



EUROPEAN COMMISSION

Brussels,  
C(2011)

**Subject:**        **State Aid/Slovak Republic**  
                         **Aid No N 519/2010**  
                         **Measure 225: Forest – environment payments.**

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 11 November 2010, registered on the following day, Slovakia notified the Commission of this measure.
- (1) By letter of 8 December 2010, the Commission asked for supplementary information which the Slovak authorities provided on 10 January 2011, registered on the same day.

**2. DESCRIPTION OF THE AID SCHEME**

**Title**

- (2) Measure 225: Forest – environmental payments.

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Hlboká cesta 2  
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**Budget**

- (3) The overall amount foreseen for the period 2010-2013 totals to EUR 25 033 216 (EUR 19 825 073 coming from EAFRD resources and EUR 5 208 143 coming from the state budget).

**Duration**

- (4) From the date of the Commission decision until 31 December 2013.

**Beneficiaries**

- (5) Eligible beneficiaries under the present scheme shall be:
- private forest owners and their associations;
  - natural and legal persons which manage forests of private owners or their associations;
  - bodies established under the Commercial Code;
  - land associations;
  - municipalities or entities managing forests owned by municipalities;
  - church or entities managing forest owned by church;
  - cooperatives.
- (6) The estimated number of beneficiaries is from 101 to 500.

**Legal basis**

- Measure 225 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.
- (7) 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 225 of the RDP, as provided by Article 57 of Commission Regulation No 1974/2006<sup>1</sup>.

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<sup>1</sup> 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

- (8) Forest-environment payment shall be provided for a specific method of forest management based on environmental needs and priorities. The proposed activities, which are necessary to achieve the objectives set, shall go beyond the relevant mandatory requirements governing the management of forests.
- (9) Aid for using the specific methods of management of forestry activities is directed mainly to NATURA 2000 sites in order to protect the natural environment and landscape, biodiversity and especially areas with high natural value.
- (10) The objective of the measure is to compensate for income foregone and additional costs resulting from the forest – environmental commitments made by beneficiaries of the aid which go beyond the mandatory requirements, in order to:
- (i) conserve and increase biodiversity;
  - (ii) conserve forest ecosystems of remarkable natural value;
  - (iii) mitigate adverse effects of climate change;
  - (v) preserve and improve soil structure and water quality.
- (11) 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**

- (12) 100% for both convergence regions and other regions.

#### **Scheme description**

- (13) The scheme comprises two sub-measures:
- a) Maintenance of good status of forest habitats;
  - b) Protection of habitats of selected bird species.
- (14) Aid will be provided as an annual flat fee per hectare of forest land covered by the forest – environmental commitment. This amount will be reduced by the costs which did not incur due to the compliance with the conditions laid down for management of such forest land.
- (15) The amount of annual compensation is fixed as follows:
- Sub-measure 1: Maintenance of good status of forest habitats:
    - In the nesting sites of endangered cavity nesting species and wild gallinaceous species (only Natura 2000 sites): payment is fixed at EUR 57,92/ha.
    - Maintenance of good status of forest biotopes (all territory): payment is fixed at EUR 54,47/ha.

- Sub-measure 2: protection of habitats of selected bird species: payment is fixed at EUR 65,39/ha.

### **Description of the calculation methodology**

- (16) Forest environmental payments are based on the principle of compensation, which results from constraints in the production process. Basically it is the compensation for lower income due to restrictions on the production intensity and additional costs resulting from the need for implementation of activities beyond mandatory requirements.
- (17) The calculation method demonstrates the existence of grounds for this compensation, and determines its amount with respect to real economic parameters in the forestry sector. The calculation is based on the information databases of relevant institutions (such as National Forest Centre, Slovak Statistical Office, Ministry of Agriculture) concerning performance parameters in years 2003 - 2005. The final calculations have been counted as an average for the whole territory of Slovakia.
- (18) Sub-measure 1: Maintaining favorable conservation status of forest habitats: The amount of the payment is the result of the difference in value of production in the ordinary course of use of forest land (i.e. respect for national and Community legislation) and in the manner prescribed for this scheme (i.e. respecting the conditions of the abandonment of trees in the restoration, small-scale restoration, leaving dead wood, natural forms of restoration, non-application of chemicals, exclusion of economic activity within a specified period in the protected bird areas) which constitutes the loss of revenue (income). This difference is reduced by the non-occurred costs for unrealized operations and increased by additional costs occurred in complying with the conditions laid down for the management of forest soils.
- (19) Sub-measure 2: Protection of habitats of selected bird species: The amount is the result of the difference in value of production for the ordinary course of use of forest land (i.e. respect for national and Community legislation) and in the manner prescribed for this scheme (non-interference in the mode radius of 50 m from the nest, restricted activity during the breeding season within a radius from 50 m to 300 m from the nest, at the time outside the breeding small-scale renewal, specific marketing method, non-application of chemicals) which constitutes the loss of revenue (income). This difference is reduced by the non-occurred costs for unrealized operations and increased by additional costs occurred in complying with the conditions laid down for the management of forest soils.
- (20) Calculation is carried out for nest protection zones: Inside protection zone - a radius of 50 m represents an area of 0.785 ha; non-intervention regime applies therein.  
The outer part of the protection zone - range from 50 m to 300 m represents area of 27.475 ha. In these sites restrictions apply at the time of reproduction (5 months) - the economic activity is excluded. Outside the reproduction period there are limits to the management methods.

### **Eligible costs**

- (21) Following costs will be considered eligible:

- Additional costs,
  - Income foregone, resulting from the assumed commitments.
- (22) More specifically, the following types of costs shall be eligible:
- a) Maintenance of good status of forest habitats:
- Revenue foregone due to the loss in timber production
  - Additional costs resulting from the specific management of forest land
  - Increased costs of tree recovery from seeds
  - Increased costs of specific interventions methods and protection of the forest
  - Increased costs of specific materials.
- b) Protection of habitats of selected bird species
- Revenue foregone due to the loss of profit from forest production and restriction of activities
  - Additional costs resulting from the specific management of forest land.
- (23) The duration of obligations is set at 5 years. This period shall start running as from 1 January of the year in which the application was submitted.

### **Procedure for granting aid**

- (24) The Agricultural Paying Agency (hereinafter "PPA")<sup>2</sup> publishes a call for applications on its web site as well as on that of Ministry of Agriculture. An application shall be submitted by 15 May of the 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. Application shall be submitted according to project of planned forestry activities for a given year.
- (25) Submitted applications will be classified into one of the three point zones according to the Government Regulation No 499/2008 Coll. on the conditions for granting aid under Rural Development Program.
- (26) Applications will be selected sequentially from the first to the third point zone. Within each zone, the selection of applications will be made decreasingly from the largest surface area proposed for the measure.

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<sup>2</sup> 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

- (27) The assistance will be provided to forest lands that are managed, in the year in which the application was submitted, under a forest management plan. The first application shall be submitted together with an application for including the forest land into the measure.
- (28) Assistance will be provided for the following types of forest land:
- Designated protected bird areas with nesting sites of endangered bird species
  - Forest land located in the sites of European importance, which are not included in the 5<sup>th</sup> degree of protection
  - Sites not included in areas with European importance or designated protected bird areas.
- (29) The applicant is entitled to receive aid provided that he/she:
- owns or manages at least 1 ha of forest land
  - the voluntary forest - environmental commitment concerns at least 1 ha of the forest land
  - undertakes to maintain the commitments to which he voluntarily entered during a period of 5 years from entry into the commitment.
  - carries out all his activities in accordance with good agricultural and environmental conditions pursuant to Article 5 and Annex IV of the Council Regulation (EC) 1782/2003 and Article 4 and Annex III of this Regulation
  - participates in a training concerning correct implementation of the commitment undertaken
  - keeps detailed records on management
  - accepts to adjust the commitment in the case of an amendment to the applicable mandatory rules or requirements established pursuant to Articles 4 and 5 and Annexes III and IV of Council Regulation (EC) 1782/2003 and other relevant mandatory requirements established by the national law<sup>3</sup>.

### **Stand-still obligation**

- (30) The Slovak authorities confirm that the scheme at hand complies with point 16 of the Guidelines<sup>4</sup>. 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.

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<sup>3</sup> The revision clause pursuant to Article 46 of Regulation 1974/2006.

<sup>4</sup> Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007-2013; OJ C 319/1.

## Cumulation

- (31) 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

- (32) 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.
- (33) 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.
- (34) Under the present measure potential beneficiaries are private and public law bodies, insofar as they exercise an economic activity, thus constituting an undertaking.
- (35) The measure in question is to be financed from the public resources.
- (36) 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.
- (37) 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 States<sup>5</sup>.
- (38) According to the case law of the Court of Justice, aid to an undertaking is deemed to affect trade between Member States where that undertaking operates in a market open to trade at the EU level<sup>6</sup>. 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.<sup>7</sup>
- (39) 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

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<sup>5</sup> In 2009 Slovak production and trade in roundwood amounted to 9 086 million m<sup>3</sup>: (source: Eurostat)

<sup>6</sup> 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

<sup>7</sup> 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

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.

- (40) 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 assessment**

- (41) 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. Moreover, the present aid scheme applies to all firms, not only to SMEs. Therefore, the Commission examines the aid in light of Chapter VII.C of the Guidelines which sets conditions for eligibility of the aid in the forestry sector.
- (42) Point 177 of the Guidelines states that the Commission will authorise State aid for the additional costs and income foregone due to the use of environmentally friendly forestry technology going beyond the relevant mandatory requirements if the forest owners enters into a voluntary commitment concerning the use of such technology and the commitment satisfies the conditions of Article 47 of Council Regulation (EC) No 1698/2005.
- (43) Pursuant to Article 47 (1) of Regulation (EC) No 1698/2005 the assistance under this measure shall be granted per hectare of forest to beneficiaries who make voluntary forest-environmental commitments. The payments shall cover only those commitments going beyond the relevant mandatory requirements.
- (44) Further, pursuant to Article 47 (1) of Regulation 1698/2005, the commitment shall be undertaken for a period between five and seven years.
- (45) According to the submitted scheme, only costs concerning the part of a commitment which go beyond the relevant mandatory requirements will be considered eligible. The assistance shall only be granted to forest owners which undertake voluntary forest –environmental commitments for a period of 5 years. Thus, the conditions quoted in the foregoing paragraphs are being met.
- (46) Article 47(2) of Regulation 1698/2005 stipulates that the payments shall cover only additional costs and income foregone resulting from the commitment made and the support shall be fixed between the minimum and maximum amounts laid down in the Annex.
- (47) As detailed in point 21 of the present decision, eligible costs include specifically additional costs and income foregone, the amount of the support being fixed for each sub-measure as detailed in point 15, thus respecting the minimum and maximum amounts laid down in the Annex. Thus, the conditions of Article 47(2) of Regulation 1698/2005 are being complied with.



- (48) As required by Annex II point 5.3.2.2.5 of Regulation 1974/2006, the commitments are duly justified in the scheme, based on their expected environmental impact in relation to environmental needs and priorities.
- (49) Further, as required by Annex II point 5.3.2.2.5 of Regulation 1974/2006 the methodology and the assumptions and parameters used as reference point for the calculations justifying additional costs and income foregone resulting from the voluntary commitment are being described in the scheme (see points 16 to 20 above).
- (1) Pursuant to Annex II, point 5.3.2.2.5 of Regulation 1974/2006 the amount of support granted under this measure shall be specified. According to the notification submitted, the total amount foreseen is EUR 25 033 216.
- (2) In the light of the foregoing, it's possible to conclude that the present aid scheme complies with all the conditions under Chapter VII.C, points 177 of the Guidelines as well as with those set in the relevant applicable provisions of Regulations No 1698/2005 and 1974/2006.

#### **4. CONCLUSION**

- (50) 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.
- (51) 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](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