



EUROPEAN COMMISSION

Brussels,
C(2010)

**Subject: State Aid / Slovak Republic
Aid No N 378/2010
Aid to compensate for losses caused to the crops by adverse weather
conditions that may be assimilated to natural disaster**

Sir,

The Commission wishes to inform Slovakia 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. PROCEEDINGS

- (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 1 September 2010, registered on the same day.
- (2) By letter of 27 September 2010, the Commission asked for supplementary information which the Slovak authorities provided on 4 October 2010, registered on the same day.

2. DESCRIPTION OF THE AID SCHEME

Title

Aid to compensate for losses caused to the crops by adverse weather conditions that may be assimilated to natural disaster

Duration

- (3) From the approval of the scheme by the Commission until 31 December 2013. The last date for submitting an application will be 31 October 2013.

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- (4) Aid will be paid within four years following the occurrence of the expense or loss.

Budget

- (5) Estimated overall amount of the aid totals to EUR 40 millions, split by year. The annual amount foreseen is EUR 10 millions.

Beneficiaries

- (6) Eligible for receiving aid shall be enterprises¹ cultivating crops which suffered damage due to adverse weather conditions.
- (7) The aid is limited to large enterprises.
- (8) The estimated number of beneficiaries is from 501 to 1000.

Type of aid

- (9) Direct grant.

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, Articles 6 and 9.
- Law No. 231/1999 Coll. on State Aid, as amended.

Meteorological situation

- (10) Floods that occurred in Slovakia in May and June were in hydrological terms exceptional, for both their temporal and spatial spread. Due to weather situation and its evolution the entire territory of Slovakia was gradually affected and the flood situation occurred almost simultaneously in all catchments.
- (11) Torrential rains in Slovakia dated from 9 May 2010. Development of the meteorological situation in April and May caused 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 caused that they lost 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.
- (12) Atypical was the fact that since the beginning of this year, i.e. from January to the end of June, in each month occurred days with some level of flood activity. 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.

¹ Commercial Code No 513/1991 Coll., § 2.

- (13) Steadily falling precipitation raised 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.

Objective

- (14) The aid scheme aims to compensate, in the form of direct grant, for damages caused to the crops production by adverse weather conditions.
- (15) In this case the adverse weather condition was water logging caused by heavy rain.
- (16) According to report of Central Control and Testing Institute for Agriculture, Department of Plant Protection (hereinafter "CCTIA") "*water logging*" means the displacement of soil oxygen by water (excessive groundwater levels, excessive rainfall which the soil is not able to absorb, increase of water flows etc.) which may result in plant mortality or premature aging.
- (17) In case of the present measure water logging affected many crops in their blooming phase. Consequently, assimilation and conductive parts of plants were destroyed (by fungal disease, decay or physiological damage) which resulted in insufficient development of the endosperm. Crops were undeveloped and, in some cases the rootstocks were damaged, which is manifested by reduced blight and empty cobs. In the early matured spikes were visible signs of black infestation, such as Saprotopic fungus or Septoria nodorum. Ears were affected by fungus Fusarium. Frequent and long-lasting rainfall prevented farmers from treatment of fungicides in wheat crops at the time before their blooming period, when such an intervention is most effective.
- (18) Department of Plant Protection of CCTIA carried out all together 1409 inspections of the flooded farmland in the period from 21 June 2010 to 22 July 2010. Extent of damage to crops varies by the region, but essentially covers almost the entire range of crops.

Aid intensity

- 80% of loss if the producer was insured and an insurance policy covers at least 50% of its average annual production or income from the production of a relevant agricultural product within an enterprise and the insurance relates to statistically the most significant weather events in the Slovak Republic, as determined by Slovak Hydro-meteorological Institute;
- 90% of loss if the producer conducts its agricultural activities in less-favoured areas and was insured as stipulated in the preceding point;
- 40% of loss if the producer was not insured or an insurance policy covers less than 50% of its average annual production or income from the production of relevant agricultural products within the enterprise;
- 45% of loss if the producer conducts its agricultural activities in less-favoured areas and was not insured as stipulated in the preceding points.

Eligible costs

- (19) Eligible for compensation will be damages in plant primary production due to the adverse weather conditions on crops which in the time of such conditions were present on the field.

Calculation method

- (20) The Slovak authorities provided following method for calculation of the amount of aid:
- (21) Normal production will be calculated from the average annual production of a crop producer in the preceding three years or three-year average for the preceding five years, excluding the highest and lowest entry within the given enterprise. If the crop was not produced before, the average three-year figure for the given county, set by the Slovak Statistical Office, will be used.
- (22) The loss of productions shall be calculated as follows:

$$(VI \times U_o) - (UI \times VI) = VP$$

where:

VP - loss of production in the adverse climatic event (t),

VI - the total acreage of damaged cropped area (ha) in the year of the adverse climatic event (ha) within the enterprise (ha)

U_o - the average yield of 1 ha of the given crop (t/ha) in the preceding three years or five years, excluding the highest and lowest figure,

UI - the average yield of 1 ha of the crop (t/ha) in the year of the occurrence of adverse climatic events.

- (23) The calculation of loss of income shall be calculated as follows:

$$VP \times c = UP$$

Where:

VP - loss of production

c - price

- (24) The calculation of loss shall be made as follows:

- if the producer was insured: $S = 0,8 \times (UP - PP) + TOZ$
- if the producer was insured and he conducts his activities in less favourable conditions: $S = 0,9 \times (UP - PP) + TOZ$
- if the producer was not insured: $S = (0,4 \times UP) + TOZ$
- if the producer was not insured and conducts his activities in less favourable conditions: $S = (0,45 \times UP) + TOZ$

Where:

S - loss (EUR)

UP - loss of income (EUR)

PP – payments due under the insurance policy (EUR)

TOZ - the tariff remuneration of expert (when calculation of damages was made by an expert).

- (25) If the amount of the damage was certified by an expert, the costs of such an expertise will also be considered as eligible expense.
- (26) Value added tax shall not be considered eligible if an applicant can deduct it under the specific regulation.
- (27) In the event of damage to standing crops (orchards, vineyards, hop) the amount of compensation will be based on their residual values as established in the accounts and on the degree of damage.

Procedure for granting aid

- (28) The application for aid shall be submitted by the producer on the basis of the published call. It shall be submitted to the regional office of the Agricultural Paying Agency² (hereinafter "APA").
- (29) On the basis of applications received the APA will count all the eligible requirements for granting aid in the given 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.
- (30) The aid will be granted provided that the following conditions are met:
 - the natural disaster or exceptional occurrence was recognized by a public authority, which shall be the Slovak Hydro-meteorological Institute;
 - the basis for determining loss in the production of each crop was one of the following:
 - satellite images
 - expertise
 - a producer concluded a contract with the APA on providing subsidies and, together with an application provided all necessary documents;
 - adverse climatic event destroyed more than 30% of the average of annual production of a given farmer in the preceding three years period or a three-year average based on the preceding five-years period (or, where the producer did not cultivate the given crop before, a three year average figure for the relevant district, established by the Slovak Statistical Office shall be used), excluding the highest and lowest entry, and
 - the loss suffered was at least EUR 2000.
- (31) Losses will be calculated for each individual holding.

Cumulation

² 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.

- (32) The Slovak authorities have confirmed that the aid cannot be cumulated with any aid received from other local, regional, national or Community schemes or with *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.
- (33) In order to avoid over-compensation all payments due under the insurance policy will be deduced from the amount of the aid.

Stand-still obligation

- (34) 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 ("the Guidelines")³ 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.

3. ASSESSMENT

3.1. Presence of aid within the meaning of Article 107(1) TFEU

- (35) 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.
- (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 financed⁴. Further, pursuit of profit is not essential⁵.
- (37) The measure in question will be financed through public resources. It favours certain undertakings by conferring an advantage on local farmers affected by adverse weather conditions which otherwise they would have to bear 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.
- (38) The sector concerned is the agriculture 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.
- (39) In the light of the above the conditions of Article 107 (1) seem 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 of the Treaty might be granted.
- (40) In this case, taking into account the nature of the measures envisaged, the derogation from Article 107(3) (c) TFEU may be invoked, whereby "aid to facilitate the

³ OJ C 319, 27.12.2006, p.1.

⁴ 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.

⁵ Judgement of the Court of Justice: 7/82 GVL v Commission

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.

Compatibility of the aid measure

- (41) Aid to make good the damage caused by natural disasters or exceptional occurrences is assessed under Chapter V.B.3.1. of the Guidelines.
- (42) Pursuant to paragraph 125 (a) of the Guidelines the Commission has consistently held that adverse weather conditions such as frost, hail, ice, rain or drought cannot of themselves be regarded as natural disasters within the meaning of Article 107(2) (b) TFEU. However, because of the damage that such events may cause to agricultural production or the means of agricultural production, such events may be assimilated to natural disasters once the level of damage reaches a certain threshold, which has been fixed at 30% of normal production. Compensation for such assimilated events contributes to the development of the farm sector and should be authorised on the basis of Article 107(3) (c) TFEU.
- (43) Likewise, according to definition in Article 2 paragraph 8 "adverse climatic events which can be assimilated to a natural disaster" means weather conditions which destroy more than 30% of the average of annual production of a given farmer in the preceding three year period or a three-year average based on the preceding five-year period.
- (44) Under the present scheme aid can only be granted where loss suffered due to adverse weather conditions was more than 30%. (see point 30 of this decision). Therefore it can be held that at the level of affected farms these weather conditions can be assimilated to a natural disaster within the meaning of point 125 (a) of the Guidelines.
- (45) Pursuant to point 125 (g) of the Guidelines, bad weather compensation should be limited to the level of primary production (farmers). For companies active in the processing and marketing of farm products the risk of bad weather must be considered a normal business risk. If such companies face economic difficulties because of bad weather events, they may be supported via rescue and restructuring aid.
- (46) The Slovak authorities declare that the aid will be limited to the level of primary production of crops, thus meeting the criterion quoted in the preceding point.
- (47) Point 127 of the Guidelines requires that notifications with regard to aid measures to compensate for damage caused by adverse weather conditions include appropriate supporting meteorological information. However, in order to facilitate quick crisis management, such information may also be provided ex post in the form of annual reports.
- (48) The Slovak authorities provided detailed reports by Slovak Hydro-meteorological institute, duly documenting meteorological situation which caused adverse climate events. From this reports it is clear that the period of May and June 2010 can be assessed as exceptional, with the rainfall far beyond the average⁶.

⁶ E.g. In long-term the monthly precipitation for the eastern Slovakia in May 2010 totalled to 331% and in June to 172% of the average rainfall recorded for that period.

- (49) Point 126 of the Guidelines further stipulates that the Commission will declare aid for losses due to adverse climatic events compatible with Article 107(3) (c) TFEU if it fulfils all the conditions of Article 11 of Regulation 1857/2006.⁷
- (50) Under the present scheme eligible for aid are damages caused to crops present on the fields at the time of the adverse climatic events. The notified adverse climatic event is water logging caused by heavy rain. Therefore, the compliance of the measure with paragraphs 2 to 6, 8 and 10 of Article 11 shall be assessed.
- (51) Article 11 paragraph 2 provides that gross aid intensity must not exceed 80% and 90% in less favoured areas of the reduction in income from the sale of the product resulting from the adverse climate event.
- (52) The Slovak authorities intend to provide aid up to 80% or 90% of loss. However, these intensities will be reduced to 40% or 45% respectively, where the producer has not taken out the insurance.
- (53) Article 11 paragraph 2 of Regulation 1857/2006 provides a method for calculation of the reduction in income from the sale of the product resulting from the adverse climatic event. That reduction in income shall be calculated by subtracting:
- (a) the result of multiplying the quantity of product produced in the year of the adverse climatic event by the average selling price obtained during that year;
 - (b) the result of multiplying the average annual quantity produced in the preceding three-year period (or a three-year average based on the preceding five-year period, excluding the highest and lowest entry) by the average selling price obtained.
- The amount thus eligible for aid may be increased by other costs specifically incurred by the farmer because of non-harvesting due to the adverse event.
- (54) The Slovak authorities declare that the method of calculation, as detailed in point 20 and following of the present decision meets the criteria of Article 11, paragraph 2 of Regulation 1857/2006.
- (55) Paragraph 3 of Article 11 of Regulation 1857/2006 requires that the maximum amount of loss eligible for aid is reduced by:
- Any amount received under insurance schemes, and
 - Costs not incurred because of the adverse climatic events.
- (56) The Slovak authorities guarantee that any payment due under the insurance scheme will be deducted from the amount paid to compensate for damages under the present scheme. Likewise, the applicant has to deduct from the amount of eligible costs those costs which did not incurred because of the adverse climate event will be taken into account.
- (57) In compliance with Article 11 paragraph 4 of Regulation 1857/2006 the calculation of loss will be made at the level of the individual holding.

⁷ Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001.

- (58) Pursuant to paragraph 8 of Article 11 of Regulation 1857/2006, from 1 January 2010, compensation offered must be reduced by 50% unless it is given to farmers who have taken out insurance covering at least 50% of their average annual production or production-related income and the statistically most frequent climatic risk in the Member State or region concerned.
- (59) The Slovak authorities propose to reduce compensations under the present scheme by 50% where a farmer has not taken out insurance as foreseen in paragraph 8 of Article 11 of Regulation 1698/2005.
- (60) Pursuant to paragraph 10 of Article 11, aid must be paid out within four years following the occurrence. The Slovak authorities undertake to do so (see pt. 4 of this Decision).
- (61) In the light of the above the Commission finds that the conditions stipulated in Chapter V.B.3.1. of the Guidelines as well as those set in relevant applicable provisions of Regulation 1857/2006 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

- (62) On the basis of the above considerations, the Commission concludes that the notified measure is compatible with Article 107 (3)(c) TFEU.
- (63) 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/community_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 CIOLOȘ
Member of the Commission