



EUROPEAN COMMISSION

Brussels,

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Embargo VISTA illimité()*

Subject: **State aid/Germany**
 Aid No SA.42452 (2015/N)
 Bavaria – Financial compensation by the 'Compensation funds large
 predators' for damages caused by wolfs, lynxes and bears

Sir,

The European Commission (hereinafter: "the Commission") wishes to inform Germany that, after examining the information supplied by your authorities on the aid scheme referred to above, it has decided not to raise any objections to the aid 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").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) In accordance with Article 108(3) of the TFEU, Germany notified to the Commission the State aid scheme mentioned above by electronic communication of 3 July 2015, registered by the Commission on the same day.
- (2) The Commission sent requests for additional information on 31 August 2015 and 18 December 2015 which the German authorities provided on 30 October 2015 and 12 January 2016, respectively.
- (3) The notified aid scheme relates to the aid scheme SA.34622 (N/2012) which was approved by Commission decision C(2012) 7787 of 29 October 2012 (hereinafter: "the aid scheme SA.34622") for the period until 31 December 2014.

Seiner Exzellenz Herrn Dr. Frank-Walter Steinmeier
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() Ce timbre porte sur l'ensemble des documents qui composent le dossier.*

- (4) The current notified aid scheme aims at continuing the supported measures under the aid scheme SA.34622 by also modifying them. Since the aid scheme SA.34622 expired in the meantime, the currently notified aid scheme has to be treated as a new aid scheme and has to be assessed under the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020¹ (hereinafter: "the Guidelines").

2. BACKGROUND

- (5) Pursuant to Council Directive 92/43/EEC (Annex IV)² wolf, bear and lynx are animal species of Community interest in need of strict protection, whose conservation requires the designation of special areas of conservation.
- (6) Since the natural resettlement of those large predators in Bavaria³, damages to breeding animals have been occurring, shedding a negative light on the image of those animals amongst the population in general and in particular amongst livestock farmers. Since 2010, 37 animals (29 sheep, 5 chickens, 1 red deer, 2 fallow deer) were killed by large predators in Bavaria. The damage altogether amounted to some EUR 4.385. Although the number of killed animals is relatively low in proportion to the stock of breeding animals in Bavaria, according to the German authorities, the immaterial damage to the cause of the protection of wolves, lynxes and bears surpasses this material damage to breeding animals by far.
- (7) Due to the high protection status of large predators, farmers are not allowed to take defence measures, let alone to repel the animals. Given the specificities of free range breeding of animals, the possibilities of effective prevention measures against damages caused by wolves, lynxes and bears are also limited.
- (8) As a result of this special situation, Bavaria intends to continue granting compensation to farmers suffering damages caused by wolves, lynxes and bears, due account being taken of the principle "prevention before compensation".

3. DESCRIPTION

3.1. Title

- (9) Bavaria – Financial compensation by the 'Compensation funds large predators' for damages caused by wolfs, lynxes and bears

3.2. Objective

- (10) The aim of the notified aid scheme is to compensate for the damage caused by wolves, lynxes and bears to the primary agricultural production.

¹ 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).

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.07.1992, p.7.

³ See the detailed description in the preceding Commission decision (recital (3)).

- (11) The German authorities have provided an analysis of the potential impact of the present State aid on the environment. They have explained that the measures covered by the present aid scheme compensate damages caused by large predators wolves, lynxes and bears and therefore no direct impact on environment is expected. Indirectly, however, the scheme should only have a positive environmental impact by improving the acceptance of wolves, lynxes and bears amongst the population and thus protecting the species in question, by facilitating co-existence of population and large predators and by reducing the impact of the latter on pastoralism.

3.3. Legal basis

- (12) Draft of *Ausgleichsregelung zum finanziellen Ausgleich von durch Wolf, Luchs oder Bär verursachtem Schaden durch den "Ausgleichsfonds Große Beutegreifer"* (Compensation rules for damages caused by wolves, lynxes or bears by the compensation fund 'Large predators').
- (13) *Bescheid des Bayerischen Naturschutzfonds zur Förderung der Einrichtung des "Ausgleichsfonds Große Beutegreifer"* (Funding note of the Bavarian Nature protection funds to the compensation funds 'Large predators').
- (14) *Förderrichtlinien des Bayerischen Naturschutzfonds vom 01.07.1999* (Funding guidelines of the Bavarian nature protection funds of 1.7.1999).
- (15) *Satzung des Bayerischen Naturschutzfonds vom 26.09.2014; GVBl. 2014, S. 444.* (Statute of the Bavarian nature protection funds).
- (16) *Bayerische Haushaltsordnung (BayHO), Bayerische Rechtssammlung (BayRS) IV, 664* (Bavarian financial regulation).
- (17) *Bayerisches Verwaltungsverfahrensgesetz (BayVwVfG), BayRS II, 213* (Bavarian Administrative Procedure Act).

3.4. Duration

- (18) The notified scheme will apply to damages occurred from 1 July 2015 and the aid may be granted until 31 December 2020.
- (19) The German authorities have undertaken not to grant any aid before the Commission has approved the scheme.

3.5. Budget

- (20) Overall budget: EUR 32.000, financed from national budgetary resources.

3.6. Beneficiaries

- (21) Between 11 and 50 undertakings active in the primary production of agricultural products affected by the damages caused by wolves, lynxes and bears.
- (22) The German authorities confirmed that the aid will not apply to undertakings in difficulty within the meaning of point 35(15) of the Guidelines, unless the financial difficulty of an undertaking has been caused by the damage brought

about by wolves, bears or lynxes and the aid is to compensate for or restore the losses or damage caused by such event.

- (23) Germany committed to suspend the payment of the aid 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 the unlawful and incompatible aid including the corresponding recovery interest.

3.7. Aid instrument

- (24) Direct grant.

3.8. Description of the aid scheme

- (25) Under the notified scheme, aid will be granted to partially compensate for damages caused by wolves, lynxes and bears to primary agricultural undertakings. Damages caused by other animals are not covered.
- (26) The “compensation fund large predators” (hereinafter: “compensation fund”) is a measure conducted by the following non-profit nature protection organisations: the Wildland foundation Bavaria (*Wildlandstiftung Bayern*), the association Nature protection in Bavaria e.V. (*Bund Naturschutz in Bayern e.V.*), the Land association for bird protection e.V. (*Landesbund für Vogelschutz e.V.*) and the World Wide Fund For Nature (WWF). Currently, the joint representative of the compensation fund is Wildland foundation Bavaria. The compensation fund itself has no legal personality. The sole task of the fund is the payment of compensation (in principle 100%) to farmers keeping animals who have suffered damages caused by large predators: wolves, bears or lynxes. Under the notified scheme, the members of the compensation fund each year pay the compensation to the farmers for the occurred damages. They pay it from their own resources. At the end of each year, the members of the compensation fund submit to the Nature protection fund (*Bavarian Naturschutzfonds*), a public law foundation financed by the State, the compensation cases with respective proofs of payments. The Nature protection fund then examines the proofs and pays to the compensation fund 80% of the prepaid compensation costs. In case of a non-rule-conforming disbursement through the compensation fund, the Nature protection fund refuses the reimbursement of the costs. If the Nature protection fund discovers after reimbursement that the compensation was unlawful, it recovers its contribution back from the compensation fund.
- (27) The legal basis concerning the notified scheme (see recital (12)) foresees that farmers are only eligible for aid payments if they have previously taken the appropriate and proportionate preventive measures. According to the German authorities, regarding wolves and bears, such preventive measures can be seen as proportionate only after a longer presence of location-loyal animals. The German authorities also explained that prevention measures make sense only if damages caused by lynxes recur very frequently, given that despite their location-loyal presence lynxes rarely attack breeding animals. Such recurring level of damage has not yet been achieved. As regards prevention, e.g. the following measures can be used: fences; livestock guarding dogs, shepherding etc. In this respect, the Bavarian district authority for environment (*Bayerisches Landesamt für Umwelt*)

provides on its website appropriate detailed information⁴ on the expected prevention measures in the different regions of Bavaria.

- (28) The German authorities have explained that the damage is calculated at the level of the individual beneficiary. The compensation is paid where the overall assessment of the items of evidence points in each individual case to a large predator bear, wolf or lynx as a cause of the damage. Farmers have to report a damage event immediately with the competent local authority. The authority then arranges for an inspection of the damage by experts, who will draw up a report on the probable cause of the damages. Documentation prepared by experts is brought together by the Bavarian district authority for environment. On the basis of all the evidence and experts assessments, the authority addresses to the compensation fund a written recommendation relating to the payment or non-payment of compensation.
- (29) The following costs are eligible under the following conditions:
- (a) Damages directly caused by large predators to farm animals, including working dogs necessary for livestock farming (livestock guardian dogs, herding dogs and shepherds): Such damages are compensated by the compensation fund up to 100%. They are calculated on the basis of fixed rates which are based on the market value of the animals and which are set and regularly reviewed by the Bavarian district authority for environment and the Bavarian research centre for agriculture.
 - (b) Veterinary costs: As a rule, 80% of the costs of veterinary check are compensated, whereby the maximum aid amount payable per damage event (irrespective of the number of wounded animals) is 35 EUR. Should treatment of a wounded animal be necessary, additional aid covering 80% of veterinary treatment costs per animal may be granted, but it cannot amount to more than 150 EUR or 30% of the animal value, whatever is less.
 - (c) Material damages directly caused by large predators to the farm assets: Such damages are compensated up to 100%, whereby the compensation can exceed EUR 500 per damage event only in case of particular hardship cases. The German authorities have assured that the calculation of the material damage is based on the repair cost or economic value of the affected asset before the event that caused the damage and it will not exceed the repair cost or the decrease in fair market value caused by the event causing the damage.
 - (d) Labour costs related to the search for missing animals: The amount of such labour costs is determined according to the time actually spent on search, with a flat rate of EUR 18 per person per working hour. This value corresponds to the most favourable hourly rate for farmers in accordance with the Bavarian "Cost file for nature conservation and landscape management" of 2011 („*Kostendatei für Maßnahmen des Naturschutzes und der Landschaftspflege*“).⁵ The labour costs are compensated by the

⁴ http://www.lfu.bayern.de/natur/wildtiermanagement_grosse_beutegreifer/praevention/index.htm

⁵ http://www.lfu.bayern.de/natur/landschaftspflege_kostendatei/index.htm

compensation fund up to 100%, whereby the compensation cannot exceed the value of the missed or killed farm animals and the maximum aid amount payable per damage event is EUR 300.

- (30) The farmers have to submit aid applications within one month of the reported damage to the representative of the compensation fund. Invoices and other proofs substantiating the damage amount have to be enclosed.
- (31) The aid must be paid out within four years from the damaging event.
- (32) No compensation is paid for amounts below EUR 50 and above EUR 30 000.
- (33) The German authorities have explained that the aid amount is reduced by any costs not incurred because of the event causing the damage, which would otherwise have been incurred by the beneficiary.
- (34) No compensation is granted for damages, which were compensated under insurance schemes.
- (35) Aid under this scheme cannot be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible costs. It can only be cumulated with private funding of up to 20% (see recital (26)).

3.9. Other commitments

- (36) Germany made a commitment to publish the information required under point 128 of the Guidelines by the deadline set out in point 131 of the Guidelines.

4. ASSESSMENT

4.1. Existence of aid - Application of Article 107(1) TFEU

- (37) For Article 107(1) TFEU to apply, the measure must provide an economic benefit to an undertaking which it would not have received in its normal course of business, the aid must be selective, the benefit must be granted by the State or through State resources and the aid must distort or threaten to distort competition and be capable of affecting trade between Member States.
- (38) The scheme in question confers an advantage on its recipients. This advantage is granted through State resources (recital (20)) and it benefits only certain undertakings, as indicated in recital (21) above.
- (39) The scheme has the potential to distort competition as it confers an economic advantage on its recipients and that advantage strengthens their position on the market. 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

⁶ Judgment of the Court of 17 September 1980 in Case 730/79 Philip Morris Holland BV v Commission of the European Communities, ECLI:EU:C:1980:209.

- (40) Pursuant to the case law of the Court of Justice, aid to an undertaking is capable of affecting trade between Member States where that undertaking operates in a market open to intra-Union trade.⁷ The beneficiaries of aid operate in the agriculture sector which is open to competition at EU level⁸ and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present measure is liable to affect trade between Member States.
- (41) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed measure constitutes State aid within the meaning of that Article. It may only be considered compatible with the internal market if it can benefit from any of the derogations provided for in the TFEU.

4.2. Lawfulness of the aid – Application of Article 108(3) TFEU

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

4.3. Compatibility of the aid

4.3.1. Application of Article 107(3)(c) TFEU

- (43) 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.
- (44) For this derogation to be applicable, the aid must fulfil the requirements of the relevant Union State aid legislation.

4.3.2. Application of the Guidelines

- (45) As regards the notified aid scheme, Chapter 1.2.1.5 "Aid to compensate for the damage caused by protected animals" of Part II of the Guidelines is applicable.
- (46) It follows from point 390 of the Guidelines that the Commission will consider aid to compensate for the damage caused by protected animals 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 1.2.1.5 of Part II of the Guidelines.

4.3.2.1. Conditions set out in Section 1.2.1.5 of Part II of the Guidelines

- (47) It appears from recital (5) that the predators whose damage the notified scheme aims to compensate for are indeed protected animals.

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, ECLI:EU:C:1988:391.

⁸ In 2013, German trade with all agricultural products with EU countries for exports amounted to EUR 52 570.5 million, and for imports amounted to EUR 60 552.7 million. 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.

- (48) Pursuant to point 391 of the Guidelines the Commission will authorise aid to compensate for the damage caused by protected animals to undertakings active in the primary agricultural production only. It follows from recital (21) that this requirement is met.
- (49) Points 326 and 392 of the Guidelines require the beneficiary to take reasonable and proportionate preventive measures. As described in recital (27) above, this requirement is met.
- (50) A direct causal link between the damage suffered and the behaviour of the protected animal must be established by the Member State (point 393 of the Guidelines). The notified scheme compensates only for damages caused by protected predators and to be eligible, the damage needs to be assessed by the competent authority (cf. recital (28)). Therefore, the condition set out in point 393 of the Guidelines is fulfilled.
- (51) Point 394 of the Guidelines requires the aid to be paid directly to the undertaking concerned. As described in recital (26), the compensation is directly paid to the farmers by the compensation fund, which is then reimbursed up to 80% by public funds through the Bavarian Nature Protection Fund (the granting authority). The German authorities demonstrated that the aid is targeted at farmers. It is provided through the compensation fund, but it is only the farmers who are the beneficiaries of the aid. Point 394 of the Guidelines is therefore complied with.
- (52) In accordance with point 395 of the Guidelines the aid scheme must be established within a period of three years from the date of the occurrence of the damaging event and the aid must be paid out within four years from that date. Under the scheme at hand, the German authorities intend to compensate for damages occurred as of 1 July 2015 (cf. recital (18)). In addition, Germany has assured that aid will be paid out within four years from the date of the occurrence of the damaging event (cf. recital (31)). Therefore, the requirements of point 395 of the Guidelines are fulfilled.
- (53) Point 396 of the Guidelines limits the eligible costs to the costs of the damage incurred as a direct consequence of the damaging event and requires the damage to be assessed by a public authority. Based on the information provided in recitals (28) above these conditions are fulfilled.
- (54) Point 397 of the Guidelines sets out the costs eligible for aid. These costs include market value of the animals killed, veterinary costs resulting from the treatment of wounded animals, labour costs relating to the search for missing animals and material damage to farm equipment, buildings and stocks. The latter must not exceed the repair cost or the decrease in fair market value caused by the damaging event. As specified under recital (29) the eligible costs under the notified scheme are in line with point 397 of the Guidelines.
- (55) Point 398 of the Guidelines requires the aid amount to be reduced by any costs not incurred because of the damaging event. Recital (33) shows that this requirement is met.
- (56) According to point 399 of the Guidelines the damage must be calculated at the level of individual beneficiary. It follows from recital (28) that this requirement is met.

- (57) Points 401 and 403 of the Guidelines limit the aid to 100% of eligible costs in case of direct costs. The direct costs under the present scheme, which are damage for killed animals and material damage (recitals (29)(a) and (29)(c)) are compensated up to 100% by the compensation fund, which is later reimbursed by the State (80%). Hence, the State aid is paid at the intensity of maximum of 80%. The requirements of points 401 and 403 of the Guidelines with regard to direct costs are therefore fulfilled.
- (58) Point 402 of the Guidelines requires the compensation for indirect costs to be proportionate to the compensation for direct costs. This point also limits the aid to 80% of eligible indirect costs. Germany has confirmed that the compensation paid by the compensation fund for veterinary costs is limited to 80% of eligible costs and that in case of veterinary treatment, the aid cannot amount to more than 30% of the animal value (recital (29)(b)). As regards the compensation paid by the compensation fund for labour costs, it amounts to maximum of 100% (recital (29)(d)) and it cannot exceed the value of the animal (recital (29)(d)). Given that the State then reimburses the compensation fund at a rate of 80%, it can be concluded that the compensation from the State will not exceed 80% of indirect eligible costs. The requirements of point 402 of the Guidelines are therefore complied with.
- (59) According to point 403 of the Guidelines the compensation paid under the notified scheme combined with any other payments, like e.g. payments received under insurance policies, must be limited to 100% of direct eligible costs and 80% of indirect costs. It appears from recital (34) that any payments for same eligible costs received from the insurance will be deducted from the aid. It follows from recitals (57) and (58) that, for both direct and indirect eligible costs, the aid intensity will not exceed 80%. Therefore, the requirements of point 403 of the Guidelines are complied with as well.
- (60) On the basis of the above, the Commission concludes that the conditions set out in Section 1.2.1.5 of Part II of the Guidelines are fulfilled.

4.3.2.2. Common assessment principles

- (61) According to points 38, 42 and 390 of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3)(c) TFEU.
- (62) As said in recital (10), the objective of the present notified scheme is to compensate for the damage caused by wolves, bears and lynxes to the primary agricultural production. The notified aid scheme contributes to a common objective in line with points 43 and 44 of the Guidelines. The notified scheme falls under Section 1.2 of Part II of the Guidelines. In accordance with point 48 of the Guidelines the Commission therefore considers that such aid is contributing to the objectives of rural development.
- (63) Taking into account the objective of the notified aid scheme, no negative impact on the environment within the meaning of point 52 of the Guidelines has been identified (recital (11)).
- (64) Since the notified scheme fulfils the specific conditions laid down in Section 1.2.1.5 of Part II of the Guidelines (cf. recital (60)), the Commission considers, in line with points 55 and 57 of the Guidelines, respectively, that the aid is necessary

and that it is an appropriate policy instrument to address the objective of common interest.

- (65) Point 69 of the Guidelines limits aid granted under Section 1.2 of Part II of the Guidelines to undertakings which have undertaken reasonable efforts to minimise the risk concerned. As described in recital (27), the aid is limited to undertakings that have taken reasonable preventive measures and therefore the requirement of point 69 of the Guidelines is considered fulfilled.
- (66) Under point 75(h) of the Guidelines, aid to compensate for the damage caused by protected animals granted in accordance with Section 1.2.1.5 of Part II of the Guidelines is not required to have an incentive effect.
- (67) As described above (recitals (57) to (59)), the eligible costs and aid intensity respect the requirements set out in Section 1.2.1.5 of Part II of the Guidelines and thus, are in line with point 84 of the Guidelines. In addition, aid under this notified scheme can only be cumulated with private funding (of up to 20%) and cannot be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible costs (see recital (35)). On this basis, the criterion of proportionality is fulfilled.
- (68) Since the present notified scheme fulfils the conditions laid down in Section 1.2.1.5 of Part II of the Guidelines (recital (60)) and does not exceed the relevant maximum aid intensities (recitals (57) to (59)), the Commission considers, in line with point 113 of the Guidelines, that the negative effect on competition and trade is limited to the minimum.
- (69) Germany has committed to comply with the transparency requirements under the Guidelines by the deadline required (cf. recital (36)).

4.3.3. Other commitments

- (70) The Commission notes that the notified scheme applies to undertakings in difficulty only in cases where the financial difficulty of an undertaking has been caused by the damage brought about by wolves, bears or lynxes and the aid is to compensate for or restore the losses or damage caused by such event (recital (22)). This is in line with point 26 of the Guidelines.
- (71) The Commission notes 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 (23)). This is in line with point 27 of the Guidelines.

4.3.4. Duration of the aid scheme

- (72) 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 (18) that this requirement is met.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified aid scheme 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 794/2004⁹, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil Hogan

Member of the Commission

⁹ 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).