



EUROPEAN COMMISSION

Brussels, 8.6.2016
C(2016) 3650 final

Subject: State aid–Czech Republic
SA.44550 (2016/N)
Aid for afforestation and creation of woodland

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 12 February 2016, registered by the Commission on 15 February 2016, 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 18 March 2016 which the Czech authorities answered by letter of 8 April 2016, registered by the Commission on the same date.

2. DESCRIPTION

2.1. Title

- (2) Aid for afforestation and creation of woodland.

PhDr. Lubomír Zaorálek
Ministerstvo zahraničních věcí České republiky
Loretánské náměstí 5
118 00 Praha 1
Česká republika

2.2. Objective

- (3) With the present notification the Czech authorities aim to grant aid for the expansion and improvement of forest resources through afforestation of agricultural land, thus contributing to the achievement of horizontal environmental objectives and reducing the impact of the global climate change and extreme weather events.

2.3. Legal basis

- (4) The legal basis is constituted by:
- Government Regulation n° 185/2015 Coll. of 22 July 2015 on conditions for providing grants under the measure afforestation of agricultural land;
 - Government Resolution n° 532 of 9 July 2014;
 - Rural Development Program of the Czech Republic 2014-2020.

2.4. Duration

- (5) From the adoption of the present decision¹ to 31 December 2016. After that date, the aid will be granted under the exempted measure SA.44379 (2016/XA).

2.5. Budget

- (6) Overall budget is estimated at CZK 6,1 million (approximately EUR 0,225 million).

2.6. Beneficiaries

- (7) Aid can be granted to all private and public owners of land and their associations and societies. In the case of State-owned land aid can be granted only if the land is managed by the private entity or municipality. Undertakings of all sizes are eligible for aid. The number of beneficiaries is estimated between 51 and 100.
- (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 2020² (hereinafter "the Guidelines") will be excluded from receiving any aid under the present scheme.
- (9) Likewise, the Czech authorities 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

¹ The Czech authorities notified this aid scheme as from 1 August 2015, when the Government Regulation n° 185/2015 Coll. of 22 July 2015 on conditions for providing grants under the measure afforestation of agricultural entered into force. As from this date and until 30 November 2015 the applications for aid had been registered.

² OJ C 204 of 1.7.2014, p. 1., as amended by the Notice of the Commission of 23 November 2015, OJ C 390, 24.11.2015, p.4.

account the total amount of the unlawful and incompatible aid including the corresponding recovery interest.

2.7. Description of the aid scheme

- (10) Under this aid scheme, woodland can be created on agricultural land suitable for afforestation, based on the typology of land to be afforested in accordance with the national legislation. The land typology is determined on the basis of permanent ecological conditions, i.e. evaluation of permanent ecological conditions (light, warmth, water regime and soil chemistry) and the reconstruction of the natural composition of the plant growth, necessary for afforestation of non-forest land in order to determine the appropriate species composition of the new forest.
- (11) In accordance with the national legislation, an applicant interested in afforesting the agricultural land must first apply for the exemption of the land from the agricultural land register and its transfer to the register of land designated for the forest functions. Such land then falls within the scope of application of the forest law and the applicant must conduct the forest management according to the forest management plan³ or the forest management scheme⁴. These documents aim to ensure sustainable forest management in compliance with the Ministerial Conference on the Protection of Forests in Europe in 1993.
- (12) Afforestation must be carried out in compliance with the project of afforestation of forest stands by suitable tree species adapted to environmental and climate conditions of the area and complying with minimum environmental requirements. The afforestation project is conditional upon the approval of a professional forest manager and the responsible natural protection authority. The project provides a list of species and their numbers with regard to habitat, number of ameliorating and stabilizing tree species and planting and crop protection methods.
- (13) Eligible for aid will be the following costs:
 - Costs of creation of woodland: purchase of seedlings, soil preparation, planting work, transaction costs;
 - Costs of maintenance, over a period of 5 years: protection against *hylobius*, weeds, grazing and removal of unwanted suckers;
 - Agricultural income foregone, over a period of 10 years.
- (14) VAT will not be eligible for aid, except where it is not recoverable under the national rules. No aid will be granted for the planting of trees for short rotation coppicing, Christmas trees or fast growing trees.
- (15) Aid will be provided as an annual lump-sum payment per hectare, at the following rates:
 - Aid for establishment of forest cover:
 - fir, pine, beech, oak, linden, douglas fir, ash: EUR 3 035 EUR / ha;

³ Forest land above 50Ha acreage.

⁴ Forest land up to 50Ha acreage.

- other species: EUR 2 100 / ha.
 - Aid for maintenance costs:
 - fir, pine, beech, oak, linden, douglas fir, ash: EUR 669 / ha / year;
 - other species: EUR 298 / ha / year.
 - Aid to compensate for agricultural income foregone:
 - Cessation of activities on arable land, hop fields, vineyards, orchard, nursery or garden: EUR 488 / ha / year;
 - Cessation of activities on grass or other culture (defined under the Act on Agriculture): EUR 161 EUR / ha / year.
 - Payment will be calculated on the basis of the loss of revenue from the production on arable land or grassland and the contribution will correspond to fixed costs and profit gained from arable land or grassland.
- (16) Aid for the costs of maintenance and aid to compensate for the income foregone will be granted only on the acreage of the land on which aid for afforestation and creation of woodland was granted. The beneficiaries must protect and care for the forest for at least the period during which they receive a premium for the loss of income from agriculture and for the maintenance costs.
- (17) Support for the afforestation of land owned by public authorities shall cover only the cost of establishing forest.
- (18) The Czech authorities stated that the methodology of calculation of payments was assessed by an independent expert institution - Institute of Forest Management and the Department of Agricultural Economics and Information.
- (19) Aid will be granted up to 100% of eligible costs within the limits described in recital 15. The maximum aid intensity and aid amount will be calculated in a non-discriminatory manner 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.
- (20) The measure is included in the Rural Development Program of the Czech Republic 2014-2020. It is designed to directly provide for its implementation and to contribute to the objectives set in the area of climate change. The Czech authorities confirmed that the same environmental criteria will apply to this aid scheme as are those applicable to the corresponding RD measure.
- (21) The measure meets the environmental objectives and requirements. The Czech authorities confirmed that only the species adapted to local environmental conditions and resilient to climate change, not threatening biodiversity and ecosystem services or having negative impact on human health, will be planted.
- (22) The Czech authorities confirmed that the choice of species to be planted, of land to be afforested and of used methods will aim to prevent unwanted afforestation

of sensitive habitats such as bogs and wetlands, and negative impacts on areas with high ecological value, including agricultural areas with high nature value.

- (23) On the Natura 2000 sites under the Habitats Directive⁵ and Birds Directive⁶ only such afforestation will be allowed which is in line with the objectives of the management the site and approved by the State authority responsible for the implementation of Natura 2000.
- (24) The Czech authorities confirmed that in accordance with the national legislation and typology, on the basis of which the project of afforestation is developed, the selection of species, varieties, ecotypes and origin of trees takes into account the necessary resilience to climate change and natural disasters, soil and hydrological conditions of the area and also potential invasive nature of the tree species in local conditions.
- (25) The Czech authorities have further confirmed that in compliance with the national legislation the forest vegetation cover will be established according to typological observations on the afforestation project, which takes into account local environmental and climatic conditions, including environmental degradation.
- (26) Where due to difficult environmental and climatic conditions, including environmental degradation, the planting of perennial woody species cannot be expected to lead to the creation of forest as defined in the relevant national legislation, it may be allowed to create other woody vegetation cover. The beneficiary will, however, be obliged to provide the same level of care and protection as in the all other cases.
- (27) In the areas where afforestation is made difficult by severe pedo-climatic conditions aid may be provided for planting other perennial woody species such as shrubs or bushes suitable to the local conditions.
- (28) Aid cannot be cumulated with aid received from other local, regional, national or Union schemes or with *ad hoc* aid for the same eligible costs, if such cumulation could lead to overcompensation.
- (29) The Czech authorities confirmed that the full text of this aid scheme will be published at the website of the Ministry of Agriculture prior to its implementation (<https://www.szif.cz/cs/seznam-prijemcu-dotaci>). They also undertook to publish the identity of the beneficiary if individual aid award exceeds the threshold of EUR 500 000. This information will remain available for the public for a period of at least 10 years.

Incentive effect

- (30) The Czech authorities notified this aid scheme as from 1 August 2015, when the Government Regulation n° 185/2015 Coll. of 22 July 2015 on conditions for providing grants under the measure afforestation of agricultural entered into force. As from this date and until 30 November 2015 the applications for aid had been registered. The aid application included the applicant's name, the size of the undertaking, the location to which the commitment relates, the dates on which the aid-related commitment begins and ends.

⁵ Council Directive 92/43 / EEC

⁶ Directive of the European Parliament and Council Directive 2009/147 / EC

- (31) The Czech authorities confirmed that all the costs which will be considered must have occurred only after the application was submitted and no aid will be granted for costs which incurred prior to the submission of the application. This procedure is in compliance with point 70 of the Guidelines as regards the presence of the incentive effect.
- (32) The Czech authorities have further confirmed that aid under this scheme will be granted only after its approval by the Commission.

3. ASSESSMENT

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

- (33) 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.
- (34) The scheme in question confers an advantage on its recipients. This advantage is granted through State resources (see recital 15) and it favours owners or managers of the land (see recital 7) which was for the purpose of this aid scheme transferred into the register of forest land. 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.⁷
- (35) 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.⁸ The beneficiaries of aid operate on a market of forestry products where intra- trade takes place⁹. 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.
- (36) 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 internal market if it can benefit from one of the derogations provided for in the TFEU.

⁷ 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.

⁸ 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.

⁹ The economic account for the forestry and logging in EU-28 reached in 2013 the value of EUR 26,154.7627. (Source: Eurostat)

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

- (37) The aid scheme was notified to the Commission on 12 February 2016. 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

- (38) 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.
- (39) 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

- (40) As regards the notified aid scheme, Part I “Common Provisions” and Part II., Chapter 2.1.1.”Aid for afforestation and creation of woodland” of the Guidelines are applicable.

3.3.2.1. Specific assessment according to the category of aid

- (41) According to point 504 of the Guidelines 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 and with the conditions set out in Chapter 2.1.1.
- (42) As regards the beneficiaries of aid, pursuant to point 505 of the Guidelines, aid for establishment costs and the annual premium may be granted to public and private land-holders and their associations. As demonstrated in recital 7 above, this condition is complied with. The aid scheme also complies with point 506 of the Guidelines, in that aid for afforestation of land owned by public authorities will cover only the costs of establishment (see recital 17). In the case of state-owned land, aid may be granted if the body managing such land is a private body or municipality (see recital 7).
- (43) In compliance with point 507 of the Guidelines, aid will be granted for the costs of establishment of forest and woodland, to cover the costs of agricultural income foregone and for the maintenance costs (see recital 13). Aid to compensate for the income foregone, as well as aid for the costs of maintenance will be granted in the form of an annual premium per hectare (see recital 15) and for the periods shorter than twelve years (see recital 13).
- (44) The Czech authorities confirmed that in compliance with point 508 of the Guidelines, no aid will be granted for the planting of trees for short rotation coppicing, Christmas trees or fast growing trees for energy production (see recital 14). Species planted must be adapted to the environmental and climatic conditions of the area and comply with minimum environmental requirements (see recital 12).

- (45) The Czech authorities also committed to comply with the minimum environmental requirements stipulated in point 509 of the Guidelines (see recitals 16, 23, 24 and 26). As regards the requirement stipulated in point 509 (d) of the Guidelines, the Czech authorities stated that in all cases only the species adapted to local environmental conditions and resilient to climate change, not threatening biodiversity and ecosystem services or having negative impact on human health, will be planted. Therefore, there is no need to set the threshold pursuant to point 509 of the Guidelines. The measure fully complies with this point.
- (46) The Czech authorities also confirmed that in compliance with point 510 of the Guidelines, in areas where afforestation is made difficult by severe pedo-climatic conditions it will be possible to grant aid for planting other perennial woody species such as shrubs or bushes suitable to the local conditions (see recital 27).
- (47) Point 511 of the Guidelines requires that the notification contains sound description demonstrating compliance with the conditions of point 509 of the Guidelines and justifications where any derogation applies. The Czech authorities provided in the notification sufficient information in this regard. Therefore, the aid scheme fulfils the condition of point 511 of the Guidelines.
- (48) Last, in compliance with point 512 of the Guidelines, aid will be granted up to 100% of eligible costs (see recital 19).

3.3.2.2. Common Assessment Principles

- (49) According to Chapter 3 of Part I of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107 (3) (c) TFEU.
- (50) This aid scheme respects the common assessment principles, in that:
- *It contributes to a common objective:* the aid scheme is designed to support expansion and improvement of forest resources through afforestation of agricultural land, thus contributing to the achievement of horizontal environmental objectives of the climate change and reducing the impact of global climate change and extreme weather events. Thus, it contributes to the achievement of common objectives in compliance with point 43 of the Guidelines. Its goals are also consistent with the rural development objectives referred to in point 10 of the Guidelines, in particular with paragraph (4). Besides, the measure is included in the Rural Development Program of the Czech Republic 2014-2020. Pursuant to point 46 of the Guidelines, measures implemented pursuant to and in conformity with Regulation (EU) No 1305/2013 are per se consistent with and contribute to the objectives of rural development. Moreover, the aid scheme is aimed at environmental objectives, thus the aided activities are expected to have a positive environmental impact.
 - *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 2.1.1. of Part II of the Guidelines (see recitals 41 to 48). 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. In compliance with point 61 of the Guidelines, this measure, being co-financed by EAFRD represents an appropriate aid instrument.
 - *Incentive effect and need for aid is present:* the Czech authorities confirmed that an application for aid, meeting the criteria of point 71 of the Guidelines, must have been addressed to the competent authority before the start of the project. Aid granted under this scheme will have an incentive effect on beneficiaries as it will change their behaviour in a way engaging them in an activity pursuing the environmental goals in which they would have not engaged without the aid. Therefore, it complies with point 66 of the Guidelines.
 - *The aid is proportional:* the maximum aid intensity laid down in point 512 of the Guidelines will be respected (see recital 19). The maximum aid intensity and aid amount will be calculated in a non-discriminatory manner 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, except where it is not recoverable under the national rules. 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.
 - *Cumulation:* The Czech 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 if such cumulation would lead to overcompensation (see recital 28).
 - *Undue negative effects on competition and trade will be avoided:* aid granted under this scheme meets the applicable conditions and does not exceed the relevant maximum aid intensities laid down in Section 2.1.1. of Part II of the Guidelines. Therefore, the Commission considers that the negative effects on competition and trade are limited to the minimum.
 - *The principle of transparency is respected:* the Czech authorities confirmed that the full text of this aid scheme will be published at the website of the Ministry of Agriculture prior to its implementation. Moreover, the Czech authorities undertook to publish the identity of the beneficiary if individual aid award exceeds the threshold of EUR 500 000. This information will remain available for the public for a period of at least 10 years (see recital 29).
- (51) The Czech 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, they have agreed not to grant aid to undertakings in difficulty. (see recitals 8 and 9).

- (52) It follows from the foregoing that the notified scheme complies with the relevant provisions of the Guidelines. In light of the above analysis, the Commission considers that the scheme is compatible with the internal market on the basis of Article 107 (3) (c) TFEU.

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 in State aid decisions¹⁰ 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 794/2004¹¹, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN

Member of the Commission

¹⁰ Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C 297, 9.12.2003, p. 6.

¹¹ 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).