



25.6.2021

NOTICE TO MEMBERS

Subject: Petition No 1111/2020 by Vera Staevska (Bulgarian), on behalf of the Society for Investigation Practices, “Green Law” initiative on the allegedly manipulative reduction of market valuations of swapped state properties by the Bulgarian government

1. Summary of petition

In its Decision on the Aid Scheme SA.26212 (2011/C) and SA.26217 (2011/C), the European Commission demanded that the Bulgarian authorities recover the illegal state aid granted through 132 forest transactions in the period 2007-2009. While the Bulgarian government announced that EUR 40 million in state aid were registered for 103 of the transactions at the end of 2019, the petitioner claims that an investigation by her own experts demonstrated that the evaluation of state aid is based on assessments that are more than 10 times lower than the market prices/value of the forests in 2007-2009. The petitioner claims that the Bulgarian government carried out falsified market evaluations of the forests to significantly reduce the amount of unlawful state aid to be recovered and they did not accept the offers of individual beneficiaries to annul the swap contracts. The petitioner highlights the European Court of Human Right’s case of Kostov and Others v. Bulgaria as an example of a practice of lowering the market evaluations of land estates.

2. Admissibility

Declared admissible on 21 January 2021. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 25 June 2021

The petition

The petition refers to the implementation of the negative decision with recovery in case

SA.26212 – Forest Land swaps¹ (“the Decision”), adopted on 5 September 2014.

The petitioner requested a public hearing in the European Parliament for a proper explanation of the case, in order to prompt Bulgaria to enforce the Decision with due regard to European Union legislation and standards. Moreover, the petitioner demands the appointment of a new, truly independent land valuator for the adequate quantification of the aid element to recover. Alternatively, the petitioner asks the Commission to launch a new investigation or demand beneficiaries to return the state-owned properties voluntarily.

The Commission's observations

The Commission services take good note of the information provided by the petitioner. The petitioner holds that the Bulgarian authorities have consistently prevented the effective implementation of the Decision through (i) the manipulative lowering and/or falsification of market evaluations of land estates; (ii) the appointment of a non-independent land valuator; and (iii) rejecting the offers of individual beneficiaries to annul the swap contracts, *inter alia*.

On the one hand, several parties and media reported the amounts to be recovered by Bulgaria to be allegedly ten times lower than the actual amounts to recover. The petitioner referred to the recent European Court of Human Rights judgment in *Kostov and others v. Bulgaria*², which confirmed the existence of similar practices, based on standing administrative provisions of Bulgarian law. On the other hand, Bulgaria stressed that every step taken to implement the recovery decision has complied with EU and national law, and that it is not possible to launch a new administrative procedure for the choice of a land valuator under national law.

Given these conflicting arguments, the Commission services are analysing all of the claims. This line of action includes new requests of information to the Bulgarian authorities in order to allow the Commission to better analyse the case.

In any case, Bulgaria remains under an obligation to enforce the recovery of the unlawful aid. The Commission has reminded Bulgaria that (i) any provision of national law preventing actual recovery should be left unapplied³; (ii) recovery must consist of the accurate State aid amounts; and (iii) that Bulgaria has the duty to provide concrete evidence on the land's market price.

The Commission holds that a hearing before the European Parliament would not contribute to an effective enforcement of the Decision. The analysis of arguments from a Member State concerned by a recovery decision and any other actions performed by the Commission while overseeing the recovery process meet the criteria defined by the Court of Justice of the

¹ 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), OJ L 80, 25.3.2015, p. 100–127.

² Judgment of the European Court of Human Rights (5th Section) of 14 May 2020, *Kostov and others v Bulgaria*, Applications No(s) 66581/12 and 25054/15, ECLI:CE:ECHR:2020:0514JUD006658112.

³ Judgment of the Court of Justice of the European Union of 5 October 2006, *Commission v France* (“*Scott*”), C-232/05, ECLI:EU:C:2006:651, paragraphs 50-53.

European Union in the *Schlyter* judgment⁴ to constitute an investigation.

The Commission would also like to recall that recovery State aid procedures are essentially bilateral, thus implying exchanges between the Member State and the Commission. The exercise of rights by interested parties may only be exercised within the boundaries of the Procedural Regulation⁵.

Thus, divulging the case file information would not contribute to the enforcement of the Decision. Instead, the purpose of recovery is better attained through technical collaboration between Bulgaria and the Commission services.

Should the Commission conclude, after further exchanges, that Bulgaria has failed to implement the Decision, an action pursuant to Article 108(2) of the Treaty on the Functioning of the European Union for infringement of EU law may follow. The Commission services may rely on all of the information in the case file to decide whether to lodge such an action, including the arguments submitted by the petitioner.

Conclusion

In light of the above, the Commission finds that it is not possible to support the petition and its content. However, the Commission will continue to oversee the implementation of the Decision. To that end, the Commission is in contact with the Bulgarian authorities on the measures adopted and to be adopted, so as to verify whether they are aligned with EU law.

⁴ Judgment of the Court of Justice (Fourth Chamber) of 7 September 2017, *French Republic v Carl Schlyter*, C-331/15 P, ECLI:EU:C:2017:639.

⁵ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9–29.