



## EUROPEAN COMMISSION

Brussels, 18.12.2013

C(2013) 9269 final

**Subject: State aid/Romania**  
**Aid no. SA.37422**  
**State aid for the prevention and eradication of tree diseases**

Sir,

The European Commission wishes to inform Romania that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to the relevant scheme as it is compatible with the Treaty on the Functioning of the European Union (hereafter TFEU).

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

### **PROCEDURE**

- (1) By letter of 27 September 2013, registered by the Commission on 1 October 2013, Romania notified, according to Article 108(3) TFEU, the above mentioned aid scheme. By letters of 2 October and 11 November 2013, Romania provided supplementary information.

### **DESCRIPTION OF THE SCHEME**

- (2) Romania plans to introduce by a Government decision a State aid scheme for preventing and eradicating tree pests in order to maintain, restore and improve the ecological, protective and recreational functions of forests. The scheme is aimed to cover the works for the spreading of chemicals by utility aircrafts as well as the costs for the substances used to prevent and eradicate tree diseases.
- (3) The service provider for the aviation works will be selected via a procurement procedure. Priority will be given to the use of biological substances. According to

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Article 9(1) of the sustainable use of pesticides directive<sup>1</sup>, aerial spraying is in principle prohibited. However, a derogation from this prohibition is possible, provided that some conditions are met (Article 9(2)(a)-(f)). The Romanian authorities demonstrated that these conditions have been complied with.

- (4) The beneficiaries of the scheme are private forest owners owing up to 30 hectares of forest. The beneficiaries must owe a forest in an area for which the competent authorities have established the necessity of prevention and eradication of tree diseases. The covered tree diseases<sup>2</sup> as well as the necessary measures for each type of pest are described in the implementation norms issued by the Ministry of Agriculture.
- (5) The estimated number of beneficiaries is over 1000.
- (6) The budget of the measure amounts to RON 0.08 million/year (approx. EUR 0.02 million). The scheme is applicable until 30 June 2014.
- (7) The Governmental Decision laying down the provision on the application of the scheme<sup>3</sup> will enter into force after the approval of the respective aid by the European Commission. The Romanian authorities confirmed that the aid can only be granted after (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 and is accepted by the competent authority.
- (8) The maximum aid intensity of the aid is 100%.
- (9) The scheme does not cover
  - (a) undertakings in financial difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty<sup>4</sup>, and
  - (b) undertakings against which there are pending recovery decisions.
- (10) The aid cannot be given to forest based industries or for the commercially viable extraction of timber, transportation of timber or for processing of wood into products or for energy generation.
- (11) The aid cannot be cumulated with other forms of support for the same costs.

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<sup>1</sup> Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides, OJ L 309, 24.11.2009, p.71.

<sup>2</sup> Ordinul nr. 454 din 14 iulie 2003 privind aprobarea Normelor tehnice pentru protecția pădurilor și a Îndrumărilor privind aplicarea Normelor tehnice pentru protecția pădurilor - Article 19 - *Lymantria dispar*, *Tortrix viridana*, *Operophtera brumata*, *Erannis* sp., *Semiothisa alternaria*, *Malacosoma neustria*, *Euproctis chrysorrhoea*, *Thaumaetopoea proccessionea*, *Drymonia ruficornis*, *Apethymus filiformis*, *Dasychira pudibunda*, *Tischeria complanella*, *Parectopa robiniella*, *Hyponomeuta rorellus*, *Phalera bucephala*, *Hyphantria cunea*, *Stilpnotia salicis*, *Pygaera anastomosis*, *Phyllocnistis suffusella* și *Lithocolletis populifoliella*) and Article 20 - *Haltica quercetorum*, *Melolontha* sp., *Polyphylla fullo*, *Orchestes fagi*, *Stereonichus fraxini*, *Lytta vesicatoria*, *Galerucella luteola*, *Melasoma* sp., *Agelastica alni*.

<sup>3</sup> Hotărare pentru aprobarea Normelor metodologice de acordare, utilizare și control a ajutorului de stat reprezentând contravaloarea lucrărilor de combatere și prevenire a răspândirii dăunătorilor prin mijloace aviochimice efectuate în fondul forestier proprietate privată a persoanelor fizice și juridice a cărui mărime pe proprietar nu depășește suprafața de 30 ha

<sup>4</sup> OJ C 244, 1.10.2004, p. 2.

## ASSESSMENT

### Application of Article 107(1) TFEU

- (12) Pursuant to Article 107(1) TFEU, aid granted by a Member State 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.
- (13) The measure in question confers an advantage on its recipients. This advantage is granted through State resources and it favours the undertakings in the agricultural sector.
- (14) 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.<sup>5</sup>
- (15) Aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade.<sup>6</sup> The Romanian agricultural is open to intra EU-trade so the present measure is liable to affect trade between Member States.
- (16) 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. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the Treaty.

### Application of Article 107(3)(c) TFEU

- (17) For the present case, Article 107(3)(c) TFEU may provide the appropriate basis for compatibility. Under this Article, aid can be declared compatible with the internal market when given: *"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"*.
- (18) In the agricultural sector this derogation applies to aid which complies with the Community Guidelines for State Aid in the agricultural and forestry sector 2007 to 2013<sup>7</sup> (hereinafter "Agricultural Guidelines"). The Commission assesses aid linked to forestry according to point 175 of the Agricultural guidelines. According to this, *"In order to contribute to the maintenance and improvement of forests and to promote their ecological, protective and recreational function the Commission will declare State aid up to 100 % compatible with Article 87(3)(c) of the Treaty for the following eligible costs where the Member State can demonstrate that these measures are directly contributing to maintaining or restoring ecological, protective and recreational functions of forests, biodiversity and a healthy forest ecosystem"*.

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> OJ C 319, 27.12.2006, p. 1.

- (19) The notified measures are aimed at the maintenance of ecological functions of forests (para. 2). The aid intensity covers 100% of the eligible costs (para. 7).
- (20) According to point 175(c) of the Agricultural Guidelines, aid can be given for preventing, eradicating and treating pests in the forestry sector. The eligible costs may include "*preventative and treatment measures [...] and the products, appliances and materials necessary for such measures*".
- (21) The Romanian scheme covers both the costs for the preventive treatment measures (i.e. spreading the chemical substances by utility aircrafts) but also costs of the materials used (para. 2).
- (22) According to point 175(c) second indent of the Agricultural Guidelines, "*Biological and mechanical prevention and treatment methods should be preferred when granting the aid unless it can be shown that such methods are not sufficient to fight the disease or pest in question.*"
- (23) According to the conditions of the scheme, priority will be given to the use of biological substances (para. 3).
- (24) Finally, the Commission notes that the beneficiaries that still have at their disposal an earlier unlawful aid that was declared incompatible by a Commission decision are excluded from the notified scheme until these beneficiaries have reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest (para. 9(b)). Further, the companies that are in difficulty, as defined in part 2.1 of the Community guidelines on rescue and restructuring aid to companies, are specifically excluded from receiving an aid under the present scheme (para. 9(a)).
- (25) The Agricultural Guidelines foresee at point 16 that State aid has to have an incentive effect, with the exception of compensatory aid. The Romanian authorities have committed to grant the aid only in respect of activities undertaken after the scheme has been set up and declared compatible with the Treaty by the Commission. Moreover, the beneficiaries must lodge an aid request that has to be approved by the competent authority (para. 7).
- (26) In the light of all the above, the aid scheme in question is considered to be compatible with the internal market under Article 107(3) (c) TFEU.

#### **4. CONCLUSION**

On the basis of the above considerations, the Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.

The Commission reminds the Romanian authorities that the present decision concerns the examination of the state aid regime under the Community Guidelines for the State aid in the agriculture and forestry sector 2007-2013. For the period after 31 December 2013 the Commission reserves the right to propose to the Romanian authorities appropriate measures in order to conform this regime with the future guidelines.

If this letter contains confidential information, which should not be published, please inform the Commission within fifteen working days from the receipt of the 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/competition/elojade/isef/index.cfm>

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

European Commission  
Directorate-General for Agriculture and Rural Development  
Directorate Agricultural Legislation  
Office: Loi 130 5/98A  
B-1049 Brussels  
Fax No: 0032 2 2967672

Yours faithfully,

For the Commission

Dacian CIOLOȘ  
Member of the Commission