any future amendments of the Union rules applicable to State aid in the agriculture sector (recital (68)).

(135) On the basis of the above, the Commission considers that the requirements regarding the compatibility of aid for agri-environmental-climate commitments are fulfilled.

## **4. CONCLUSION**

The Commission has accordingly decided not to raise objections to the notified aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) 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>12</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>12</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).