



EUROPEAN COMMISSION

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C(2016)1196 final

**Subject: State aid - United Kingdom
SA.41812 (2015/N)
Forestry Co-operation**

Sir,

The European Commission ("the Commission") wishes to inform the United Kingdom 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 8 May 2015, registered by the Commission on the same day, the United Kingdom pre-notified, according to the Code of Best Practice for the conduct of State aid control procedures¹, the above mentioned aid scheme. The Commission sent a request for additional information to the UK authorities on 30 June 2015 which the UK authorities answered by letter of 20 July 2015, registered by the Commission on 14 August 2015, and by letter of 23 October 2015, registered by the Commission on 27 October 2015.
- (2) By letter of 23 October 2015, registered by the Commission on the same day, United Kingdom notified, according to Article 108(3) TFEU, the above mentioned aid scheme. The UK authorities provided additional information by letter of 8 January 2016, registered by the Commission on the same date.

¹ OJ C 136, 16.6.2009, p. 13

The Rt Hon Philip HAMMOND
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UNITED KINGDOM

2. DESCRIPTION

2.1. Title

- (3) Forestry Co-operation.

2.2. Objective

- (4) With the present notification the UK authorities wish to set up a State aid scheme for forestry co-operation in the framework of the underlying rural development measure 16.5 "Support for joint action, to mitigating or adapting to climate change, joint approaches to environmental projects" included in the Scottish Rural Development Programme 2014 – 2020 (SRDP).

2.3. Legal basis

- (5) The legal basis is:
- European Communities Act 1972; and
 - Rural Development Programme of Scotland 2014 – 2020.

2.4. Duration

- (6) From the date of the approval by the Commission to 31 December 2020.

2.5. Budget

- (7) Overall budget is 1 million GBP (approximately 1,4 million EUR) and the annual budget is 200 000 GBP (approximately 280 500 EUR).

2.6. Beneficiaries

- (8) The beneficiaries are private landowners such as farmers and private forest owners.
- (9) The beneficiaries are only SMEs.
- (10) Undertakings in difficulties as defined in point (35)15 of European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020² (hereinafter "the Guidelines") will be excluded from the scope of the beneficiaries.
- (11) No aid under the notified aid scheme will be paid to any undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission Decision, until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.

² OJ C 204, 1.7.2014, p.1, amended by OJ C 390, 24.11.2015, p.4.

2.7. Description of the aid scheme

- (12) As explained in SRDP the aim of the underlying rural development measure is to preserve and promote the necessary changes to agricultural and forestry practices that make a positive contribution to the environment and climate at a landscape or catchment scale. It will support the animation and facilitation required to bring land managers together to achieve positive environmental actions such as to reduce the incidence of diffuse pollution in priority catchments which go beyond minimum national standards to maintain and enhance Scotland's rich and varied natural environment.
- (13) Forestry projects are an integral part of rural Scotland and make a significant contribution to the economy, environment and culture. However, as the UK authorities pointed out, issues such as economies of scale and fragmentation are difficult to overcome and delivering projects at a landscape scale across a number of land ownerships has proven difficult to establish under the previous Rural Development Programme.
- (14) Landscape scale projects across a number of land ownerships can bring important public benefits. This scheme therefore aims to provide critical support for the establishment and implementation of landscape scale projects by providing support for project facilitation to encourage larger scale projects through getting a number of landowners working together. The aim is to provide support to a range of collaborative projects that address key policy areas within the Scottish Forestry Strategy.
- (15) The cooperation will involve at least two entities in the forestry sector. The collaborative projects must be supported by all of the landowners who are included in the area of proposed work. If a landowner will not participate then the project may still go ahead but the project proposal must outline if this exclusion will affect the objective of the project.
- (16) As explained by the UK authorities, there are two elements to the Forestry Co-operation scheme, both of which correspond to above mentioned SRDP measure 16.5: (i) Environmental Co-operation Action Fund, and (ii) Forestry co-operation option.
- (17) The Environmental Co-operation Action Fund promotes the planning of landscape-scale environmental projects by groups of farmers, foresters and other land managers. It aims to fund individuals to carry out the planning and facilitation of co-operative activities with the purpose of encouraging environmental outcomes at a landscape scale.
- (18) The Forestry co-operation option aims to encourage landscape-scale collaborative projects between two or more landowners by providing support for project facilitation and co-ordination.
- (19) The difference in the criteria for the granting authority to classify one project as being under the Environmental Co-operation Action Fund and the Forestry co-operation option is the scale of the projects. The costs for undertaking woodland creation or other projects are not covered.

- (20) Aid will be granted the form of direct grants for cooperation relating to the following activities:
- pilot projects;
 - co-operation among small operators in organising joint work processes and sharing facilities and resources;
 - joint action undertaken with a view to mitigating or adapting to climate change;
 - joint approaches to environmental projects and ongoing environmental practices including efficient water management and the preservation of agricultural landscapes.
- (21) The following types of eligible costs are covered:
- the costs of studies of the area concerned, feasibility studies, and the drawing up of a business plan;
 - the costs of animation of the area concerned in order to make feasible a collective territorial project;
 - the running costs of co-operation, such as the salary of a "co-ordinator".
- (22) In particular, costs of a project coordinator are covered to serve as facilitator between the collaborators to achieve the following:
- Animation and feasibility – it is targeted at communication between interested parties, identifying and resolving issues around tenancy, land ownership, and eligibility, discussing and setting costs, cash flow, commitments, and risks, providing an outline of the cooperation project;
 - Consolidation – it focusses on the detail of the collaborative project and includes the following – agreement on work plans, coordination and submission of applications for individual owners in the project area to Forestry Grant Scheme concerning projects involving direct and investment costs³.
- (23) The collaborative projects subject to aid have to address key policy areas within the Scottish Forestry Strategy such as:
- woodland creation projects that improve water quality or mitigate against the risk of flooding (identified through the Forestry Commission Scotland/Scottish Environment Protection Agency opportunity mapping project);
 - woodland projects to enhance the survival and expansion of Black grouse/Capercaillie;
 - woodland projects to encourage rhododendron control in priority areas identified within the national rhododendron strategy;
 - projects to encourage the planting of small scale farm woodlands or the management of existing farm woodlands.

³ As regards the direct costs and investment costs eligible under the Forestry Grant Scheme, the UK informed the Commission that those projects are not part of the current notification, but will be executed under SA. 41767 (2015/XA).

- (24) The potential beneficiaries will submit an application form for the aid before work on the project has started, which will include at least 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.
- (25) All applications are made via an on-line system that involves a business registration process to obtain a unique reference and to ensure that all land included within the application is also registered. The business registration process captures details of the applicant's name, address and contact details and the type of applicant.
- (26) Once an applicant is registered a range of information is then requested about the project. This includes:
- i) a project outline providing details of the aims and rationale for the project and how this will support delivery of the Scottish Forestry Strategy and wider land use strategy of Scotland,
 - ii) a summary of the project implementation including a breakdown of the activities with clear milestones, outputs and timescale,
 - iii) an estimate of the social, environmental and economic benefits of the project,
 - iv) a letter of support for the project signed by all landowners who are included in the area of proposed work and
 - v) a map that outlines the area of proposed work and showing individual properties.
- (27) The applications will include a detailed schedule of works which will set out all the activities proposed to facilitate the landscape scale project, as well as the annual key milestones for delivery (for example number of site visits, public meetings and applications to other funding sources).
- (28) Each application will be assessed against scoring criteria, including (but not limited to) the following:
- effectiveness in delivering priority outcomes;
 - landscape-scale management delivers clear benefits over individual AEC applications;
 - an appropriate spatial scale is proposed;
 - proposed actions compliment the AEC targeting and local and national objectives / strategies. Forestry projects must be targeted to support priorities within the Scottish Forestry Strategy;
 - the facilitator has relevant expertise;
 - the proposal will deliver value for money.
- (29) The Scottish Government will then assess applications through a system of points allocated on the basis of the quality and value for money aspect of the proposal.

The detailed criteria shall be made available to applicants prior to the call for proposals, and shall be clear, transparent and non-discriminatory.

- (30) The UK authorities ensure that the calculations of the aid amount contain only elements that are verifiable, based on figures established by appropriate expertise, indicate clearly the source of the figures used, are differentiated to take account of regional or local site conditions and actual land use, where applicable and do not contain elements linked to investment costs.
- (31) The amount of aid is established based on the following considerations: The aid will be used to facilitate and encourage joint forestry projects where the principal cost is the professional time (days) for the facilitator - project coordinator. In practice, the beneficiaries will present a breakdown of days required together with clear milestones and outputs. The successful applications will be the ones that deliver the output of the project in the least number of days.
- (32) The UK authorities explained in the SRDP that the two main reasons for using this approach are the following: (a) it keeps administration simple; Measuring projects by days is a practical and cost effective approach that simplifies administration both from an applicant's perspective and from a delivery point of view; and (b) using a standard man day rate avoids excessive rates.
- (33) The aid amount is based on the market day rate for a forestry consultant of £400 - this is the day rate for professional forestry agent.
- (34) The actual aid amount for the activities under the Environmental Co-operation Action Fund is up to 75% of that market day rate for a forestry consultant, namely at £300 per project day. Thus, the aid is granted at no more than 75% of the eligible costs.
- (35) The actual aid amount for the Forestry co-operation option is fixed to be 62.5 % of that market day rate for a forestry consultant, namely at £250 per project day. Thus, the aid is granted at 62.5% of the eligible costs.
- (36) The calculation of the aid amount is verified by an external body, the Scotland Rural University College, and the verification statement is attached to SRDP.
- (37) The aid per the Forestry co-operation option project will be limited to the equivalent of up to 40 days meaning an equivalent of a maximum of £10,000. The UK authorities explain that this is the best way to use the limited budget resources available over the Rural Development period and provides both sufficient incentive and proportionality through limiting aid to the minimum necessary to encourage the facilitation and co-ordination of a larger number of smaller scale projects.
- (38) The UK authorities explain that the duration of the cooperation will be not more than 5 years. This is the standard period within the SRDP and it is considered to be of sufficient duration to carry out forestry co-operative projects.
- (39) The UK authorities have undertaken to respect the transparency requirement stipulated in point (128) of the Guidelines.

- (40) The UK authorities have confirmed that aid granted under this scheme cannot be cumulated with any other aid received from other local, regional, national or Union schemes to cover the same eligible costs.
- (41) The UK authorities have provided their assurances that the scheme will comply with the relevant provisions of competition law, in particular with Articles 101 and 102 of the Treaty.

3. ASSESSMENT

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

- (42) 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.
- (43) The scheme in question confers an advantage on its recipients. This advantage is granted through State resources in the form of direct grants and it favours the undertakings active in the forestry sector by strengthening their competitive position. 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.⁴
- (44) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade (i.e. the forestry sector).⁵ The beneficiaries of aid operate on a market where intra- trade takes place⁶. The sector concerned is 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 distort competition and to affect trade between Member States.
- (45) In light of the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the

⁴ 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.

⁵ 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.

⁶ Overall, 58% of harvested EU wood biomass is processed by EU Forest-based Industries, representing about 7% of EU manufacturing GDP. The remaining 42% is used for energy, accounting for about 5% of total EU energy consumption. Source: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "A new EU Forest Strategy: for forests and the forest-based sector", COM (2013) 659 final, 20.9.2013.

internal market if it can benefit from one of the derogations provided for in the TFEU.

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

- (46) The aid scheme was notified to the Commission on 23 October 2015. It has not been implemented. Therefore, United Kingdom has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

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

- (47) Under Article 107(3)(c), 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.
- (48) 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

- (49) As regards the notified aid scheme, Part II, Chapter 2.6. "Aid for co-operation in forestry sector" of the Guidelines is applicable.

3.3.2.1. Common Assessment Principles

- (50) Contribution to a common objective

Pursuant to paragraph (4), the measures form part of the SRDP for the period 2014-2020. The aid scheme is designed to support the animation and facilitation required to bring land managers together to achieve positive environmental actions such as to reduce the incidence of diffuse pollution in priority catchments which go beyond minimum national standards to maintain and enhance Scotland's rich and varied natural environment. Therefore point (46) of the Guidelines is complied with.

- (51) Need for State intervention

According to point (55) of the Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid measures fulfilling the specific conditions laid down in Part II of these Guidelines. Therefore, such aid should be considered necessary to achieve the objectives of common interest specified under Section 3.1 of Part I of these Guidelines. The current aid measure fulfils the specific conditions laid down in Chapter 2.6 of the Guidelines, as shown in paragraphs (58)-(64) below, and therefore point (55) of the Guidelines is complied with.

- (52) Appropriateness of aid

According to point (57) of the Guidelines, the Commission considers that aid granted in the agricultural and forestry sectors and in rural areas, which fulfils the

specific conditions laid down in the relevant Sections of Part II of these Guidelines, is an appropriate policy instrument. The current aid measure fulfils the specific conditions laid down in Chapter 2.6 of the Guidelines, as shown below, and therefore point (57) of the Guidelines is complied with.

(53) Incentive effect and need for aid

According to the aid scheme (see paragraph (24)), an aid application shall be submitted by the beneficiary before the relevant activity or project has started and the content of the aid application meets the minimum requirements laid down in point (71) of the Guidelines. Therefore the requirement for incentive effect is complied with.

(54) Proportionality of the aid

Points (82) and (84) of the Guidelines stipulate that if the aid amount does not exceed the eligible costs and that the aid intensity respects the ceilings set out in the Part II thereof, the aid is deemed to be proportionate. The current aid measure fulfils the specific conditions regarding the eligible costs and the aid intensity laid down in Part II, Chapter 2.6 of the Guidelines, as shown in paragraphs (62) and (64) below, and therefore points (82) and (84) of the Guidelines are complied with.

(55) Cumulation of aid

The UK authorities have confirmed that aid granted under this scheme cannot be cumulated with any other aid received from other local, regional, national or Union schemes to cover the same eligible costs (see paragraph (40)).

(56) Avoidance of undue negative effects on competition and trade

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 current aid scheme fulfils the conditions laid down in Chapter 2.6 of the Guidelines, as shown in paragraph (64) below, and therefore point (113) of the Guidelines is complied with.

(57) Transparency

Point 131 of the Guidelines requires Member States to implement the transparency provisions of points 128-131 as of 1 July 2016. The UK authorities have undertaken the commitment to respect this requirement (see paragraph (39)).

3.3.2.2. Specific assessment according to the category of aid: Aid for cooperation in the agricultural and forestry sectors

(58) According to point (573) of the Guidelines, aid for co-operation involving at least two entities in the forestry sector or in the forestry and agricultural sectors must be granted in accordance with the conditions set out in Section 1.1.11. of Part II of the Guidelines.

- (59) According to point (315) of the Guidelines, the aid should be granted in order to promote forms of cooperation involving at least two entities active in the forestry sector, but subject to the cooperation benefitting the forestry sector, and in particular co-operation approaches among different actors in the forestry sector and other actors active in the forestry sector that contribute to achieving the objectives and priorities of rural development policy, including producer groups, cooperatives and inter-branch organisation. Pursuant to paragraphs (14)-(19), these provisions are complied with.
- (60) According to point (316) of the Guidelines, the aid will be granted for cooperation relating, in particular, to (i) pilot projects, (ii) co-operation among small operators in organising joint work processes and sharing facilities and resources, (iii) joint action undertaken with a view to mitigating or adapting to climate change, and (iv) joint approaches to environmental projects and ongoing environmental practices including efficient water management and the preservation of agricultural landscapes. Pursuant to paragraph (20) these provisions are complied with.
- (61) According to point (320) of the Guidelines, the aid should comply with the relevant provisions of competition law, in particular with Articles 101 and 102 of the Treaty. The UK authorities have confirmed this compliance (paragraph (41)).
- (62) Pursuant to paragraph (21) and (22) the aid shall cover the material and personnel costs of studies/business plan, animation and running costs. Therefore the eligible costs comply with the provisions of point (321) of the Guidelines.
- (63) According to point (322) of the Guidelines, the aid must be limited to a maximum period of seven years except for collective environmental action in duly justified cases. As the measure is part of the SRDP (see paragraph (4)), and the duration of the cooperation is limited to 5 years ((see paragraph (38)), this provision is complied with.
- (64) Pursuant to paragraphs (34) and (35), the maximum aid intensity is 75%, therefore point (323) of the Guidelines is complied with.
- (65) Finally, the Commission notes that the UK authorities have committed to suspend all aid payments under this scheme to beneficiaries still having at their disposal an earlier unlawful aid declared incompatible by a decision of the Commission (either on an individual aid or an aid scheme), until they have reimbursed or paid into a blocked account the total amount of illegal and incompatible aid, plus the related recovery interests. Likewise, the UK authorities have committed to not grant aid to undertakings in difficulty as defined in point (35)15 of the Guidelines (see paragraphs (11) and (10)).

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 the United Kingdom will be deemed to agree to the publication of the full text of this letter. If the United Kingdom 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 794/2004⁷, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN
Member of the Commission



⁷ 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).