



EUROPEAN COMMISSION

Brussels,
C(2010)

Subject: **State Aid/Slovak Republic**
 Aid No N 410/2010
 Measure 224: Payments under Natura 2000.

Sir,

The European Commission ("the Commission") wishes to inform the Slovak authorities that, after examining the information supplied by your authorities on the aid referred to above, it has decided not to raise any objections to the aid in question, since it is compatible with the Treaty on the Functioning of the European Union (hereinafter "TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) In accordance with Article 108(3) of the TFEU, by letter of 22 September 2010, registered as received on the same date, Slovakia notified the Commission of this measure.

2. DESCRIPTION OF THE AID SCHEME

Title

- (2) Measure 224: Payments under Natura 2000.

Budget

- (3) The overall amount foreseen totals to EUR 6 648 364 (EUR 5 300 691 coming from EAFRD resources and EUR 1 347 673 coming from the state budget), split by years. The annual amount shall be EUR 1 329 673.

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Duration

- (4) From the date of the Commission decision until 31 December 2013.
- (5) In accordance with Regulation (EC) No 1290/2005¹, expenditure incurred shall be recognized by paying authority until 31 December 2015². However, in accordance with section 189 of the Commission Guidelines for State Aid in the Agriculture and Forestry Sector 2007 – 2013 (hereinafter "the Guidelines")³ and aforementioned Regulation, the commitments have to be achieved by 31 December 2013⁴.

Beneficiaries

- (6) Eligible beneficiaries under the present scheme will be private forest owners and their associations.
- (7) Estimated number of beneficiaries is from 101 to 500, all firms.

Legal basis

- Measure 224 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.
- (8) The Slovak authorities state that the present measure is delivered under 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 granted under measure 224 of the RDP, as provided by Article 57 of Commission Regulation No 1974/2006⁵.
- (9) The objective of the measure is to grant support to private forest owners or their associations in order to compensate for income foregone resulting from the restrictions on the use of forests due to the implementation of Directives 79/409/EEC and 92/43/EEC in the area concerned.

¹ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy

² Article 28 of Regulation 1290/2005

³ OJ C 319, 27.12.2006, p.1

⁴ Article 23 of Regulation 1290/2005

⁵ 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

- (10) The Slovak authorities confirm that the measures under the present scheme exclude aid to forest based industries or for commercially viable extraction of timber, transportation of timber or for the processing of wood or other forestry resources into products or for energy generation.

Aid intensity

- (11) 100% for both convergence regions and other regions.
- (12) Aid will be provided as an annual flat fee per hectare of forest land belonging to Natura 2000 area (5th level of protection).
- (13) The amount of annual compensation is fixed at EUR 47,14 per hectare.

Procedure for granting aid

- (14) Assistance will be provided to forest land which is included in the National List of Sites of European Importance (hereinafter "SEI"), referred to in the Decree of the Ministry of Environment of the Slovak Republic No. 3/2004.
- (15) Forest land eligible for the financial assistance under this measure has to be the land classified and registered to 5th degree of protection under the relevant legal instruments⁶. In the event that only part of the land meets the aforementioned criteria, the measure may cover only that part.
- (16) Aid will not be granted to forest land where the responsible authority issued consent to conduct certain activities under Act No 543/2002 Coll. on nature and landscape protection, which would allow any interference in the forest and soil and vegetation cover degradation.
- (17) The applicant is entitled to receive aid provided that:
- he owns at least 1 ha of forest land located in the SEI
 - this land belongs into areas with 5th degree of protection
 - the applicant undertakes to respect the "non-intervention mode" commitment for the period of five years, beginning from the first payment.
- (18) In case of non compliance with these conditions and commitments aid for a given year as well as for subsequent years will not be granted.
- (19) Further, the amount of the aid can be reduced or abolished if the recipient of the aid, carrying out agricultural activities, fails to comply with good agricultural and environmental conditions or does not meet requirements of good management or fails to comply with the minimum requirements for fertilizers or plant protections products throughout the enterprise.

⁶ Act No. 543/2002 Coll. on nature and landscape protection as amended and Act No. 326/2005 Coll. on forests as amended by Act. 360/2007 Coll. (paragraph 4).

- (20) However, such a reduction or withholding of payment for non-compliance will not apply in cases of proven force majeure or if the inclusion of the forest land into a European network of protected areas has been cancelled, or the inclusion of forest land has been changed to a lower level of protection.

Stand-still obligation

- (21) The Slovak authorities confirm that the scheme at hand complies with point 16 of the Guidelines. More specifically, aid under the present scheme will only be granted after the aid scheme has been set up and declared compatible with the TFEU by the Commission.

Cumulation

- (22) The Slovak authorities have confirmed that the aid cannot be cumulated with any aid received from other local, regional, national or EU 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.

3. ASSESSMENT UNDER COMPETITION RULES

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

- (23) 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.
- (24) Under Article 107(1) of the TFEU, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, is incompatible with the internal market.
- (25) The measure in question is to be financed from the public resources.
- (26) The measure favours certain undertakings by conferring an advantage on local forest owners or their associations. 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.
- (27) 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 States⁷.
- (28) 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 level⁸. The mere fact that the competitive position of an undertaking is strengthened compared with other competing undertakings, by

⁷ In 2008 Slovak production and trade in roundwood amounted to 9 269 million m³: (source: Eurostat)

⁸ 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

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.⁹

- (29) In the light of the above the conditions of Article 107(1) TFEU 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 TFEU might be granted.
- (30) In this case, taking into account the nature of the measures envisaged the derogation pursuant to Article 107(3) (c) of the TFEU may be invoked, whereby aid may be considered compatible with the common market if it aims 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.

3.2. Compatibility of aid pursuant to Article 107(3)

- (31) Aid to the forestry sector has to be examined against the background of the Guidelines, in particular Chapter VII thereof.
- (32) Point 176 of the Guidelines states that the Commission will declare State aid for afforestation of agricultural or non-agricultural land, establishment of agroforestry systems on agricultural land, Natura 2000 payments, forest-environment payments, restoration of forestry potential and introduction of prevention actions as well as non-productive investments compatible with Article 107(3)(c) of the TFEU if the aid meets the conditions laid down in Articles 43-49 of Council Regulation (EC) No 1698/2005 and does not exceed the maximum intensity stipulated therein.
- (33) In the present case Article 46 of Council Regulation (EC) No 1698/2005 applies.
- (34) Article 46 of Council Regulation (EC) No 1698/2005 states that Natura 2000 support shall be granted annually and per hectare of forest to private forest owners or associations thereof in order to compensate for costs incurred and income foregone resulting from the restrictions on the use of forests and other wooded land due to the implementation of Directives 79/409/EEC and 92/43/EEC in the area concerned. In compliance with Annex I of Council Regulation (EC) No 1698/2005 such support shall be set between € 40/ha per year and € 200/ha per year.
- (35) The Slovak authorities confirmed that these conditions are complied with.
- (36) More specifically, the support will be granted annually and per hectare of forest land included in Natura 2000 areas. Aid can only be granted to private owners of such a land or their associations, with the aim to compensate for income foregone resulting from the restrictions on the use of such a land. The amount of the aid has been fixed in compliance with Article 46 of Council Regulation 1698/2005 (i.e. EUR 47,14 per hectare; see also point 13 of this decision).

⁹ 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

- (37) 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 Regulation 1698/2005 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

- (38) In view of the foregoing, the Commission has accordingly decided to consider the aid compatible with the internal market under Article 107(3)(c) of the TFEU.
- (39) If this letter contains confidential information that should 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 this letter in the authentic language on the Internet site:

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

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

European Commission
Directorate-General for Agriculture and Rural Development
Directorate M – Agricultural Legislation
Unit M.2 - Competition
Office: Loi 130 5/94A
B-1049 Brussels
Fax No: 0032 2 29 67 672

Yours faithfully,
For the Commission

Dacian CIOLOȘ
Member of the Commission