FIT FOR FUTURE Platform Opinion

Topic title	Guidelines on State aid to the Agricultural and Forestry Sectors and in Rural Areas and Agricultural Block Exemption Regulation (ABER)
	2021 AWP
	Commission Regulation (EU) No 702/2014 and European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 *Legal reference*
Date of adoption	28 January 2022
Opinion reference	2021/SBGR3/12
Policy cycle reference	☑ Contribution to (ongoing) legislative process CWP 2021, Annex II, Revision of the Guidelines on State aid to the Agricultural and Forestry Sectors and in Rural Areas and Agricultural Block Exemption Regulation (ABER) *Commission work programme reference:*

To simplify state aid procedures, the Council has empowered the Commission to adopt block exemption regulations exempting certain categories of aid from the notification requirement. A specific framework of rules has been set up for the control of State aid in the agriculture and forestry sectors and in rural areas. The current framework comprises an Agricultural Block Exemption Regulation ("ABER") and State aid Guidelines.

The current rules are applicable until 31 December 2022. The evaluation was completed in May 2021 and it showed that the current rules have worked well but that there is scope for procedural simplification as well as adjustments to increase the effectiveness of certain aid measures. Some eligibility conditions have become obsolete or cause interpretation difficulties or are unnecessarily burdensome. The State aid framework must continue to be closely linked to the legislation under the Common Agricultural Policy, in particular the future regulation on support for national strategic plans.

A public consultation took place between 26 April 2019 - 19 July 2019.

	☐	Contribution to the (ongoing) evaluation process
		Title of the ongoing evaluation:
		No
	☐	Included in Annex VI of the Task force for subsidiarity and proportionality
		No
	☐	Other
		No
Have your say: Simplify!	*No relevant suggestions on this topic were received from the public.*	
Commission follow up	REFIT Scoreboard:	State aid rules in agriculture
	Have your say portal:	Agricultural State aid guidelines
	Annual Burden Survey:	The EU's efforts to simplify legislation

FIT FOR FUTURE PLATFORM'S SUGGESTIONS SUMMARY

Suggestion 1: Simplify the rules and improve their consistency with green policies

Suggestion 2: Aligning the scope of the notion 'damage' to achieve a coherent use throughout the Guidelines

Suggestion 3: Simplify aid to the forestry sector, through more streamlined rules

Suggestion 4: Align the risk management loss thresholds with the new CAP requirements

Suggestion 5: Simplify aid to small farmers by further reducing administrative burden

Suggestion 6: More comprehensive formulation of eligible costs

Suggestion 7: Exploring the possibilities for introducing result-oriented State Aid

SHORT DESCRIPTION OF THE LEGISLATION ANALYSED

State aid control is a key instrument of the EU's competition policy, as enshrined in the Treaty on the Functioning of the European Union. Its objective is to safeguard the internal market by preventing undue distortions of competition and trade. The Treaty generally prohibits State aid unless it is justified for example for reasons of economic development. The Commission has set up a specific framework of rules for State aid in the agricultural and forestry sectors and in rural areas. That framework comprises a block exemption regulation (ABER), State aid Guidelines and a regulation on *de minimis* aid for farmers. The State aid rules for agriculture, forestry and rural areas are closely related to the Common Agriculture Policy (CAP), in particular the rules on support measures financed by the European Agricultural Fund for Rural Development.

The ABER and the 2014 State aid guidelines for agriculture, forestry and rural areas were both set to expire in 2020, but (in line with the rural development rules under the CAP) have been extended till the end of 2022.

Further sources of information

Have your Say entry page

Legislation framework webpage

Roadmap

Public consultation results

Commission SWD(2021)107 final on the evaluation of the instruments applicable to State aid in the agricultural and forestry sectors and in rural areas + executive summary EN, FR, DE

Evaluation study of the instruments applicable to state aid in the agricultural and forestry sectors and in rural areas

State Aid Scoreboard

Existing evidence suggests the following issues:

In May 2021 the Commission concluded the evaluation of the framework, concluding that, overall, it worked well, has been relevant, effective, coherent and globally efficient from the point of view of overall simplification. This is particularly true for the extended scope of the ABER, which as from 2014 covers most of the rural development support measures financed under the CAP. The exemption of these measures from the obligation to notify aid has saved time and reduced administrative costs. As for the impact on businesses, speedier procedures mean faster access to aid. The revised guidelines were seen as contributing less to simplification, as Member States' authorities still associate the notification process with a heavy workload and lengthy procedures.

It showed as well that certain aspects of the guidelines raised interpretation problems or are otherwise difficult to apply; in particular, this concerns obsolete or partly outdated rules, unclear definitions and terms giving rise to recurring interpretation requests, and overly complex requirements. In this respect, some rules appeared to be outdated, e.g. with respect to aid in sectors which are subject to production limits, such limits are set in previous CAP legislation which is no longer in force. Furthermore, certain definitions and terms in the existing rules give rise to recurring interpretation requests (e.g. the definition of protected animals causing damage for which farmers may be compensated) and, hence, should be further clarified. Lastly, some requirements under the existing rules, in particular those relating to aid for subsidised services, such as information actions, appear to be too complex.

More specifically, for **agriculture**, the assessment showed that Member States favour using the ABER, as it means less administrative costs compared to notifying aid under the Guidelines. The main reason for notifying aid is to extend the scope of the aid scheme to large undertakings. Some Member States also notify aid in response to specific needs that are not covered by the ABER or to ensure legal certainty. The support study confirmed that the inclusion of compensation for damage caused by protected animals in the Guidelines has facilitated the notification of relevant measures by the Member States. However, it highlighted that procedures remain cumbersome for low levels of aid.

The inclusion of rural development support measures in the **forestry** sector in the scope of the ABER has significantly increased the efficiency of State aid procedures. The support study showed that the ABER is widely used and that Member States' authorities perceive this to be a real simplification. However, the scope of the ABER is limited to forestry measures co-financed under rural development programmes. Aid measures financed exclusively by national funds remain subject to the notification obligation. In that regard, Member States authorities find that the rules of the Guidelines and their application remain complex. The inclusion of rural development support measures for forestry in the scope of the ABER is therefore considered a success, whereas Member States find it demanding to have to fulfil the notification obligation applicable to measures financed outside the scope of rural development programmes.

As regards aid for non-agricultural activities, the evaluation shows that the impact on efficiency is moderate. The sole reason for including such aid in the scope of the agricultural

State aid framework was to facilitate the implementation of rural development programmes. However, the support study showed that Member States continued to use the State aid instruments already used in the past, in particular the GBER and the general *de minimis* rules.

From an overall simplification point of view, the evaluation thus concludes that the revised rules have at least partly achieved their efficiency objectives. This is particularly true for the extended scope of the ABER, which has allowed for time savings and reductions of administrative costs. As to the impact on undertakings, speedier procedures mean faster access to aid. The revised agricultural Guidelines are seen as a simplification to a lesser extent as Member States' authorities still associate the notification process with a heavy workload and lengthy procedures. The evaluation has thus revealed some flaws to be addressed under future State aid rules in order to improve the efficiency of State aid control and do away with unnecessarily unclear or complex provisions.

Source: Commission SWD(2021)107 final on the evaluation of the instruments applicable to State aid in the agricultural and forestry sectors and in rural areas + executive summary EN, FR, DE

The Fit for Future Platform has acknowledged the issues raised by the legislation concerned as follows:

Regarding: modernisation and future proofing of existing laws, including via digitalisation, the efficient labelling, authorisation and reporting obligations, the simplification of EU legislation:

- To strictly **respect the principle of subsidiarity** and **not to generate additional obligations and requirements** to the Member States;
- To facilitate **State aid for the promotion of regional food products.** As the consumers are getting more actively involved in sustainable change, their demand for obtaining reliable information about the production processes and origin of food grows. Consequently, the consumers are willing to pay higher prices for sustainably produced food, however, the agriculture and food industry, on the other hand, are facing difficulties to ensure and promote transparent and trustworthy communication and labelling that is in line with the internal market rules. Therefore, the Platform invites the legislators to take into consideration how state aid could support producers' promotion of regional food;
- Simplify **the rules** and improve their **consistency with green policies**;
- Simplify **the granting of aid for the forestry** sector which, even if not included in rural development programmes, is compatible with their aim;
- To align the thresholds to qualify for the **'adverse climatic event which can be assimilated to a natural disaster'** with the upcoming CAP Regulation;
- To **simplify aid to small farmers by further reducing administrative burden**;
- To **widen the scope of eligible costs**;
- To **explore the possibility of introducing result-oriented State Aid**.

SUGGESTIONS

Suggestion 1: Simplify the rules and improve their consistency with green policies

Description: The 2021 Strategic Foresight Report[1] recognises that over 40% of the EU's agricultural imports could become highly vulnerable due to drought by 2050, inducing competition for water and fertile land. On the one hand, it must become more resilient and self-reliant, on the other hand, however, the agricultural sector must be encouraged to transition to greener policies. The procedures of the Block Exemption Regulation should be simplified in order to facilitate Member States' investments (e.g. under the CAP and the Recovery and Resilience Facility (RRF)).

The Green Deal and its implementation offer a number of possibilities to finance green transition. It should be stressed that from State aid point of view some content or measures are to be classified as compatible with the internal market and should not be classified as state aid.

Agri-environmental measures or compensation for income foregone in connection with Natura 2000 sites must be notified on the basis of the agricultural guidelines, in so far as they are not implemented through an approved rural development programme and can be block exempted under the Article 14 of ABER.

To reach out more green investments, the maximum aid intensities should be accordingly adjusted, which would lead to an increased incentive effect for investments and increased viability of enterprises. Such an adjustment would also facilitate achievement of the objectives of the Green Deal, since it adds new conditions that need to be taken into account and the adjustment of aid intensities could counterbalance new conditions. It should be specified that, art 14, point 13, e) the increased percentage proposed for higher conditions should apply to the investment not only to the additional costs.

Expected benefits easier and quicker disbursement, coherence with environmental policy and easier disbursement under RRF.

Suggestion 2: Aligning the scope of the notion 'damage' to achieve a coherent use throughout the Guidelines

Description: Another contribution suggests expanding the covering of income lost also to the total or partial destruction of both agricultural production and means caused by protected species. Under the current Guidelines, the measure 1.2.1.5 «Aid to compensate for the damage caused by protected animals» covers only the damage that occurs to the plants destroyed by the protected species and material damage to assets based on restoration costs. However, the measure does not cover loss of income due to total or partial destruction of both agricultural production and means caused by protected species.

Other similar measures, for instance, 1.2.1.1. "Aid to make good the damage caused by natural disasters or exceptional occurrences" and 1.2.1.2. "Aid to compensate for damage caused by an adverse climatic event which can be assimilated to a natural disaster," also cover loss of income due to the total or partial destruction of agricultural production and means, in addition

[1] strategic_foresight_report_2021_en.pdf

to the cost of replacing the damaged crop given the time required to recover to the previous state.

Expected benefits: Under the existing reference, the aim is to recover and establish the previous state, while similar measures do cover loss of income. Adapting the measure would cover the real damage.

The inclusion of the corresponding aid measure to "Aid to compensate for the damage caused by protected animals" in the ABER would further alleviate the administrative burden of the Member States.

Suggestion 3: Simplify aid to the forestry sector, through more streamlined rules

Description: State aid to the forestry sector currently still needs to be notified to the Commission if the measure does not fall under the Member State's rural development programme (i.e. if the measure is financed exclusively from State resources). The ABER should in the future cover such aid interventions, thus alleviate the administrative burden of the Member States and allowing a faster start of their implementation.

Furthermore, a contribution suggests to revise the rules for aid for forest-environment and climate services and forest conservation (section 2.3, point 551). In particular, the reference to the area (aid per hectare) and the limitation of aid to a maximum amount per hectare and the duration of aid hamper the implementation of effective and efficient measures such as conservation of single old trees.

Expected benefits: Ensuring that the forestry sector can more than at the moment, benefit from the simplified procedure regardless of their inclusion in the rural development programs. Such a measure would ensure faster granting of aid where they do not pose a risk of distorting competition.

Regarding the aid for forest-environment and climate services and forest conservation, lifting the maximum amount of aid and the reference to the area as well as the limited period of aid schemes will facilitate the implementation of state aid and unfold new incentives for additional sustainable measures.

Suggestion 4: Aligning the thresholds to qualify for the 'adverse climatic event which can be assimilated to a natural disaster' with the upcoming CAP Regulation

Description: The Agricultural State Aid Guidelines currently regulate that to be eligible for state aid for **'adverse climatic event which can be assimilated to a natural disaster'** that such an event resulted in destruction of at least 30% of the production calculated on the basis of the preceding three year period or a three year average based on the preceding five year period. The upcoming CAP Regulation on the other hand, sets lower threshold of a destruction of at least 20% of the average annual production or income of the farmer in the preceding three-year period or a three-year average based on the proceeding five-year period excluding

the highest and lowest entry. The Agricultural State Guidelines should in the future lower the threshold and align it to the one in the CAP Regulation.

Expected benefits: Aligning the two legal texts would bring more coherent approach and make access to aid support easier.

Suggestion 5: Simplify aid to small farmers by further reducing administrative burden

Description: The current provisions in ABER and the Guidelines cannot fully address the difficulties that small farmers are facing. Therefore, the "the calculation of loss of income" does not reflect the realities of farmers having very small production systems. Small farmers have to bear high administrative burden to collect the large amount of data as required by the regulation and is not proportionate to the relatively small amount of aid that such farmers obtain, which is still significant to them when considering their level of production. Therefore, simpler aid mechanisms should be provided.

Expected benefits: a further simplification of requirements for small farmers would alleviate administrative burden.

Suggestion 6: More comprehensive formulation of eligible costs

Description: Under Article 24 (2) of the ABER "Aid for promotion measures in favour of agricultural products", aid for the organisation of competitions, fairs and exhibitions may be granted to SMEs for the promotion of agricultural products.

According to Article 24 (6) of the ABER, the aid is granted either in kind or as reimbursement of the real costs incurred by the beneficiary. However, the description of the eligible costs does not reflect the benefits in kind in accordance with Article 24 (6) (a). Therefore, we suggest more comprehensive description of eligible costs.

Expected benefits: The clarification and possibly expansion of the eligible costs would result in increased legal certainty.

Suggestion 7: Exploring the possibility of introducing result-oriented State Aid

Description: The current Guidelines on State aid to the Agricultural and Forestry Sectors only allow to compensate additional costs and/or losses associated to an e.g. conservation or additional management measure implemented by the beneficiary. It does not allow yet to directly grant the beneficiary for providing support for achieving public good e.g. increased Carbon sink or increased number of habitats or species (result-oriented aid). The upcoming CAP Regulation that will be applicable as of 1 January 2023, on the other hand, allows such result-oriented financing. To align state aid to the upcoming CAP Regulation, we invite the legislators to explore the possibility of allowing result-oriented measures also in the Guidelines on State aid to the Agricultural and Forestry Sectors.

Expected benefits: State Aid directly linked to results delivered by the beneficiaries could bring more effective and efficient results. With introduction of such aid, beneficiaries would obtain more options for the selection of the appropriate measure while taking more responsibility for their action. Control measures could focus more on the results and less on compliance with agreed measures. When exploring the possibility of introducing result-oriented State aid, we would like to emphasise the importance of the design of the measure in order to be future proof (in particular being able to avoid unpredictable recoveries that could occur due to unfulfilled results).

ABSTENTIONS

- 1 Member State