



EUROPEAN COMMISSION

Brussels,
C (2010)

**Subject: State aid/Slovak Republic
Aid No N 165/2010
First afforestation of agricultural land.**

Sir,

The European Commission ("the Commission") wishes to inform Slovakia that, having examined the information supplied by your authorities on the State aid measure referred to above, it has decided to raise no objections to the relevant measure, deeming it 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) By letter of 10 May 2010, registered by the Commission as received, Slovakia notified, in accordance with Article 108 (3) TFEU, the above mentioned aid scheme.
- (2) By letter of 8 June 2010, the Commission asked for supplementary information which the Slovak authorities provided on 26 July 2010 and on 21 September 2010, registered on the same day.

(3) Title

First afforestation of agricultural land

2. DESCRIPTION OF THE AID SCHEME

- (4) The notified scheme will be implemented and financed under the cover of the Rural Development Programme of Slovakia 2007-2013. The notification has been introduced in order to obtain the consent on the basis of state aid rules for payments

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granted under measure 221 of the RDP, as provided by Article 57 of Commission Regulation No 1974/2006¹.

(5) **Duration and budget**

(6) From the date of its approval by the Commission until 31 December 2013. Last date for submitting applications will be 30 June 2013.

(7) The overall budget amounts to EUR 4 661 510 (EUR 3 693 213 coming from EAFRD resources and EUR 968 298 coming from the state budget). The annual amount foreseen is EUR 1 165 378.

(8) **Legal basis**

- Measure 221 of the 2007-2013 Rural Development Program of Slovakia
- Act No 528/2008 Coll. on aid and support provided from the European Community funds
- Act No 231/1999 Coll. on State aid
- Government Regulation No 499/2008 Coll. on the conditions for receiving aid under the Rural Development Programme.

(9) **Beneficiaries**

Following beneficiaries shall be entitled under this measure:

- a) Owners or tenants of the agricultural land;
- b) Associations of owners or tenants of the agricultural land, which have legal personality.

(10) The estimated number of beneficiaries is from 101 to 500.

(11) For the purposes of this measure, "farmer" is defined by the RDP of Slovakia as:

- (i) Natural or legal person which has been devoting, in last two years, substantial part of its total working time (at least 50 %) to farming activities, and
- (ii) has been obtaining substantial part of its global income (at least 25%) from farming activities.

(12) **Objectives**

The measure aims at converting agricultural land in order to:

- (i) increase the quality of forest resources;
- (ii) contribute to the environmental protection and biodiversity;
- (iii) mitigate climate changes;

¹ Commission Regulation (EC) No 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD); OJ L 368, 23.12.2006, p. 15

(v) mitigate aftermaths of erosion, landslides and floods.

(13) Aid intensity

The maximum aid granted shall amount to:

a) 80% of the establishment costs in less favoured areas and for payments linked to Directive 2000/60/EC². This aid intensity relates to both, convergence regions and other regions.

b) 70% of the establishment costs in other areas. This aid intensity relates to both, convergence regions and other regions.

(14) The amount of the assistance will be calculated on the basis of actual costs incurred by beneficiaries.

(15) Eligible costs

Following costs will be considered admissible:

a) Establishment costs, on the basis of the actual costs incurred and within the following limits:

- EUR 2 230.63/ha where the agricultural land belongs into less favoured areas;
- EUR 1 951.8/ha in other areas.

b) Annual premium per hectare afforested to contribute to covering maintenance costs for a maximum of 5 years, will amount to EUR 763.46/ha per year.

Afforestation with fast-growing species and that made by public institutions is excluded from this premium. However, if publicly owned lands are rented by a natural person or a private law body, the annual premium may be paid to a tenant.

c) Annual premium per hectare to cover loss of income for a maximum of 15 years, for farmers or their associations, which have been farming on the land concerned before its afforestation, or for any other natural person.

For farmers the premium shall amount to EUR 464.72/ha per year. For other beneficiaries the amount shall be even to EUR 150/ha per year.

Afforestation with fast-growing species and afforestation made by public institutions are excluded from this premium. However, if publicly owned lands are rented by a natural person or a private law body, the annual premium may be paid to a tenant.

(16) Excluded from the support under the present scheme are farmers benefiting from early retirement support and costs of planting of Christmas trees and decorative plants.

(17) Aid under the present scheme can be granted provided that:

² Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy; *OJ L 327, 22.12.2000*

- Agricultural land intended for afforestation is registered in the land register and during the last two years was used for agricultural purposes;
- The area of land designated for afforestation is minimum 0.5 ha and maximum 10 ha of contiguous area, with its shorter side measuring over 50 m;
- The major part of surface should belong in group between 6 to 9 of BPEJ classification scale³;
- Agricultural land proposed for afforestation is not included in the proposed bird protection areas, in sites of European importance or in the European system of protected areas.

(18) Procedure for granting the aid

- (19) The Agricultural Paying Agency⁴ (hereinafter "PPA") publishes a call for projects on its web site as well as on that of Ministry of Agriculture. An application has to be submitted by 15 May of each calendar year. The application may also be made after this date, but no later than 25 days, resulting in any case in 1% reduction in the amount eligible for each working day of delay.
- (20) The application shall be presented by an applicant who carries out his agricultural activity on the surface of at least 1 ha of agricultural land.
- (21) The applicant shall be either owner or the tenant of land proposed for afforestation, provided that he obtained the written consent of the owner.
- (22) The applicant can also be the association of owners of agricultural land with legal personality or the association of tenants of agricultural land proposed for afforestation with legal personality, provided that it obtained the written consent of the owner.
- (23) A project shall be accompanied by the following documents:
- (i) list of parts of land specifying the type and measurement of agricultural land proposed for afforestation;
 - (ii) type and number of forest tree species used for afforestation under the project of care on forest land;
 - (iii) graphic annex showing the land designated for afforestation;
 - (iv) opinion of the Forest District Office on the appropriateness of the proposed tree species composition and on the origin of reproductive material;
 - (v) affirmative statement of the Land District Office certifying that at the time of application no land reparation proceedings was ongoing.
- (24) Applications shall be assigned to point zones according to the Government Regulation No 499/2008 Coll. on the conditions for granting aid under Rural Development Program as follows:

³ "BPEJ" – classification and identification data for quality and value of production and ecological potential of agricultural land.

⁴ Agricultural Paying Agency will be responsible for the execution of the aid scheme in accordance with Law No 473/2003 Coll. on Agricultural Paying Agency and on promoting entrepreneurship in agriculture

- The first zone shall include applications for the afforestation of agricultural land with the predominant area with a lower code BPEJ;
 - The second zone shall include applications for the afforestation of land of which the whole acreage or its part belongs in disadvantaged areas (mountain areas, other less-favoured areas, areas affected by specific handicaps);
 - The third zone shall include applications for the first afforestation of agricultural land adjacent to the existing forest vegetation.
- (25) Applications will be selected sequentially from the first to the third point zone. Within each zone, the selection of applications will be made descendingly from the largest surface area proposed for afforestation.
- (26) In the first year following the afforestation a request for payment for the maintenance costs of forest area and request for payment to cover loss of income shall be made.
- (27) Annexed to the request for the aforementioned payment shall be:
- a list of parts of land, specifying the type and surface measurement of agricultural land;
 - the type and number of forest tree species used for afforestation;
 - graphic annex showing the agricultural land designated for afforestation;
 - documents establishing the eligibility of the costs; the applicant shall submit it not later than on 15 November of a given calendar year;
 - a decision on changing the type of land;
 - certified copy of an ownership certificate.
- (28) **Respect for 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")⁵ had been met. More specifically, the aid can only be granted once (i) the aid scheme is declared compatible with the TFEU by the Commission, (ii) an application for the aid is properly submitted to the competent authority concerned, (iii) the application is accepted by the competent authority concerned in a manner which obliges that authority to grant the aid.
- (30) Aid under this scheme will be granted only for activities that have started, or services received after the scheme was declared by the Commission compatible with TFEU.
- (31) **Cumulation**
- Aid cannot be cumulated with the aid received from other local, regional, national or Community schemes to cover the same eligible costs, where in consequence the level of the aid would exceed maxima set by this scheme.

⁵ OJ C 319, 27.12.2006, p.1.

- (32) Likewise, aid cannot be cumulated with the *de minimis* aid to cover the same eligible costs, where in consequence the level of aid would exceed maxima set thereof.
- (33) In the year when the application for inclusion of agricultural land proposed for afforestation is submitted, the applicant can not request support under Government Regulation No 20/2009 Coll. on terms and conditions for agricultural subsidy in the form of direct payments.

ASSESSMENT

General

- (34) In accordance with article 88 (1) of Regulation (EC) No 1698/2005, articles 107 and 108 of the TFEU apply to support for rural development granted by Member States.
- (35) Pursuant to Article 107 (1) of the 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.
- (36) The prohibition of state aid enshrined in the above quoted article applies only insofar as the beneficiaries are undertakings. The Court of Justice has consistently ruled that the notion of undertakings encompasses every entity engaged in an economic activity, irrespective of its legal form and the way in which it is financed⁶. Further, pursuit of profit is not essential⁷.
- (37) Under the present measure potential beneficiaries are owners or tenants of agricultural land, insofar as they exercise an economic activity, thus constituting an undertaking.
- (38) The measure in question will be financed through public resources. It favours certain businesses by conferring an advantage on beneficiaries – owners or tenants of agricultural land and their associations, carrying out their activities in Slovakia. 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.⁸
- (39) Aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-Union trade.⁹ The sector concerned is the forestry sector which is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member State.¹⁰
- (40) In the light of the above considerations the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed measure constitutes state aid within the meaning of that Article.

⁶ Judgments of the Court of Justice: C-41/90, Hofner und Elser, [1991] ECR 1979, paragraph 21, C-244/94, Fédération française des sociétés d'assurance and Others, [1995] ECR I-4013, paragraph 14, and C-55/96 Job center, [1997] ECR I-7119, paragraph 21.

⁷ Judgement of the Court of Justice: 7/82 GVL v Commission

⁸ 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 (Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980] ECR 2671).

⁹ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities* [1988] ECR 4067.

¹⁰ In 2008 Slovak production and trade in roundwood amounted to 9 269 million m³: (source: Eurostat)

Compatibility assessment

- (41) As provided by Article 107(2) and (3) of the TFEU, certain measures shall/may be considered to be compatible with the internal market.
- (42) In this case, taking into account the nature of the measures envisaged, the derogation from Article 107(3) point c) of the TFEU may be invoked, whereby the aid 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, may be considered to be compatible with the internal market.
- (43) Regulation (EC) 1857/2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium enterprises engaged in production of agricultural products and amending Regulation (EC) No 70/2001 is not applicable, for it does not concern aid to the forestry sector.
- (44) Therefore, the Commission examines the submitted aid scheme in the light of Chapter VII.C of the Community Guidelines for state aid in the agriculture and forestry sector¹¹ (hereinafter "the Guidelines"), which sets conditions for eligibility of the aid in the forestry sector.
- (45) Specifically, pursuant to paragraph 176 of the Guidelines, such aid must meet all the requirements of Article 43 of Regulation No 1698/2005¹² and relevant implementing rules under Regulation No 1974/2006 and must not exceed the maximum intensity limits stipulated therein.
- (46) In accordance with Article 43(1) of Regulation 1698/2005, the scheme may cover establishment costs, an annual premium per hectare afforested to cover maintenance cost for five years and an annual premium per hectare to compensate for loss of income for a maximum period of fifteen years. The eligible costs under the scheme at hand, described in point 15 of this decision, are in compliance with the quoted provision.
- (47) In accordance with article 43(2) of Regulation 1698/2005, support for afforestation of agricultural land owned by public institutions will cover only establishment costs. (see point 15 of this decision)
- (48) Pursuant to Article 43(3) of Regulation 1698/2005, the aid shall not be granted to farmers receiving aid for early retirement and for plantation Christmas tree. The respect for both conditions is demonstrated in point 16 above. Moreover, in accordance with Article 43(3), in the case of plantations of fast growing species cultivated in the short term, aid will be granted only to cover establishment costs.
- (49) Pursuant to Article 43(4) of Regulation 1698/2005 support to farmers or other natural persons and private law bodies, as described in details in point 13 of this decision, will respect maxima laid down therein.
- (50) In compliance with Annex of Regulation 1698/2005, maximum intensity of aid for establishment costs in less favoured areas and for payments linked to Directive 2000/60/EC is fixed at 80% and at 70% of eligible costs in other areas.

¹¹ OJ C 319/1, 27/12/2006.

¹² Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Fund for Rural Development (EAFRD); OJ L 277, 21/10/2005

- (51) In compliance with Article 31(4) of Regulation 1974/2006, agricultural land eligible for first afforestation is specified in the scheme. It includes land where farming takes place on a regular basis.
- (52) Areas belonging to Natura 2000 are excluded from the present measure.
- (53) In compliance with Article 31(4) of Regulation 1974/2006, the Slovak authorities confirmed that "establishment costs" will include types of expenses which are specified therein.
- (54) Article 31(3) of Regulation 1974/2006 sets criteria for the definition of "farmer". The definition provided by the scheme corresponds to it, as demonstrated in point 11 of the present decision.
- (55) Further, point 5.3.2.2.1 of Annex II of Regulation 1974/2006 requires that the scheme provides also the definition of agricultural land eligible for assistance.
- (56) The Slovak authorities provided the following definition of agricultural land: "For the purposes of this scheme agricultural land shall mean the potentially productive land, registered in the land register as arable land, vineyard, orchards, gardens and permanent grassland". In addition, Government Regulation No 499/2008¹³ stipulates that the aid can be granted only for the first afforestation of agricultural land that was used for farming activities for at least two years prior to its first afforestation. This definition is in accordance with Article 31(1) of Regulation 1974/2006.
- (57) In compliance with article 31(1) of Regulation 1974/2006 the scheme is consistent with the objectives of Natura 2000 sites.
- (58) In accordance with paragraph 5.3.2.2.1 of Annex II of Regulation 1974/2006, the scheme offers guarantees that the measures will be suited to local conditions and will comply with the environmental requirements. In addition, pursuant to RDP of Slovakia, first afforestation should always be suited to the local conditions and be in compliance with environmental protection and ameliorate biodiversity.
- (59) In accordance with Annex II, point 5.3.2.2.1 of Regulation 1974/2006, the Slovak authorities have presented the description of the methodology for calculating costs of establishment and maintenance as well as for granting premium to offset loss of revenue (see points 13, 14 & 15 of this decision).
- (60) In the light of the above the Commission finds that the conditions stipulated in paragraph 176 *et seq.* of the Guidelines as well as those set in relevant applicable provisions of Regulations 1698/2005 and 1974/2006 are being respected. Therefore, the Commission considers that the proposed aid scheme qualifies for exemption under Article 107(3) (c) of the TFEU.

4. CONCLUSION

- (61) On the basis of the above considerations, the Commission concludes that the notified measure is compatible with Article 107(3)(c) TFEU.
- (62) If this letter contains confidential information, which should not be published, please inform the Commission within fifteen working days following the receipt of the

¹³ Regulation of the Government of the Slovak Republic No 499/2008 Coll. on the conditions for receiving aid under the Rural development Programme, § 11 (2) (a).

present letter. If the Commission does not receive a reasoned request by this deadline, you will be deemed to have agreed to the publication of the full text of this letter in the authentic language on the following webpage:

http://ec.europa.eu/community_law/state_aids/state_aids_texts_sk.htm.

Any such request specifying the relevant confidential information should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Dacian CIOLOȘ
Member of the Commission