

Explanatory note accompanying the proposal for the revision of the guidelines for state aid in agriculture, forestry and in rural areas and for the agricultural block exemption regulation

The purpose of this note is to clarify the objective and scope of the proposals for revised State aid Guidelines in the agricultural and forestry sectors and in rural areas (“the Guidelines”) and the Agricultural Block Exemption Regulation (“ABER”). It accompanies the consultation on the two proposals that will be open until 13 March 2022.

Citizens, organisations and public authorities are invited to provide their views on these draft State aid rules in the sectors of agriculture, forestry and in rural areas. In addition to the consultation, two meetings with Member States will be held to gather their feedback on the ABER, as well.

The consultation on the Guidelines is launched based on the English version of the draft. Translations into all EU languages¹ will be added gradually to the website upon their completion. The consultation on ABER is launched in all EU languages.

Stakeholders are invited to indicate which of the two instruments their comments concern.

Stakeholders are invited to provide their comments in electronic format and should clearly indicate if their reply is confidential. In such case, a non-confidential version of the reply, which can be published on the website of DG Competition, should also be provided.

1. Context

The current rules, which started to apply on 1 July 2014, will expire on 31 December 2022. Their performance has been evaluated and the results are set out in a Commission Staff Working Document that was published on 19 May 2021². The evaluation concluded that, overall, the existing rules work well but that some targeted adjustments are necessary to align the rules with the current EU priorities, in particular the future Common Agricultural Policy (“CAP”) and the European Green Deal. A forward-looking impact assessment is ongoing. The results of this public consultation will feed into that process.

The public support for the agricultural and forestry sectors and for rural areas is embedded in the broader context of the CAP. The public support provided within the CAP is crucial for ensuring a fair standard of living for the agricultural community, to stabilise markets and to ensure the availability of supplies reaching the consumer at reasonable prices. The current State aid framework is consistent with the CAP rules and the new rules seek to maintain, to the extent possible, this approach.

The two State aid instruments set out a specific, tailor-made framework for the allocation of public funds for the agricultural and forestry sectors and for rural areas. The revision seeks to ensure that public support is well targeted and leads to modern, economically viable and environmentally sustainable agricultural production and forests. In that regard, an important

¹ With the exception of Gaelic for this public consultation. However, the forthcoming State aid instruments will be available in Gaelic as well.

² [Revision of the State aid rules for agriculture, forestry and rural areas – Competition - European Commission \(europa.eu\)](#)

policy objective has been to contribute to achieving the objectives of the Green Deal, in particular the ‘Farm to Fork’ and Biodiversity strategies. The current State aid framework already has the potential to contribute to the transition to a sustainable and biodiversity-friendly agriculture. The new rules have the ambition to create additional possibilities for achieving the Green Deal objectives.

2. Proposed changes in the draft of the two revised instruments

The evaluation of the current State aid instruments concluded that they both are overall fit for purpose and has achieved their objectives. However, the evaluation also identified some issues that need to be addressed when designing the future State aid rules.

Against that background, the revision seeks the following main objectives:

- Predictability, legal certainty and coherence in State aid control;
- consistency with the Green Deal and CAP objectives and
- simplification, more efficient State aid procedures and a reduction of administrative costs.

The revision of the State aid rules for agriculture, forestry and rural areas follows the evaluation of the performance of the 2014 rules in relation to their relevance, effectiveness, efficiency, coherence and EU added value. The analysis was mainly based on case handling experience and in-house data, but also comprised the results of an external evaluation support study and an open public consultation.

The proposed changes compared to the current rules are summarised in this explanatory note. For each proposal, this note specifies whether it concerns both or only one of the State aid instruments. Where significant policy changes are put forward, these will be assessed in a separate impact assessment.

The following aspects of the rules are subject to the revision:

- (i) common assessment principles;
- (ii) consistency with the future CAP/Strategic Plans Regulation (SPR);
- (iii) removal of obsolete or partly outdated rules;
- (iv) changes seeking to contribute to Green Deal objectives;
- (v) extension of the scope of the ABER;
- (vi) removal from the scope of the Guidelines of certain aid measures that are already covered by other State aid rules, such as the Regional Aid Guidelines (“RAG”) and the General Block Exemption Regulation (EU) No 651/2014 (“GBER”);
- (vii) modifications of certain general conditions which apply across the State aid rules also to other sectors of the economy;
- (viii) modifications related to specific agricultural and forestry aid measures.

I. Common assessment principles

This modification concerns both instruments.

The common assessment principles, introduced through the 2014 State aid modernisation initiative (“SAM”), need to be revised in the light of the judgement in case T-356/15 Austria v Commission (the Hinkley Point C judgement). In that judgement, the Court provided an important interpretation of Article 107(3)(c) TFEU. The proposed structural change reflects this interpretation.

The revision of the common assessment principles is subject to an overarching approach, common to all recently revised State aid instruments. The proposed changes are consistent with these other State aid instruments, while maintaining certain distinctions, which cater for the specificities of the agricultural and forestry sectors.

II. Consistency with the future CAP rules and the SPR

This modification concerns both instruments.

Whilst rural development support co-financed by the EAFRD for the agricultural sector is exempt from the application of State aid rules (cf. Article 145(2) of [Regulation \(EU\) 2021/2115](#), (“CAP SPR”), support co-financed under the EAFRD for forestry and non-agricultural activities in rural areas is indeed subject to State aid control. Therefore, to smoothen the State aid procedures for rural development support, the 2014 State aid Guidelines and ABER mirror the rural development rules.

The subsidiarity-based approach envisaged for the future rural development policy under the CAP presents a technical challenge for the drafting of the new State aid rules. Under the just mentioned CAP SPR, the EU will establish basic policy parameters, but it will be up to the Member States to tailor their rural development interventions to their specific needs, while remaining in line with the Green Deal targets and the legal framework of the new CAP. The absence of precise eligibility criteria for rural development support at EU level means that the design of the agricultural State aid rules must also change.

The subsidiarity approach does not allow providing in the State aid rules the entire scale of possibilities and modalities that the Member States may consider necessary to include in their strategic plans. The revised State aid rules therefore propose a general compatibility presumption clause for rural development interventions included in the strategic plans, for which a State aid cover is required. Such a compatibility presumption is subject to the condition that certain general State aid principles are respected: no financing can be provided for working capital, except where aid is provided in the form of financial instruments, the public support cannot constitute operating aid and it cannot be granted to undertakings in difficulty.

This compatibility clause will ensure that the necessary State aid control procedures are followed, while at the same time, the Member States will be able to design their strategic plans according to their needs.

III. Removal of obsolete or partly outdated rules

This modification concerns both instruments.

This proposal is largely linked to the previous point: the current specific compatibility conditions are largely a blue-copy of the rural development legislation adopted under the CAP in 2013. Given the fact that the CAP has changed, the State aid rules have to be adapted accordingly. Moreover, in the course of time, some conditions have become obsolete or partly outdated. The revised texts include up-dates where appropriate.

IV. Changes seeking to contribute to Green Deal objectives

These modifications concern both instruments.

The current State aid framework already has the potential to contribute to the transition to a sustainable and biodiversity-friendly agriculture. Therefore, there is no need for a major overhaul of the existing rules.

The revision seeks to establish even more ambitious rules, capable of creating the State aid framework which will adequately contribute to achieving the objectives of the European Green Deal, as expressed in the ‘farm to Fork’ Strategy, the 2030 Biodiversity Strategy and the 2030 Forestry Strategy, as well as the targets set out by the European Climate Law.

Furthermore, the evaluation showed that the uptake of some measures, which would have the potential to contribute to the Green Deal objectives, was too low to have an impact.

It is therefore proposed to adapt some of the existing measures in order to improve the incentives for farmers and foresters to engage in actions contributing to the Green Deal objectives. Particular attention is given to climate change related matters.

V. Extension of the scope of the ABER

Certain aid measures could not be included in the scope of the current ABER when it was adopted in 2014, because the Commission did not at the time have sufficient case handling experience. Today, they fulfil the requirements of the Enabling Regulation (EU) 2015/1588 for being included in the ABER. The measures are listed below.

As regards the agricultural sector, it is proposed to include

- aid to compensate farmers for damage caused by protected animals and
- aid to compensate farmers for disadvantages related to Natura 2000 areas.

With regard to the forestry sector, the ABER already today contains co-financed aid measures. It is proposed to add certain aid measures that are exclusively financed from national funds:

- afforestation and creation of woodland;
- agroforestry systems;
- the prevention and restoration of damage to forests;
- investments improving the resilience and environmental value of forest ecosystems;
- area-specific disadvantages resulting from certain mandatory requirements;

- investments in infrastructure related to the development, modernisation or adaptation of the forestry sector;
- investments in forestry technologies and in processing, mobilising and marketing of forestry products;
- conservation of genetic resources in forestry, and
- the start-up for producer organizations in the forestry sector.

Finally, regarding rural areas, it is proposed to include:

- aid for basic services and village renewal in rural areas, co-financed by the EAFRD;
- aids for costs incurred by SMEs participating in CLLD or EIP Operational Group operations and
- limited amounts of aid to SMEs benefitting from CLLD or EIP Operational Group projects

VI. Removal from the scope of certain aid measures that are already covered by other State aid rules

This modification concerns both instruments.

It is proposed to remove from the scope of the Guidelines some aid measures that are already covered by other State aid instruments, in particular by the scope of Regulation 651/2014 (General Block Exemption Regulation) and by the Regional Aid Guidelines.

This change concerns aid measures in favour of rural areas. It seeks to do away with parallel, dual, potentially differing conditions for the same aid measures. The proposal identifies measures for which there is no need for specific sectoral rules, because other State aid instruments fully cater for the purpose: aid for investments concerning the processing of agricultural products into non-agricultural products, the production of cotton, investments in the creation and development of non-agricultural activities, aid for knowledge transfer and information actions and aid for advisory services.

VII. Modifications of certain general conditions which apply across the State aid rules

The following changes are proposed, which are generally applicable to all State aid measures, unless stated otherwise in a specific set of rules:

Simplified cost options:

This modification concerns the Guidelines.

Currently, the ABER provides for the possibility to use simplified costs options for co-financed aid. It is proposed to include similar provisions in the Guidelines and to extend the scope of this option to certain aid measures not co-financed by the EAFRD.

Simplified cost options have already been accepted under the Guidelines (for co-financed measures), by way of interpretation in analogy with the ABER. Furthermore, the current Guidelines already include a possibility to use “standard assumptions” for costs under certain

types of aid. The simplified costs could therefore apply to several types of aid, including aid measures financed exclusively from national funds. The risk of overcompensation is limited, given the nature of the aid: in the agricultural and forestry sectors, aid is mostly granted under large schemes, the beneficiaries are almost exclusively SMEs and the aid amounts granted are low.

Derogation from the requirement of a counterfactual scenario in the case of aid in favour of small municipalities:

This modification concerns the Guidelines.

Under the SME definition³ municipalities are considered as large undertakings regardless of their actual size. They are therefore required to submit a counterfactual scenario when applying for aid.

This causes problems for small municipalities in particular (but not exclusively) for aid for forestry local infrastructure. It is therefore proposed to exempt small municipalities with an annual budget of less than EUR 10 Mio and less than 5 000 inhabitants, from the requirement to submit a counterfactual scenario. Given the types of aid in question (aid for local and forestry infrastructure), it is considered that such an amendment will not lead to a risk of distortion of competition.

The derogation would be specific for the Guidelines. There are no similar derogations under other State aid instruments. However, it is considered that this derogation is justified in the current context, given the very large number of small municipalities where aid for local and forestry infrastructure is crucial to keep rural areas alive.

VIII. Modifications related to specific agricultural and forestry aid measures.

Agricultural investment aid

These modifications concern both instruments.

- The current rules provide for a differentiated aid intensity, ranging from 30% to 75%. In order to align the State aid rules with the rural development legislation, it is proposed to introduce a general aid intensity level of 65% for aid in favour of both, primary agricultural production and processing and marketing of agricultural products. Given the structural disadvantages and constraints, which they face, the higher aid intensity up to 85% is maintained for the outermost regions.

³ Annex I to Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the EU, OJ L 193, 1.7.2014, p. 1
https://eur-lex.europa.eu/legal-content/en/TXT/?uri=uriserv:OJ.L_.2014.193.01.0001.01.ENG#:~:text=Commission%20Regulation%20%28EU%29%20No%20702%2F2014%20of%2025%20June,Treaty%20on%20the%20Functioning%20of%20the%20European%20Union

- The current State aid rules allow for investment aid to meet new requirements imposed on farmers by Union law for a maximum period of 12 months from the date on which they become mandatory. Such aid seems not to be in compliance with the general State aid principles, because it may not have an incentive effect. Furthermore, it may indirectly incentivise late implementation of new standards. This would infringe upon Union law and would run counter the objective of achieving the Green Deal Goals. It is therefore proposed to remove such aid from the scope of the future rules.
- Under the current rules, as regards agricultural and forestry investments, aid for the purchase of land is limited to 10% of the total eligible costs of the operation concerned, except for the purchase of land for operations concerning environmental conservation, where this can be higher. The new rules propose to extend this possibility for operations concerning carbon-rich soil preservation. Such a derogation is in line with the Green Deal objectives.
- As regards aid in favour of restoration of the damage caused by adverse climatic events and plant pests, if such events can be linked to climate change, it is proposed to introduce in the new rules the condition for the beneficiaries to include in the restoration, where possible, adaptation measures to climate change, in order to minimise damage and losses produced by similar events in the future. This condition aims to reflect the link between the recurrent occurrence of such events and climate change and to incentivise the agricultural and forestry sectors to implement farming practices adapted to climate change.

Aid for prevention, control and eradication of animal diseases and aid to make good the damage caused by animal disease

This modification concerns the Guidelines.

The current State aid rules allow aid to compensate the costs for the prevention, control and eradication of animal diseases and to make good the damage caused. To be eligible, the animal disease must be included in the list established by the World Organisation for Animal Health or in the list set out in Annex II to Regulation (EU) 2016/429. Under the current rules, aid can therefore not be granted in relation to emerging animal diseases. However, Union legislation in the area of health and food safety provides also for measures in favour of emerging animal diseases, under the same conditions as those applicable to the listed diseases. It is proposed to adapt the State aid rules accordingly and enlarge their scope to emerging diseases.

Aid to make good damages caused by invasive alien species and for prevention, control and eradication of invasive alien species

This modification concerns the Guidelines.

The current State aid rules do not address the spread of invasive alien species throughout the EU territories. Imported by accident, these alien species often cause important unbalances

and damages to EU biodiversity and may endanger local and regional species used for agricultural activities.

To be eligible for aid, these invasive species must be included in the list adopted by the Commission in compliance with Article 4 of Regulation (EU) No 1143/2014. It is proposed to extend the scope of the Guidelines to damage caused by invasive species included in that list, in order to allow for aid in favour of their prevention and eradication and to make good damage caused by invasive alien species.

Carbon farming

This modification concerns the Guidelines.

Under the current rules, various carbon farming measures can already be supported. These measures will be maintained: e.g. investment aid, aid for agri-environment-climate commitments and animal welfare commitments, aid for disadvantages related to Natura 2000 and the Water Framework Directive, aid for organic farming etc.

The proposed new rules envisage to make support also possible (in line with the SPR) to ‘collective schemes and result-based payment schemes’. Where such schemes are mentioned in the new GL (e.g. aid for agri-environment-climate commitments, aid for forest-environment and climate services and forest conservation), it has been specified that this also includes carbon farming schemes. Such specific reference to carbon farming complies with the strategy on adaptation to climate change and with the European Climate Law. In addition to that, in order to increase the currently low uptake of forest-environment climate services, it is proposed to introduce the possibility of an incentive payment of up to 120% of the eligible costs for biodiversity, climate, water or soil related services and collective and result-based schemes, such as carbon farming schemes in forestry.