



EUROPEAN COMMISSION

Brussels,
C(2010)

Subject: State Aid / Slovak Republic
Aid No SA. 32013 (2010/N)
Compensation for losses caused by natural disaster in forest nurseries

Sir,

The European Commission wishes to inform the Slovak Republic that, having examined the information supplied by your authorities on the aid referred to above, it has decided to raise no objections to the relevant aid as it is compatible with the Treaty on functioning of the European Union (hereinafter "TFEU").

In taking this decision the Commission has relied on the following considerations:

1. PROCEDURE

- (1) In accordance with Article 108 (3) of the TFEU, the Permanent Representation of the Slovak Republic to the European Union notified the Commission of this measure by letter of 30 November 2010, registered on the following day.
- (2) By letter of 13 January 2011 the Commission asked for supplementary information which the Slovak authorities provided on 11 February 2011, registered as received.

2. DESCRIPTION

Title

- (3) Compensation for losses caused by natural disaster in forest nurseries

Budget

- (4) Estimated overall amount of the aid is EUR 320 000, split by year. The annual amount foreseen is EUR 80 000.

Duration

- (5) The duration of the scheme is foreseen from the date of its approval by the Commission. The aid may be granted until 31 December 2013. The last date for the submission of an application shall be 31 October 2013.

S.E. Mikuláš Dzurinda
Minister zahraničných vecí
Hlboká cesta 2
833 36 Bratislava
Slovenská republika

Legal basis

- Law No. 267/2010 Coll. of 10 June 2010 on providing subsidies to compensate for losses caused by adverse climate events which can be assimilated to a natural disaster, by a natural disaster or exceptional occurrence, Article 7;
- Law No. 231/1999 Coll. on State Aid, as amended.

Aid intensity

- (6) Up to 100% of the damage per beneficiary.

Objectives

- (7) The Slovak authorities intend to provide aid, in the form of direct grant, to compensate for losses caused by natural disaster to seedlings in the forest nurseries.

The exceptional meteorological situations in May and June 2010

- (8) Following information is based on data recorded, collected and processed by hydro-meteorological stations across the Slovak Republic and the Slovak Hydro-meteorological Institute:
- (9) Floods that occurred in Slovakia in May and June were in hydrological terms exceptional, both for their temporal and spatial spread. Due to the weather situation and its evolution the entire territory of Slovakia was gradually affected and the flood situation occurred almost simultaneously in all catchments.
- (10) Torrential rains in Slovakia dated from 9 May 2010. The development of the meteorological situation in April and May led to the repeated occurrence of intense rainfall, which resulted in a river basin recurrence flood waves in the short term. The excessive saturation of basins from previous repeated rainfall led to the loss of their retention ability. In the same time the groundwater level increased, causing major problems. These devastating, nearly full-scale floods have caused rupture of dams, undermining of roads and railways, landslides, destruction of bridges and the demolition or partial destruction of many houses, with flooded cellars and underground spaces, contaminated drinking water in the wells, flooded agricultural land and subsequent destruction of crops. Material damages climbed into the tens of billions of Euros.
- (11) Atypical for the described events was the fact that as from January until the end of June this year, in each month days with some level of flood activity occurred. Overall, it was 96 days. In May 2010 altogether 23 days and in June 25 days with some degree of flood activity occurred throughout the territory.
- (12) Steadily falling precipitations raised sharply the level of river basins and increased satiety. Unfavorable hydrological situation culminated in the beginning of June. Continuous intensive rainfall caused the increase of numerous rivers and their tributaries which recorded extreme floods, exceeding third flood activity degree. Extreme rainfall in early June finally hit the water catchment area and caused the oversaturation in many places with 50 to 100 - year recurrence.
- (13) The total recorded cumulative rainfall in May was around 235 mm and around 148 in June. The total monthly precipitation in the month of May was 309% and in the month of June it was 172% of average rainfall for that period.

Damage description

- (14) Continuous intensive rainfall in May and June 2010 lead to the sharp increase of water level of flows which in consequence lost their retention ability and poured out from their banks, causing significant material damage to several forest nurseries located in their proximity.
- (15) The total damage suffered amounted to EUR 305 658, representing in all cases more than 50 % of the value of reproductive material present in the nurseries at the time of flooding. In all cases the amount of the damage was verified by a fact-finding committee which carried out physical inspections and assessment of losses.
- (16) Such on spot inspections were carried out at the request of an entrepreneur running the affected forest nursery. During inspections the fact-finding committee assessed the extent of damage which was then certified in the Protocol on the damage.

Beneficiaries

- (17) The eligible beneficiaries are entrepreneurs¹ carrying out their activities in forest nurseries, who suffered losses caused by floods.
- (18) The estimated number of beneficiaries is from 11 to 50, all firms.
- (19) The beneficiary must not be an undertaking in bankruptcy or compounding proceedings or under restructuralisation, nor was the bankruptcy dismissed for the lack of assets.

Aid scheme description

- (20) The Slovak authorities have specified that aid aims to compensate for damages caused to the forest nurseries.

Eligible costs

- The value of the damaged reproductive material in the forest nursery
 - Costs of disposal of the damaged reproductive material.
- (21) For the purposes of the previous point the loss shall include also costs of an expertise certifying the amount of the damage suffered.
 - (22) Value added tax shall not be considered eligible if an applicant can deduct it under the specific regulation.
 - (23) The Slovak authorities confirmed that compensation under the presented scheme will be limited to cases where natural courses of water swell over their watercourses bounds. The damage caused exclusively by rain will be excluded.
 - (24) The compensation will be calculated at the level of an individual beneficiary.
 - (25) In order to avoid over-compensation all payments due under the insurance policy will be deducted from the amount of the aid.

¹ Commercial Code No 513/1991, § 2.

- (26) The scheme shall be executed by the Agricultural Paying Agency (hereinafter "PPA") which publishes the call for projects on its web site as well as on that of Ministry of Agriculture. Applications shall be submitted by 15 May of each calendar year.
- (27) On the basis of all applications received the PPA counts all the eligible requirements for granting assistance in the calendar year. If the total sum exceeds the amount available, it shall determine the conversion rate to calculate the amount of the aid for each eligible applicant.
- (28) The aid will be granted provided that the following conditions are met:
- the natural disaster or exceptional occurrence is recognized by a public authority, which shall be the Ministry of Agriculture, on the basis of the report of Slovak hydro-meteorological institute;
 - the amount of damage has been established either by the Fact-finding committee or by an expertise;
 - a producer concluded a contract with the PPA on providing assistance and, together with an application, he provided all necessary documents;
 - the loss suffered is at least EUR 5000.

Stand-still obligation

- (29) The Slovak authorities have confirmed that the incentive requirement, as set out in point 16 of the Commission Guidelines for State aid in the agriculture and forestry sector 2007–2013 (hereinafter "the Guidelines")² is met. More specifically, the aid can only be granted after the aid scheme will have been declared compatible with the TFEU by the Commission.

Cumulation

- (30) The Slovak authorities have confirmed that the aid cannot be cumulated with any aid received from other local, regional, national or EU schemes or *de minimis* aid to cover the same eligible costs if, as a result of such a cumulation, the total amount of the aid exceeds maximum aid intensity.

(31) ASSESSMENT

Presence of aid

- (32) Pursuant to Article 107(1) TFEU, aid granted by a Member State and/or through state resources in any form whatsoever that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is prohibited, insofar as it affects trade between Member States.
- (33) The measure in question is to be financed from the state budget, thus involves public resources.
- (34) The measure favours certain undertakings by conferring an advantage on local forest nurseries entrepreneurs affected by flooding which they would have to bear otherwise themselves. It may lead to distortion of competition at the EU level, since the beneficiaries are active in a highly competitive sector of the internal market.

² OJ C 319, 27.12.2006, p.1.

- (35) The sector concerned is the agricultural sector that is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States.
- (36) According to the case law of the Court of Justice, aid to an undertaking seems to affect trade between Member States where that undertaking operates in a market open to trade at the EU level³. The mere fact that the competitive position of an undertaking is strengthened compared with other competing undertakings, by giving it an economic benefit which it would not otherwise have received in its normal course of business, points to a possible distortion of competition.⁴
- (37) In the light of the above the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed measure constitutes state aid within the meaning of that Article. Hence it must be examined whether derogation from the general principle of the incompatibility of State aid under Article 107 TFEU might be granted.
- (38) In this case, taking into account the nature of the measure envisaged the derogation from Article 107(2) point b) TFEU may be invoked, whereby "aid to make good the damage caused by natural disasters or exceptional occurrences shall be considered compatible with the internal market".

Compatibility of the aid measure

- (39) Aid to make good the damage caused by natural disasters or exceptional occurrences is assessed under Chapter V.B.2 of the Guidelines.

The existence of a natural disaster

- (40) Pursuant to point 121 of the Guidelines, the Commission has consistently held that the notions of 'natural disaster' and 'exceptional occurrence' contained in Article 107(2) point b) TFEU must be interpreted restrictively. Hitherto the Commission has accepted that earthquakes, avalanches, floods and landslides may constitute natural disasters provided that a sufficiently precise description can be established. Point 122 of the Guidelines provides that the Commission will continue to evaluate proposals to grant aid in accordance with Article 107(2) point b) TFEU on a case-by-case basis, having regard to its previous practice in this field.
- (41) The Slovak authorities provided hydro-meteorological reports duly documenting the occurrence of exceptionally heavy rain intensities in May and June 2010. From these reports it appears that the level of precipitations and their duration were such as can be considered exceptional and apt to provoke severe flooding.
- (42) In the past the Commission has considered flooding as natural disaster. In the present case the repeated torrential rains with exceptionally high rainfall caused the flooding which cannot be considered as typical for the time and the geographic area concerned. Given the nature and the circumstances of these meteorological events, the flooding in the present case can be classified as a natural disaster within the meaning of Article 107(2) point (b) of the TFEU.

³ See in particular Judgment of the Court of 13 July 1988, Case 102/87, French Republic v Commission of the European Communities, ECR 1988, p. 4067

⁴ Judgment of the Court of 17 September 1980, Case 730/79, Philip Morris Holland BV v Commission of the European Communities, ECR 1980, p. 2671

- (43) For the above reasons the flooding in the present case can be classified as a natural disaster within the meaning of Article 107 (2) point b) of the TFEU.
- (44) Point 123 of the Guidelines provides that once the existence of a natural disaster or an exceptional occurrence has been demonstrated, the Commission will permit aid up to 100 % to compensate for material damage. Compensation should normally be calculated at the level of the individual beneficiary. In order to avoid overcompensation, any payments due, for example under insurance policies, should be deducted from the amount of aid.
- (45) The present scheme foresees the compensation up to 100% of the losses suffered. The compensation will be calculated at the level of an individual beneficiary, as mentioned in point 24 of the present decision. Further, the Slovak authorities provided assurances that the aid will be reduced by any payment carried out under the insurance policy in order to respect point 123 of the Guidelines and avoid overcompensation. The conditions set in point 123 of the Guidelines are therefore being met.

Direct link between the event and compensation and the level of compensation

- (46) Pursuant to point 123 of the Guidelines the case law of the Court of Justice requires the Member State to demonstrate a direct link between the damage caused by the exceptional occurrence and the State aid and as precise assessment as possible to be made of the damage suffered by the producers concerned.
- (47) The Slovak authorities have specified that only damage done by floods, as certified by an expertise, shall be eligible for compensation. This excludes damage caused directly by climatic events such as rain itself.
- (48) The Slovak authorities have confirmed that the aid would be granted according to the scheme, notably in determining the damage, verifying the causal connection between the natural disaster and the damage occurred, and assessing and verifying the value of the eligible damage at the level of the individual beneficiary.
- (49) Based on the above considerations, it appears that aid will be granted only where there is a demonstrated direct and causal link between the occurrence of exceptional situation and the damage suffered.
- (50) Therefore it can be concluded that a direct link exists between the event and the compensation.

3. CONCLUSION

- (51) On the basis of the above considerations, the Commission concludes that the notified measure is compatible with Article 107 (2)(b) of the TFEU.
- (52) If this letter contains confidential information which shall not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to disclosure to third parties and to publication of the full text of the letter in the authentic language on the following internet address:

http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm

Your request shall be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate M.2
Office: Loi 130 /128
B-1049 Brussels
Fax No.: 0032.2.296 7672

Yours faithfully,
For the Commission

Dacian CIOLOŞ
Member of the Commission