



EUROPEAN COMMISSION

Brussels,

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Subject: State aid– Czech Republic
SA. 43402 (2015/N)
Fund of hardly insurable risks

Sir,

The European Commission ("the Commission") wishes to inform the Czech Republic 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 23 October 2015, registered by the Commission on 28 October 2015, the Czech Republic notified, according to Article 108(3) TFEU, the above mentioned aid scheme. The Commission sent a request for additional information to the Czech authorities on 25 November 2015 and on 16 February 2016 which the Czech authorities answered by letters of 22 December 2015 and 16 March 2016, registered by the Commission on the same day.

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

2. DESCRIPTION

2.1. Title

- (2) Fund of hardly insurable risks.

2.2. Objective

- (3) The present aid scheme aims at the niche market in the field of insurance in the Czech Republic. It is designed to provide the framework for the good risk management of the adverse climate events for which no insurance product exist.

2.3. Legal basis

- (4) The legal basis is constituted by:
- Act no. 252/1997 on agriculture, as amended;
 - Principles for granting aid for losses caused by adverse climatic events - Fund of hardly insurable risks.

2.4. Duration

- (5) From the date of the approval by the Commission to 31 December 2022.

2.5. Budget

- (6) The overall budget amounts to CZK 14 million (approximately EUR 0,517 million).

2.6. Beneficiaries

- (7) The beneficiaries under the present aid scheme can be all undertakings active in the primary production, participating in the Fond.
- (8) The Czech authorities confirmed that undertakings in difficulty within the meaning of the definition stipulated in point 35 (15) of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020¹ (hereinafter "the Guidelines") will be excluded from receiving any aid under the present scheme, unless their financial difficulty has been caused by the adverse climatic events referred to in recital 10 below.
- (9) The Czech authorities have also 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.

¹ OJ C 204 of 1.7.2014, p. 1.

2.7. Description of the aid scheme

- (10) The proposed Fund of hardly insurable risks (hereafter "the Fund") shall represent the system of risk and crisis management to address the adverse impacts of drought and excessive rainfall, for which no insurance is available to farmers on the Czech insurance market.
- (11) The Fund will be managed by the Support and Guarantee Agricultural and Forestry Fund. It will be formed by the deposits of farmers and by the State contribution.
- (12) The task of the Fund will be to compensate the damage caused by the two adverse climatic events referred to in recital 10 during the harvest period. The harvest period is defined as the time of the year which is locally customary for harvesting of specific crops.
- (13) The deposit of a farmer will be equal to the sum of the multiplication of the contribution for a commodity per ha and the number of hectares covered by that commodity. The contribution will be always calculated from all cultivated land (i.e. from the number of hectares declared in a farmer's application).
- (14) The State contribution will correspond to the amount of the sum of annual deposits of participating farmers. The State can also provide an extra-contribution up to the sum of annual deposits of farmers over the last two years that precede the exhaustion of the Fund's resources. The State contribution will be paid from the budget of the Ministry of Agriculture.
- (15) For the purpose of this aid scheme the following commodities will be considered: cereals, oilseeds, root crops, fruits, vegetables, forage crops, legumes, hops, vines, grassland or plants grown in nurseries located on land other than that fulfilling forest functions.
- (16) For the purpose of this notification "damage" means the loss of income due to destruction or damage of the commodity, which occurred in the causation of adverse climatic event and has resulted in the destruction of more than 30% of the commodity production in that year, compared to an average annual production for the period the previous five years; the lowest and highest annual production value will be excluded from the calculation.
- (17) The damage incurred as a direct consequence of the adverse climatic event will be as assessed either by a public authority, by an independent expert recognised by the granting authority or by an insurance undertaking.
- (18) The occurrence of each adverse climatic event will have to be officially recognized; it will be indicated by the "Integrated system for monitoring risks in agriculture" (www.intersucho.cz) and formally recognized by the Czech Hydro-meteorological Institute.
- (19) The criteria for the formal recognition are determined in advance: the Czech authorities confirmed that the Integrated system for monitoring risks in agriculture operates with three categories of drought depending on the scale of its impact. As for the excessive rainfall, information from the Czech Hydro-meteorological Institute will be used.

- (20) The Czech authorities stated that every adverse climatic event which will give rise to the compensation claim will, at the time of its occurrence, be supported by meteorological data.
- (21) Eligible for aid will be the loss of income a farmer suffered due to an adverse climate event which can be assimilated to a natural disaster. Aid will be paid directly to the affected farmer and no later than two years following the occurrence of the damage.
- (22) The Czech authorities confirmed that only the damage directly linked to the adverse climatic event will be eligible for aid. In order to confirm the direct link, the claim commission will be tasked to carry out the on-spot checks. In order to ensure that such checks are carried out in objective conditions, the beneficiary must submit a request within 21 calendar days after the discovery of damage, but in case of heavy rainfall no later than 14 days before the harvest of the damaged commodities or revocation of the crop.
- (23) The loss of income will be calculated by subtracting the product of the quantities of agricultural products produced in the year of the adverse climatic event, or in each subsequent year negatively impacted by the total or partial loss of production and average sales prices achieved during that year, from the product of the three years average annual production quantity based on the preceding five-year period (excluding the highest and the lowest values) and an achieved average selling price. This method or the values used in the calculation will be applied to the damaged commodity.
- (24) The aid amount may be increased by other costs incurred by the beneficiary due to the adverse climatic event. The Czech authorities specifically undertook to reimburse only those other costs which are directly linked to the adverse climatic event. They also provided examples of such costs: costs associated with a mechanical cultivation of arable land affected by drought, costs of disruption of soil crust and costs associated with tilting of land affected by drought; increased harvesting costs (e.g. roots), etc. In the event of excessive rainfall during the harvest season, additional costs may be incurred as a consequence of using special harvesting techniques, for instance, waterlogged crops can be harvested often only after freezing of soil or for specific post-harvest treatments (drying, sorting and other processing). Revenue from insurance premiums or costs which did not occur as a result of adverse climatic event will be deducted from the aforementioned values.
- (25) For the purpose of calculating the annual agricultural output indicators will be used. The average selling price of a commodity concerned will be based on data of the Czech Statistical Office for the 12 months period preceding the time of the damage. The Czech authorities confirmed that the proposed calculation method will allow determining the actual loss in a given year.
- (26) Support will be paid on the basis of an average loss. In order to ensure that the average loss is representative and not based on disproportionately high yields or leading to overcompensation, the data provided by the Czech statistical office will be used.
- (27) The loss will be calculated at the level of individual beneficiary.

- (28) The aid to compensate losses can be granted up to 80% of eligible costs.
- (29) Aid will be reduced by 50% if the farmer concerned has not concluded insurance covering at least 50% of his average annual production or production-related income and covering the statistically most frequent climatic risks in the Czech Republic, which are hail, frost or storms.
- (30) The Czech authorities assume that the adverse weather conditions will affect different regions of the Czech Republic with different intensity. In each region the specific situation will always be assessed. The aforementioned integrated system of risk management is based on the evaluation of the intensity of droughts in the spatial radius of 500x500 m, taking into account not only the weather, but also the soil conditions, the terrain formation, the course the previous winter months and the current phenological development of crops. In the event of excessive rainfall information from the Czech Hydro-meteorological Institute will be used.
- (31) The Czech authorities undertook to include in its annual report information on meteorological information on the type, timing, relative magnitude and location of the climatic event which can be assimilated to a natural disaster.
- (32) The Czech authorities undertook to ensure that the aid under this aid scheme will not be cumulated with aid received from other local, regional, national or EU sources to cover the same eligible costs. Moreover, they declared that no same measure is provided for in the Rural Development Program of the Czech Republic 2014-2020. Therefore, there is no risk of overlap with the RDP financing.
- (33) The Czech authorities have committed to publish this aid scheme on the website dedicated to State aid. This information will include the identification of a granting authority; in addition, the identity of each individual beneficiary of aid of more than EUR 60 000 active in primary agricultural production will be published, together with all the mandatory information contained in paragraph 128 of the Guidelines.

3. ASSESSMENT

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

- (34) 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.
- (35) The scheme in question confers an advantage on its recipients. This advantage is granted through State resources and it favours farmers active in agricultural primary production in the Czech Republic. 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.²

- (36) 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.³ The beneficiaries of aid operate on a market of agricultural production of commodities listed in recital 15 where intra- trade takes place⁴. This sector 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.
- (37) 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. The aid may only be considered compatible with the 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

- (38) The aid scheme was notified to the Commission on 23 October 2015. It has not been implemented yet. Therefore, the Czech Republic 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

- (39) 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.
- (40) 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

- (41) As regards the notified aid scheme, Part II, Chapter 1.2.1.2. of the Guidelines is applicable.

3.3.2.1. Specific assessment according to the category of aid

- (42) According to point 346 of the Guidelines, the Commission will consider aid to compensate for the damage caused by an adverse climatic event which can be assimilated to a natural disaster compatible with the internal market under Article

² 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.

³ 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.

⁴ The production of harvested crops in 2015 in the Czech Republic is estimated at 8,414 thousand t. Source: Eurostat

107(3)(c) TFEU if it complies with the common assessment principles and with the conditions of Chapter 1.2.1.2. of the Guidelines.

- (43) In compliance with point 347 of the Guidelines, aid can be granted to compensate for damage caused by an adverse climatic event which can be assimilated to a natural disaster as defined in point 35 (34) of the Guidelines. Both adverse climate events referred to in this decision, i.e. severe drought and heavy rainfall which destroy more than 30% of the annual average production fall within that definition.
- (44) Aid under this aid scheme will only be granted to undertakings active in the primary agricultural production. Therefore, point 347 of the Guidelines is complied with (see recital 7).
- (45) In compliance with point 348 of the Guidelines, the Czech authorities confirmed that the competent Czech authority will formally recognize the character of the event as an adverse climatic event which can be assimilated to a natural disaster (see recital 18) and that there will be a direct causal link between the adverse climatic event which can be assimilated to a natural disaster and the damage suffered by the undertaking (see recital 22).
- (46) Pursuant to point 349 of the Guidelines, the Czech Republic establishes in advance criteria on the basis of which such formal recognition will be done (see recital 19).
- (47) This aid scheme being an ex-ante framework scheme, in compliance with point 350 of the Guidelines the Czech Republic committed to comply with the reporting obligation and to include in its annual report information on meteorological information on the type, timing, relative magnitude and location of the climatic event which can be assimilated to a natural disaster (see recital 31).
- (48) The Czech authorities confirmed that in compliance with point 351 of the Guidelines aid will be paid directly to the undertaking that suffered losses due to adverse climate event. The Czech authorities also comply with the obligation to pay out the aid within four years from the date of the occurrence of such an event (see recital 21).
- (49) In accordance with point 353 of the Guidelines, eligible for aid will be the damage incurred as a direct consequence of the adverse climatic event, as assessed either by a public authority, by an independent expert recognised by the granting authority or by an insurance undertaking. This damage will include the loss of income from the full or partial destruction of the agricultural production (see recitals 17 and 21).
- (50) In line with point 355 of the Guidelines, the calculation of the damage will be made at the level of the individual beneficiary (see recital 27).
- (51) The method which will be used for calculating the loss of income (see recital 23) corresponds to the one described in point 358 of the Guidelines.
- (52) The Czech authorities confirmed that in compliance with point 359 of the Guidelines, the aid amount may be increased by other costs incurred by the beneficiary due to the adverse climatic event and that any costs not incurred

because of the adverse climatic event which would otherwise have been incurred by the beneficiary will be deducted from the aid (see recital 24).

- (53) In accordance with point 360 of the Guidelines, the Czech Republic will use indexes in order to calculate the annual agricultural production of the beneficiary.
- (54) The Czech authorities confirmed that the aid intensity will be limited to 80%, as stipulated in point 362 of the Guidelines (see recital 28). They also undertook to reduce aid by 50 % if a beneficiary has not taken out insurance covering at least 50 % of their average annual production or production-related income and the statistically most frequent climatic risks in the Czech Republic for which insurance coverage is provided (see recital 29).

3.3.2.2. Common Assessment Principles

- (55) Pursuant to point 38 of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3)(c) TFEU.
- (56) This aid scheme respects the common assessment principles, in that:
- *it contributes to a common objective* in line with point (43) of the Guidelines. As described in recital 3 above, the objective of the present scheme is to fill the gap on the insurance market in order to achieve sustainable risk and crisis management of the agricultural primary production. Its goals are consistent with the rural development objectives referred to in point 10 of the Guidelines. The Czech authorities declare that the same measure is not provided for in the RDP of the Czech Republic 2014-2020. Therefore, the conditions of point 47 of the AGRI Guidelines are met.
 - This aid scheme, aiming exclusively at compensating losses caused to agricultural products by adverse climate event, will have no negative impact on the environment within the meaning of point 52 of the Guidelines.
 - *There is a need for State intervention:* pursuant to point 55 of the Guidelines, the Commission considers that the market does not deliver the expected objectives without State intervention regarding aid measures fulfilling the specific conditions set out in Part II of the Guidelines. This aid scheme meets the conditions of Section 1.2.1.2. of Part II of the Guidelines. Therefore, the aid is considered necessary to achieve the objectives of common interest.
 - *The aid is appropriate:* Pursuant to point 57 of the Guidelines, the Commission considers that aid granted in the agricultural and forestry sectors and in rural areas that meet the specific conditions laid down in the relevant Sections of Part II is an appropriate policy instrument. The proposed scheme satisfies the applicable criteria set on in Part II. of the Guidelines, therefore it is considered to be an appropriate policy instrument. This aid scheme does not provide for funding of the same measures as those co-financed under the Rural Development Program of the Czech Republic. Point 58 of the Guidelines is therefore not applicable. Furthermore, in line with point 59 of the Guidelines the selected forms of aid – direct grant – appear to be the most suitable forms of aid.

- *Incentive effect and need for aid:* in compliance with point 75 (e) of the Guidelines, aid under this scheme is deemed to have an incentive effect or not to require any incentive effect.
 - The Czech authorities have analysed and identified the need for the framework scheme to compensate for the adverse climate events for which no appropriate insurance instrument is offered on the Czech insurance market. They have demonstrated positive effects of the aid scheme as this will address the niche market and in this way provide for better risk and crisis management of agricultural production.
 - Furthermore, the Czech authorities undertook to ensure that the aid under this aid scheme will not be cumulated with aid received from other local, regional, national or EU sources to cover the same eligible costs (see recital 32).
 - *The aid is proportional:* the maximum aid intensity laid down in point 362 of the Guidelines will be respected. The maximum aid intensity and aid amount will be calculated by the granting authority when granting the aid. The eligible costs will be supported by clear, contemporary documentary evidence. For the purposes of calculating the aid intensity and the eligible costs, all figures used will be taken before any deduction of tax or other charge. Value added tax will not be eligible for aid. The aid under this aid scheme can therefore be considered limited to the minimum needed to achieve common objectives. Hence, the criterion of proportionality is deemed to be fulfilled.
 - Furthermore, the Czech authorities have analysed the risk of distortion of competition. They confirmed that this aid scheme aims merely at compensation of losses on primary agricultural production and it will not have any direct link to any production processes or their extension, nor to investment projects. Therefore, the Commission considers that the negative effects on competition and trade are limited to the minimum.
- (57) *The principle of transparency is respected:* the Czech authorities have committed to publish this aid scheme on the website dedicated to State aid. This information will include the identification of a granting authority; in addition, the identity of each individual beneficiary of aid of more than EUR 60 000 active in primary agricultural production will be published, together with all the mandatory information contained in paragraph 128 of the Guidelines. Therefore, in the course of the implementation of this aid scheme the transparency will be ensured (see recital 33).
- (58) The Commission takes note that in compliance with point 27 of the Guidelines and with the settled case law⁵, the Czech authorities commit to 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 (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 (see recital 9).

⁵ See Judgment of the General Court of 13 September 1995, joined cases T-244/93 and T-486/93, *Textilwerke Deggendorf GmbH v. Commission*, p. II-2288, paras 51 and 56 et seq.; confirmed by the judgment of the Court of Justice of 15 May 1997, case C-355/95 P, p. I-2575, paras 22 and 26 et seq.

- (59) Likewise, the Commission takes note of the commitment by the Czech authorities that aid will not be granted to undertakings in difficulty as defined in point 35 (15) of the Guidelines, unless their financial difficulty has been caused by the adverse climate events referred to in recital 10 above (see recital 8).
- (60) In view of the above considerations the Commission concludes that all the applicable points of the Guidelines are complied with. However, since the present aid scheme is proposed to be in place until 31 December 2022, while the current Guidelines are due to expire on 31 December 2020, the Czech authorities undertook to adapt it to the new rules applicable after this date.

4. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the 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 in State aid decisions⁶ 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 Czech Republic will be deemed to agree to the publication of the full text of this letter. If the Czech Republic 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(3) 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

⁶ Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C 297, 9.12.2003, p. 6.

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).