



EUROPEAN COMMISSION

Brussels, 15.2.2017

C(2017) 804 final

**Subject: State aid–Germany
SA.46073 (2016/N)
Saxony-Anhalt: Guidelines on the granting of aid to supporting
associations of the natural parks, nature conservation associations
and landscape maintenance associations of Saxony-Anhalt**

Sir,

The European Commission ("the Commission") wishes to inform Germany that, having examined the information supplied by your authorities on the notified measure referred to above, it has decided that this scheme does not constitute State aid in the sense of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By letter of 26 July 2016, registered by the Commission on the same day, Germany notified, according to Article 108(3) TFEU, the above mentioned scheme.
- (2) The Commission sent requests for additional information to the German authorities on 7 September 2016, 17 October 2016 and 22 December 2016, which the German authorities answered by letters of 28 September 2016, 8 November 2016 and 16 January 2017, respectively.

Seiner Exzellenz Herrn Sigmar Gabriel
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2. DESCRIPTION

2.1. Title

- (3) Saxony-Anhalt: Guidelines on the granting of aid to supporting associations of the natural parks, nature conservation associations and landscape maintenance associations of Saxony-Anhalt

2.2. Objective

- (4) With the present notification the German authorities wish to introduce a scheme for development of nature and landscape aiming at:
- (a) support of the coordination of voluntary nature conservation activity and
 - (b) implementation of the declared objectives of nature parks.

2.3. Legal basis

- (5) The legal basis are guidelines of the Ministry of Agriculture and Environment of Saxony-Anhalt [*Richtlinien über die Gewährung von Zuwendungen zur Förderung der Trägervereine der Naturparke Sachsen-Anhalts, von Naturschutzvereinigungen und Landschaftspflegeverbänden Sachsen-Anhalts (Richtlinien Verbandsförderung) des Ministeriums für Landwirtschaft und Umwelt des Landes Sachsen-Anhalt*]

2.4. Duration

- (6) From the date of the Commission decision till 31 December 2023.

2.5. Budget

- (7) Overall budget is EUR 7.490.000, financed from the resources of Saxony-Anhalt.

2.6. Beneficiaries

- (8) The number of beneficiaries is estimated to be between 11 and 50.
- (9) The eligible beneficiaries are non-profit private-law legal entities, such as:
- (a) associations supporting the nature reserves in Saxony-Anhalt;
 - (b) nationally recognised nature conservation associations of the Land of Saxony-Anhalt, with the exception of the State Association for the landscape maintenance (*Landesverband für Landschaftspflege Sachsen-Anhalt e. V.*);
 - (c) landscape maintenance associations in Saxony-Anhalt.
- (10) Excluded from the scheme are:

- (a) undertakings in difficulty in the meaning of point 26 of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020¹ ("the Guidelines");
- (b) undertakings subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.

2.7. Aid instrument

- (11) Direct grant.

2.8. Aid intensity

- (12) The maximum aid intensity will be 80% for beneficiaries listed in recital (9)(a) above and 90% for the other beneficiaries.

2.9. Description of the aid measure

- (13) Eligible are personal and material expenses relating to:
 - (a) coordination of the association activities of the eligible beneficiaries (recital (9));
 - (b) implementation of concrete measures of natural reserves' maintenance and development concepts.
- (14) Supported projects relate to:
 - (a) projects on the restoration of habitats of wild species of fauna and flora indigenous to the area;
 - (b) measures to protect endangered and protected species (e.g. securing bat colonies or breeding sites of certain bird species on buildings and structural installations);
 - (c) implementation of a functioning biotope network (e.g. specific planting in existing gaps between biotopes in order to connect them with the objective of creating migratory corridors for animals and dispersion areas for plants);
 - (d) guidance for visitors and visitor information, e.g. creation of education paths and their signposting in conservation areas, combined with the installation of information boards on existing objects of protection (e.g. animals or plants in the area), observation facilities and interactive stations;
 - (e) publications and public information, e.g. exhibitions on the conservation objectives and conservation areas.

¹ OJ C 204, 1.7.2014, p. 1, amended in the Commission Notice amending the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (2015/C 390/05), OJ C 390, 24.11.2015, p.4.

- (15) Land purchase is not supported.
- (16) The projects must be in line with the objectives and principles of nature conservation and landscape maintenance. In addition, the beneficiaries listed in recital (9)(a) must also respect the objectives of the legal basis of the respective natural reserve.
- (17) The German authorities explained the following:
- (a) Natural reserves constitute a category of conservation areas under the German Nature Conservation Act and they combine the conservation and use of nature and landscape. They are thus model landscapes for the development of rural regions and provide the opportunity to advance sustainable development in their territory. Natural reserves also have a pioneering role at European level in nature conservation, landscape recovery and integrated sustainable rural development.
 - (b) Recognised nature conservation associations coordinate voluntary activities and the interaction of nature conservation with agriculture and forestry at regional level. They thus provide an important contribution to the fulfilment of the tasks under federal and regional nature conservation laws as well as EU nature conservation obligations in the framework of the Natura 2000 network. The recognised nature conservation associations carry out a large number of tasks which are of significant importance for the nature conservation management of the Land.
 - (c) The landscape maintenance associations carry out important and extensive work for mapping and monitoring of plant and animal species, ecosystems and habitats. This data is, inter alia, an important basis for the preparation of plans and projects in order to fulfil the reporting obligation under Natura 2000. Furthermore, they are very active in the environmental education sector and raise public awareness through a number of measures.
- (18) According to the German authorities, projects supported under the present scheme will not generate net revenues. It is stipulated in the grant decisions that items acquired when implementing the notified measure may only be used in accordance with the aid objective and only for non-economic nature protection purposes. In particular renting, leasing or any other transfer for use against payment is not allowed.
- (19) The German authorities further explained that no economic activities take place and no goods or services are offered on a market within the supported projects. The projects within the notified scheme are not aimed at commercial exploitation. All activities (brochures, guides, trainings, meetings etc. are offered) must in principle be accessible free of charge. Only in exceptional cases (for example, for certain expensive material for promotion and education developed and produced within a project, e.g. expensive brochures, films and the like) a nominal fee ("Schutzgebühr") is required, which never cover the costs actually incurred and which must be completely accounted for in the project. The imposition of a nominal fee is intended to ensure that such material is used properly and in the longer term. The results of the projects under the notified scheme are fully used for the public good and will be available to the public. Any payment-based use of

supported projects' elements is excluded. The granting authority (and hence the Land Sachsen-Anhalt) secures, through a relevant ancillary provision in the grant decision, their right of use of the results of the project and of the copyright protected parts of project results.

- (20) The German authorities further explained that, outside of the supported projects, it is not excluded that some of the beneficiaries of the notified scheme offer goods or services on a market and thus carry out economic activities. In this regard, the German authorities assured that it is ensured in different ways that no financial flow takes place between the supported non-economic activities on the one hand and possible economic activities of the beneficiaries on the other hand:
- (a) the objective of the aid is stipulated in detail in the aid application and in the granting decision;
 - (b) the financing of the project is governed by a mandatory costs and financial plan, so that the correct use of subsidies is ensured already before the start of the project;
 - (c) payments are made by way of a reimbursement procedure, i.e. prior to the disbursement of funding all invoices are checked, the beneficiary must pay in advance and an inspection also takes place in order to check whether the invoices submitted fit the supported project, with the aim to ensure that subsidies cannot be used for any other projects;
 - (d) beneficiaries keep separate accounts for the supported non-economic activities on the one hand and the other, economic activities on the other hand;
 - (e) any items acquired when implementing the notified measure may only be used for non-economic purposes;
 - (f) the results of the projects under the notified measure will be available to the public and the granting authority will keep the right of use of the results of the project and of the copyright protected parts of project results.

2.10. Cumulation

- (21) The support under the scheme cannot be cumulated with support from other measures for the same eligible costs.

3. ASSESSMENT

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

- (22) 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.
- (23) The objectives of the notified measure are to support nature conservation and landscape maintenance (recitals (4) and (16)). This is also in line with the

activities (recital (14)), and evident from the eligible costs envisaged (recital (13)), under the scheme. The activities under the scheme are to the benefit of the general public and are not meant for commercial exploitation (recitals (17)-(19)).

- (24) The Guidelines stipulate that Articles 107, 108 and 109 of the Treaty apply to aid for basic services in rural areas, in so far as they constitute State aid within the meaning of Article 107(1) of the Treaty.² The Commission considers that public funding of a heritage conservation activity, including nature conservation, accessible to the general public free of charge can be considered as fulfilling a purely social and cultural purpose which is non-economic in nature.³ It follows from recital (19) that, under the supported projects, nature protection activities must in principle be accessible to everyone free of charge and only in exceptional cases a nominal charge is required. The fact that participants in a nature conservation activity open to the general public are required sometimes to pay a monetary contribution that only covers a fraction of the true costs does not alter the non-economic nature of that activity, as it cannot be considered genuine remuneration for the service provided.⁴ It follows from recital (20) that, outside of the projects supported under the notified scheme, beneficiaries can carry out economic activities. In any case, public funding they receive will only cover the costs linked to the supported nature-protection activities (recital (19)). Moreover, there must be a clear division between economic and non-economic activities, so that cross-subsidisation is excluded.⁵ It follows from recitals (19) and (20) that beneficiaries use separate accounts for supported and non-supported activities, it is ensured that costs and revenues are allocated in an appropriate way and it is excluded that public funding benefits any economic activities in which beneficiaries may engage outside of the supported projects.
- (25) It can therefore be concluded that, under the present aid scheme, the beneficiaries do not exercise an economic activity and, therefore, they are not undertakings within the meaning of Article 107(1) TFEU.⁶
- (26) Based on the above, it can be concluded that this scheme does not constitute State aid in the sense of Article 107(1) of the TFEU, without it being necessary to ascertain whether other conditions of application of this provision are met.

4. CONCLUSION

The Commission has accordingly decided that the notified measure does not constitute State aid in the sense of Article 107(1) of the TFEU.

² Section 3.2, footnote no. 88 on p. 87.

³ See point 34 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1 ("the Notice"). In this sense also a recent Commission decision C(2016)5146 of 11 August 2016: SA.44011 (2015/N) – Germany (Thuringia) Aid for projects for development of nature and landscape.

⁴ Point 34 of the Notice.

⁵ Cf. points 37, 188 and 206 of the Notice.

⁶ See Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, ECLI:EU:C:1987:283, paragraph 7; Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, ECLI:EU:C:1998:303, paragraph 36; Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 75.

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 decisions⁷ 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(3) of Commission Regulation (EC) No 794/2004⁸, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN
Member of the Commission

⁷ Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C 297, 9.12.2003, p. 6.

⁸ 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).