

Commission Decision (EU) 2015/456 of 5 September 2014 on the aid scheme No SA.26212 (11/C) (ex 11/NN — ex CP 176/A/08) and SA.26217 (11/C) (ex 11/NN — ex CP 176/B/08) implemented by the Republic of Bulgaria in the context of swaps of forest land (notified under document C(2014) 6207) (Only the Bulgarian text is authentic) (Text with EEA relevance)

- Article 1 The State aid, granted to undertakings in the context of...
- Article 2 Individual aid granted under the swap transactions referred to in...
- Article 3 Individual aid granted under the swap transactions referred to in...
- Article 4 (1) The Republic of Bulgaria shall recover the incompatible aid...
- Article 5 (1) Recovery of the aid granted under the scheme referred...
- Article 6 (1) Within four months following notification of this Decision, the...
- Article 7 This Decision is addressed to the Republic of Bulgaria.
Signature

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2015/456. (See end of Document for details)

- (1) [OJ C 273, 16.9.2011, p. 13.](#)
- (2) See footnote 1.
- (3) Letter dated 26 July 2011.
- (4) Letter dated 27 July 2011.
- (5) Letters dated 28 July and 14 October 2011.
- (6) Letter dated 29 July 2011.
- (7) Letter dated 29 July 2011.
- (8) Letter dated 29 July 2011.
- (9) Letters dated 30 July 2011, 15 and 22 October 2011.
- (10) Letter dated 31 July 2011.
- (11) Letter dated 1 August 2011.
- (12) Letter dated 1 August 2011.
- (13) Letter dated 5 August 2011.
- (14) Letter dated 12 August 2011.
- (15) Letter dated 22 August 2011.
- (16) Letter dated 12 October 2011.
- (17) Letters dated 14 and 23 October 2011.
- (18) Letter dated 14 October 2011.
- (19) Letter dated 14 October 2011.
- (20) Letters dated 16 September and 15 October 2011.
- (21) Letters dated 16 September and 15 October 2011.
- (22) Letters dated 16 September and 15 October 2011.
- (23) Letters dated 15 October 2011 and 7 December 2011
- (24) Letter dated 17 October 2011. In accordance with Article 6(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union ([OJ L 83, 27.3.1999, p. 1](#)), this interested party has requested its identity is not disclosed to the Member State concerned on grounds of potential damage.
- (25) Aqua Estate OOD, Beta Forest EOOD, Kosta Gerov, Dimitar Terziev, Yavor Haytov, Valentina Haytova, Georgi Aleksandrov Babev, Marieta Babeva, Elizabet Mihaylova, Svetoslav Mihaylov, BG Land Co OOD, Mirta Engineering EOOD, Miks PS-OOD, and Boil OOD.
- (26) Bulgarian Forest Act published in Bulgarian State Journal No 125 of 29 December 1997.
- (27) Adopted by Decree of the Council of Ministers No 252 of 6 November 2003, published in Bulgarian State Journal No 101 of 18 November 2003 (last amended in Bulgarian State Journal No 1 of 5 January 2007).
- (28) The Executive Forests Agency was previously called State Forest Agency, or SFA. It will be referred to as the 'EFA' throughout the present decision for reasons of consistency.
- (29) In cases in which an estate falls into more than one area, the higher coefficient is taken into account.
- (30) Published in the Bulgarian State Journal No 1 of 2 January 2001
- (31) During the period 1999 to 2007, this Ministry was known as the Ministry of Agriculture and Forests. It was renamed the Ministry of Agriculture and Food at the beginning of 2008. The Ministry is referred to by its current name throughout this decision for reasons of consistency. The Executive Forests Agency (EFA) was once part of this Ministry.

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- (32) Published in Bulgarian State Journal No 44 of 21 May 1996 (last amended in Bulgarian State Journal No 41 of 2 June 2009)
- (33) Published in Bulgarian State Journal No 275 of 22 November 1950 (last amended in Bulgarian State Journal No 50 of 30 May 2008)
- (34) An unknown number of intended changes of use may be blocked by the moratorium imposed in 2009.
- (35) OJ C 54, 4.3.2006, p. 13.
- (36) OJ C 319, 27.12.2006, p. 1.
- (37) According to the complainant, the exclusion of forest from the State forest fund prejudices the subsequent decision of the local authorities regarding its subsequent use, as they have no better option but to adopt a Detailed Spatial Plan for the plot, which has ceased to be forest land and protected as such.
- (38) 'Bulgaria: Forest Policy Note', 10.3.2009, p. 11, paragraph 51, <http://siteresources.worldbank.org/BULGARIAEXTN/Resources/305438-1224088560466/BulgariaForestPolicyNote03102009GOB.pdf>
- (39) Ecobalkani-Bulgaria EOOD, Vihren OOD and Elkabel AD
- (40) This opinion was supported by Foros, Mirta Engineering, Beta Forest, LM Impex, Mr Gerov, Mr Babev and Mrs Babeva, Mr Terziev, Mr Mihailov and Mrs Mihailova
- (41) All Seas
- (42) LM Impex
- (43) This opinion was supported by Izgrev, Litex, MIKS, BOIL, and Mrs Blagoeva.
- (44) This opinion was supported by Mr Gerov and Terziev and by Mr Babev and Mrs Babeva.
- (45) All Seas
- (46) Foros Development, Izgrev, Liteks Komers and Jivka Blagoeva
- (47) This opinion was supported by Mr Mihailov and Mrs Mihailova, Mirta Engineering, Beta Forest, Elkabel and Mrs Blagoeva.
- (48) Mrs Blagoeva
- (49) Izgrev and Litex Komers
- (50) Mr Gerov, Mr Babev and Mrs Babeva, and Mr Terziev (and their lawyer Mrs Shankova on their behalf).
- (51) LM Impex, Mr Mihailov and Mrs Mihailova, Mirta Engineering, Beta Forest, Foros Development.
- (52) Elkabel. In response to doubts expressed by the Commission, Elkabel ordered a new expertise from an independent expert which showed that even though for some of the plots concerned the market prices would be higher than the administrative prices calculated in line with the Regulation on basic prices, the total administrative price of all plots exchanged by Elkabel was higher than their market value. It was further explained that the total administrative price of the publicly-owned plots that were exchanged was also higher than their market value. The evaluator hence concluded that the use of administrative prices did not lead to the granting of an unwarranted advantage to Elkabel
- (53) Izgrev, Litex Komers, Mr Gerov, Mr Terziev, Mr Babev and Mrs Babeva, MIKS and BOIL. In the case of Mr Mihailov and Mrs Mihailova, the value of the swapped privately owned land was allegedly higher (BGN 83 322,66) than that of the publicly owned land (BGN 67 125,0).
- (54) Mr Mihailov and Mrs Mihailova, Mirta Engineering and Beta Forest (in relation to the Novo Oriahovo Region), Foros Development (in relation to the Burgas Municipality), and MIKS and BOIL (in relation to the Nessebar Region).
- (55) MIKS, BOIL, Foros Development, Mirta Engineering and Beta Forest
- (56) Izgrev, Mrs Blagoeva, MIKSD, BOIL, Mirta Engineering, Beta Forest, Mr Mihailov and Mrs Mihailova
- (57) Litex Komers.

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- (58) BOIL, Mr Mihailov and Mrs Mihailova
- (59) Mr Gerov, Mr Terziev, and Mr Babev and Mrs Babeva
- (60) LM Impex
- (61) All Seas
- (62) Izgrev, Mrs Blagoeva, Litex Komers, MIKS, Foros Development, Mirta Engineering and Beta Forest
- (63) Izgrev, Litex Komers, MIKS, BOIL, Mirta Engineering, Beta Forest, Mr Mihailov and Mrs Mihailova, LM Impex
- (64) LM Impex
- (65) Mr Gerov, Mr Babev and Mrs Babeva and Mr Terziev
- (66) Mr Stoev.
- (67) The authorities indicated that in the period under review 567 private forest sales transactions took place.
- (68) Subsequently, in January 2009 the swaps of government land under the old rules and procedure were prohibited by law and the practice was discontinued.
- (69) The Bulgarian authorities point to evidence showing that in 105 swap transactions the administrative swap price was higher than the market price obtained by private parties in arm's-length transactions, while it was lower only in 13 cases.
- (70) SG No 108/2006
- (71) Order No RD 49-269/17.7.2007.
- (72) Decision No 602/16.9.2008.
- (73) This information was (re)submitted by Bulgaria in a spreadsheet sent to the Commission by e-mail of 21 January 2014 (2014/032997).
- (74) Submission reference 2013/115208.
- (75) Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451, paragraph 74.
- (76) Case 118/85 *Commission v Italy* [1987] ECR 2599, paragraph 7; Case C-35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 36; Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451, paragraph 75.
- (77) Case C-379/98 *Preussen Elektra* [2001] ECR I-2099.
- (78) See, by way of analogy, Case T 475/04 *Bouygues SA v Commission* [2007] ECR II-2097, paragraphs 108 to 111 and 123 upheld in Case C 431/07 P *Bouygues and Bouygues Telecom v Commission* [2009] ECR I-2665, paragraphs 94 to 98 and 125.
- (79) Case C-239/09 *Seydaland Vereinigte Agrarbetriebe GmbH & Co. KG v BVVG Bodenverwertungs- und -verwaltungs GmbH* [2010] ECR I-13083, paragraph 34 and Case C-290/07 P *Commission v Scott* [2010] ECR I-7763, paragraph 68; Case T-244/08 *Konsum Nord ekonomisk förening v Commission* [2011] ECR II-00444, paragraph 61.
- (80) Case T-288/97 *Friuli-Venezia Giulia* [2001] ECR II-1169, paragraph 41.
- (81) This is, amongst others, the case for: All Seas Property 2, Aqua Estate, Beta Forest, BG Land Co, Ecobalkani, MIKS and BOIL.
- (82) This is the case, e.g. for Izgrev, Liteks Komers, LM Impex and VNG Confort.
- (83) Case C-239/09 *Seydaland*, cited above, paragraph 35. See, also, Commission Decision of 19 December 2012 in Case SA.33167 on proposed alternative method for the valuation of agriculture and forest land in Germany sold by the public agency BVVG ([OJ C 43, 15.2.2013, p. 7](#)).
- (84) See, by way of analogy, Title II, point 2(b), of the Commission communication on State aid elements in sales of land and buildings by public authorities ([OJ C 209, 10.7.1997, p. 3](#)).
- (85) Letter of 19 November 2013; submission reference 2013/115208.

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- (86) This issue, together with the Bulgarian arguments, is described in detail in Section 5.4.
- (87) Under- or overvaluation in comparison to the market price provided by the Bulgarian authorities for the plot concerned.
- (88) Case C-239/09 *Seydaland*, cited above, paragraph 54.
- (89) Commission Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1). The *De minimis* Regulation was adopted by the Commission pursuant to Article 2 of Council Regulation (EC) No 994/98 (OJ L 142, 14.5.1998, p. 1), as amended by Regulation (EC) No 733/2013 (OJ L 204, 31.7.2013, p. 11).
- (90) On the basis of the preliminary calculations performed by the Commission on the quantitative data provided by the Bulgarian authorities, it would seem that in only 45 out of 104 cases where an advantage was granted to a private party as a result of a swap, that advantage exceeded the *de minimis* threshold. However, these calculations neither exclude those cases in which the beneficiary of the swap was not an undertaking (which would reduce the number of swaps constituting aid) nor do they account for those cases in which the same beneficiary benefitted from multiple swap transactions, the advantage of which exceed EUR 200 000 in total (increasing the number of swaps constituting aid). More precise calculations should be carried out by the Bulgarian authorities in the context of recovery.
- (91) Case T-68/03 *Olympiaki Aeroporia Ypiresies/Commission* [2007] ECR II-2911, paragraph 34.
- (92) Paragraph 175(g) of the Forest Guidelines defines eligible costs as: ‘the costs of purchase of forest land used or to be used as nature protection areas. The forest land in question must be entirely and permanently secured for nature protection purposes by the means of a statutory or contractual obligation.’ The remaining categories of eligible costs defined in paragraph 175 of the Forest Guidelines are not appropriate in the case at hand.
- (93) For publicly owned forest land the difference between the market price and the administrative price ranges from – 6 130,0 % to +74,98 %. It should be noted, however, that the administrative price for such plots was higher than their market price only in 2 out of 23 cases.
- (94) Case C-277/00 *Germany v Commission* [2002] ECR I-11695, paragraphs 74-76
- (95) Case C-209/00 *Germany v Commission*, cited above, paragraph 57-58.
- (96) Case C-303/88 *Italy v Commission* [1991] ECR I-1433, paragraph 57; Case C-277/00 *Germany v Commission* (‘SMI’), [2004] ECR I-3925, paragraph 75.
- (97) Case C-310/99 *Italy v Commission* [2002] ECR I-2289, paragraph 91.
- (98) Case C-480/98 *Spain v Commission* [2000] ECR I-8717, paragraph 25 and Joint Cases C-67/85, C-68/85 and C-70/85 *Kwekerij van der Kooy BV and others v Commission* [1988] ECR 219.
- (99) This information was submitted by Bulgaria in a spreadsheet sent to the Commission by e-mail of 21 January 2014 (hereinafter: submission 2014/032997).
- (100) I.e. the (i) market price for forest plot concerned; and (ii) administrative price for the forest plot concerned as determined in application of the Regulation on basic prices and effectively used for the purpose of the swap transaction, in the amounts stated in submission 2014/032997.
- (101) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).
- (102) Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).
- (103) Notice from the Commission — Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid (OJ C 272, 15.11.2007, p. 4).

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