



# State aid in agriculture and forestry sectors and in rural areas

Guidelines for State aid in agricultural and forestry sector and in rural areas  
Regulation 2022/2472 (ABER)

Regione Campania  
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# Background

- Both revised instruments entered into force on 1/1/2023
- OJ C 485 (GL) and L 327 (R 2022/2472), 21/12/2022
- Accompanied by an impact assessment
- Drivers:
  - Results of the evaluation of the previous rules
  - New CAP Framework
  - Green policy objectives of the Commission
  - Judgement in case C-594/18 (“Hinkley Point C judgement”)

# Key drivers of the process

- Changes in the related EU framework :
  - State aid has been embedded in the broader Common Agricultural Policy
  - Entry into force of Regulation N°2021/2115 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans (CSP)) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 Regulation (Direct payments)
    - The new CSPs are based on objectives; less descriptive regarding measures
  - Revision of other State aid instruments (fishery, GBER, RAG, CEEAG, R&D&I Framework)
  - Commission objectives set out under the Green Deal policy
- Experience gained by the Commission with existing measures
- Streamlining rules and alleviating administrative burden

# Main changes in a nutshell I.

## Guidelines:

- Common assessment principles restructured in line with the Hinkley Point C judgement
- Removal from the scope of the Guidelines of certain aid measures that are already covered by other State aid instruments (mostly RAG, GBER)
- New aid measures included/aid amounts replaced by aid intensity
- Adaptation of the rules to better cater for State aid clearance of multidimensional schemes co-financed by the EAFRD
- Revision of the rules to cater for the Green Deal objectives
- Up-date and clarification of some concepts and definitions
- Removal of obsolete or partly outdated rules
- Simplified costs option included and enlarged
- Lowering of publication thresholds to EUR 100 000 / EUR 10 000 (primary production) to increase transparency

# Compatibility assessment under Art. 107(3)(c) TFEU

- Restructured of common assessment principles in light of the judgement in case C-594/18 (« Hinkley Point C »)
- Changes consistent with other State aid instruments (CEEAG, RAG etc.), while maintaining certain distinctions, which cater for the specificities of the agricultural and forestry sectors
- Court interpretation of Article 107(3)(c) TFEU:
  1. two sets of conditions (see next slide)
  2. objective of common interest / priorities is not a compatibility condition

# Compatibility assessment under Art. 107(3)(c) TFEU: two sets of conditions

## ➤ Positive:

- Obligation to identify an economic activity
- Aid must facilitate the development of aided economic activity
- Aid must not contravene provisions or general principles of EU law

## ➤ Negative:

- Balancing test: weigh up the positive effects of the aid for the development of the aided economic activity, and the negative effects of the aid on trading conditions in the single market.
- Within this balancing, the Commission can take into account if the measure pursues EU priorities or common objectives

# No parallel rules in the State aid instruments

- Removal from the scope of the Guidelines of certain aid measures that are already covered by other State aid instruments (e.g. RAG, GBER):
  - Investment aid in favour of rural areas
  - Investments in processing of agricultural products into non-agricultural products
  - Aid for knowledge transfer and information actions in rural areas
  - Aid for advisory services in rural areas

# New aid measures

- Aid to make good damages caused by invasive alien species and for prevention, control and eradication of invasive alien species
- Emerging diseases
- Result-based schemes:
  - Agri-environment-climate commitments
  - Forest-environment and climate services
- Aid to make good damage caused by protected animals:
  - New, enlarged definition: includes animal species for which national legislation provides specific rules to preserve the population
  - New eligible costs: indirect costs (e.g. reduced production capacity)



# Main changes to forestry measures

- No more limitation on the range of beneficiaries – exception below
- Aid for area-specific disadvantages resulting from certain mandatory requirements in forest areas:
  - Aid may be granted to private forest holders, forest managers and their associations (in line with CSP)
  - Aid amount replaced by 100% aid intensity
- Forest-environment and climate services
  - Aid may cover collective and result-based schemes, such as carbon farming schemes
  - 100% aid intensity (as now), plus an **incentive payment** possible, not exceeding 20% of the compensation

# Other changes

- References and definitions updated: e.g. plant pests, protected animals
- Simplified costs option enlarged
- Some aid amounts replaced by aid intensity (up to 100%)
- Some definitions no longer needed and thus deleted: e.g. less developed regions, EU-25, EU-27,
- New definitions: e.g. carbon farming schemes, invasive alien species, emerging diseases
- Obsolete and outdated provisions deleted (e.g. rules limited in time, which have already expired)
- Publication thresholds lowered (to EUR 10 000/100 000) to increase transparency

# Main changes in a nutshell II.

## ABER:

- Measures block exempted under R 702/2014 remain by and large block exempted.
- Updates introduced: based on changes in the EU regulatory framework and upgraded figures where necessary.
- To define and formulate block exempted measures, the revised ABER bases itself on the wording of R 2021/2115 (as R 702/2014 was based on R 1305/2013).
- Whenever suitable/possible, the revised ABER takes into account regulatory choices pursued by R 2021/2115 (e.g. aid intensities, definitions etc.).
- Whenever suitable the revised ABER takes into account regulatory choices pursued by the CSP Regulation (e.g. aid intensities, definitions etc.) and maintains the approach of R 702/2014 as a general rule.
- Most of the notification thresholds remain the same (EUR 500 000; EUR 7,5 mio.) but few are increased and thresholds for the newly introduced measures are set.
- Publication threshold lowered to EUR 10 000/100 000 to increase the transparency.

→ Considerable extension of scope (+50% of measures with notification requirement under the old rules can now be block-exempted)

- New measures added
- Forestry also for “pure” (nationally financed) State aid
- Better use of specific categories of the “Enabling Regulation”
- Procedural: no more “ex ante” checks

# Revised ABER – main changes

- Measures which are no longer block exempted in ABER:
  - Articles 44, 46 and 47 of R 702/2014 removed. They are planned to be covered under the ongoing amendment to GBER.
- New and extended block exempted measures
  - Aid to make good the damage caused by adverse weather conditions, for which the Commission has already experience on similar measures.
  - Aid to compensate for the damage caused by protected animals.
  - Aid for disadvantages related to Natura 2000 **agricultural areas**. Under the previous ABER only for forestry areas.
  - Start-up aid for producer groups and organizations in the forestry sector.
  - Aid for basic services and infrastructure in rural areas co-financed by the EAFRD.
  - Aid for costs incurred by SMEs participating in community-led local development ('CLLD') or European Innovation Partnership for agricultural productivity and sustainability ('EIP') Operational Group projects co-financed by the EAFRD.
  - Limited amounts of aid to SMEs benefitting from CLLD or EIP Operational Group projects.

# No change in fundamental rules

- ABER applies on the basis of Council R 2015/1588, Art. 1, to:
  - **SMEs:**
    - active in the agricultural sector;
    - when aid is granted in accordance with SPR regulation and is either co-financed under EARDF or granted as additional national financing
  - **other undertakings** for aids:
    - in favour of cultural and natural and heritage in agricultural holdings,
    - to compensate for damages caused by natural disasters in the agricultural sector,
    - for research and development in agriculture and forestry and,
    - In favour of environmental protection
    - In favour of forestry sector.

# New CAP framework

- Subsidiarity-based approach/consistency between CAP and State aid
- A. Co-financed measures – no change to the general rule:
  - Art. 42 TFEU: the rules on competition, which include those on State aid, apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council.
  - Art. 145 of R 2021/2115:
    - State aid rules apply to support under that Regulation
    - State aid rules do not apply to support provided by Member States pursuant to and in accordance with this Regulation, or to additional national financing referred to in Article 146 of this Regulation, falling within the scope of Article 42 TFEU
- Therefore:
  - Actions falling within the scope of Article 42 TFEU: no change – no State aid clearance required
  - Actions falling outside the scope of Article 42 TFEU: subject to State aid control (R 2022/2472 – Sections 6 & 7, GL – Chapters 2 & 3.)

# New CAP framework

- B: Pure State aid:
  - Consistency with the CAP is maintained, to the extent possible
  - Alignment with the CAP on a case by case basis: e.g. increased aid intensity for investment aid, result-based schemes, collective schemes, aligned definitions



# New CAP framework

- Subsidiarity based approach – challenge for the State aid
- Previous State aid rules almost identical to R 1305/2013
- « compatibility clauses »: points (499) and (635) of the Guidelines (not provided for under ABER)
  - 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 or which is subject to a recovery order.

# Available State aid clearance

EAFRD co-financed measures and additional national financing			
	Agriculture	Forestry	Rural areas others
<b>ABER</b>	→		
<b>AGRI Guidelines</b>	→		
<b>Horizontal State aid instruments*</b>	→		
<b>De-minimis 1407/2013</b>	→		

\* Mainly GBER

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