



Brussels, 14.12.2022
SWD(2022) 418 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT REPORT

accompanying the documents

**Communication from the Commission
Commission Regulation**

Guidelines on State aid in the agriculture and forestry sectors and in rural areas

and

Commission Regulation 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 European Union

{C(2022) 9120 final} - {C(2022) 9131 final} - {SEC(2022) 442 final} -
{SWD(2022) 419 final}

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Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
ABER	Agricultural Block Exemption Regulation
CAP	Common Agricultural Policy
CMO	Common Market Organisation
CSP	CAP Strategic Plans
EAFRD	European Agricultural Fund for Rural Development
ETC	European Territorial Cooperation
EU	European Union
EUR	Euro
FIBER	Fishery Block Exemption Regulation
GBER	General Block Exemption Regulation
IACS	Integrated Administration and Control System
LEADER	Links between actions for the development of the rural economy
OIE	World Organisation of Animal Health
RAG	Regional Aid Guidelines
RSB	Regulatory Scrutiny Board
SAM	State aid modernisation initiative
SDGs	United Nations Sustainable Development Goals
SME	Small and Medium sized Enterprises
TFEU	Treaty on the functioning of the European Union
UN	United Nations
WTO	World Trade Organisation

1. 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

1.1. 1.1. Legal context of State aid control

“State aid” means financial support granted by the government or public authorities to an undertaking within the European Union (EU). State aid can take various forms, such as direct subsidies, interest and tax relief, State guarantees or the purchasing of goods and services on preferential terms. Support financed from the Union budget is also considered to be State aid, if the national authorities have discretion as to the use of these resources.

Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) lays down a negative presumption against State aid. However, the TFEU also provides for some exemptions from the general rule that State aid is prohibited. The exemptions that are particularly relevant for the economic sectors falling within the scope of this impact assessment are laid down in Article 107(2)(b) and Article 107(3)(c) TFEU. The exemption under Article 107(2)(b) concerns aid to make good damage caused by natural disasters and exceptional occurrences. The exemption under Article 107(3)(c) concerns aid to facilitate the development of certain economic activities or areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

State aid control is part of the competition policy enshrined in the TFEU. Its objective is to avoid undue market distortions and subsidy races, as well as to safeguard the internal market and create a competitive landscape with a level playing field for undertakings and adequate and affordable choices for consumers.

Aid to facilitate the development of certain economic activities or areas is subject to the scrutiny of the Commission, which has exclusive competence to decide whether the aid is compatible with the internal market. When assessing such aid, the Commission balances its positive effects (such as environmental protection or climate change mitigation) against its possible negative effects on competition and intra-Union trade. Aid to make good damage caused by natural disasters and exceptional occurrences is *per se* compatible with the internal market but still requires the Commission’s authorisation.

Article 108(3) TFEU lays down the principle that Member States shall notify State aid to the Commission and may not implement the aid until it has been authorised by the Commission. The Commission assesses the compatibility of the notified aid with the internal market and adopts decisions authorising the aid.

To ensure predictability and coherence, the Commission has adopted State aid guidelines. Moreover, for less distortive State aid measures, the Commission has adopted block exemption regulations under which certain aid measures are deemed to be compatible with the internal market. Member States can thus implement aid measures falling within the scope of a block exemption regulation without notifying them to the Commission and waiting for its approval.

The Commission’s State aid rules aim to ensure that the aid is needed, appropriate and has an incentive effect (i.e. changes the behaviour of its beneficiary), is limited to the minimum necessary and does not cause undue distortion of competition within the EU’s internal market.

1.2. 1.2. Scope of the State aid rules for agriculture, forestry and rural areas

State aid rules are not automatically applicable to support for the agricultural sector. Article 42 TFEU provides that State aid rules shall apply to production of and trade in agricultural products only to the extent that the EU legislator has decided so. On that basis, the legislator has decided that State aid rules shall not apply to support for agriculture co-financed by the EU under the Common Agricultural Policy (CAP).

However, State aid rules and procedures fully apply to aid measures financed exclusively from national resources and to rural development support falling outside the scope of Article 42 TFEU, namely forestry measures and non-agricultural activities in rural areas.

The Commission has set up a specific framework of tailor-made rules for State aid in agriculture, forestry and non-agricultural activities in rural areas. The current agricultural State aid framework comprises the following acts:

- EU Guidelines for State aid in the agricultural and forestry sectors and in rural areas¹ ("the Guidelines");
- Commission Regulation (EU) No 702/2014 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 European Union² (the Agricultural Block Exemption Regulation or "ABER");
- Commission Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid³ in the agriculture sector⁴ (not in the scope of this Impact Assessment).

The Guidelines and ABER set out specific compatibility conditions for State aid falling within three categories:

- 1) aid for the agricultural sector;
- 2) aid for the forestry sector; and
- 3) rural development support for non-agricultural activities in rural areas.

The State aid rules for the agriculture and forestry sectors comprise two sub-categories:

- The first sub-category are "rural development-like measures". Such measures are either co-financed by the European Agricultural Fund for Rural Development (EAFRD) or financed exclusively by national funds.

¹ OJ C 204, 1.7.2014, p. 1.

² OJ L 193, 1.7.2014, p. 1.

³ *De minimis* aid is aid of a limited amount, which is not considered to distort competition. It is therefore not a State aid and thus not subject to State aid rules. In the sector of primary agricultural production this amount is set at EUR 20 000 (and EUR 25 000 respectively under certain circumstances) per undertaking over a period of three years.

⁴ OJ L 352, 24.12.2013, p. 9.

- The second aid sub-category are measures that fall outside the scope of the EAFRD and are financed exclusively by national funds.

The third category concerns only aid for non-agricultural activities co-financed by the EAFRD under rural development programmes. This category was included in the agricultural State aid framework in 2014 to make it easier for Member States to implement those programmes.

Table 1 in Annex 5 shows the full scope of the current Guidelines and ABER.

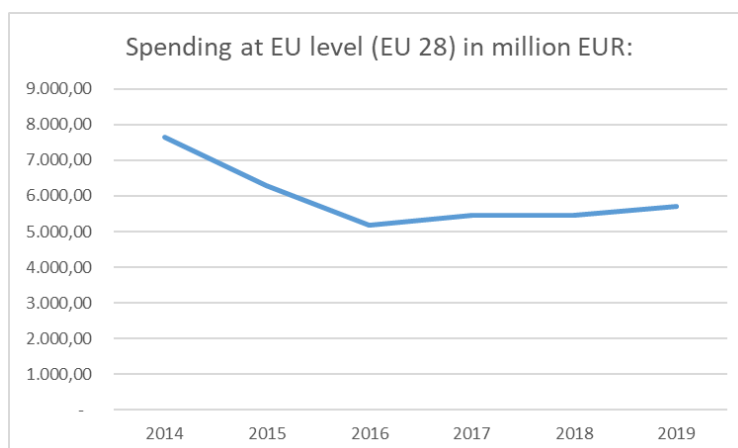
The current agricultural State aid framework applies since July 2014 and is set to expire on 31 December 2022.

State aid rules for agriculture, forestry and rural areas are particularly relevant for SMEs. In fact, 99.8% of all enterprises in the EU are SMEs⁵. When it comes to farming, micro-enterprises even represent 99.9% of total agricultural enterprises⁶.

1.3. 1.3. The importance of State aid in the sectors concerned

Member States (EU-28) spent yearly on average some EUR 6 billion of State aid in the agriculture and forestry sectors and in rural areas in the period 2014-2019⁷.

Figure 1: State aid spending (in current prices) in the agriculture and forestry sectors and in rural areas (Source: State aid Scoreboard 2020)



The biggest spenders in 2019 were Germany (with some EUR 707.5 million), Spain (EUR 681.5 million), France (EUR 599.2 million), Poland (EUR 509.4 million) and Italy (EUR 467.5 million).

⁵ <https://cor.europa.eu/en/engage/studies/Documents/EU-SMEs/EU-policy-SMEs.pdf>

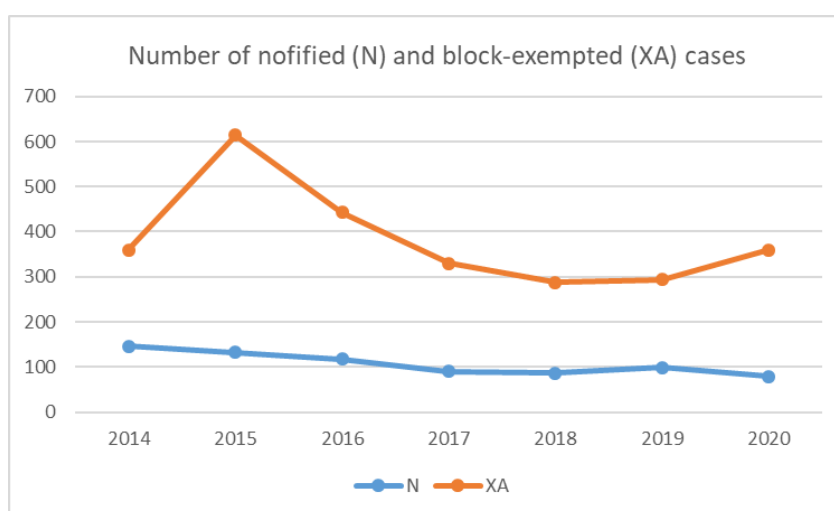
⁶ Source: European Commission (DG AGRI) estimates based on FADN and Eurostat.

⁷ Source: State aid Scoreboard 2020
https://webgate.ec.europa.eu/comp/redisstat/databrowser/view/AID_AGRI/default/table?lang=en&category=AID_AGRI

The majority of aid (some 36%) was spent in the period 2018-2020 on risk and crisis management in agriculture (comprising such measures as prevention of and compensation for damages caused by natural disasters or adverse climatic events, combatting animal diseases, or subsidised insurance premiums), followed by various agricultural rural development measures (e.g. investments in primary agricultural production and processing, animal welfare, knowledge transfer), which accounted for some 17% of spending, and investments in forest area development and improvement of the viability of forests, with around 10% of total spending.

In the period 2014-2020, on average 107 cases were notified to the Commission each year and 384 were block-exempted by Member States. The average share of block-exempted cases in this period amounts thus to 78.2% of all State aid cases.

Figure 2: Number of cases notified and block-exempted in the agriculture and forestry sectors and in rural areas⁸ (Source: DG Competition)



1.4. 1.4. Current political priorities

The TFEU provides that the competence for agriculture is shared between the Union and the Member States, while establishing a CAP with common objectives and a common implementation. Until now, the CAP model has relied on detailed, often prescriptive requirements at EU level and has included controls, penalties and audit arrangements.

On 2 December 2021, the agreement on the reform of the CAP was formally adopted. The new CAP model (referred to as the “delivery model”) has been designed in view of better taking into account the Union's highly diversified farming and climatic environment, in which a one-size-fits-all approach seems not to be suitable for delivering the results and achieving objectives. The future EU’s rural development policy will thus be based on a subsidiarity approach.

⁸ The peak of block exempted aid measures in 2015 can be explained by the need for State aid clearance of aid measures co-financed by the EAFRD at the beginning of the rural development programming period 2014-2020. This possibility was newly introduced in the current ABER, which entered into force in mid 2014.

The new delivery model, to be applied for the programming period 2023-2027, represents a shift towards a more performance-oriented policy. The CAP Strategic Plan Regulation⁹ itself only lays down the main cornerstones of the policy (objectives of the CAP, broad types of intervention, basic requirements), while the details are elaborated by the Member States in their national Strategic Plans (tailored to their specific national and regional needs). Those national Strategic Plans are assessed and approved by the Commission prior to their implementation. At the same time, Member States are more accountable as to how they meet the objectives and achieve agreed targets.

Key policy objectives of the new CAP will be supporting viable farm income, increasing competitiveness, improving farmers' position in the value chain, contributing to climate change mitigation, efficient natural resource management, halting and reversing biodiversity loss, generational renewal, jobs, growth and equality in rural areas, responding to societal demands on food & health and fostering knowledge & innovation.

At the beginning of its mandate, the current European Commission set up the EU's strategic agenda for 2019-2024 and presented its main political priorities¹⁰. Among them, the European Green Deal (hereinafter, the 'Green Deal')¹¹. Agriculture, forestry and rural areas are central to the Green Deal, and the new CAP should be a key tool to contribute to its implementation.

1.5. 1.5. UN Sustainable Development Goals

The United Nations (UN) established its 2030 Agenda for Sustainable Development in 2015¹². It sets out a framework to steer sustainable development globally via a set of 17 sustainable development goals (SDGs) and 169 targets¹³. The SDGs cover environmental, economic and social aspects. The Commission's system of better regulation aims to mainstream the SDGs into the policymaking process, so that every legislative proposal contributes to the 2030 sustainable development agenda of the UN.

The Green Deal, which also sets the framework for the future State aid rules, addresses 12 of the 17 SDGs¹⁴ and will play a vital role for the EU to deliver on its sustainability goals for 2030¹⁵.

⁹ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) 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; OJ L 435 of 6.12.2021, p.1.

¹⁰ https://ec.europa.eu/info/strategy/priorities-2019-2024_en

¹¹ The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Green Deal (11/12/2019, COM(2019) 640 final, "Green Deal Communication").

¹² https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

¹³ <https://sdgs.un.org/goals>

¹⁴ Cf. https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/eu-holistic-approach-sustainable-development_en

¹⁵ Furthermore, the EU has embarked on five "Missions" rooted in the Horizon Europe research and innovation programme 2021-2027 (https://ec.europa.eu/info/research-and-innovation/funding/funding-opportunities/funding-programmes-and-open-calls/horizon-europe/eu-missions-horizon-europe_en) in

State aid rules in agriculture, forestry and in rural areas mirror largely the EU's rural development policy (cf. section 1.2 above). Their contribution to certain SDGs can therefore directly be derived from the contribution of the reformed CAP to the 2030 sustainable development agenda of the UN.

Based on the policy objectives of the new CAP¹⁶, the following relevant SDGs can be identified:

- 1) SDG 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture:

In fact, one of the overriding goals under the reformed CAP is to meet society's demands for safe, nutritious and sustainable food. It will contribute to the enhancement of food safety (with the fight against antimicrobial resistance being an integral part) and thus to the paramount objective of the UN to ensure that all people have access to safe, nutritious and sufficient food throughout the year (SDG 2.1).

The new CAP also plays an essential role in supporting young farmers and in general fair farmers' incomes, increasing agricultural productivity and ensuring sustainable food production systems.

- 2) SDG 13: Take urgent action to combat climate change and its impacts:

The agriculture sector accounts for 12% of all EU greenhouse gas (GHG) emissions. At the same time, it is more vulnerable than most other sectors of the economy to climate change. Therefore, agriculture (together with the forestry sector) both have a key role to play and a vital interest in tackling climate change, thus helping to achieve the commitments of the Paris' Agreement¹⁷ (as also the main objective of the EU Green Deal). The new CAP can support mitigation technologies, carbon sink enhancement through improved soil management, biomass production, reduction in fossil fuel consumption in farm production, and reduction in agricultural production losses and waste, as possible measures to contribute to these objectives.

- 3) SDG 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss:

order to address certain great societal challenges. EU Missions use SDGs as sources for their design and implementation. The Missions "Adaptation to Climate Change", "Restore our Ocean and Waters" and "A Soil Deal for Europe" are in particular relevant for the Green Deal and its implementation. Moreover, to deliver on the Green Deal, the Commission has submitted in July 2021 the climate policy package 'Fit for 55', that covers 12 climate and energy policy proposals including amendments to the Effort Sharing Regulation affecting agricultural emissions and to the Land Use, Land Use Change and Forestry (LULUCF) Regulation.

¹⁶ https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/new-cap-2023-27/key-policy-objectives-new-cap_en

¹⁷ The Paris Agreement is a legally binding international treaty on climate change. It was adopted by 196 Parties at COP (Conference of the Parties) 21 in Paris, on 12 December 2015 and entered into force on 4 November 2016. Its goal is to limit global warming to well below 2, preferably to 1.5 degrees Celsius, compared to pre-industrial levels.

One of the underlying objectives of the reformed CAP is the protection, restoration and promotion of sustainable use of terrestrial ecosystems and the fight against land degradation and biodiversity loss.

1.6. 1.6. Evaluation results and starting points

The Commission has evaluated the performance of the 2014 ABER and Guidelines 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 study¹⁸ and an open public consultation¹⁹. The findings of the evaluation are published on the Commission's Better Regulation site²⁰.

The evaluation concludes that the 2014 agricultural State aid framework has overall performed well and achieved its objectives, in particular the overarching objective of minimising distortive impacts on competition and trade in the internal market. It also concludes that the various aid measures included in the framework largely meet the needs of farmers and foresters and contribute to the achievement of rural development objectives as well as to other public policy objectives, such as environmental protection and animal and public health. However, some challenges have become more acute in recent years, for example adverse climatic events, animal diseases, plant pests and forest fires, more can be done to contribute to the objectives of the Green Deal (in particular the Farm to Fork Strategy²¹ and Biodiversity Strategy²²), and there is a need to adapt the rules to the new CAP, including its enhanced environmental ambition.

As regards efficiency, the evaluation finds that the 2014 agricultural State aid framework has at least partly achieved its simplification objectives. In particular, the extended scope of the ABER allowed for timesavings and reductions of administrative costs. As to the impact on undertakings, speedier procedures mean faster access to aid. This is particularly relevant for SMEs, who's access to finance is often more limited than for large undertakings²³.

The evaluation furthermore confirms that the agricultural State aid rules are generally coherent with other EU policies and legislation, in particular with the rural development policy. Moreover, it concludes that the very existence of a tailor-made State aid

¹⁸ <https://op.europa.eu/en/publication-detail/-/publication/e01b61f0-504f-11e9-a8ed-01aa75ed71a1>

¹⁹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2089-Review-of-Agricultural-State-aid-Guidelines/public-consultation>. That public consultation was carried out as a “back-to-back” exercise and its results have fed into both, the evaluation and the impact assessment. For a summary of the main results, cf. Annex 2.2

²⁰ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2330

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final).

²² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380 final).

²³ https://ec.europa.eu/growth/access-finance-smes/data-and-surveys-safe_en

framework for agriculture and forestry has an EU added value, as it reduces administrative costs and provides predictability, coherence and legal certainty for both Member States and businesses.

1.7. 1.7. Scope of the Impact Assessment

The scope of this Impact Assessment is limited to the Guidelines and ABER. Regulation (EU) No 1408/2013 on *de minimis* aid for the agricultural sector was revised and amended in 2019 and will apply until 31 December 2027.

The Impact Assessment does not touch upon the common assessment principles introduced through the 2014 State aid modernisation initiative (SAM). They are subject to an overarching approach and were recently evaluated in the context of a Fitness check²⁴. Following the Hinkley Point C judgement²⁵, the assessment of those general compatibility criteria has to be restructured (and this new structure is already reflected in other horizontal State aid instruments) but their substance does not change.

1.8. 1.8. COVID-19 crisis

The outbreak of the COVID-19 crisis as of March 2020 has had considerable repercussions on the agriculture, forestry and agro-tourism sectors. Demand patterns shifted considerably, particularly throughout 2020, which lead to losses and difficulties in agri-food businesses. At the same time, the EU's agri-food sector showed resilience and capacity to adapt.

Recognising the COVID-19 outbreak as a major shock to the global and Union's economies and the need to mitigate these negative repercussions on the EU economy, on 19 March 2020, the Commission adopted a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak²⁶. The aim of the Temporary Framework was to tackle the severe liquidity needs of undertakings due to the exceptional circumstances created by the COVID-19 outbreak. In particular, the Temporary Framework allowed for compatible aid under Article 107(3)(b) TFEU to remedy a serious disturbance in the economy (while the ABER and the Guidelines are based on Articles 107(3)(c) and 107(2)(b) TFEU). The Temporary Framework complemented the existing State aid rules in this crisis. It expired on 30 June 2022.²⁷

As far as the agriculture sector is concerned, farm income per work unit has stayed fairly stable in 2020²⁸ and figures for 2021 show a similar situation²⁹. It is, however, too early

²⁴ https://ec.europa.eu/competition-policy/state-aid/legislation/modernisation_en

²⁵ Judgement of the Court of Justice of 22 September 2020, case C-594/18 P, Hinkley Point C, EU:C:2020:742.

²⁶ Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 91 I/01 - C/2020/1863; OJ C 91I, 20.3.2020, p. 1–9 and following amendments.

²⁷ With some exceptions, cf. https://ec.europa.eu/competition-policy/state-aid/coronavirus/temporary-framework_en

²⁸ https://agridata.ec.europa.eu/extensions/DashboardIndicators/FarmIncome.html?select=EU27_FLAG,1

²⁹ https://ec.europa.eu/eurostat/databrowser/view/aact_eaa06/default/line?lang=en

to determine which role the COVID-19 aids played in this context, as the respective data is not yet readily available.

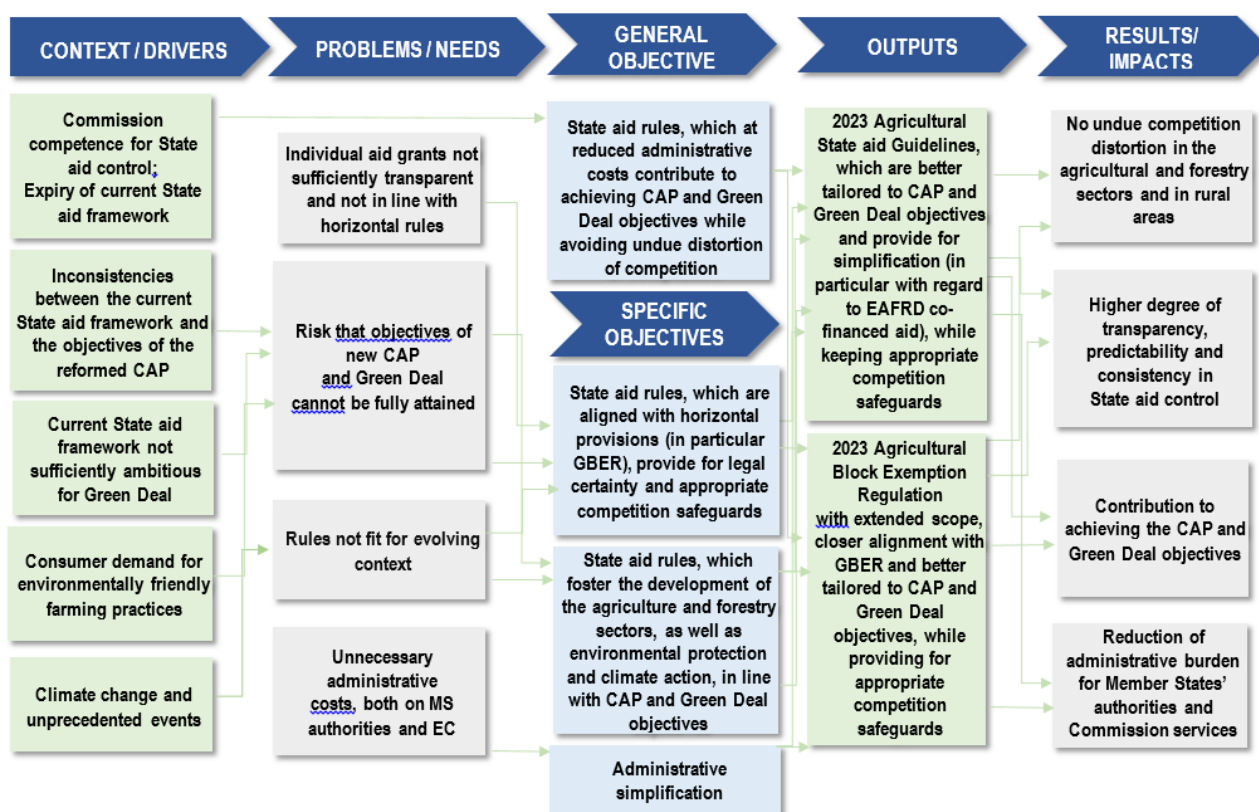
1.9. 1.9. Russia’s invasion of Ukraine

While it is still too early to measure the actual effects, it is already obvious that the geopolitical crisis provoked by Russia’s aggression against Ukraine is having a severe impact on the EU economy and that the agriculture and food processing sectors are being particularly hit.

Recognising the effects of the invasion of Ukraine by Russia on the global and Union’s economies and the need to mitigate these negative repercussions on the EU economy, on 23 March 2022, the Commission adopted a Temporary Crisis Framework for State Aid measures³⁰. As in the case of the COVID-19 Temporary Framework, the Temporary Crisis Framework is based on Article 107(3)(b) TFEU and it complements for a limited period of time the existing State aid toolbox (which is based on Articles 107(3)(c) and 107 (2) (b) TFEU).

2. 2. PROBLEM DEFINITION

Figure 3: Intervention logic



³⁰ Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia; OJ C 131 of 24.3.2022, p. 1, as amended.

2.1. 2.1. What are the problems?

2.1.1. 2.1.1. *Risk, that objectives of the new CAP and the Green Deal cannot be fully attained*

2.1.1.1. Contribution to CAP objectives

Rural development support financed by the EAFRD for forestry and non-agricultural activities in rural areas is subject to State aid control. Therefore, to smoothen the State aid procedures for rural development support, the 2014 Guidelines and ABER mirror the rural development rules applicable for the programming period 2014-2022³¹.

The evaluation shows that the almost complete alignment of the agricultural State aid framework with the rural development policy has achieved the key objective of consistency and coherence with the CAP. The common assessment principles have provided a specific, additional layer of State aid control pursuant to Article 107(3) of the TFEU. However, under the reformed CAP from 2023 onwards the rural development policy is based on a subsidiarity approach (the so-called “delivery model”).

This new delivery model represents a significant shift towards a more performance-oriented policy. It removes the eligibility conditions at EU level and sets only main cornerstones and the basic policy parameters. Member States are responsible for defining the details of their Strategic Plans in view of their specific needs and bear responsibility for the result.

Such a structure ensures a tailor-made approach and better results for the EU farming sector. However, it represents a technical challenge for the design of the future State aid rules, since it will no longer be possible to cover all possible modalities, which Member States may provide in their Strategic Plans. At the same time, it is important to maintain coherence between the two policies.

The challenge therefore consists in striking a balance between the requirements of State aid control of co-financed measures in favour of forestry and non-agricultural activities in rural areas (as only those measures are subject to State aid control) and the subsidiarity approach envisaged under the new CAP delivery model, based on the CAP Strategic Plan Regulation³². The current ABER and Guidelines set very specific conditions (stemming from the rural development rules applicable from 2014), but the national Strategic Plans may impose different or less conditions on beneficiaries. If the current level of detail of the State aid rules for EAFRD co-financed aid remains unchanged, it may become an obstacle to the implementation of the CAP Strategic Plans.

³¹ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005; OJ L 347, 20.12.2013, p. 487.

³² Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) 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; OJ L 435 of 6.12.2021, p.1.

Since one policy should not hinder the implementation of another, the flexibility of Member States to design their Strategic Plans according to their area-specific needs must translate into a corresponding flexibility in the State aid rules. This was also the main message drawn from the replies to the open questions in the 2019 public consultation (cf. Annex 2.1).³³ At the same time, it is important not to compromise the effectiveness of State aid control.

Besides the general question of consistency of State aid rules and rural development policy, the Fit for Future Platform (F4F) opinion³⁴ points to a specific inconsistency in relation to aid for adverse climatic events, which can be assimilated to a natural disaster. While the current State aid rules require a threshold of 30% of destroyed production in agriculture to be recognised as such an event, the new CAP Strategic Plans Regulation sets the minimum loss threshold at 20% for co-financed aid.

2.1.1.2. Contribution to Green Deal objectives

The current State aid framework already has the potential to contribute to the transition to a sustainable and biodiversity-friendly land sector. In particular, measures in the areas of sustainable investment or voluntary management commitments beneficial for the environment or the climate, if adequately designed, have the potential to contribute to the objectives of the Green Deal (for a detailed overview of such measures, cf. Table 2 in Annex 5).

However, these measures in their current form may not always be sufficiently ambitious to fully contribute to achieving the objectives of the Green Deal, as expressed in the Farm to Fork Strategy³⁵, the 2030 Biodiversity Strategy³⁶ and the 2030 Forest Strategy³⁷, as well as the targets set out by the European Climate Law³⁸. In particular, where measures only allow for the compensation of the additional costs and income foregone, which the farmer/forester has to bear to engage in activities beneficial for the

³³ In particular, Member State authorities asked in their position papers that State aid rules must not undermine the subsidiarity approach pursued by the proposal on CAP Strategic Plans (it has to be noted that at the time of the public consultation in 2019 the CAP Strategic Plans Regulation was still in the legislative process and at the proposal stage).

³⁴ The F4F is a high-level expert group bringing together Member States, the Committee of the Regions, the European Economic and Social Committee and stakeholders (including a collaboration with the SME Envoy Network). On 28 January 2022, the F4F adopted an opinion on the Guidelines and the ABER in view of their potential for simplification and reduction of unnecessary costs (https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-less-costly-and-future-proof/fit-future-platform-f4f/adopted-opinions_en: Opinion No 12).

³⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final).

³⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380 final).

³⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - New EU Forest Strategy for 2030 (COM/2021/572 final).

³⁸ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'); OJ L243 of 9.7.2021, p. 1.

environment, the climate or biodiversity, they do not always offer the required incentives to commit to such new activities.

The evaluation showed that, at the current level of aid intensities, the uptake of some measures, such as aid for forest-environment climate services, which would have the potential to contribute to the Green Deal objectives, was too low to have an impact. In fact, only a few Member States have introduced such schemes in the last years and the majority of them have had a low uptake.

Table 1: State aid schemes for forest-environment and climate services and their uptake

SA number	MS	Annual budget million EUR	% of annual budget used*					
			2015	2016	2017	2018	2019	2020
SA.41046	FI	90.0	11%	50%	47%	56%	58%	56%
SA.42464	DK	2.5	10%	11%	9%	7%	11%	28%
SA.45294	DE	28.0			3%	0%	0%	0%
SA.48810	UK	34.0					1%	1%
SA.50409	DE	0.8					11%	57%
SA.54137	CZ	39.0					35%	111%

* Under State aid procedural rules, Member States may exceed the total budget of approved aid schemes by up to 20% without having to re-notify.

Moreover, the F4F opinion also points to the need to improve the consistency of the State aid rules in agriculture, forestry and rural areas with green policies.

Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council (“Taxonomy Regulation”)³⁹, which was adopted on 18 June 2020, sets criteria for environmentally sustainable investments, including the “do no significant harm” principle, or other comparable methodologies. Given the date when this Regulation was adopted, these criteria are not yet taken into account for investment aid under the current rules.

a. State aid rules for agriculture

Aid for agri-environment-climate or animal welfare commitments

The Guidelines allow for aid to farmers who undertake to carry out voluntary actions favouring the environment and climate or animal welfare, where these actions go beyond requirements imposed by Union or national law.

The current maximum aid amounts for such commitments date back to 1999, when they were copied from rural development legislation⁴⁰. In the course of time, the maximum

³⁹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088; OJ L 198, 22.6.2020, p. 13.

⁴⁰ There will be no maximum aid rates in the future CAP Strategic Plans Regulation for agri-environment-climate commitments.

amounts have become outdated, given inflation and current real prices. This is in particular the case in Member States with higher income/wages per capita and a higher degree of mechanisation. Therefore, derogations from the maximum amounts have largely become the rule⁴¹, as there is otherwise insufficient incentive for farmers to commit to more environment and climate friendly farming practices.

Most of the position papers submitted in the 2019 public consultation (mostly Member State authorities but also NGOs and farmers’ associations, cf. Annex 2.2) called for an increase of the maximum aid levels for environment-climate actions.

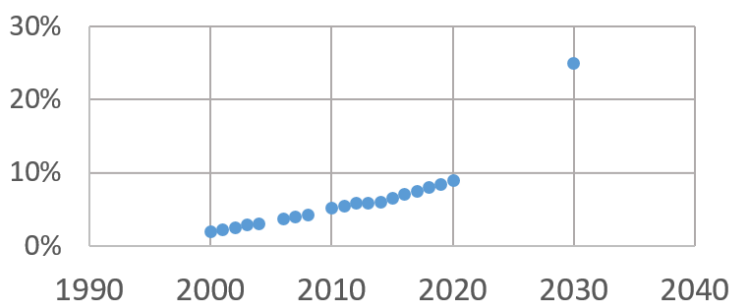
Furthermore, the current section on aid for agri-environment-climate commitments allows to grant aid to cover costs and income foregone resulting from management practices, but does not include the possibility to finance result-based payment schemes in terms of climate mitigation such as carbon farming schemes.

Aid for organic farming

The demand for products from organic agriculture is constantly growing. Organic production comes with higher costs (and this will be further accentuated in the current context) and lower yields, and support for organic agriculture has been in place for many years. The Green Deal has set a target of 25% of agricultural land under organic farming by 2030. Given the growing consumer demand for organic products, there is potential to reaching this target. However, despite the general preference for organic farming, consumers are normally not willing to pay excessively high prices for organically farmed products. Should the current growth rate remain, we would reach about 15% by 2030. Without aid, this would be even less. In view of the ambitious target, further aid might thus be necessary to adequately grow organic production.

The figure below illustrates the development in market share of organic farming in the period between 2000 and 2020 and the Green Deal target for 2030

Figure 4: Area under organic agriculture as a percentage of total utilised agricultural area (Source: Eurostat):



⁴¹ In around 65% of all measures with agri-environment-climate commitments, notified in the period July 2014 to March 2020, Member States went beyond the foreseen maximum amounts, cf. section 8.2.

Aid to make good damage caused by protected animals

Aid to make good damage caused by protected animals supports the co-existence of livestock farmers and wild carnivores (wolf, lynx, etc.) and thus promotes biodiversity. At present, the scope of eligible costs only covers the material damage but does not include loss of income. Furthermore, it does not take into account indirect costs, such as reduced production capacity, although wildlife attacks may also cause production losses through distress (e.g. miscarriage). Lack of compensation for such income loss weakens farmers' acceptance of the presence of protected carnivores.

Furthermore, farmers also suffer losses due to damage caused by animals, which are not strictly speaking protected, but for which national legislation provides specific rules to preserve the population (by imposing for instance temporary hunting bans). Aid to make good such damage is currently not covered by the agricultural State aid rules.

The extension of eligible costs in relation to damage caused by wild animals was also widely requested in the 2019 public consultation.

Aid to prevent and make good damage caused by invasive alien species

The current State aid rules do not address the spread of invasive alien species⁴². Imported by accident, these alien species cause imbalances and damage to biodiversity throughout the EU and can endanger local and regional species used for agricultural activities (e.g. apiculture).

b. State aid rules for forestry

Aid for investments in and payments for ecosystem services

Public support for investments in ecosystem services is an important element for achieving the 2030 Forest Strategy, in particular as regards carbon sequestration, biodiversity and adaptation to the impacts of climate change. The 2030 Biodiversity Strategy also highlights the need to increase the quantity, quality and resilience of forests. Both rural development rules and State aid rules provide for aid to incentivise forestry ecosystem services, allowing for a reimbursement of 100% of the additional costs and income foregone. Experience however shows that in many cases a reimbursement of additional costs and income foregone alone might not be sufficient, as, without an additional incentive payment, the uptake of the respective aid measures is very low.

Furthermore, the current section allows to grant aid to cover costs and income foregone resulting from voluntary management commitments beneficial to achieving climate- and environment-related specific objectives, but does not include the possibility to finance result-based payment schemes in terms of climate mitigation, such as carbon farming schemes.

⁴² Invasive alien species of Union and of Member State concern, as provided for in Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species; OJ L 317, 4.11.2014, p. 35.

Aid to prevent and make good damage caused by invasive alien species

The current State aid rules do not address the spread of invasive alien species. Imported by accident, these alien species cause imbalances and damage to biodiversity throughout the EU and can endanger native forest ecosystems, local and regional species and varieties.

Aid for the restoration and maintenance of natural habitat for plants and fungi in the forestry sector

Under current rules, aid of up to 100% of eligible costs can be paid for the restoration and maintenance of the natural habitat for animals in the forestry sector. This is, however, not possible for the natural habitat of plants and fungi.

2.1.2. 2.1.2. Rules not fit for evolving context

a) Maximum aid intensities

Regulation (EU) No 1305/2013⁴³ provides for differentiated aid intensities for investments, depending on their objectives. The current State aid framework therefore also differentiates aid intensities for investments in agriculture and forestry. However, in the forestry sector, the Guidelines and the ABER limit the aid intensity for certain investment aid measures below what would be allowed under the EAFRD⁴⁴. This has caused problems for Member States' authorities who had either to finance those measures at lower aid intensities or finance them as *de minimis* aid.

The CAP Strategic Plans Regulation provides a single aid rate of 65%, with the possibility to increase the aid rate for certain investments, such as those favouring climate and environment or investments in the outermost regions.

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

The current State aid rules allow for aid to compensate 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 Article 5(1) of Regulation

⁴³ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005; OJ L 347 of 20.12.2013, p. 487.

⁴⁴ This is the case for "aid for investments in forestry technologies and in processing, in mobilising and in marketing of forest products", where current State aid rules foresee an aid intensity of 50% in less developed regions, while the EAFRD Regulation would allow 65%; The rationale was to limit the aid intensity (aligning it to agricultural investment aid measures), since this measures was considered to have a higher potential for competition distortion.

(EU) 2016/429⁴⁵. However, the current State aid rules do not reflect the new provisions laid down in Article 6 of Regulation (EU) 2016/429 as concerns the prevention and control of emerging diseases. An ‘emerging disease’ is a disease that is not listed as referred to above, but which has the potential to meet the criteria for being listed and which:

- results from the evolution or change of an existing disease agent;
- is a known disease spreading to a new geographic area, species or population;
- is diagnosed for the first time in the Union or is caused by an unrecognised or a previously unrecognised disease agent.

The absence of alignment of the Guidelines with EU animal health legislation, and in particular Regulation (EU) 2016/429, means that Member States cannot use State aid to address the prevention and control of emerging diseases. This is a growing problem, in particular in the context of climate change.

2.1.3. 2.1.3. Unnecessary administrative costs for Member State authorities and Commission services

2.1.3.1. Scope of the ABER

The evaluation shows that the 2014 agricultural State aid framework has at least partly achieved its simplification objectives. This is particularly true for the extension of the scope of the ABER. The exemption of numerous aid measures from the notification requirement has significantly simplified State aid procedures and led to savings in administrative costs for both Member States and Commission services. As for the impact on businesses, speedier procedures mean faster access to aid.

When the Commission adopted the current ABER in 2014, it could however not exempt certain aid measures from the notification requirement because of lack of sufficient case handling experience. Today, those aid measures qualify for being exempted from notification, in line with the conditions laid down in the “Enabling Regulation” (EU) 2015/1588⁴⁶ (Enabling Regulation). The measures are as follows:

- a) Aid to compensate farmers for damage caused by protected animals.*
- b) Aid for agri-environment-climate commitments.*
- c) Aid for animal welfare commitments.*
- d) Aid for organic farming.*
- e) Aid to compensate farmers for disadvantages related to Natura 2000 areas.*
- f) Aid for cooperation in the agricultural sector.*

⁴⁵ Regulation (EU) 2016/429 of the European Parliament and of the Council on transmissible animal diseases and amending and repealing certain acts in the area of animal health; OJ L 84 of 31.3.2016, p. 1.

⁴⁶ Council Regulation 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid; OJ L 248, 24.9.2015, p. 1.

g) Aid for the following forestry measures financed exclusively from national funds:

- aid for afforestation and creation of woodland;
- aid for agroforestry systems;
- aid for the prevention and restoration of damage to forests;
- aid for investments improving the resilience and environmental value of forest ecosystems;
- aid for area-specific disadvantages resulting from certain mandatory requirements;
- aid for investments in infrastructure related to the development, modernisation or adaptation of the forestry sector;
- aid for investments in forestry technologies and in processing, in mobilising and in marketing of forestry products;
- aid for conservation of genetic resources in forestry;
- aid for forest-environment and climate services;
- start-up aid for producer organisations in the forestry sector, both, financed exclusively from national funds and co-financed by the EAFRD; and
- aid for cooperation in the forestry sector, both, financed exclusively from national funds and co-financed by the EAFRD.

h) Co-financed aid for SMEs in rural areas:

- aid for basic services and village renewal in rural areas; and
- aid for cooperation in rural areas.

In the period July 2014 (i.e. entry into force of the current rules) until March 2020⁴⁷, Member States had notified to the Commission 652 cases. Out of them, 315 concerned the measures enumerated above. They can be broken down as follows:

⁴⁷ The cut-off date end of March 2020 was chosen to consider only notifications under the Guidelines and to exclude notifications under the COVID-19 Temporary Framework, which started coming in after that date.

Table 3: Breakdown of measures with simplification potential (Source: DG Competition)

Notifications July 2014 - March 2020	No of cases
<i>Agriculture</i>	
Aid for damage caused by protected animals	43
Aid for agri-environment-climate commitments	58
Aid for animal welfare commitments	19
Aid for organic farming	5
Aid for Natura 2000 areas	10
Aid for cooperation	9
<i>Forestry measures pure State aid</i>	
Afforestation and creation of woodland	12
Agroforestry systems	1
Prevention and restoration of damage	16
Investments improving the resilience and environmental value	17
Natura 2000 areas-specific disadvantages	1
Forest environment and climate services	9
Investments in infrastructure	13
Investments in forestry technologies	4
Conservation of genetic resources	3
Start-up aid for producer organisations (including co-financed aid)	9
Aid for cooperation (including co-financed aid)	33
<i>Rural areas</i>	
Aid for basic services and village renewal in rural areas	26
Aid for cooperation in rural areas	27
Total	315

The share of those measures in total notifications received in the period July 2014 until March 2020 under the Guidelines corresponds to around 48%.

The fact that the above-listed measures are still subject to notification requirements, despite the fact that they fulfil all the requirements for being included in the scope of the ABER, burdens State aid procedures and incurs unnecessary administrative costs, both for Member States' authorities and for Commission services⁴⁸. It is therefore not surprising that in the 2019 public consultation, 74% of public authorities saw a very high simplification potential in extending the scope of the ABER.

⁴⁸ As shown in greater detail in section 8.2, for public authorities the average total workload of a notified measure is around 2.7 times more than that of a block exemption.

For Commission services, block exempted aid, by its very nature, entails a much lower administrative burden⁴⁹.

For farmers and foresters as aid beneficiaries it means that for almost half of all State aids the waiting time for the disbursement of funds is at the moment higher than necessary⁵⁰.

2.1.3.2. Simplified cost options

An additional aspect of unnecessary administrative costs, mainly for Member State authorities but also for aid beneficiaries, is the fact that currently only the ABER provides for the possibility to use simplified cost options⁵¹ for co-financed aid. This is not reflected in the Guidelines. Simplified cost options have been accepted for co-financed measures by way of interpretation in analogy with the ABER.

Both, Member State authorities and farmers' associations asked for a broader scope of simplified cost options in the 2019 public consultation.

2.1.3.3. Application of SME definition to small municipalities

Furthermore, the definition of micro, small and medium sized enterprises (SMEs) causes difficulties in relation to small municipalities. Due to their public nature, all municipalities are considered to be large undertakings regardless of their actual size⁵². They are thus required to submit a counterfactual scenario, when applying for aid, demonstrating that they would not have engaged in a certain activity or would not have carried out a certain investment without the aid. This requirement puts a disproportionate burden, in particular on small municipalities who apply for aid.

Several Member State authorities called for a clarification of the SME definition with regard to the classification of municipalities as large undertakings in the 2019 public consultation.

⁴⁹ Under the current ABER, the Commission was carrying out *ex-ante* checks (on the compliance of the envisaged measure with formal requirements) and was giving Member States the possibility to still remedy possible shortcomings. It should be noted that Commission services were offering those checks as a service to Member States. Legally, the responsibility for block-exempted aid lies with the Member States.

⁵⁰ For notified aid, the average time between the submission of the notification and the adoption of a State aid decision is five months.

⁵¹ Simplified cost options comprise unit costs, lump sums and flat-rate financing; The aid amount must be established either by a fair, equitable and verifiable calculation method, based on statistical or verified historical data or the application of usual cost accounting practices of individual beneficiaries, or in accordance with the rules for application of corresponding unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation; Cf. Article 83 of the CAP Strategic Plans Regulation.

⁵² In fact, according to the SME definition, reproduced in Annex I of the ABER, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies (cf. Article 3(4) of that Annex).

2.1.4. 2.1.4. Individual aid grants not sufficiently transparent

With a view to increasing transparency in State aid control, the 2014 SAM initiative introduced a publication requirement for individual aid awards above a certain threshold. Member States were given a two-year transition period to comply with this transparency requirement. Since July 2016 and in line with the horizontal SAM requirement, both under the Guidelines and the ABER, individual aid awards above EUR 500 000 (and above EUR 60 000 for aid awards in the sector of primary agricultural production) have to be published by Member States. Publication takes place either on a comprehensive State aid website at national or regional level or on the Commission's transparency award module (TAM)⁵³.

However, it turned out, that with a EUR 500 000 publication threshold, only around 20-25% of the total State aid spent in the EU is made transparent. The situation is similar in the sector of primary agricultural production. Based on average aid amounts granted in this sub-sector in the period 2014-2019, only around 30 % of the aids would have had to be published with a threshold set at EUR 60 000. Moreover, the average amount of investment aid granted in this period is estimated at around EUR 17 000. The vast majority of investment aids in the sub sector of primary agricultural production seems therefore not to be covered by the current transparency requirement. Investment aid is more likely to have distortive effects on competition than other aid measures and should hence be awarded as transparently as possible.

Data from TAM even show that, on average, actually only around 10% of all aid grants in the primary agricultural production sector were published in the period 2017-2020. This undermines the objective of the SAM transparency requirement, namely to reduce negative effects of State aid by ensuring competitors have access to relevant information about supported activities.

Furthermore, several recently adopted horizontal State aid legal texts (such as the Guidelines on regional State aid⁵⁴ or the Guidelines on State aid for climate, environmental protection and energy 2022⁵⁵) already provide for lower publication thresholds (EUR 100 000 for individual aid grants). The same threshold is also proposed for GBER in the latest targeted revision to enhance the green and digital transition (the draft amendment was subject of a public consultation in the fourth quarter of 2021⁵⁶). Finally, both the COVID-19 Temporary Framework and the Temporary Crisis Framework set the general publication threshold at EUR 100 000 as well and impose that aids received by primary agricultural producers are published as of EUR 10 000.

This situation leads to inconsistency between horizontal State aid rules on the one hand and the Guidelines and ABER on the other hand.

⁵³ State Aid Transparency Public Search, available at: <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

⁵⁴ OJ C 153 of 29.4.2021, p. 1

⁵⁵ OJ C 80 of 18.2.2022, p. 1.

⁵⁶ https://ec.europa.eu/competition-policy/public-consultations/2021-gber_en

2.2. 2.2. What are the drivers?

As shown in the intervention logic at the beginning of this chapter, the above-described problems are mainly driven by the following aspects:

- There are inconsistencies between the current State aid framework and the objectives of the reformed CAP (with its enhanced environmental and climate ambition);
- The current State aid framework is not sufficiently ambitious to contribute to the implementation of Green Deal objectives (amongst others via the Farm to Fork-, Biodiversity- and Forest Strategies, the Organic Action Plan⁵⁷ and the Communication on carbon removals⁵⁸);
- Consumer demand for environmentally friendly farming practices is rising;
- There are increased impacts of climate change and more frequent unprecedented events, such as emerging animal diseases and plant pests.

2.3. 2.3. How will the problem evolve?

2.3.1. 2.3.1. *Risk, that objectives of the new CAP and the Green Deal cannot be fully attained*

The subsidiarity approach wanted for the new legal framework of the CAP is meant to shift the policy focus from compliance to performance in order to better achieve CAP objectives. That approach would be hindered, if the application of State aid rules was to prevent Member States from tailoring the content and nature of their national plans to their own specific needs.

If ABER and Guidelines were to remain unchanged, farmers and foresters would not be offered additional incentives via the tool of State aid to engage in new activities that could contribute to the achievement of the Green Deal objectives, in particular those under the Farm to Fork, the Biodiversity and the Forest Strategies, and of the targets set out by the European Climate Law. The Commission would therefore miss an important opportunity to design new rules, which could better contribute to the attainment of these high-level objectives.

2.3.2. 2.3.2. *Rules not fit for evolving context*

It would also miss the opportunity to streamline rules and to bring them in line with new developments in other policy areas such as EU animal health legislation.

⁵⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an action plan for the development of organic production (COM/2021/142 final/2).

⁵⁸ Communication from the Commission to the European Parliament and the Council “Sustainable Carbon Cycles Brussels” of 15.12.2021 COM(2021) 800 final (https://ec.europa.eu/clima/system/files/2021-12/com_2021_800_en_0.pdf).

2.3.3. 2.3.3. *Unnecessary administrative costs*

If the ABER and Guidelines were to remain unchanged, there would be no savings in administrative costs. Member States' administrations and the Commission services would have to continue using their scarce resources on State aid procedures also for aid measures with very limited impact on competition and trade.

2.3.4. 2.3.4. *Transparency deficiency*

Leaving the current rules unchanged in terms of publication threshold for individual aid grants would mean not to tackle the current deficiency related to the desired SAM transparency objective. With more and more horizontal legislation being adopted with a lower general publication threshold of EUR 100 000, the issue of inconsistency of Guidelines and ABER with general State aid rules would become even more pronounced.

3. 3. WHY SHOULD THE EU ACT?

3.1. 3.1. Legal basis

The legal basis is laid down in Articles 107(2)(b), 107(3)(c) and 108 of the TFEU, on aids granted by States and, as regards the ABER, in Article 1 of the Enabling Regulation.

3.2. 3.2. Subsidiarity: Necessity of EU action

State aid rules are part of the rules on competition law and thus fall under the exclusive competence of the EU according to Article 3(1)(b) TFEU. State aid rules have to be adopted at EU level. The proposed initiative is therefore not subject to the subsidiarity test.

3.3. 3.3. Subsidiarity: Added value of EU action

State aid control is obligatory under the TFEU and thus applies independently of the existence of State aid instruments adopted by the Commission. A common framework of detailed rules for assessing the compatibility of State aid with the internal market safeguards predictability, equal treatment and legal certainty in State aid control and eases the administrative procedure between Member States and the Commission. Providing for exemptions from the Member States' obligation to notify State aid to the Commission brings simplification to State aid procedures.

4. 4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1. 4.1. General objectives

The general objective is to have State aid rules in the fields of agriculture, forestry and rural areas in place, which, at reduced administrative costs contribute to achieving CAP and Green Deal objectives while avoiding undue distortion of competition and trade.

4.2. 4.2. Specific objectives

From the above general objective, three specific objectives (SOs) can be deduced for the on-going review of State aid rules in agriculture, forestry and rural areas, which address

different aspects of the problems and drivers described in section 2 (cf. Figure 3 intervention logic):

- 1) SO1: State aid rules, which are aligned with horizontal provisions (in particular GBER), provide for legal certainty and appropriate competition safeguards:

This specific objective would tackle the current inconsistencies between the sectoral State aid rules at hand and the relevant provisions in horizontal State aid legislation (cf. in particular section 2.1.4⁵⁹), as well as the uncertainties arising from outdated rules and rules no longer fit for the evolving context (cf. section 2.1.2), while at the same time ensuring that the Commission competence for State aid control is not undermined.

- 2) SO2: State aid rules, which foster the development of the agriculture and forestry sectors, as well as environmental protection and climate action, in line with CAP and Green Deal objectives:

This specific objective would address the risk that without any changes to the current State aid framework the objectives of the new CAP and the Green Deal cannot be fully attained. It would thus tackle the inconsistency between the current State aid framework and the objectives of the reformed CAP and the Green Deal (such as the missing possibility to support result-based approaches, as for instance carbon farming schemes). It would take into account the rising consumer demand for environmentally friendly farming practices (cf. section 2.1.1.2) and also tackle the problem that the current rules are in parts (in particular as regards certain animal diseases, cf. section 2.1.2) no longer fit for the evolving context.

- 3) SO3: Administrative simplification:

This specific objective addresses the problem of unnecessary administrative costs, both for Member State authorities and for Commission services (cf. section 2.1.3), arising mainly from State aid notification procedures. Those costs could be saved with appropriate changes to the current rules. Indirectly, and to a much lesser extent, it also addresses the administrative costs on beneficiary undertakings (as faster State aid procedures would mean faster access to aid).

5. 5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

5.1. 5.1. What is the baseline from which options are assessed?

The baseline is to prolong the current Guidelines and the ABER for the period 2023 to 2027, without making any changes.

⁵⁹ Cf. also section 5.1 below on further differences between ABER and GBER.

Under the baseline scenario, State aid rules in the agriculture and forestry sector and in rural areas would continue to be closely linked to the rural development policy for the programming period 2014-2022 (cf. section 2.1.1.1). Member States would therefore need to design their national **CAP** Strategic Plans in a way where they fit into the current State aid framework⁶⁰.

For aids in the agriculture sector, there would be, amongst others, a discrepancy between loss thresholds in relation to damage caused by adverse climatic events, which would limit the flexibility of Member States to design damage compensation measures financed exclusively from national funds in this field.

Under the baseline scenario, measures, which would have the potential to contribute to **Green Deal** objectives (but would require certain adaptations) would remain unchanged. Measures with voluntary management commitments, which are beneficial for the environment, the climate or biodiversity, would remain capped at maximum aid amounts. Assessment of measures going beyond those amounts would continue to be burdensome, both for Member State authorities and for Commission services, since the higher amounts would need to be duly justified, even if the aid intensity would be less or equal to 100% of eligible costs. It would furthermore not be possible to approve schemes going beyond 100% aid intensity to provide for additional incentive⁶¹. Not all losses linked to damage caused by protected animals to farming could be covered. Result-based payment schemes, such as carbon farming schemes, aid in relation to invasive alien species or aid for the restoration and maintenance of natural habitat for plants and fungi in the forestry sector would have to be assessed directly under the TFEU (since they are not covered by the current rules, cf. section 2.1.1.2). This would incur high administrative costs on Member State authorities and Commission services.

Under the baseline scenario, aid intensities for investment aid measures would continue to be differentiated according to their objective (and their location). There would be no **alignment** of State aid rules to **animal health legislation**, as aid for the prevention and control of emerging diseases would not be covered. Such aid would need to be assessed directly under the TFEU.

Concerning the **scope of the ABER**, Member States would need to continue notifying measures, for which the Commission has meanwhile acquired sufficient case experience (cf. section 2.1.3.1). Moreover, the possibility to use simplified cost options would not be included in the Guidelines (cf. section 2.1.3.2) and even small municipalities would need to continue to present a counterfactual scenario when applying for aid (cf. section 2.1.3.3).

If current State aid rules were to remain unchanged, **publication thresholds** for individual aid grants of EUR 500 000 and of EUR 60 000 in primary agricultural production would continue to apply.

⁶⁰ State aid clearance is required for rural development support falling outside the scope of Article 42 of the TFEU, namely forestry measures and non-agricultural activities in rural areas, cf. section 1.2).

⁶¹ The Guidelines are self-binding on the Commission. It is therefore not possible to approve State aid directly under the TFEU that would go against State aid rules in force.

Moreover, under a baseline scenario of the current ABER extended without modification, Member States would continue to be required to submit a summary information sheet 10 working days before the date of entry into force of an aid scheme⁶².

Under the baseline scenario, certain procedural and substantial alleviations exist for SMEs (in line with horizontal SAM provisions). SMEs, for instance, do not need to present a counterfactual scenario when applying for aid. They are furthermore not subject to additional conditions for investment aid under notified schemes⁶³. Moreover, SMEs benefit to a higher extent than large undertakings from the possibility to block-exempt aid under the ABER. Simplified procedures means faster access to aid; in particular in the agriculture sector the scope of the ABER is largely limited to SMEs.

5.2. 5.2. Description of the policy options

5.2.1. 5.2.1. Option 1: Adaptation to the future CAP legal framework, alignment to animal health legislation, lowering of publication thresholds, alignment with horizontal State aid provisions, simplification and ABER extension “light”

Adaptation to the future CAP legal framework

Under Option 1, the Commission would first adapt the future State aid rules to the new legal framework of the CAP. In that context, State aid objectives would be aligned with the objectives for EAFRD support under the CAP Strategic Plans Regulation. The conditions for considering State aid to be compatible with the internal market would as far as possible be aligned to the broad criteria laid down in the CAP Strategic Plans Regulation for rural development interventions. Furthermore, aid intensities for agricultural and forestry investments would be aligned to those under EAFRD co-financing (basic aid intensity of 65%, which can be increased in certain cases, such as for environmental protection).

As regards the Guidelines, and in order to strike the balance between avoiding inconsistencies with the CAP and at the same time not undermining the effectiveness of State aid control, distinction would be made between rural development interventions included in the CAP Strategic Plans and measures financed exclusively from national funds.

A simplified approach for State aid control in relation to rural development support (the so-called compatibility presumption clause) would be introduced⁶⁴ into the Guidelines in

⁶² Cf. Article 9 ABER; Based on those information sheets, the Commission has been carrying out *ex-ante* checks (compliance with formal requirements of the planned aid measures) and has been giving Member States the possibility to still remedy possible shortcomings; It should be noted that this approach is only applied in relation to the ABER; GBER and FIBER (Block Exemption Regulation (EU) No 1388/2014 applicable to the fishery sector) only foresee that Member States have to submit summary information sheets within 20 working days after entry into force of a block-exempted aid measure.

⁶³ Cf. points 95-98 of the Guidelines.

⁶⁴ This only concerns aid in favour of forestry and aid for non-agricultural activities, as State aid rules do not apply to EAFRD co-financed aid for agricultural activities (cf. section 1.2).

order to ascertain the subsidiarity approach envisaged for the future CAP legal framework.

This clause would be based on two main elements: prior assessment of the Strategic Plans by the Commission (cf. section 1.4) and application of the basic State aid principles. The compliance of the plans with the internal market is first verified by the Commission in its assessment of the draft Strategic Plans, prior to their approval by the Commission. An additional guarantee of this compliance will be provided by the assessment of individual aid measures, included in the plans and notified to the Commission for approval under the State aid procedure in accordance with Article 108 TFEU, against the basic, core State aid principles⁶⁵.

At the same time, for aid measures outside the CAP Strategic Plans and financed exclusively from national resources, detailed compatibility rules will be maintained, both in the Guidelines and in the ABER, providing for legal certainty for Member States' authorities and allowing the Commission to perform a thorough State aid compatibility assessment.

With this approach, the Commission responds to the requests received in the 2019 public consultation (mainly Member State authorities but also farmers' and forestry associations) that State aid rules must not undermine the subsidiarity approach pursued by the CAP Strategic Plans (cf. Annex 2.2). Also the contributions received as a reaction to the published inception impact assessment (cf. Annex 2.1) requested to ensure consistency between the new State aid instruments and the CAP Strategic Plan Regulation, but to various degrees: from the eight contributions received in total, three business associations asked to take the CAP Strategic Plans Regulation fully into account and therefore not to set additional/stricter conditions in State aid rules while two national authorities called for putting in place clear and detailed State aid rules for a well-functioning and balanced single market to provide legal certainty while taking also the performance-oriented model of the CAP Strategic Plans Regulation into account. Moreover, the F4F Platform Opinion (cf. Annex 2.6) suggests to strictly respect the principle of subsidiarity and not to generate additional obligations and requirements on Member States.

The compatibility presumption clause, presented in the public consultation in spring 2022, was in general very well received by Member States. One Member State voiced the suggestion in the second Advisory Committee meeting to have an even simpler approach, namely to automatically approve State aid measures together with the approval of the CAP Strategic Plans by the Commission.

Alignment with EU animal health legislation

Furthermore, the Commission would include under option 1 aid for control and eradication of emerging diseases, as defined in Article 6 of Regulation (EU) No

⁶⁵ Such as the general exclusion of operating aid or exclusion of aid to undertakings in difficulty. Further details on the envisaged presumption clause for EAFRD co-financed measures included in the CAP Strategic Plans can be found in Annex 6.

2016/429, as well as aid to make good the damage caused by such diseases, in order to align with the EU animal health legislation in force (cf. section 2.1.2).

This step is also strongly supported by stakeholders. In the 2019 public consultation, 79% of respondents were in favour of including emerging diseases in the scope of aid to combat animal diseases (cf. Annex 2.2)⁶⁶.

Lowering of publication thresholds

Option 1 would also provide for lower publication threshold for individual aid grants.

As regards the general publication threshold and in order to aim at consistency with horizontal State aid rules (cf. section 2.1.4 above), the option considers a threshold set at EUR 100 000 per aid grant (down from EUR 500 000 in the current rules). This corresponds to the threshold for individual aid awards set in the new Guidelines on regional aid⁶⁷, the new Risk Finance Guidelines⁶⁸, the new IPCEI Communication⁶⁹ and the new Guidelines on State aid for climate, environmental protection and energy 2022⁷⁰.

In order to capture a more substantive part of aids⁷¹, in particular investment aids, which are more likely to have distortive effects on competition, the publication threshold for individual aid awards in the sector of primary agricultural production would be lowered from the current EUR 60 000 to EUR 10 000 (as explained in section 2.1.4, the average amount of investment aid granted for the period 2014-2019 is estimated at around EUR 17 000). This would roughly correspond to the change made in the general publication threshold (cf. paragraph above). A publication threshold of EUR 10 000 for individual aid awards in primary agricultural production has also already been applied under the COVID-19 Temporary Framework and the Temporary Crisis Framework (cf. section 2.1.4).

The envisaged lowering of publication thresholds has met strong resistance from Member State authorities. In the consultation on the draft legal texts in spring 2022 (cf. Annex 2.4), a significant number of Member States expressed their concern that such a step would entail additional administrative burden on public authorities (this position was also supported by several farmers' associations). A considerable number of Member States confirmed this position in the second Advisory Committee held in September 2022 (cf. Annex 2.5).

Alignment with horizontal State aid provisions

Furthermore, option 1 would align the procedural requirements of the ABER to the ones of the GBER⁷². In fact, and as explained in section 5.1 above, Member States are

⁶⁶ It has to be noted that the replies to the specific questions of that public consultation did not show any important variations depending on the respondent category (cf. Annex 2.1).

⁶⁷ OJ C 153, 29.4.2021, p. 1.

⁶⁸ OJ C 508, 16.12.2021, p. 1.

⁶⁹ C/2021/8481 final.

⁷⁰ OJ C 80, 18.2.2022, p. 1.

⁷¹ At the current level of publication threshold for primary agricultural production, only around 10% of all aid grants were published in TAM in the period 2017-2020, cf. section 2.1.4.

⁷² And the FIBER.

required under the ABER to submit summary information sheets on exempted aid measures 10 working days prior to their implementation⁷³. This requirement would be abolished under option 1 and would be aligned to the GBER (and FIBER) requirement to submit such summary information sheets 20 working days after their entry into force of a given aid measure.

This envisaged change did not trigger any significant reaction from Member State authorities. Only three Member States asked in the public consultation in spring 2022 and/or in the first Advisory Committee meeting to maintain the current approach.

Simplification

Option 1 would introduce the possibility to use simplified costs options also in the Guidelines. With this change, the Commission responds to demands for simplification in this area made by stakeholders in the 2019 public consultation⁷⁴.

It would moreover provide for an exception from the condition to submit a counterfactual scenario for small municipalities.

ABER Extension “light”

Under option 1, the Commission would open the ABER up to all forestry measures, irrespective of the fact whether they are co-financed by the EAFRD or financed exclusively from State aid. It would furthermore include aid for the compensation of damage caused by protected animals. This extension was largely asked for by stakeholders in the 2019 public consultation⁷⁵. Moreover, the F4F Platform Opinion suggested to simplify the granting of aid for the forestry sector, even if not included in a rural development programme⁷⁶.

The targeted consultation of Member State authorities, carried out towards the end of 2021 revealed that the average total workload of a notified measure is around 2.7 times more for public authorities than that of a block exemption (cf. Annex 2.3). For Commission services, block exempted aid, by its very nature, also entails a much lower administrative burden⁷⁷. Taking into account that Member States had notified 43 measures of aid for damage caused by protected animals in the period July 2014-March 2020 and, in the same period, 118 forestry measures outside of EAFRD co-financing (cf. section 2.1.3.1), option 1 would largely respond to the simplification potential under the ABER.

⁷³ This allowed Commission services so far to perform an *ex-ante* check of the envisaged aid measures, cf. footnote 62.

⁷⁴ Both, Member State authorities and farmers’ associations asked for a broader scope of simplified cost options and 61% of respondents identified an extended use of such simplified cost options as a major simplification step, cf. Annex 2.2.

⁷⁵ 74% of public authorities saw a very high simplification potential in extending the scope of the ABER and suggested to open it to all types of forestry measures and to aid relating to damage caused by wild animals, cf. Annex 2.2.

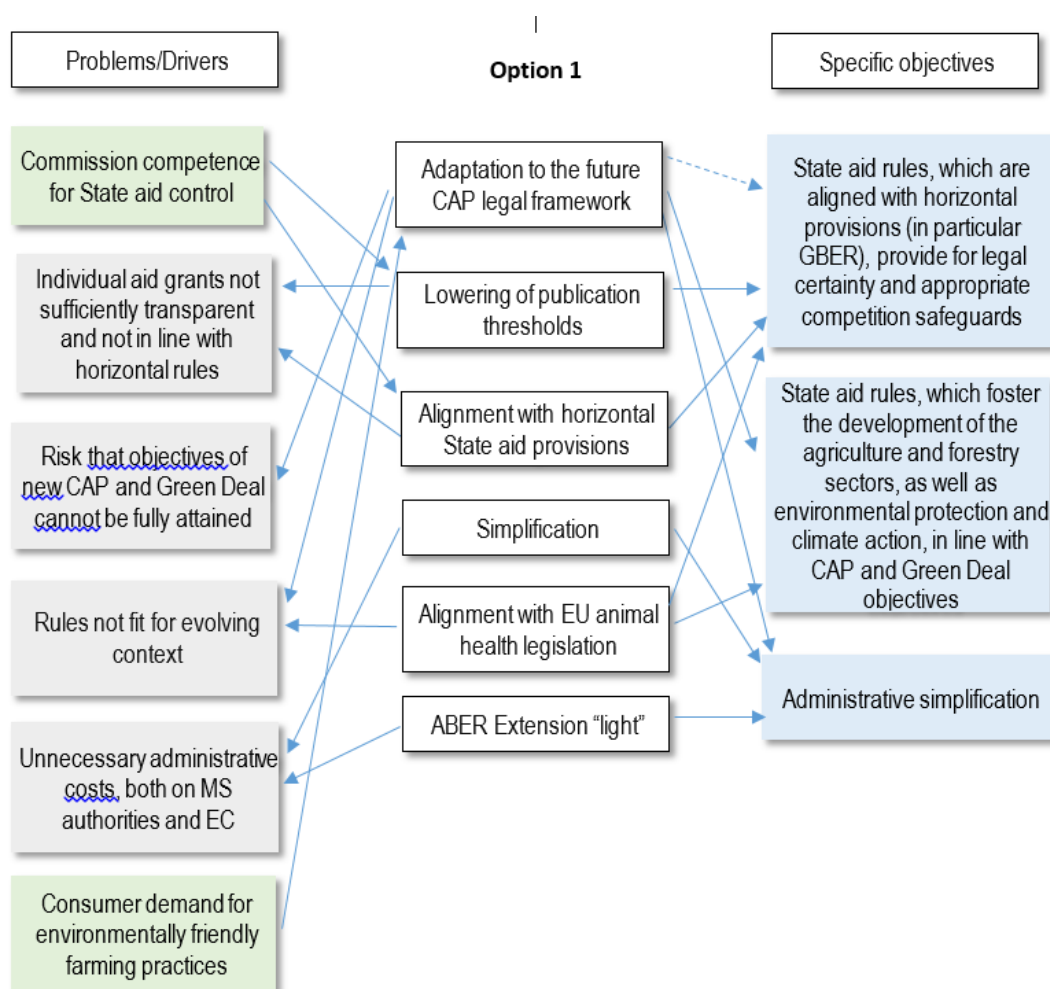
⁷⁶ Cf. Annex 2.6

⁷⁷ Under the current ABER, Commission services have performed *ex-ante* checks of the envisaged aid measures. They were however under no legal obligation to do so and offered this possibility as a service to Member States.

Notification thresholds would largely remain unchanged⁷⁸. Only the threshold for investments in relation to primary agricultural production would be increased from EUR 500 000 to EUR 600 000 (mainly to reflect the changes in price levels). In fact, the evaluation had found that the notification thresholds linked to primary agricultural production were adequate, with some leeway for increase⁷⁹. Investment aid measures in forestry, which under option 1 can also be financed exclusively with State resources (i.e. outside a CAP Strategic Plan), would be subject to the same notification thresholds as for EAFRD co-financing. This threshold is fixed (as in the current ABER) at EUR 7.5 million, which corresponds to the threshold for SME investment aid under the GBER.

The below figure illustrates the contribution of the different aspects of option 1 to the specific objectives and shows the interlink with the problems/drivers they address (cf. section 2.1):

Figure 5: interlink of option 1 with problems/drivers and objectives



⁷⁸ Although it has to be noted that around one fourth of respondents in the 2019 public consultation saw a very high simplification potential in increasing the notification thresholds.

⁷⁹ Cf. page 30 and 31 of the Commission Staff Working Document on the evaluation.

5.2.1.1.Sub-option 1a: Lowering of publication thresholds only for activities outside primary agricultural production

In sub-option 1a the Commission would choose to leave the publication thresholds for individual aid awards in the sector of primary agricultural production unchanged (at EUR 60 000) and only adjust the general publication threshold⁸⁰ down to EUR 100 000, in line with horizontal State aid legislation.

In this sub-option, the Commission would thus respond to the resistance of Member State authorities (expressed in the consultation on the draft legal texts) against a lower publication threshold in primary agricultural production.

5.2.1.2.Sub-option 1b: Lowering the loss threshold for adverse climatic events from 30% to 20%

Under sub-option 1b, the Commission would choose to lower the threshold for production destroyed by an adverse climatic event in order to assimilate such event to a natural disaster from currently 30% to 20%.

This would bring a further alignment with the CAP Strategic Plans Regulation and EAFRD co-financed aid⁸¹. It would also respond to the F4F suggestion to align the threshold to qualify as ‘adverse climatic event which can be assimilated to a natural disaster’ with the loss threshold in the CAP Regulation (cf. Annex 2.6).

5.2.2. 5.2.2. *Option 2: Further changes in favour of the attainment of Green Deal objectives plus full ABER extension*

In addition to what is proposed under option 1, option 2 would introduce changes to further facilitate the attainment of Green Deal objectives and open up the ABER to the full range of measures with simplification potential.

Changes in favour of Green Deal objectives

Under Option 2, the Commission would revise the Guidelines and the ABER beyond what is necessary for ensuring a smooth State aid clearance of rural development interventions under, and in coherence with the CAP.

It would remove (in the Guidelines) maximum aid amounts for commitments in favour of environment, climate and animal welfare and replace them by maximum aid intensities for additional costs and income foregone (cf. section 2.1.1.2). Furthermore, it would introduce the possibility of result-based approaches, such as carbon farming schemes.

The possibility of result-based payment schemes was welcomed by several Member States and farmer’s associations following the consultation on draft legal texts in spring 2021.

⁸⁰ Which would be applicable to forestry and to other economic activities in rural areas.

⁸¹ It should, however, be noted in this context that EAFRD co-financed aid in the agriculture sector does not require a State aid clearance (cf. section 1.2). Furthermore, the EAFRD mainly finances risk management tools (such as aid for insurance premiums or contribution to mutual funds).

The Commission would furthermore include in its rules aid to make good the damage caused by animals, which are not strictly speaking protected, but for which national legislation provides specific rules to preserve the population. It would moreover include income loss and indirect costs such as reduced production capacity⁸² or veterinary costs in the scope of eligible costs for damage caused by protected animals. Under this option, aid to prevent and to make good damage caused to agricultural producers and foresters by invasive alien species would also be included.

As regards specifically aid to the forestry sector, this option would allow for higher incentives for aid for investments in and payments for forest ecosystem services, with the aim to contributing to the objectives of the Forest Strategy (cf. section 2.1.1.2 b above). It would furthermore introduce the possibility of result-based approaches, in particular for carbon farming, to contribute to the targets of the Climate Law.

Aid for the restoration and maintenance of natural habitat for plants and fungi in the forestry sector would be furthermore included.

Full ABER extension

Under option 2, the scope of the ABER would be further extended, to include (in addition to the measures already listed under option 1) the following measures:

- Aid for agri-environment-climate commitments;
- Aid for animal welfare commitments;
- Aid for organic farming;
- Aid to compensate farmers for disadvantages related to Natura 2000 areas;
- Aid for cooperation in the agricultural sector
aid for cooperation in the forestry sector;
- Aid for basic services and village renewal in rural areas; and
- Aid for cooperation in rural areas.

As shown in table 3 in section 2.1.3.1, the Commission has acquired sound case experience with those aid measures based on notified aid. Option 2 would therefore respond to the full simplification potential under the ABER⁸³.

For measures, where farmers/foresters enter into voluntary commitments (such as forest-environment and climate services or animal welfare commitments), and in order to strike a balance between simplification and the need for adequate competition safeguards,

⁸² In fact, around 73% of respondents in the 2019 public consultation were in favour of introducing damage compensation for income losses such as reduced production capacity.

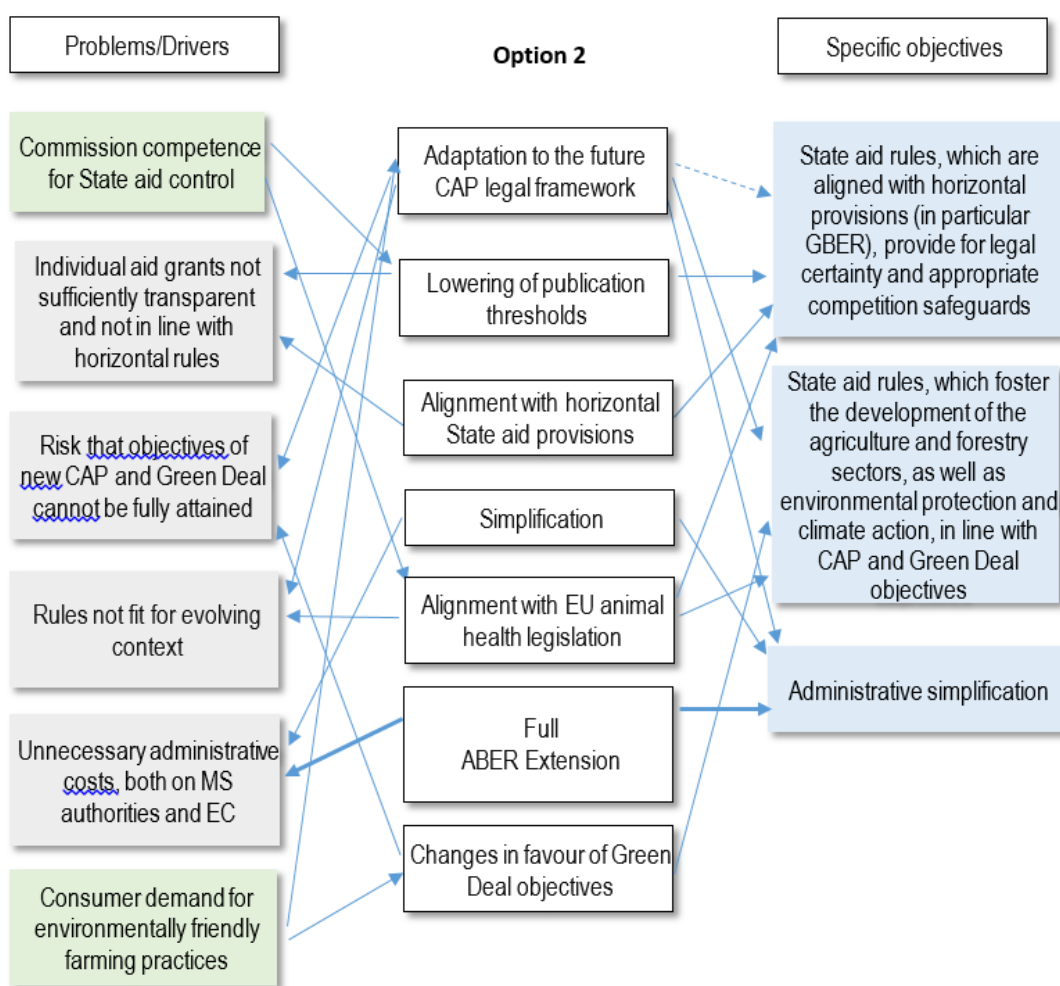
⁸³ As indicated for option 1 above, the average total workload of a notified measure is around 2.7 times more for public authorities than that of a block exemption.

option 2 would introduce maximum aid amounts per unit, which would also serve as notification thresholds. Those amounts would be set at the level of the current maximum amounts of the different commitment measures included in the Guidelines.

For investments carried out under the newly introduced cooperation measures, the same notification threshold as for other investment measures under the ABER would apply. The notification threshold for investments for basic services and infrastructure in rural areas (granted under the new aid measure ‘basic services and village renewal in rural areas’) would be set at EUR 10 million, which corresponds to the notification threshold for local infrastructures under the GBER.

The below figure illustrates the contribution of the different aspects of option 2 to the specific objectives and shows the interlink with the problems/drivers they address (cf. section 2.1):

Figure 6: interlink of option 2 with problems/drivers and objectives



5.2.2.1.Sub-option 2a: Lowering of publication thresholds only for activities outside primary agricultural production

In sub-option 2a, the Commission would choose to leave the publication thresholds for individual aid awards in the sector of primary agricultural production unchanged (at EUR 60 000) and only adjust the general publication threshold⁸⁴ down to EUR 100 000, in line with horizontal State aid legislation.

In this sub-option, the Commission would thus respond to the resistance of Member State authorities (expressed in the consultation on the draft legal texts) against a lower publication threshold in primary agricultural production.

5.2.2.2.Sub-option 2b: Lowering the loss threshold for adverse climatic events from 30% to 20%

Under sub-option 2b, the Commission would choose to lower the threshold for production destroyed by an adverse climatic event in order to assimilate such event to a natural disaster from currently 30% to 20%.

This would bring a further alignment with the CAP Strategic Plans Regulation and EAFRD co-financed aid⁸⁵. It would also respond to the F4F suggestion to align the thresholds to qualify as ‘adverse climatic event which can be assimilated to a natural disaster’ with the loss threshold in the CAP Regulation (cf. Annex 2.6).

Table 4: Overview of policy options

Overview of policy options	
Option 1	Adaptation to the future CAP legal framework, alignment to animal health legislation, lowering of publication thresholds, alignment with horizontal State aid provisions, simplification and ABER extension “light”
<i>Sub-option 1a</i>	<i>Lowering of publication thresholds only for activities outside primary agricultural production</i>
<i>Sub-option 1b</i>	<i>Lowering of loss threshold for adverse climatic events to 20%</i>
Option 2	Option 1 plus further changes in favour of the attainment of Green Deal objectives plus full ABER extension
<i>Sub-option 2a</i>	<i>Lowering of publication thresholds only for activities outside primary agricultural production</i>

⁸⁴ Which would be applicable to forestry and to other economic activities in rural areas.

⁸⁵ It should, however, be noted in this context that EAFRD co-financed aid in the agriculture sector does not require a State aid clearance (cf. section 1.2). Furthermore, the EAFRD mainly finances risk management tools (such as aid for insurance premiums or contribution to mutual funds).

5.3. 5.3. Options discarded at an early stage

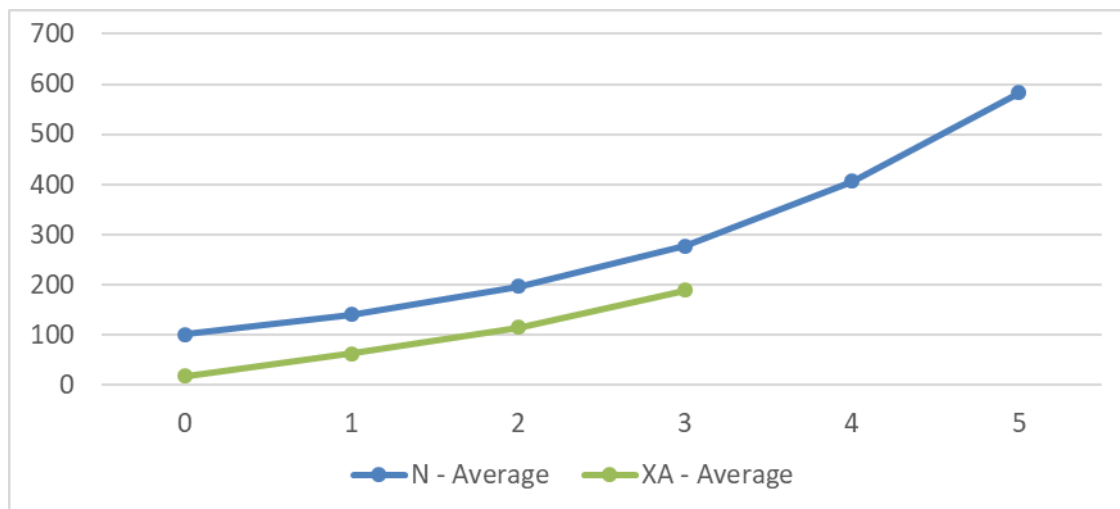
A discontinuation of the Guidelines and the ABER is discarded, given that the absence of those instruments would deprive State aid control of predictability, equal treatment and legal certainty and would entail significantly increased administrative costs and burdens at both national and EU level.

In fact, the evaluation showed that Member States use the ABER to exempt from notification about 79% of the State aid cases in agriculture and forestry. In the absence of a regulation allowing Member States to grant aid without a prior Commission decision, the same percentage of State aid cases would have to be notified to the Commission. This could be difficult for the Commission to handle, given its limited resources.

Moreover, in the absence of guidelines, each notification would have to be assessed by the Commission directly under the TFEU.

Lack of detailed guidance would put a burden on the case-handling process for all parties involved. At present, the average time between the submission of the notification and the adoption of a State aid decision is five months, as shown in Figure 2. The length of the process mainly depends on the number of information requests that the Commission has to send to the Member State before the notification is complete

Figure 2: Current average number of days (y) and requests for information (x) (Source: Evaluation Staff Working Document)



N = Notification; XA = Exemption

The need for information requests is likely to increase without guidelines showing Member States which information they have to submit. The result would inevitably be lengthier and more burdensome State aid procedures.

For undertakings, lengthy procedures mean that it takes longer for the aid to reach them. That would in particular be a problem in the case of events requiring quick action, such as natural disasters, extreme weather events, animal diseases and plant pests.

Moreover, since the relevant TFEU provision leaves a considerable margin of discretion for assessment to the Commission, a lack of detailed guidance would significantly increase the risk of diverging results. This would, in turn, harm the predictability and coherence in State aid control.

Furthermore, it could generally be expected that the absence of a State aid framework would create a disincentive to notify State aid. In that case, it can be expected that Member States start granting aid without notifying it to the Commission, which would lead to an increase of the granting of aid unlawfully and, more importantly, to an increase of the risk of market distortion. This, in turn, would lead to the need for the Commission to open investigation procedures in many more cases and, ultimately, to the obligation of the Member States to recover such aid.

Therefore, the implications of this policy option would be of such magnitude that the Commission must simply not let the current State aid rules expire without replacing them.

6. 6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

In this section, the different policy options will be assessed as to their contribution to the attainment of the specific objectives, identified in section 4.2. They are:

- State aid rules, which are aligned with horizontal provisions (in particular GBER), provide for legal certainty and appropriate competition safeguards;
- State aid rules, which foster the development of the agriculture and forestry sectors, as well as environmental protection and climate action, in line with CAP and Green Deal objectives; and
- Administrative simplification.

The impact on SMEs will also be analysed for each policy option.

Citizens are not directly concerned by State aid rules. The impact on citizens will therefore not explicitly be assessed. It should, however, be noted that citizens also benefit, albeit indirectly, from simplification in State aid procedures⁸⁶.

It is not possible to reliably quantify costs or benefits of each policy option, as their direct and indirect influence on aid schemes is too speculative. Nevertheless, it is worth noting

⁸⁶ In fact, the presumption is that a State aid measure is compatible with the internal market because it helps achieving common policy objectives. In case of, for instance, organic farming, the fast implementation of organic farming projects will allow consumers to get access to better and cheaper organic products.

that aid amounting to around EUR 16 billion was granted under the Guidelines and the ABER in the period July 2014 to December 2018 alone⁸⁷.

The economic impact of the different policy options will be assessed via their contribution to the effectiveness and administrative simplification of State aid rules as well as their impact on SMEs.

The environmental impact of the different policy options will be assessed as to their contribution to the attainment of CAP and Green Deal objectives.

Social impacts are relevant to a lesser extent and will not be assessed in this impact assessment.⁸⁸

The analysis of the different policy options will be mostly done qualitatively. In fact, as shown in the evaluation, information-gathering tools on the impacts of State aids are extremely limited.

6.1. 6.1. Option 1: Adaptation to the future CAP legal framework, alignment to animal health legislation, lowering of publication thresholds, alignment with horizontal State aid provisions, simplification and ABER extension “light”

6.1.1. 6.1.1. SO1: State aid rules, which are aligned with horizontal provisions, provide for legal certainty and appropriate competition safeguards

Option 1 will significantly contribute to the attainment of the first specific objective, mainly through the alignment with GBER provisions and the lowering of publication thresholds (cf. figure 5 in section 5.2.1) and will have a positive impact on the effectiveness of State aid rules as compared to the baseline.

In fact, aligning the procedural requirements under the ABER to the ones of the GBER (cf. section 5.2.1) will end the current inconsistency between the different State aid instruments in this field. It will at the same time end the possibility to perform ex-ante checks of ABER measures. This could possibly increase the risk of competition distortions in this field, since some irregularities might not be detected up front. It has, however, to be noted that the *ex-ante* checks focused on formal compliance with State aid requirements, rather than on the implementation of schemes. The Commission furthermore did not give any formal approval. Altogether it can therefore be expected that the alignment of procedural requirements of the ABER to the GBER (and FIBER) should not have a negative impact on effectiveness as compared to the baseline scenario.

⁸⁷ Cf. section 3.1 of the Commission Staff Working Document on the evaluation.

⁸⁸ It is still worth noting that, according to the results of the 2019 public consultation, aid for non-agricultural activities in rural areas has led to employment and growth in those areas, boosted the creation and development of SMEs, strengthened the social fabric and contributed to cultural and recreational activities.

Legal certainty for Member State authorities and for beneficiaries will furthermore increase under option 1 by aligning the State aid rules to the animal health legislation in force (cf. section 5.2.1).

The proposed ‘compatibility presumption clause’ for EAFRD co-financed aid, introduced in the Guidelines (cf. section 5.2.1 and Annex 6) , will also contribute to increasing legal certainty for Member State authorities and aid beneficiaries, as compared to the baseline. Following the subsidiarity approach under the reformed CAP, no additional conditions will be imposed on State aid measures (for instance in respect of eligible costs) included in a national Strategic Plan, as long as they respect the core State aid principles. At the same time, this approach should not undermine the effectiveness of State aid rules, as it is ring-fenced to non-agricultural activities co-financed by the EAFRD and notified under the Guidelines⁸⁹. Moreover, core State aid principles still need to be respected.

A standard basic aid intensity of 65% for investments in agriculture and forestry (cf. section 5.2.1) could in some cases lead to a higher risk of competition distortion than under the baseline scenario. At the same time, this alignment with the CAP Strategic Plans Regulation will increase legal certainty in particular for Member State authorities managing rural development support and aid beneficiaries.

Lowering the threshold for production destroyed by an adverse climatic event in order to assimilate such event to a natural disaster to 20%, as foreseen in *sub-option 1b* (cf. section 5.2.1.2), would help to avoid inconsistency between purely nationally financed State aid and such granted under the EAFRD and would thus further increase legal certainty for Member State authorities and aid beneficiaries in this field.

As regards the lowering of publication thresholds, lowering the general threshold to EUR 100 000 will end the current inconsistency between ABER/Guidelines and other horizontal State aid rules. This, in turn, will increase legal certainty, both for granting authorities and for aid beneficiaries.

In the sector of primary agricultural production, the average amount of investment aid granted in the period 2014-2019 is estimated at around EUR 17 000. Investment aid is more likely to have distortive effects on competition than other aid measures and should hence be awarded as transparently as possible. A publication threshold of EUR 10 000 should capture a reasonable part of investment aids.

Lowering the publication thresholds will increase transparency in State aid control, as many more individual aid awards will be made public and accessible to competitors. This, in turn, should have a positive impact on competition control and the effectiveness of State aid rules.

Lowering the publication threshold only for non-agricultural activities (and leaving it at EUR 60 000 for primary agricultural producers), as proposed under *sub-option 1a*, would only partly tackle the current transparency deficiency as compared to the baseline. Under this sub-option, only a fraction of aid awards would continue to be published in the sector of primary agricultural production. Moreover, the ratio between the general publication

⁸⁹ The ABER will keep detailed compatibility conditions, even for EAFRD co-financed aid.

threshold and the threshold for aid to primary agricultural producers would become disproportionate. The specific *de minimis* threshold (of EUR 20 000 and EUR 25 000 respectively) for the sector of primary agricultural production⁹⁰ is based on the premises that even very small amounts of aid can bear the risk of competition distortion, given the small-scale structure of this sub-sector. The two publication thresholds (of EUR 500 000 and EUR 60 000 respectively) were set to mirror roughly the ratio between the two *deminimis* thresholds (EUR 200 000 general *deminimis* threshold versus EUR 20 000/EUR 25 000 *deminimis* in primary agricultural production).

The proposed extension of the ABER to all forestry measures (i.e. whether co-financed under the EAFRD or not) and to aid for the compensation of damage caused by protected animals could bear a higher risk of competition distortion as compared to the baseline⁹¹. However, as shown in section 2.1.3.1, the Commission has gained considerable case experience with those measures under the current rules. It should be noted that compensatory types of aid, such as aid for the compensation of damage caused by protected animals, are not improving or enhancing the productivity of farms and are, therefore, unlikely to produce undue distortive effects. The same is true for many of the forestry measures (which can be seen as aid in the public interest and are also compensatory in nature in a wider sense), such as aid for area-specific disadvantages resulting from certain mandatory requirements, aid for the prevention and restoration of damage to forests or aid for investments improving the resilience and environmental value of forest ecosystems. Measures which could enhance productivity (such as aid for investments in forestry technologies and in processing, in mobilising and in marketing of forestry products) will be subject to a notification threshold of EUR 7.5 million (cf. section 5.2.1). Here, it should again be noted that this notification threshold corresponds to the threshold for SME investment aid under the GBER, even though the ABER does not limit aid to the forestry sector to SMEs⁹². Even aid to large undertakings would thus need to respect the notification threshold for SME investment aid.

6.1.2. 6.1.2. SO2: State aid rules, which foster the development of the agriculture and forestry sectors, as well as environmental protection and climate action, in line with CAP and Green Deal objectives

State aid rules adapted to the CAP Strategic Plans Regulation will be able to contribute better to the attainment of the CAP objectives for the new programming period than if State aid clearance would have needed to be sought on the basis of the current rules. Option 1 will therefore have a positive impact on the consistency with the CAP as compared to the baseline.

⁹⁰ Cf. Commission Regulation (EU) No 1408/2013.

⁹¹ Although the 2019 public consultation showed that 72% of respondents taking position considered that the positive effects of aid to the forestry sector outweigh potential distortive effects on the internal market. At the same time, environmental NGOs referred to the risk of lower prices in raw materials and increased biomass use (cf. Annex 2.2).

⁹² The Enabling Regulation empowers the Commission to block exempt aid to the forestry sector as such.

Given the enhanced environmental and climate ambition of the new CAP, the alignment of State aid rules in this field can also be expected to have some positive impacts on the attainment of Green Deal objectives in general, and in particular on biodiversity preservation and on climate change mitigation and adaptation⁹³.

The lowering of the loss threshold for adverse climatic events to 20%, foreseen under *sub-option 1b*, while increasing the consistency with the CAP for this very measure⁹⁴, could have a negative impact on farmer's adaptation to climate change. Loss thresholds should have an incentive to properly assess the risk of farming. Lowering the threshold from which compensation for losses can be paid, lowers the incentive for proper risk management. Farmers might be more prone to growing crops, which are not or no longer suitable for a certain area due to recurring adverse weather conditions. This could run counter to the Green Deal objective of climate change adaptation in agriculture.

6.1.3. 6.1.3. SO3: Administrative simplification

The lowering of publication thresholds will clearly increase the administrative burden on Member State authorities, since many more aid grants will have to be made public as compared to the baseline⁹⁵.

Such increase in administrative burden would be less pronounced under *sub-option 1a*, where burden would only increase with respect to aid grants in sectors outside of primary agricultural production.

At the same time, it should be noted that in the public consultation for the "Fitness check" of horizontal State aid rules, only 30% of respondents took the view that transparency increases the administrative burden on granting authorities. Analysis of the TAM database furthermore showed that certain Member States have already been reporting (on a voluntary basis) individual aid awards far below the legal publication threshold. It should also be noted that Member States' authorities have already been reporting aid awards above EUR 100 000 and above EUR 10 000 in the sector of primary agricultural production under the COVID-19 Temporary Framework and the Temporary Crisis Framework.

Moreover, this additional administrative burden for Member State authorities (resulting from a lowering of both publication thresholds) should be counter-balanced by the envisaged compatibility presumption clause for notified EAFRD co-financed aid and by the extension of the scope of the ABER, foreseen under option 1.

The current rules already offer the possibility to block-exempt the majority of measures if they are co-financed under the EAFRD. However, certain measures, such as aid for

⁹³ Over 60% of respondents in the 2019 public consultation considered climate change mitigation and adaptation as well as ecosystem services and biodiversity to be very important objectives pursued by the granting of State aid (cf. Annex 2.2).

⁹⁴ I.e. for aid to make good the damage caused by climatic events, which can be assimilated to a natural disaster

⁹⁵ This concern was repeatedly voiced by many Member States in the consultation on the draft new rules (cf. Annex 2).

cooperation or aid in rural areas involving public entities (as they would fall outside the SME scope) has to be notified under the Guidelines. In the period July 2014 until March 2020, Member States had notified to the Commission more than 50 measures for State aid clearance under EAFRD co-financing. These measures were subject to a detailed, and sometimes lengthy, compatibility assessment. In fact, as shown in section 5.3, the average time between the submission of the notification and the adoption of a State aid decision is five months.

The simplified approach for State aid control in relation to rural development support introduced by this option ('compatibility presumption clause', cf. section 5.2.1) should in the future allow for fast and non-bureaucratic State aid decisions for EAFRD co-financed aid and should thus ease the administrative burden on Member State authorities and Commission services⁹⁶.

The envisaged extension of the scope of the ABER should further and considerably alleviate the administrative burden on Member State authorities and on Commission services. In fact, according to the results of the targeted consultation (cf. Annex 2.3), 70% of respondents consider notifications to be always or mostly burdensome, while 77% indicate that block-exemptions are not or only sometimes burdensome.

Analysis of the data collected in the targeted consultation shows that the average total workload of a notified measure for a Member State authority is almost three times more than that of a block exemption. Option 1 will open the possibility to additionally block-exempt close to one fifth of measures, which have to be notified at the moment. This means a substantial reduction of administrative burden for Member State authorities and for Commission services.

The positive impact on reduction of administrative burden for Commission services stemming from an ABER extension should be further amplified by the alignment of procedural requirements of the ABER to the GBER and, as a consequence, the discontinuation of ex-ante checks of block-exempted measures. This new procedure should considerably further reduce the administrative burden on Commission services.

Option 1 would bring about an additional administrative simplification at the level of small municipalities as aid beneficiaries, by excluding them from the requirement to present a counterfactual scenario when applying for aid.

Furthermore, the introduction of the possibility to use simplified cost options in the Guidelines should contribute to simplifying and shortening State aid procedures at the level of Member State authorities, which should also bring about a certain degree of administrative simplification at the level of aid beneficiaries.

Option 1 would therefore have a positive impact on administrative simplification as compared to the baseline.

⁹⁶ The Commission will endeavour to approve aid measures notified under the simplified approach within the legal deadline of two months.

6.1.4. 6.1.4. Impact on SMEs

Option 1 would have a positive impact on SMEs as compared to the baseline scenario.

The alignment of State aid rules with the CAP Strategic Plans Regulation and animal health legislation, as well as the proposed ‘compatibility presumption clause’ for EAFRD co-financed aid would increase legal certainty for aid beneficiaries, which are largely SMEs.

Faster State aid procedures for notified aid under the EAFRD also means faster access to funds for final beneficiaries (which in rural areas are mostly SMEs).

The lowering of publication thresholds should also positively affect this group of undertakings. Lower publication thresholds will enhance an important tool of competition control, which is readily available and should be simple to use. This is in particular relevant for micro and small enterprises, who do not always have the resources to launch investigations of potential competition infringements. Under *sub-option 1a*, this impact would only materialise partly (cf. section 6.1.1 above). Given the small-scale structure of the sector of primary agricultural production (which is dominated by micro and small enterprises), it would be particularly relevant for SMEs to enhance transparency as a tool of competition control in this sector. *Sub-option 1a* would miss this opportunity. However, given the other positive impacts of option 1 on SMEs, *sub-option 1a* should altogether still have a positive impact on SMEs as compared to the baseline.

The envisaged extension of the scope of the ABER under option 1 means faster State aid procedures (and faster access to funds) for close to one fifth of measures, which currently need to be notified.

Aid under the ABER in the agriculture sector and in rural areas is mostly limited to SMEs. That is why SMEs should benefit to a higher extent than large undertakings from an alignment of ABER procedural requirement to the GBER. Since Member States will implement aid measures faster, this also means faster access to the aid for beneficiary undertakings.

Since farmers are largely SMEs, this group should also benefit to a larger extent than large undertakings from a decrease of the loss threshold for adverse climatic events from 30% to 20%, as foreseen under *sub-option 1b*. A lower loss threshold means that more aids can be granted to beneficiaries to make good the damage caused by such adverse climatic events, as compared to the baseline. *Sub-option 1b* would therefore have an additional positive impact on SMEs as compared to option 1.

6.2. 6.2. Option 2: Option 1 plus further changes in favour of the attainment of Green Deal objectives plus full ABER extension

6.2.1. 6.2.1. SO1: State aid rules, which are aligned with horizontal provisions, provide for legal certainty and appropriate competition safeguards

Option 2 is expected to have overall the same impact as option 1 on the effectiveness of State aid rules (and thus a positive impact compared to the baseline)⁹⁷.

Predictability and legal certainty will slightly increase under option 2 as compared to option 1. Under current rules, the maximum amounts of aid for environmental/climate- and animal welfare commitments can be overpassed in duly justified cases, but that means a certain level of discretion on the side of the Commission. By introducing maximum aid intensities instead of maximum aid amounts for such aids under the Guidelines, option 2 will do away with this uncertainty. However, the impact on effectiveness of this change is not considered significant.

The two aid measures in relation to alien species and plants and fungi in forestry, which would be newly introduced under option 2, aim at biodiversity preservation and would not enhance the productivity of farmers/foresters. They would therefore not have an undue distortive effect on competition.

The further extension of the scope of the ABER (as compared to option 1) to cover all measures with simplification potential (cf. section 5.2.2) should not increase the risk of competition distortion, given the nature of the measures to be newly introduced and the competition safeguards foreseen:

Measures, such as agri-environment and climate services or animal welfare commitments, where farmers on a voluntary basis commit to change certain management practices, can be seen as aid in the public interest (as they pursue a wider policy objective, such as environmental protection, climate change mitigation or animal welfare) and have a compensatory nature in a wider sense. The Commission has gained sufficient experience with those measures under the Guidelines (cf. section 2.1.3.1). Furthermore, aid for voluntary management commitments would be limited by maximum aid amounts per unit (corresponding to the current maximum aid amounts under the Guidelines), which would also serve as notification thresholds. In fact, and as explained in section 2.1.1.2 a, this is a prudent approach, since in around 65% of all measures with agri-environmental-climate commitments (which represent by far the biggest share in all measures with voluntary management commitments) Member States overpassed those amounts in the period July 2014 to March 2020. Measures with higher aid amounts per unit would thus continue to be subject to notification, even under option 2.

The Commission has also gained vast experience with cooperation measures based on notifications (cf. section 2.1.3.1). The eligible cooperation activities in the agriculture or

⁹⁷ For an analysis of the impacts of sub-options 2a and 2b on SO1, cf. the analysis made for options 1a and 1b under section 6.1.1.

forestry sectors or in rural areas have a very low risk to distort competition. Where investments are financed in the framework of cooperation, the investment aid is subject to the same rules as the corresponding investment aid measure. Under option 2, moreover, the same notification thresholds as in the corresponding investment aid measure would have to be respected in case of investments within a cooperation project.

Furthermore, aid for basic services and village renewal benefit in the first place the rural communities and are not of a productivity enhancing nature, as the Commission could conclude on the basis of extensive case experience (cf. 2.1.3.1). Any investment carried out under this measure (for instance infrastructure in rural areas) would be subject to a notification threshold of EUR 10 million, which corresponds to the notification threshold for local infrastructures under the GBER.

Moreover, it should be underlined that option 2 (as already option 1, cf. section 6.1.1) would come with a lowering of publication thresholds for individual aid awards, which should increase transparency and thus additionally enhance competition control.

It can therefore be concluded that the full extension of the scope of the ABER to all measures with simplification potential would not increase the risk of competition distortion as compared to the baseline.

6.2.2. 6.2.2. SO2: State aid rules, which foster the development of the agriculture and forestry sectors, as well as environmental protection and climate action, in line with CAP and Green Deal objectives

Option 2 would further contribute to achieving the second specific objective and would thus produce further positive impacts on consistency with the Green Deal, as compared to the baseline.

The replacement (in the Guidelines) of maximum aid amounts for measures with voluntary management commitments by a maximum aid intensity of 100% and the possibility of higher incentives for ecosystem services in forests should enhance the uptake of such measures, which, in turn would have a positive impact on the environment and climate. The introduction of result-based approaches (such as carbon farming schemes) in agriculture and forestry should have a positive effect on the efforts towards climate change mitigation.

The widening of the scope of costs eligible for aid for damages caused by protected animals should increase farmers' acceptance of the presence of carnivores and contribute to their protection. Aid in relation to damage caused by invasive alien species will contribute to protecting and preserving local and regional species in agriculture and forestry. Those measures would therefore have a positive impact on the Green Deal objective of biodiversity preservation.

The same is true for the introduction of a new aid measures for the restoration and maintenance of natural habitat for plants and fungi in the forestry sector. Plants play a vital role in supporting other wildlife, providing essential elements such as food, water, oxygen, and habitat. Fungi help break down the materials in the stressed and dead trees

as part of a complex nutrient cycle that is vital to regeneration and a healthy forested ecosystem. Their presence enhances biodiversity⁹⁸.

6.2.3. 6.2.3. SO3: Administrative simplification

Option 2 would bring additional administrative simplification for Member State authorities and Commission services and would thus further contribute to attaining the third specific objective⁹⁹.

Option 2 would open the possibility to block-exempt altogether close to 50% of measures, which have to be notified at the moment. Since the average total workload of a notified measure for a Member State authority is almost three times more than that of a block exemption (cf. section 6.1.3), this would mean a substantial additional reduction of administrative burden for Member State authorities¹⁰⁰ (and by the very nature of block-exempted aid also for Commission services) as compared to option 1.

As already explained for option 1 (cf. section 6.1.3), the positive impact on administrative simplification for Commission services should be further amplified by the alignment of procedural requirements of the ABER to the GBER and as a consequence the discontinuation of *ex-ante* checks of block-exempted measures. This new procedure should considerably further reduce the administrative burden on Commission services.

6.2.4. 6.2.4. Impact on SMEs

Option 2 would have an additional positive impact on SMEs, as compared to option 1¹⁰¹. The envisaged further extension of the scope of the ABER would mean faster State aid procedures (and faster access to funds) for another 30% of measures, which currently need to be notified. SMEs will benefit to a larger extent from this change than large undertakings, since aid under the ABER in the agriculture sector and in rural areas is mostly limited to SMEs.

7. 7. HOW DO THE OPTIONS COMPARE?

This chapter provides a summary of the Commission's assessment of the various options available. They are compared on the basis of their effectiveness, efficiency and coherence, based on the analysis in chapter 6.

To assess their *effectiveness*, the options are scored against the specific objectives, identified in section 4.2 and analysed in chapter 6. *Efficiency* is measured by the impact

⁹⁸ For an analysis of the impact of sub-option 2b on consistency with CAP and Green Deal objectives, cf. the analysis of sub-option 1b under section 6.1.2.

⁹⁹ For an analysis of the impact of sub-option 2a on administrative simplification, cf. the analysis of sub-option 1a under section 6.1.3.

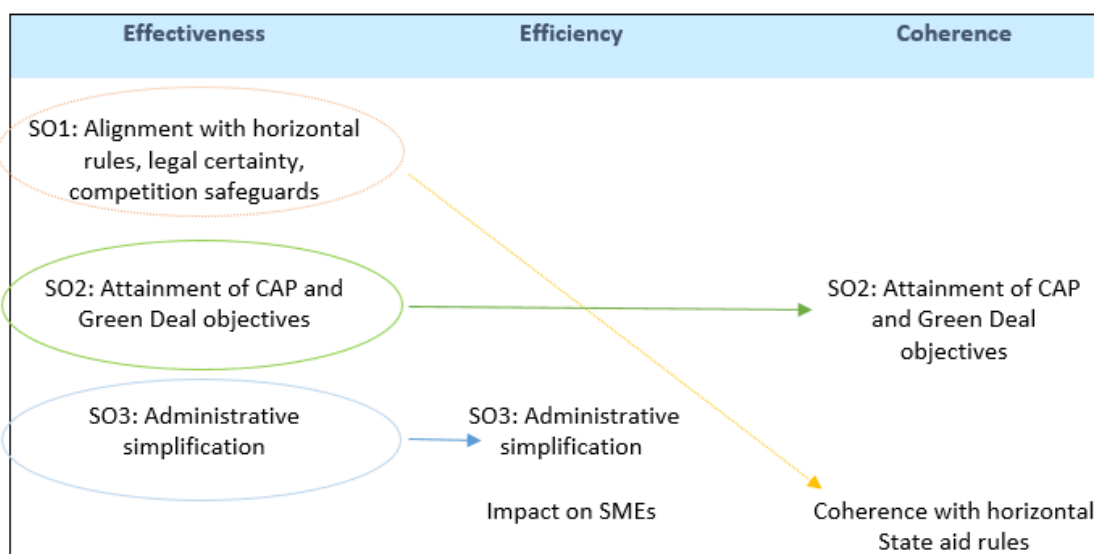
¹⁰⁰ For a more detailed quantification of the impact of this measure, cf. section 8.2.

¹⁰¹ For an analysis of impacts of sub-options 2a and 2b on SMEs, cf. the analysis of sub-options 1a and 1b under section 6.1.4.

of the different policy options on administrative simplification (a criterion already covered by the third specific objective) and their impact on SMEs. *Coherence* of the policy options will be assessed on the basis of their impact on consistency with CAP and Green Deal objectives (covered by the analysis of the second specific objective) and their coherence with horizontal State aid rules (which can be derived from the first specific objective)¹⁰².

Figure 7 below illustrates the interplay between the proposed rating criteria and the three categories effectiveness, efficiency and coherence.

Figure 7: Interplay between rating criteria and effectiveness, efficiency and coherence of policy options



The available policy options will thus be rated in view of their contribution towards the specific objectives pursued by the intervention and their potential impact on SMEs (cf. chapter 6). The rating will take the baseline scenario as a benchmark.

Table 5 below depicts how each of the abovementioned criteria rate for the policy options, on a scale ranging from (--) for very negative impacts to (++) for major positive impacts. Options which are likely to have no or negligible impact as compared to the baseline have not been assigned a score ("0"). The scoring criteria are not weighted.

For a better differentiation, the criterion of consistency with CAP and Green Deal objectives has been split into two sub-sections. Administrative simplification differentiates between the impact on Member State authorities and Commission services.¹⁰³ The criterion of effectiveness will focus on the contribution towards the first

¹⁰² None of the options considered have impacts regarding fundamental rights.

¹⁰³ The impact of administrative simplification for aid beneficiaries will be taken into account in the impact on SMEs.

specific objective, since the two others will be covered by the criteria of efficiency and coherence.

Table 5: Comparison of policy options

	Option 1: Adaptation to new CAP ↓Publication thresholds =Horizontal provisions Simplification ABER extension “light”	<u>Sub-option</u> <i>1a:</i> Keeping publication thresholds for primary production	<u>Sub-option</u> <i>1b:</i> Lowering loss threshold to 20%	Option 2: + Changes in favour of Green Deal Full ABER extension	<u>Sub-option</u> <i>2a:</i> Keeping publication thresholds for primary production	<u>Sub-option</u> <i>2b:</i> Lowering loss threshold to 20%
Effectiveness (alignment, legal certainty, comp. safeguards)	+	0	+	+	0	+
Consistency with new CAP	+	+	+	+	+	+
Consistency with Green Deal	+	+	0	++	++	+
Administrative Simplification MS	+	++	+	++	++	++
Administrative Simplification EC	++	++	++	++	++	++
Impact on SMEs	+	+	++	++	++	++

Based on the table above it is visible that options 1, 1b, 2 and 2b score highest with regard to **effectiveness**, with a positive impact as compared to the baseline. As elaborated in further detail in sections 6.1.1 and 6.2.1, all options foresee to lower publication thresholds for individual aid grants, which will enhance competition control. All options furthermore foresee to align the ABER procedural requirements to the ones of the GBER, align the rules to the CAP Strategic Plans Regulation and the animal health legislation in force and introduce the ‘compatibility presumption clause’ for EAFRD co-financed aid, which will increase legal certainty for Member State authorities and aid beneficiaries. Both, the compatibility presumption clause and the extension of the ABER (partial and full) come with appropriate competition safeguards and therefore do not negatively affect the criterion of effectiveness. Only *sub-options 1a and 2a* score lower (and are hence assessed not to have an impact on effectiveness as compared to the baseline), since the positive impact of lower publication thresholds would only be materialised partly.

All options score equally high (with a positive impact as compared to the baseline) for **consistency with the objectives of the new CAP** (cf. sections 6.1.2 and 6.2.2.).

Options 2 and 2a score highest when it comes to **consistency with Green Deal objectives** (cf. section 6.2.2.). The lowering of the loss threshold for adverse climatic

events to 20% (foreseen in *sub-options 1b and 2b*), which can have negative impacts on farmers' adaptation to climate change and thus on Green Deal consistency, keeps the score down (cf. sections 6.1.2 and 6.2.2).

The lowering of publication thresholds foreseen in all the options (but to a lesser extent under *sub-options 1a and 2a*) have a negative impact on **administrative simplification for Member State authorities**. However, the positive impacts of the other envisaged simplification steps (in particular, the simplified approach for EAFRD co-financed aid and the extension of the ABER, cf. sections 6.1.3 and 6.2.3) outweigh by far this negative impact. All options show a positive impact on administrative simplification for Member State authorities as compared to the baseline, while the expected positive impacts are the highest for options 1a, 2, 2a and 2b.

All options have a significant positive impact (and score equally high) on **administrative simplification for Commission services** as compared to the baseline (cf. sections 6.1.3 and 6.2.3). This positive score is mainly driven by the alignment of the ABER to the procedural requirements of the GBER (and a discontinuation of the practice of *ex-ante* checks), the introduction of the 'compatibility presumption clause' for EAFRD co-financed aid under the Guidelines and the considerable extension of the scope of the ABER.

Options 1b, 2, 2a and 2b show the highest positive **impact on SMEs** as compared to the baseline (cf. sections 6.1.4 and 6.2.4). This score is mainly driven by an increase in legal certainty for SMEs as aid beneficiaries and faster access to aid stemming from the envisaged simplification steps (compatibility presumption clause and ABER extension).

As can be seen by the colour markings in table 5 above, option 2 scores altogether highest in all categories.

The proposed policy options are proportionate, as they do not go beyond what is necessary to achieve the objectives set under this initiative.

Option 2 (with sub-options 2a and 2), which decentralise State aid rules most¹⁰⁴, does not go beyond what is necessary to achieve the objectives of the CAP and at the same time aim at administrative simplification at the level of Member State authorities and Commission services. Even if Member States were given more flexibility in the granting of notified aid co-financed by the EAFRD, the Commission would still keep its prerogative of competition control, since those measures will be screened as part of the national Strategic Plans, which are approved by the Commission. A compatibility assessment based on the core principles of State aid control (such as exclusion of pure operating aid or exclusion of aid to undertakings in difficulty) will furthermore still be performed under the Guidelines (cf. section 5.2.1). The envisaged extension of the scope of the ABER would come with corresponding safeguards to minimise the risk of competition distortion, such as notification thresholds or maximum aid amounts.

¹⁰⁴ By introducing the compatibility presumption clause for EAFRD co-financed aid under the Guidelines and by extending the scope of the ABER, which shifts the responsibility for compatibility of aid measures to Member States.

There is no issue of subsidiarity, since State aid rules fall under the exclusive competence of the EU, as explained in section 3.2 above.

8. 8. PREFERRED OPTION

8.1. 8.1. Option 2

Based on the analysis in chapter 7, option 2 has altogether the highest scores in all categories.

It has positive impacts on the effectiveness of State aid rules and the consistency with CAP objectives as compared to the baseline and a significant positive impact on the consistency with Green Deal objectives.

Despite the introduction of lower publication thresholds, which, while improving the effectiveness of State aid rules, will have a negative impact on administrative simplification for Member State authorities (cf. table 5 in chapter 7 above), it overall shows a major positive impact in this category as compared to the baseline. This is thanks to other changes this option entails for administrative simplification, and in particular the significant extension of the scope of the ABER and the simplified approach for EAFRD co-financed aid under the Guidelines.

Option 2 also shows major positive impacts on administrative simplification for Commission services and on SMEs, as compared to the baseline.

8.2. 8.2. REFIT (simplification and improved efficiency)

The revision of the Guidelines and the ABER is part of the Commission's Work Programme for 2021¹⁰⁵.

Under the Commission's better regulation requirements, proposals to amend existing legislation should report on the scope for simplification and improving the efficiency of that legislation.

The proposed option 2 is expected to lead to significant administrative simplification as compared to the baseline scenario, both for Member States' authorities and for Commission services.

The envisaged extension of the scope of the ABER can be expected to have the highest impact on administrative simplification. As illustrated in section 2.1.3.1 above, 315 cases, which at present would fulfil the requirements for being block-exempted, were

¹⁰⁵ Annex II to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2021: A Union of vitality in a world of fragility, COM(2020) 690 final, p. 9.

subject of a notification procedure in the period July 2014 until March 2020¹⁰⁶. On average, this corresponds to around 55 cases per year.

The Commission carried out a targeted consultation to collect data on the administrative burden of the different State aid procedures (cf. Annex 2.3). Member State authorities (at national and regional level) were approached with a questionnaire and asked to assess the time spent on the different steps of a notification and a block-exemption respectively.

The Commission received in total 53 submissions. The replies received were, however, very diverging and included many outliers¹⁰⁷. They were thus not directly usable.

In order to try to quantify the simplification potential linked to the possible extension of the scope of the ABER and as described in further detail in Annex 2.3, the dataset obtained from the targeted consultation was cleared of outliers (to obtain a range of average plus/minus standard deviation). The following adjustment steps were also performed:

- 4) values given as a range were converted to the average of the two figures;
- 5) input given in working days (in full time equivalents) was converted to working hours (based on the assumption of a 8 hours working day); and
- 6) removal of the lowest figures.

Taking into account only comparable data (i.e. where authorities had provided data on both, block-exemption and notification procedures and where the difference between the two seemed plausible) and after elimination of data lines with too many outliers, data of 20 authorities remained.

While this data sample is limited, it still gives an indication of the difference in workload associated with the two procedures. It establishes on average a total workload for public authorities of 56 hours for notified aid and of 21 hours for block exemptions. The median values are at 40 and 15 hours respectively¹⁰⁸. It shows for both methods, that the average total workload of a notified measure is around 2.7 times more than that of a block exemption.

Based on these data it can furthermore be established that by block-exempting a measure instead of notifying it, around 62% of working time could be saved at the level of public authorities.

To try to quantify the possible savings in working time, which would result from an extension of the ABER as described in section 5.2.2, and taking as a starting point an

¹⁰⁶ In total, 652 cases were notified in the same period, which corresponds to a share of almost 50%.

¹⁰⁷ For possible explanations for this, cf. Annex 2, section on targeted consultation.

¹⁰⁸ It should be noted that even in this “cleaned” data sample, the range of indicated workload is very big, varying for instance for the preparation of notifications between 3 and 136 hours and for block-exemptions between 1 and 64 hours. It also seems to suggest, that the higher figures for both procedures include the national legislative procedures to prepare the legal basis.

average of 55 cases a year as simplification potential (see above), the following adjustments have to be made:

- Measures with voluntary commitments (such as forest-environment and climate services or animal welfare commitments) account for around 14% of all measures with simplification potential (cf. Table 3 in section 2.1.3.1). Those measures will be capped in the ABER with maximum aid amounts per unit (which are the same as the current maximum amounts of those measures included in the Guidelines). Case experience has shown that in around 64% of all agri-environment-climate commitments¹⁰⁹ notified in the period July 2014 to March 2020, those amounts were exceeded (cf. section 2.1.1.2 a). For the purpose of the present calculation and to take a cautious approach, commitment measures will only be considered at 50% for the simplification potential¹¹⁰.
- Agricultural measures account for 22% of all measures with simplification potential. In the field of agriculture, the ABER is largely limited to SMEs. Therefore, it will not necessarily be possible to exempt all these measures even if they were included in the ABER¹¹¹. Measures in the agriculture sector will therefore only be considered at 80% of their simplification potential.

Based on the above, the total simplification potential of on average 55 cases per year has to be reduced by 11%. A yearly average of 49 cases can therefore be taken into account.

Based on a difference of 35 working hours (average) and 25 working hours (median) respectively between a notified and a block-exempted measure, a saving in aggregate workload across Member States' authorities of roughly 1 715 working hours and 1 225 working hours respectively per year can be expected from the envisaged extension of the scope of the ABER.

Taking into account that the average remuneration of national civil servants in central public administration amounted to EUR 2 827 (net remuneration in nominal value) in 2021¹¹², a yearly saving potential for Member State authorities of between EUR 19 981 and EUR 27 973 can be calculated¹¹³.

The real savings for Member State authorities from the full extension of the scope of the ABER would be higher, as no more *ex-ante* checks would be carried out by Commission

¹⁰⁹ Measures with agri-environment-climate commitments represent by far the biggest share of measures based on voluntary management commitments, cf. Table 3 in section 2.1.3.1).

¹¹⁰ As described in section 5.2.3, under option 3, maximum aid amounts for commitments in favour of environment, climate and animal welfare would be removed in the Guidelines and replaced by maximum aid intensities for additional costs and income foregone.

¹¹¹ The issue of not fulfilling the SME definition might in particular be relevant for public authorities such as municipalities, which can sometimes be beneficiaries of aid.

¹¹² Source: Eurostat: https://ec.europa.eu/eurostat/databrowser/view/prc_rem_avg/default/table?lang=en

¹¹³ Based on the assumption of a 40 hours working week and of 4.3 weeks per month.

services and there would thus not be any subsequent correspondence between the Commission services and the Member State authorities.¹¹⁴

While for Member State authorities even block-exempting aid measures still comes with considerable administrative costs¹¹⁵ (although significantly lower than for notified aid measures), the administrative simplification is much more pronounced for Commission services. The extension of the scope of the ABER, and at the same time the discontinuation of ex-ante checks, will basically reduce the administrative costs for around 49 measures a year (see above), which until now would need to be notified, down to zero¹¹⁶.

Besides, the compatibility presumption clause for EAFRD co-financed measure would bring further significant savings in administrative costs, both for Member State authorities and Commission services. This approach would speed up notification procedures for aid measures included in CAP Strategic Plans, which Member States could still not block-exempt. Given that the Commission will endeavour to approve aid measures notified under the simplified approach within two months (cf. section 6.1.3), this would mean on average a time saving of 60%¹¹⁷, as compared to normal notifications¹¹⁸.

Businesses as aid beneficiaries will indirectly also benefit from the reduced administrative burden for the public sector. Simplified and speedier procedures means faster implementation of aid measures and hence faster access to aid. Simplified rules (such as the possibility to use simplified cost options) and increased legal certainty (by aligning rules to horizontal State aid or policy legislation) also mean less burdensome interaction of businesses with the competent national authorities.

8.3. 8.3. Application of the ‘one in, one out’ approach

This initiative is out of scope of the one in, one out approach as administrative obligations related to applications for subsidies are not subject to that approach.

9. 9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

In accordance with Article 108 TFEU, ‘*the Commission shall, in cooperation, with Member States, keep under constant review all systems of existing aid in those Member States*’. In this regard, Chapter IX of Regulation No 2015/1589¹¹⁹ (Procedural

¹¹⁴ As can be seen in Annex II, subsequent correspondence with the Commission was estimated to account for around 25% of total workload associated with a block-exemption procedure under the current ABER.

¹¹⁵ Such as preparing and adopting the national legal basis or handling aid applications.

¹¹⁶ Not taking into account a possible *ex-post* monitoring of block-exempted cases, cf. section 9.2

¹¹⁷ Under the current rules, the average time between the submission of the notification and the adoption of a State aid decision is five months (cf. section 5.3).

¹¹⁸ It is, however, not possible at this stage to quantify how many measures of the national CAP Strategic Plans would have to be cleared via the compatibility presumption clause.

¹¹⁹ 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 of 24.9.2015, p. 9

Regulation) sets the monitoring obligations for Member States, and Article 26 establishes that Member States shall submit to the Commission annual reports on all existing aid schemes with regard to which no specific reporting obligations have been imposed.

The Commission implements a State aid control system based on three main elements: transparency, monitoring, and ex post evaluation.

Both, the Guidelines and the ABER contain provisions on transparency, monitoring and reporting requirements¹²⁰. The existing requirements in place seem, however, not to have been sufficient.

The evaluation¹²¹ revealed the lack of relevant quantitative data, especially data needed to assess the impact on competition and trade (as information gathering tools in this area are limited).

According to the evaluation, the information on Member States' expenditures, as summarised in the annual State aid scoreboard, is too general to allow for any concrete conclusions on market impacts. This is also partly because State aid in the agricultural and forestry sectors is usually granted under schemes with a large number of beneficiaries and covering several types of aid measures. The external study commissioned to collect more quantitative market data for the evaluation gave limited results.

The evaluation therefore concluded that data collection needs to be improved for the future.

9.1. 9.1. Transparency

As elaborated in further detail in sections 6.2.1 above, the planned lowering of publication thresholds should have a positive impact on State aid control, as many more individual aid awards will be made public and accessible to competitors. This should, at least partly, also remedy the current lack of data availability at the level of individual beneficiaries, criticised in the evaluation.

9.2. 9.2. Monitoring

As introduced above, *ex-post* monitoring is required under Article 108(1) TFEU. Commission services initiated this practice in 2006. It has aimed to ensure the proper enforcement of State aid rules in approved and block-exempted aid schemes. For this reason, it selects yearly a sample of existing aid schemes (covering notified and block-exempted schemes) based on Member State coverage and important aid objectives and types of aid. The scope of classical monitoring consists of a complete assessment of a scheme's legal basis and the examination of individual aid awards granted to a sample of beneficiaries. This enables to detect and correct irregularities in the implementation of schemes by Member States.

¹²⁰ Cf. Articles 9, 12 and 13 of the ABER and recitals 128-132 and 227-230 respectively of the Guidelines.

¹²¹ Cf. Section 6.6 of the Evaluation Staff Working Document

State aid in agriculture, forestry and rural areas has only been included in this *ex-post* monitoring at the beginning of 2020. The evaluation, which kicked-off in 2017, could therefore not yet resort to data from this structural monitoring exercise. Since State aid in agriculture, forestry and rural areas will now also be subject of a detailed *ex-post* monitoring, more accurate information at beneficiary level can thus be expected in the future from that exercise.

9.3. 9.3. Ex-post evaluation of certain State aid measures

To further ensure that distortions of competition and trade are limited, the Commission may require that certain schemes are subject to an *ex-post* evaluation, which will be carried out for schemes in the case of which the potential distortions of competition are particularly high (e.g. large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen).

Ex-post evaluations are carried out by an expert independent from the aid granting authority based on a common methodology, and must be made public. Each Member States must notify, together with the relevant aid scheme, a draft evaluation plan, which will be an integral part of the assessment of the scheme by the Commission.

The Commission has so far not requested Member States to carry out *ex-post* evaluations in relation to State aid in agriculture, forestry and rural areas (mainly because the above-mentioned criteria were not met). This was identified as a weak point in the evaluation.

The intention is to make more use of this tool in the future, also in relation to aid schemes in agriculture, forestry and rural areas.

9.4. 9.4. The State aid Scoreboard

The State Aid Scoreboard¹²², which is maintained by DG COMP and published annually, provides information on the overall situation of State aid in each Member State and on the Commission's State aid control activities. The information published in the Scoreboard is based on the annual reports submitted by Member States. The Scoreboard provides information on State aid expenditure and State aid measures and describes the trends and patterns of State aid expenditure per sector, per Member State and per type of aid measure.

The Scoreboard also contains information on the number of aid measures or aid amounts per sector, per form of aid or aid instrument, etc. and contributes to the monitoring and evaluation exercises of the Commission.

¹²² http://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.html

9.5. 9.5. Operational objectives against which the success of the initiative can be measured in the future

The new ABER will expire in 2029, which means that an evaluation of the ABER (and also the Guidelines) should be carried out before the end of 2028.

This future evaluation should assess the success of the initiative in relation to operational objectives (linked to the objectives set out in sections 4.1 and 4.2) and criteria against which success can be measured in the future.

9.5.1. 9.5.1. Non-distortion of competition

An indication of success with regard to the general objective of minimising the risk of distortion of competition could be the number of complaints received under the new State aid rules.

Other indicators could be the nature, the number and the geographical distribution of the new measures. To this effect, aid schemes are less distortive than *ad hoc* measures since potentially all undertakings within the same economic sector are eligible for aid. Similarly, aid schemes available within all - or most - of the Member States are less distortive by ensuring a common level playing field.

9.5.2. 9.5.2. Contribution to the Green Deal objectives

A success indicator for the objective of contributing to Green Deal objectives could be the uptake of organic farming and of other measures with environmental-climate commitments, even if here, State aid might only play a partial role¹²³.

In this regard, the Commission may evaluate if -and to what extent- the existence of this type of aid schemes results in a higher increase of these economic activities in comparison to the increase reported in other Member States, which do not make use of these rules.

9.5.3. 9.5.3. Administrative simplification through reduction of the burden

A success criterion for administrative simplification could be the future proportion between block exempted and notified aid, entailing a reduction in the number of notifications. In this regard, a comparison should be established between the current overall ratio¹²⁴ towards the future ratio, taking into account the enlarged scope of the ABER.

¹²³ In fact, the development of these activities (as always with State aid) highly depends on the policy decision of Member States to avail of the opportunities offered by the State aid rules.

¹²⁴ In the period 2014-2020, the average share of block-exempted cases amounted to 78.2% of all State aid cases (cf. section 1.3).

Another good indicator is whether for measures already covered by the current ABER, the number of ad hoc notifications is stable or increases. If the number of ad hoc notifications were to increase substantially, that could justify the modification of the notification thresholds established in Article 4 of the ABER. If many State aid measures fall outside the set thresholds, one could conclude that the general cost of the projects, and thus the size of non-problematic projects, has not been correctly estimated, without this meaning that the distortion of competition of those measures is sufficiently high to justify an individual assessment. The Commission should only individually assess those measures that, in comparison to similar projects, provide for a high expenditure and therefore are likely to distort competition and trade beyond the minimum which is inherent to the notion of State aid (see Article 107(1) TFEU).

Finally, as explained in Section 9.1, the lowering of the transparency thresholds will lead to the availability of substantially more data, from where information on the uptake of the State aid measures provided for in the new instruments can be expected and conclusions be drawn as to their success.

Annex 1: Procedural information

10. 1. LEAD DG, DECIDE PLANNING/CWP REFERENCES

The lead DG behind the initiative is DG Competition (DG COMP).

- DECIDE ref.: PLAN/2020/9341 - COMP - Review of agricultural block exemption Regulation
- DECIDE ref.: PLAN/2020/9342 - COMP - Review of agricultural State aid Guidelines

11. 2. ORGANISATION AND TIMING

The European Commission formally started the review of the State aid rules in the agriculture and forestry sectors and in rural areas in 2018. It carried out an evaluation based on an external support study¹²⁵ and an open public consultation, which was run as a “back to back” exercise to this Impact Assessment (for further details, cf. Annex 2), in a, line with the Commission Better Regulation Guidelines¹²⁶. The findings of the evaluation were published on 19 May 2021 on the Commission’s Better Regulation site¹²⁷.

The initiative was initially launched by Directorate-General Agriculture and Rural Development (DG AGRI) in 2018 (PLAN/2018/4730; PLAN/2018/4736). However, on 1 January 2020, the competence in the field of State aid control for the agriculture and forestry sectors and in rural areas was reattributed from DG AGRI to DG COMP. Consequently, the responsibility for the draft SWD on the evaluation of the agricultural State aid instruments was transferred to DG COMP on 10 June 2020.

The Inception Impact Assessment was published on the Better Regulation Portal on 30 January 2019.

Other Commission services have been involved in the review, including the evaluation of the existing framework and the preparation of this report through an Inter-service Steering Group (ISSG). The ISSG was set up in January 2019 and was composed of representative of 15 services. In particular, the SG, the LS and DGs AGRI, BUDG, CLIMA, COMP, ECFIN, ENVI, GROW, MARE, REGIO, SANTE, TAXUD and TRADE as well as the JRC.

The first two ISSG meetings on 17 January 2019 and on 12 March 2019 took place as joint meetings for the evaluation and the impact assessment. They were followed by 6 further meetings specifically on the impact assessment on 25 May 2021, 22 October 2021, 17 December 2021, 18 February 2022, 1 April 2022 and 19 May 2022.

¹²⁵ <https://op.europa.eu/en/publication-detail/-/publication/e01b61f0-504f-11e9-a8ed-01aa75ed71a1>

¹²⁶ SWD (2017) 350 of 7.07.2017: Commission Staff Working Document Better Regulation Guidelines.

¹²⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2330

Date	Description of action – AGRI instruments
01/01/2023	Entry into force
16/12/2022	Publication in: L-series of the ABER C-series of the Guidelines
12/12/2022	Adoption
5/12/2022	Launch of the Written Adoption Procedure by SG
29/11/2022	Validation of e-greffe files by Cabinet(s)
28/11/2022	Submission of files in e-greffe for adoption
25/11/2022	Arrival of translations
7/11/2022	Transmission of translation requests for adaptation of texts
19/10/2022	End of the ISCs
04/10/2022	Start of the last ISCs
30/9/2022	Validation of start of ISCs by Cabinet(s)
27/9/2022	Finalisation of draft texts and transmission of texts to CAB
9/9/2022	2nd AC meeting
End July/beginning August 2022	Transmission of texts to Member States for AC meeting on 9/9/2022
22/07/2022	Arrival of translations
20/06/2022	Transmission of adaptation of translations to DGT
03/06/2022	End of 2nd ISC
20/05/2022	6th ISSG meeting (RSB debrief)
11/05/2022	RSB meeting
06/05/2022	Arrival of questions from RSB
05/05/2022	Launch of 2nd ISC
13/04/2022	Submission of documents to the RSB

07/04/2022	Submission of NCOM on adaptations to CAB
01/04/2022	5th ISSG meeting
13/03/2022	End of public consultation
10/03/2022	1st AC/EG meeting
18/02/2022	4th ISSG meeting
11/01/2022	Start of public consultation
10/01/2022	Transmission of draft texts to Member States for 1st AC/EG and start of public consultation
17/12/2021	3rd ISSG meeting Arrival of translations
22/10/2021	2nd ISSG meeting
04/10/2021	Sending of texts to DGT for translation
27/09/2021	End of 1st ISCs on draft legal texts
18/09/2021	End of targeted consultation
06/09/2021	Start of 1st ISCs on draft legal texts
01/07/2021	Start of targeted consultation
25/05/2021	1st ISSG meeting

12. 3. CONSULTATION OF THE RSB

The RSB scrutinized the present impact assessment report, which was submitted to it on 13 April 2022, by way of a written procedure. It gave a positive opinion, however, it expected the report to be further improved with respect to several aspects:

- (1) The report was not sufficiently clear on the need to reconcile the greater flexibility given by the CAP to Member States and the requirements of State aid control.
- (2) The presentation of the policy options was not sufficiently precise as to their content and the rationale behind the options. Some policy options only addressed part of the identified problems.

The comments raised have been addressed in the following way:

RSB comment	Action taken
<p>(1) The report should better explain the new CAP delivery model and in particular, the greater flexibility it leaves to Member States and the challenges this presents to State aid control. It should clarify how the policy options translate the balance between the subsidiarity approach of the new CAP and the need for effective State aid rules that safeguard competition in the internal market.</p>	<p>The new CAP delivery model (and the changes it entails as compared to the rural development policy 2014-2022) is now better explained in section 1.4. (Current political priorities); The policy options are now better described, presenting how they balance the new subsidiarity approach proposed for aid financed under the CAP and the need to provide appropriate competition safeguards (cf. section 5.2 Description of the policy options). Moreover, Annex 6 now explains in more details the proposed approach of the compatibility presumption clause.</p>
<p>(2) The report should provide a better description of the content and the rationale of the policy options with a view to setting out a full intervention logic, so that it becomes more clear how the identified options (and the measures included) are expected to tackle the identified problems and their drivers. The options should be designed as genuine alternatives to each other, i.e. addressing all challenges but in different ways or to different degrees. The report should consider sub-options reflecting different choices as to the tradeoff between flexibility to Member States and effective State aid control. Furthermore, the analysis of the policy options should demonstrate their proportionality, in particular regarding the necessary safeguards to preserve competition in the internal market.</p>	<p>The intervention logic was completed and aligned closer to the intervention logic used for the evaluation; The options are now described in much more detail (cf. section 5.2); Furthermore, a visual aid was added to demonstrate the interlink of the different aspects of the policy options with the problems/drivers they address and the objectives they contribute to (cf. figures 5 in section 5.2.1 and figure 6 in section 5.2.2); With regard to the rationale behind the policy options, the specific objectives have been better defined (cf. section 4.2), and the report now includes operational objectives and success criteria following the suggestions of the Board (cf. section 4.3); The options (two main policy options) are now designed as genuine alternatives to each other, addressing all challenges but in some aspects to a different degree; Additionally, the report now also examines two sub-options with policy choices regarding transparency and further CAP alignment (cf. section 5.2); More stress was now put in the report on the demonstration of proportionality of the different options with regard to competition safeguards (cf. section 6 and 8.2); This is now facilitated by the better explanation of the compatibility presumption clause and by providing more</p>

	information on notification thresholds for block-exempted measures in section 5.2.
<p>(3) The report should clearly separate the administrative burden for public authorities from that of private businesses and citizens. It should estimate the administrative burden in monetary terms (not just in working hours). It should better explain the possible indirect benefits for private businesses and citizens from simpler State aid procedures.</p>	<p>The report now separates the administrative burden for public authorities (and differentiates further between Member State authorities and Commission Services) from that of private businesses (cf. section 6); It explains the indirect benefit for private businesses from simpler State aid procedures (cf. section 6 and 8.2); The effect on citizens is not explicitly assessed (as they are not directly concerned by this exercise); Section 6 however mentions the indirect effect on citizens of simplified State aid procedures;</p> <p>The report now estimates in monetary terms the expected administrative burden reduction for Member State authorities resulting from the extended scope of the ABER (cf. section 8.2); However, and as also explained in section 8.2, this burden reduction was calculated on the basis of the status quo, while the change of procedural requirements foreseen under the preferred option should lead to a further reduction.</p>
<p>(4) The report should develop the monitoring and evaluation arrangements by defining operational objectives and describing how they will be measured. This includes a description of how the needed data will be collected (and how this links to the lowering of the publication thresholds). The report should specify when the revised instruments will be evaluated.</p>	<p>The report now includes this information: The new ABER will expire in 2029; Therefore, an evaluation of the ABER (and also the Guidelines) would be carried out before the end of 2028 (cf. section 9.5); The report has a new section 4.3 with “operational objectives” and success criteria;</p> <p>Furthermore, section 9 now explains in detail how these indications of success would work in practice for each of the objectives the intervention is trying to achieve, and how the information for a future evaluation will be collected and aggregated; In particular it explains, how the lowering of publication thresholds should in the future help to increase data availability at beneficiary level .</p>
<p>(5) The views of stakeholders should be reflected throughout the report. Both majority and minority views should be taken into account. The report should better present the views of the various</p>	<p>The report now includes the views of stakeholders throughout the main text (cf. in particular sections 2.1 and 5.2); It also differentiates according to stakeholder groups (granting authorities, NGOs,</p>

stakeholder groups.	farmers' associations, etc.), where possible; The report now also includes the feedback received after the publication of the inception impact assessment as well as the feedback received in the latest consultation round on the draft legal texts (2 nd Advisory Committee Meeting held with Member States, cf. Annex 2.5).
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13. 4. EVIDENCE, SOURCES AND QUALITY

The Commission has evaluated the performance of the 2014 ABER and Guidelines in relation to their relevance, effectiveness, efficiency, coherence and EU added value¹²⁸. The evaluation comprised the results of an external evaluation support study¹²⁹ and an open public consultation¹³⁰.

A targeted consultation of Member States' authorities was carried out between 29 October 2021 and 3 December 2021 to collect data on administrative burden of State aid procedures (cf. Annex 2).

Information was also extracted from different data bases:

- State aid cases database:
http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3
- State aid scoreboard:
http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html

Finally, concerning external sources, the Commission also refers to the opinion of the Fit for Future (F4F) platform (cf. Annex 2).

¹²⁸ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2330

¹²⁹ <https://op.europa.eu/en/publication-detail/-/publication/e01b61f0-504f-11e9-a8ed-01aa75ed71a1>

¹³⁰ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2089-Review-of-Agricultural-State-aid-Guidelines/public-consultation>

Annex 2: Stakeholder consultation

14. 1. INCEPTION IMPACT ASSESSMENT - STAKEHOLDERS' FEEDBACK

The inception impact assessment roadmap had been published for public consultation between 30 January 2019 and 27 February 2019. The European Commission received 8 contributions in total: 3 from NGOs, 3 from business associations in the agriculture and/or forestry sector and 2 from national authorities.¹³¹

The options envisaged in the inception impact assessment concerned:

- ✓ Option 1: Prolong the current State aid rules as they are (baseline scenario)
- ✓ Option 2: Adaptation of the State aid rules to the new legal framework of the CAP but without further changes.
- ✓ Option 3: Revise the State aid rules beyond adaptation to the new legal framework of the CAP, in particular as regards:
 - scope (removing or adding certain types of aid), notably the scope of the ABER;
 - eligibility conditions (removing or adding details);
 - maximum aid intensities;
 - clarification of legal concepts;
 - simplification potential;

Option 3 was to present several sub-options. An option of discontinuation of the ABER or of the Guidelines was discarded in the inception impact assessment itself.

One business association favored option 2, two contributions (1 NGO and 1 national authority) favored option 3 and one contribution (national authority) expressed preference for option 3 and at the same time found option 2 also feasible.

The contributions requested to ensure consistency between the new State aid instruments and the upcoming CAP Strategic Plan regulation –that was in the legislative process that time- to various degree:

- some argued to take the CAP Strategic Plans Regulation fully into account and therefore not to set additional/stricter conditions in State aid rules in the agriculture and forestry sector than those of future CAP rules (3 business associations);
- others called for putting in place clear and detailed State aid rules for a well - functioning and balanced single market to provide legal certainty while taking

¹³¹ The non-confidential version of the contributions for the inception impact assessment is available : https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2089-Agricultural-State-aid-guidelines-review/feedback_en?p_id=382942

also into account performance-oriented model of the CAP Strategic Plans Regulation (2 national authorities).

With regard to the main aspects of the policy options, stakeholders' view called for:

- the simplification in State aid rules (2 business associations) including for example to introduce simplified cost options;
- extending the scope of ABER to cover new categories of aid, such as aid for damage caused by protected animals and preventive measures (1 NGO, 1 business association and two national authorities) and forestry measures irrespective whether those are co-financed by EAFRD inasmuch as they have a link with CAP Strategic plans (1 national authority);
- taking into account environmental and climate change objectives and certain potential harmful/negative impact of the supported economic activities in these sectors (2 NGOs).

The Commission also received requests:

- to alter certain conditions of existing aid measures (for example with regard to the risk management tools, aid for the livestock sector, aid to young farmers, increasing certain investment aid intensities or the maximum amount for advisory services); or
- with regard to general State aid requirements (for example not to apply the prohibition of support to undertakings in difficulty for certain aid or alleviating the incentive effect requirements in certain cases).

15. 2. BACK-TO-BACK PUBLIC CONSULTATION

The open, internet-based public consultation ran from 26 April to 19 July 2019. Its aim was to gather the views of public authorities, stakeholders and EU citizens on the application of the agricultural State aid instruments and on their possible future design. The instruments concerned are the Guidelines and the ABER. Both instruments expire on 31 December 2022.

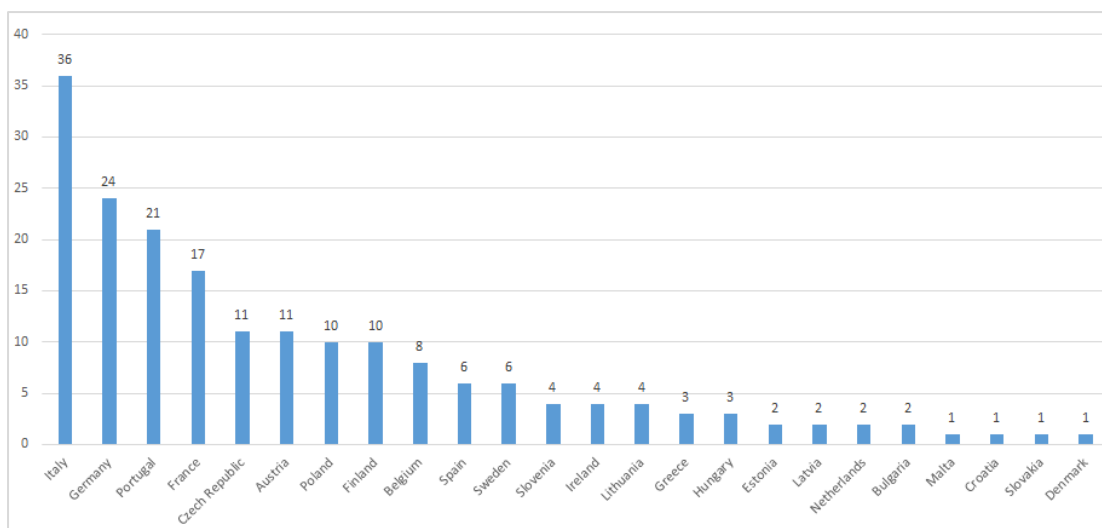
1. Results of the public consultation

The consultation questionnaire included closed and open questions on the performance of the current State aid rules, the State aid objectives to be pursued and the challenges for the future. Stakeholders could also submit position papers.

1.1. Overview of the respondents

The consultation received 190 contributions from respondents in 24 Member States. The majority of the replies came from respondents in Italy (36), Germany (24), Portugal (21), France (17), Czech Republic and Austria (11 each). The two largest categories of respondents were aid beneficiaries (55, of which 39 were undertakings active in the agricultural sector) and public authorities handling State aid (39). The other types of respondents were farmers' organisations (20) and foresters' organisations (15), public citizens (19, most of them farmers), NGOs (14), academics or other experts (13) and undertakings active in downstream sectors to agriculture and forestry (6).

Figure 1: Distribution of replies by country in absolute numbers



1.2. Overview of the key responses

The first part of the consultation concerned the overall performance of the current State aid rules, their coherence with other EU policies and the importance of various aid objectives. It also included questions on future challenges, tools to limit distortive effects on the internal market and potential for simplification. The second part of the consultation concerned specifically aid for each of the three areas falling within the scope of the ABER and the Guidelines, namely agriculture, forestry and non-agricultural activities in rural areas. The last part raised the question of EU added value and also allowed respondents to comment freely on the subject of the consultation.

The results, as summarised below, mirror to a large extent the response given to the inception impact assessment published in January 2019.

It has to be noted that replies to the specific questions as analysed below do not show any important variations depending on the respondent category (being it public authority, beneficiary of aid, NGO or general public, see also under section 1.1 above). In some

cases, differences between respondent categories exist, that are inherent to the issues/sectors concerned¹³².

1.2.1. General issues

1.2.1.1. Effectiveness and efficiency of the current State aid rules

The outcome was fairly positive as regards the State aid rules' performance in terms of ensuring a useful spending of taxpayers' money (50% fully/largely agree, 39% to some extent), coherence with Rural Development objectives (48% fully/largely agree, 32% to some extent) and a transparent, consistent and coherent handling of cases (46% fully/largely agree, 30% agree to some extent).

The rules also seem to have ensured legal certainty (44% fully/largely agree, 33% agree to some extent), created a level playing field for undertakings (39% fully/largely agree, 31% agree to some extent) and addressed market failures (27% fully/largely agree, 47% agree to some extent). They are also fully or largely clear, according to 32%, or clear to some extent, according to 44%.

On the negative side, more than half of the respondents (51%) consider that the rules have not led to a reduction of administrative costs for public authorities and slightly less than half of the respondents (38%) consider that the rules has not led to a reduction of regulatory burdens for aid beneficiaries.

1.2.1.2. Coherence of State aid rules with other EU policies and legislation

In perceiving the coherence of the rules with other policies, replies are fairly balanced and no major incoherence emerges.

Slightly less than half of the respondents (44%) think that the agricultural State aid rules are fully or largely coherent with the CAP legislation, while one-third (33%) agree to some extent. About one-third also thinks that they are coherent with horizontal State aid instruments (32% agree fully/largely, while 29% agree to some extent).

Concerning coherence with other policies, the tendency is around one-third full or large agreement and one-third agreement to some extent: EU cohesion policy (28% agree fully/largely, 36% to some extent); EU environmental protection policy (32% agree fully/largely, 35% to some extent); EU 2030 climate and energy (31% agree fully/largely, 24% to some extent); EU veterinary and public health policy (27% fully/largely agree, 21% to some extent); EU research and development policy (28%

¹³² For instance for forester's organisations or beneficiaries in the forestry sector, the animal health and animal welfare issues are less known or relevant. For environmental NGOs climate change adaptation and mitigation are to over 90% very important objectives to be pursued.

fully/largely agree, 31% to some extent); EU policy on SMEs (32% agree fully/largely, 39% to some extent).

1.2.1.3. Importance of objectives pursued by the granting of State aid

As to the aid objectives pursued, a majority accorded very high importance to the competitiveness and viability of undertakings (63%), socio-economic development in rural areas (62%), sustainable use of natural resources (63%), climate change mitigation and adaptation (62% and 60% respectively), ecosystem services and biodiversity (61%), protection of public and animal health (53%) and sustainable forest management (53%). Fewer, but still almost half of the respondents, found it highly important to achieve access to knowledge and new technologies (49%), viable food production (47%), animal welfare (47%) and growth of the bioeconomy sector (41%).

The replies to the open questions are along the same line. A common theme is the importance of environmental and climate objectives. Stakeholders interested in forestry (mostly NGOs) emphasise the importance of the circular economy, carbon stocks and carbon sink capacity. In the agriculture sector, risk management seems to be one of the most important objectives for farmers and their associations.

It must be noted however that it is not yet possible to assess the potential impact of the COVID-19 outbreak on the perceived importance of these objectives.

1.2.1.4. Important challenges to be pursued by the future State aid rules

Looking forwards, stakeholders consider the most important challenges for the future State aid rules to be useful spending of taxpayers money and avoidance of harmful environmental impacts rank first (76% and 74% respectively consider them as highly important).

Similarly, a majority sees highly important challenges in greenhouse gases and enhance carbon sinks (72%), biodiversity loss (69%), jobs and growth in rural areas (68%), competitiveness and viability of undertakings (66%), adverse climatic events (66%) and generational renewal in rural areas (64%).

Slightly fewer, but still a majority, see highly important challenges in animal diseases and plant pests (57%), administrative costs and burdens (55%), societal demands on food and health (53%) and changes in production conditions and technology (50%). Damage caused by wild animals and market developments are the only two categories that less than half of the respondents find to be highly important (44% and 43%). However, looking only at the replies of public authorities and aid beneficiaries, 50% also see these challenges as highly important.

The main message drawn from the replies to the open question is that State aid rules must not undermine the subsidiarity approach envisaged for the future legal framework of the CAP, concerning support co-financed by the European Agricultural Fund for Rural Development (EAFRD) under the proposed Regulation on CAP Strategic Plans¹³³. Challenges relating to environment and climate is another common theme. Many also asked for new types of aid measures and eligible costs, in particular with regard to risk management.

1.2.1.5. How to limit undue distortive effects on the internal market

Concerning the tools to limit undue distortive effects on the internal market, stricter conditions for large undertakings scored highest for 47% of the respondents, whereas maximum aid levels scored highest for 46%. Thereafter followed stricter conditions for investment aid for processing and marketing of agricultural products (35%), type of aid instrument (33%) and limitation of eligible costs (32%).

1.2.1.6. Potential for simplification under future State aid rules

The highest potential identified for simplification is clearer rules (67%), followed by simplified cost options (61%), streamlining with CAP strategic plans (56%) and simplified incentive effect requirements for subsidised services (52%). Around half of the respondents also see a very high potential in a simplified approach for cooperation (50%) and LEADER (46%).

As specifically concerns the ABER, one-third (36%) sees a very high simplification potential in extending the scope of the regulation and one fourth (27%) sees a very high potential in increased notification thresholds. However, both items score very high for a vast majority of the public authorities, which actually deal with State aid procedures (74% and 47% respectively).

Concrete suggestions for simplification came mainly from Member States' authorities. Recurring themes were the clarification of various legal concepts and definitions, simplified cost options, less prescriptive eligibility conditions, harmonised aid rates, a simplified approach towards subsidised services and more leniency for large undertakings. There were also strong demands for extending the scope of the ABER, for example (e.g. to all types of forestry measures and to aid relating to damage caused by wild animals). Some Member States also suggested including large undertakings in the ABER for aid measures of general public interest.

¹³³ Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD).

Otherwise, many aid beneficiaries complained about bureaucracy, but in general terms and without giving concrete examples or making suggestions for simplification.

1.2.1.7. Difficulties encountered by Member States' authorities

Member States' authorities were specifically asked to provide information on difficulties and administrative burdens associated with State aid procedures and the design of the rules.

As for State aid procedures, notifying aid under the Guidelines is associated with a heavier administrative burden than applying the ABER, as expected given that the two procedures are of different nature. Almost half of the authorities (45%) find notifying aid to always be burdensome, one-fourth (26%) sees it as mostly burdensome and another fourth (23%) sees it as sometimes burdensome. Submitting information under the ABER is, for 29% of public authorities, not burdensome, for 20% sometimes burdensome, for 14% mostly burdensome and for 20% always burdensome.

Moreover, 20 out of 35 of the authorities (54%) indicated that they have had difficulties in applying the current State aid rules. Many referred to problems with the incentive effect requirement, in particular in relation to subsidised services and large undertakings. Several also referred to difficulties associated with multidimensional aid measures such as cooperation and LEADER.

These responses reflect the replies to the questions on efficiency (see section 2.2.1.1.), where respondents express their views on administrative burdens.

1.2.1.8. Level of detail in the State aid rules

One third of the public authorities think that the current rules have a level of detail that is well balanced (31%). However, 54% find them too detailed, while 12% find them too general.

1.2.2. State aid for the agricultural sector

1.2.2.1. Positive impact of granted aid and potential distortive effects

Concerning the impact of aid granted to the agricultural sector, the majority of replies are positive. Most respondents think that the aid has helped to achieve viable food production (61%) and fostered competitiveness in the agri-food sector (56%). When asked if State aid has helped to achieve a sustainable use of natural resources in agriculture, around half of the respondents agree, while around one-third of them disagree.

Regarding potential distortive effects on the internal market, aid to large undertakings that already have economies of scale and a robust market position is an issue identified.

Several stakeholders also mentioned the disparities between Member States in terms of financial means.

Nevertheless, more than half of the respondents find that the positive effects of the aid outweigh potential distortive effects on the internal market (56%).

1.2.2.2. Difficulties in complying with the current State aid rules

30 respondents (16% of all respondents), of which almost half were aid beneficiaries (47%) said that they had had difficulties complying with State aid rules but gave very few concrete examples. Those that were mentioned mainly concerned restrictive eligibility criteria and incentive effect requirements.

1.2.2.3. Potential changes to the State aid rules for agriculture

A majority of the respondents are in favour (i.e. agree or agree strongly) of the following potential changes to the rules:

- no investment aid for the purchase of land unless it serves environmental and climate objectives or young farmers (65%);
- better targeting of investment aid for irrigation towards protection of water bodies (57%);
- inclusion of emerging diseases in the scope of aid to combat animal diseases (79%);
- compensation for damage caused by animal diseases or plants pests in the case of 1) loss of value of products even if they are not destroyed (60%) and 2) indirect costs for damage to plants (75%);
- compensation for damage caused by wild animals for income losses such as reduced production capacity (73%).

1.2.3. State aid for the forestry sector

1.2.3.1. Positive impact of granted aid and potential distortive effects

There was a largely positive response also with regard to the impact of aid for the forestry sector. Although many replied that they had no strong views (about one-third), a majority of those that actually took position replied positively. Consequently, most of those respondents confirmed that State aid has helped to achieve viable forest area development (66%) and development of the bioeconomy (63%), increased the resilience and protection of forest ecosystems (64%) and contributed to carbon sequestration (53%) as well as to the recreational or ecological function of forests (62%).

As to potential distortive effects, environmental NGOs referred to the risk of lower prices in raw materials and increased biomass use.

Nevertheless, a majority of the respondents taking position considered that the positive effects outweigh potential distortive effects on the internal market (72% agree or agree strongly).

1.2.3.2. Difficulties in complying with the current State aid rules

Several respondents, comprising both Member States and forestry stakeholders, complained about overly restrictive conditions for granting aid. Among the concrete examples were aid for afforestation and agroforestry (e.g. limits in time and number of annual payments) and difficulties to support the functioning of forest management associations because of the ineligibility of running costs.

1.2.3.3. Potential changes to the State aid rules for forestry

A vast majority of the respondents are in favour (i.e. agree or agree strongly) of the following potential changes to the rules:

- no investment aid for the purchase of land unless it serves environmental and climate objectives (70%);
- investments in afforestation must be consistent with climate and environmental objectives as governed by sustainable forest management principles (96%);
- 100% aid intensity for non-productive investments in the context of cooperation (85%);
- extension of the scope of the ABER to all forestry measures (85%).

1.2.4. State aid for non-agricultural activities in rural areas

Around one-third of the respondents had no strong views on the impact of aid to non-agricultural activities. However, a majority of those that actually took position responded positively. More than two-thirds (69 to 76%) of those respondents agree or agree strongly that the aid has led to employment and growth in rural areas, boosted the creation and development of SMEs, strengthened the economic and social fabric and contributed to cultural and recreational activities. As many as 76% also agree or agree strongly that the positive effects outweigh potential distortive effects on the internal market.

There were no concrete examples of difficulties to comply with the rules for this category of aid.

1.2.5. EU added value

A vast majority of the respondents agreed to that there is added value in having a common framework of detailed rules for assessing the compatibility of State aid with the internal market (82% and even 92% when taking only into account the 162 respondents who expressed an opinion).

2. Summary of position papers

Eight Member States' authorities at both national and regional levels submitted position papers, either *ad hoc* or through the public consultation, as did three farmers' associations, two forestry associations, two environmental NGOs, one public financial institute and one State-owned forestry company. The most common views are briefly summarised as follows:

- **CAP legal framework post 2022**

A common theme for most submissions is that State aid rules must not undermine the subsidiarity approach pursued by the proposal on CAP Strategic Plans. Member States must be allowed to freely decide the content and nature of their national strategic plans.

- **Environment and climate**

Most submissions also call for strengthened incentives for activities with environmental and climate objectives, including an increase of the maximum aid levels for environment-climate actions targeting biodiversity, ecosystem services and carbon sequestration. One NGO argues that State aid should benefit only practices that are beneficial for environment and human health and not be granted to industrial farming (e.g. intensive livestock farming).

- **Scope of the State aid instruments**

Several submissions ask for new aid measures to be included in the State aid instrument. References are made *inter alia* to aid for animal identification, species protection, the reduction of antibiotics, land improvement systems, the purchase of breeding animals, forestry insurance and additional non-agricultural activities. There are also numerous requests for adding new eligible costs to existing aid measures (e.g. extend the scope of diseases eligible for aid to combat animal disease and the scope of eligible costs in relation to damage caused by wild animals). Many also ask for a more flexible approach towards forestry aid schemes, for example in respect of aid to forestry associations and State-owned companies.

- **ABER**

Most submissions also asks for an extension the scope of the ABER. The various demands concern for example aid relating to damage caused by wild animals, all aid measures co-financed by the EAFRD, all forestry measures (also those that are not co-financed by the EAFRD), LEADER support, aid for outermost regions and aid for diversification into non-agricultural activities. Some also ask for the inclusion of large undertakings for aid measures of public interest, such as environmental services or the prevention of animal diseases and plant pests.

- **Simplified cost options**

Both Member States' authorities and farmers' associations ask for a broader scope of simplified cost options.

- **Maximum aid intensities/amounts**

There are numerous requests for increased maximum aid levels for measures such as environment-climate actions, agro-forestry investments, animal welfare, young farmers, fallen stock, advisory services, genetic tests and insurance premiums.

- **Subsidised services**

Both Member State authorities and farmers' associations complain about difficulties associated with aid in the form of subsidised services (e.g. information actions, advisory services and veterinary services), in particular when it comes to the application of the incentive effect requirement as well as the identification of undertakings in difficulty and large undertakings. A common suggestion is to let service providers submit aid applications on behalf of the final beneficiaries. Others ask for the possibility to pay aid directly to final beneficiaries instead of paying it in kind to the service provider.

- **Incentive effect requirement**

The incentive effect requirement is generally seen as a source of administrative burden, not only in relation to subsidised services (see bullet above) but also for aid granted in the form of guarantees via financial institutes.

- **Large undertakings/SME definition**

Several Member States call for a clarification of the SME definition and refer in particular to the difficulties caused by the classification of municipalities as large undertakings (i.e. even very small municipalities have to submit a contra factual scenario when applying for aid to investments in local infrastructure).

- **Undertakings in difficulty**

Some Member State authorities and farmers' associations ask for a more widespread inclusion of undertakings in financial difficulty in the scope of the ABER and Guidelines, in particular in respect of aid to combat animal diseases and plant pests, aid for farm replacement services and aid financed through tax exemptions.

- **Multidimensional aid measures**

Both regions and Member States refer to difficulties in implementing multidimensional aid measures such as cooperation and LEADER.

16. 3. TARGETED CONSULTATION

To collect more specific data on the administrative burden of the different State aid procedures in the agriculture and forestry sector and in rural areas, the Commission carried out a targeted consultation between 29 October 2021 and 3 December 2021. Member State authorities (at national and regional level) were approached with a questionnaire and asked to assess the time spent on the different steps¹³⁴ of a notification and a block-exemption respectively.

In total, the Commission received 53 replies from 20 different Member States (20 at national and 33 at regional level).

Generally, 70% of respondents considered notifications to be always or mostly burdensome, while 77% indicated that block-exemptions are not or only sometimes burdensome.

Table 1: Perceived burden in different State aid procedures

	Burdensome? - % results				
	not	sometimes	Mostly	always	don't know
Notification	4%	18%	27%	43%	8%
Block exemption	22%	55%	12%	4%	8%

The replies received in terms of quantitative data (working time) were very diverging and included many outliers. They were thus not directly usable.

¹³⁴ For the purpose of the questionnaire, the State aid procedure was split in three different steps: preparation, notification/submission and subsequent correspondence with the Commission.

Table 2: Indications of working time for notifications and block exemptions, with and without outliers

	W. hours notif w/o outliers					W. hours block-ex w/o outliers					Notif - Block ex w/o outliers			
	total	prep	notif	REQs		Total	prep	notif	REQs		total	prep	notif	REQs
Minimum	10	4	2	4		0	2	1	1		10	3	2	4
Avg-Stdev	27	8	2	7		0	0	0	0		27	9	2	6
Average	80	43	8	30		31	28	3	8		49	15	5	22
Median	67	36	8	30		16	16	2	7		51	20	6	24
Avg+Stdev	132	77	13	54		61	56	6	16		71	21	8	38
Maximum	216	136	24	108		104	104	8	30		112	32	16	78
Stdev	53	34	5	24		31	28	3	8		22	6	3	16
	Working hours notified					W. hours block-ex					Notified - Block ex			
	total	prep	notif	REQs		Total	prep	notif	REQs		total	prep	notif	REQs
Minimum	2	3	1	2		3	1	0	0		-1	2	1	2
Avg-Stdev	10	0	-5	-8		-9	-11	-3	-10		19	11	-2	2
Average	122	73	11	38		64	47	5	13		15	-4	3	18
Median	80	36	5	17		32	20	2	7		49	16	3	11
Avg+Stdev	233	146	28	85		138	104	14	35		95	42	14	50
Maximum	480	240	72	240		280	240	40	120		200	0	32	120
Stdev	112	73	16	47		73	58	9	22		38	16	8	24

Values, which were given by Member States' authorities as a range were converted to the average of the two figures. Input given in working days (in full time equivalents) was converted to working hours (based on the assumption of a 8 hours working day). Lines without outliers only include data in the range of average plus/minus standard deviation.

From the comments received it can be concluded that in many cases (in particular where authorities indicated a very high workload in the preparatory phase of both State aid procedures), this also included all the legislative work done at national level (such as preparation of the national legal basis). Furthermore, many local authorities include the time spent on coordination with/advise from the national level.

Taking into account only comparable data (i.e. where authorities had provided data on both, block-exemption and notification procedures and where the difference between the two seemed plausible) and after elimination of data lines with too many outliers, data of 20 authorities remained.

Table 3: Set with comparable data

	Working hours notified				Working hours block-ex				Difference Notified - Block Exempted			
	total	prep	notif	REQs	total	prep	notif	REQs	total	prep	notif	REQs
Minimum	10	3	1	2	3	1	1	1	0	0	0	0
Avg-Stdev	5	-3	1	2	-0	-1	0	-1	0	-4	-1	0
Average	56	30	6	21	21	13	2	7	35	17	3	14
Median	40	16	3	16	15	8	1	4	25	8	2	12
Avg+Stdev	108	63	11	39	42	27	4	14	70	38	8	28
Maximum	216	136	16	64	96	64	8	24	133	72	15	51
Stdev	52	33	5	19	21	14	2	7	35	21	4	14
Count	20	19	19	18	20	19	19	18	20	19	19	18
Avg+Stdev with outliers	227	143	20	82	135	101	13	35	106	53	11	53

While this data sample is limited, it still gives an indication of the difference in workload associated with the two procedures. It establishes on average a total workload for public authorities of 56 hours for notified aid and of 21 hours for block exemptions. The median values are at 40 and 15 hours respectively¹³⁵. It shows for both methods, that the average total workload of a notified measure is around 2.7 times more than that of a block exemption.

Member States' authorities furthermore made the following comments in relation with the different State aid procedures:

Generally, the authorities agree that the notification process of a measure under the Guidelines is highly burdensome, with regional authorities also pointing out to the lack of the required high-level knowledge and practical difficulties. Most of the authorities confirmed that the pre-notification of a State aid measure requires the coordination of several bodies at national level, which are very time-consuming. Those authorities requested the Commission for further explanations and assistance to prepare the file. In general, respondents considered that the total duration of the complete procedure is too long which may conflict with the need to adopt urgent measures.

On the contrary, the respondent considered that the procedure related to block exempted measures is simpler, faster and preferred. The processing of documents related to a block-exempted measure is less burdensome and less time-consuming.

17. 4. PUBLIC CONSULTATION ON DRAFT LEGAL TEXTS

The public consultation on the new draft ABER and new Guidelines was launched on 11 January 2022 and last until 13 March 2022¹³⁶. The Commission consulted stakeholders on a first draft of the revised State aid rules. During the consultation, in total 118 contributions were received. 27 contributions from 23 Member States were submitted by national and regional authorities and approximately 90, to some extent coordinated replies came from individual stakeholders, most of which are farmers or farmers'

¹³⁵ It should be noted that even in this "cleaned" data sample, the range of indicated workload is very big, varying for instance for the preparation of notifications between 3 and 136 hours and for block-exemptions between 1 and 64 hours. It also seems to suggest, that the higher figures for both procedures include the national legislative procedures to prepare the legal basis.

¹³⁶ https://ec.europa.eu/competition-policy/public-consultations/2022-agri_en

associations and entities active in environmental protection. The Commission also received a submission from the COMAGRI of the EP.¹³⁷

18. 5. CONSULTATION OF MEMBER STATES

On 10 March 2022, the Commission held an advisory meeting on the ABER and a multilateral meeting with Member States on the new draft Guidelines (version as for public consultation, cf. point 4 above) receiving also oral comments from Member States.

Furthermore, on 9 September 2022 the Commission held a second advisory meeting with Member States on a revised draft of the ABER (the revised draft of the Guidelines was also shared with Member States in order to give a general overview of the two instruments).

Overall, Member States provided a positive feedback on the draft ABER and Guidelines. They particularly welcome the enlarged scope of the ABER, which represents an important simplification tool in State aid procedures. Many Member States voiced their concern about the additional administrative burden to be expected from the proposed lowering of publication thresholds.

19. 6. F4F PLATFORM OPINION

On 8 February 2022, the Fit for Future (F4F) Platform adopted an opinion on the revision of the State aid rules in the agricultural and forestry sectors and in rural areas¹³⁸.

The Platform proposes certain concrete suggestions for the revision of the State aid instruments, also providing expected benefits. The suggestions are the following:

- 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;
- 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 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.

¹³⁷ Contributions are published on the following website: https://competition-policy.ec.europa.eu/public-consultations/2022-agri_en

¹³⁸ https://ec.europa.eu/info/sites/default/files/final_opinion_2021_sbgr3_12_state_aid.pdf

Annex 3: Who is affected and how?

20. 1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

The costs and benefits of the preferred option are expected to affect a number of actors (undertakings operating in the concerned sectors, Member States and citizens). These impacts, of which the exact costs and benefits are uncertain but based on the best estimates under the available evidence, are explained below:

1.1 Undertakings in the agriculture and forestry sectors and placed in rural areas (in particular SMEs)

Undertakings in the concerned sectors and/or placed in rural areas will benefit from the implementation of the preferred option, which entails legal certainty through the alignment with the CAP legal framework.

The inclusion of new measures under the ABER also means, as potential beneficiaries, faster access to aid, which is in particular relevant for SMEs.

Moreover, the lower publication thresholds for individual aid awards guarantees transparency and facilitates peer-review.

1.2 Member States

Member States (in particular, granting authorities) would benefit from a State aid framework that is aligned with the CAP legal framework, in terms of clarity and legal certainty.

The higher transparency requirements through lower publication thresholds for individual aid awards would be burdensome for granting authorities, compared to the baseline option. However, the benefits of the transparency rules for interested parties (for instance competitors of aid beneficiaries) should weight up the negative impact on the granting authorities with an overall positive effects on competition and trade.

1.3 European citizens

European citizens and consumers will be indirectly impacted. In particular, the initiative will have a positive impact on avoiding competition distortions in the markets for agriculture and forestry products. It will also provide further transparency on public expenditure.

Moreover, the initiative will have a positive impact on the environment, through the alignment with overarching EU objectives (i.e. Green Deal).

21. 2. SUMMARY OF COSTS AND BENEFITS

I. Overview of Benefits (total for all provisions) – Preferred Option		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Benefits for the administration	<ul style="list-style-type: none"> Easier to understand the rules due to the alignment to the CAP legal framework. Administrative simplification as a consequence of: (1) the enlargement of the scope of ABER and (2) the simplified approach for notified aid co-financed by the EAFRD.. The increase on legal certainty and extension of block exemptions will imply that more resources will be free within the granting authorities. 	By lowering the transparency threshold, the administrative burden on the granting authorities will increase. However, this negative effect should be weighted up with the positive effects of transparency on public expenditure.
Benefits for companies	<ul style="list-style-type: none"> Faster access to aid in the areas where administrative simplification can be achieved. Less need for legal and economic external advise. 	
Benefits for the environment	<ul style="list-style-type: none"> Positive environmental impact: coherence with the Green Deal objectives 	
<i>Indirect benefits</i>		
Benefits for citizens and society	<ul style="list-style-type: none"> Highest cost effectiveness: by encouragement of pro-competitive schemes. Advocacy of State aid rules and coherence with EU priorities Increased policy coherence among the EU priorities 	
<i>Administrative cost savings related to the 'one in, one out' approach*</i>		
(direct/indirect)		

II. Overview of costs – Preferred option						
	Citizens/Consumers		Businesses		Administrations	
	One-off	Recurrent	One-off	Recurrent	One-off	Recurrent

Action (a)	Direct adjustment costs	NA	NA	NA	NA	NA	NA
	Direct administrative costs	NA	NA	X: once they file an aid application form	NA	NA	X: the increase of legal certainty and procedural simplification will imply cost savings for public authorities
	Direct regulatory fees and charges	NA	NA	NA	NA	NA	NA
	Direct enforcement costs	NA	NA	NA	NA	NA	X: since SA rules will be clearer and simplified, the need for ex post monitoring may decrease and so the enforcement cost of SA rules
	Indirect costs	NA	NA	X: less need for advise (legal and/or economic) from external experts when preparing aid application forms	NA	NA	NA
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs						
	Indirect adjustment costs						
	Administrative costs (for offsetting)						

22. 3. RELEVANT SUSTAINABLE DEVELOPMENT GOALS

III. Overview of relevant Sustainable Development Goals – Preferred Option(s)		
Relevant SDG	Expected progress towards the Goal	Comments
SDG no. 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture	One of the overriding goals under the reformed CAP is to meet society's demands for safe, nutritious and sustainable food. State aid control has an important role to play in this respect, as the agriculture sector highly depends on State aids. As an illustration, support may be used to ensure fair incomes for young farmers, which is an integral part of the UN goal to ensure sustainable food production systems.	State aid rules in agriculture, forestry and in rural areas mirror largely the EU's rural development policy. Their contribution to certain SDGs can therefore directly be derived from the contribution of the reformed CAP.
SDG no. 13: Take urgent action to combat climate change and its impacts	The agriculture sector accounts for 12% of all EU greenhouse gas (GHG) emissions. At the same time, it is more vulnerable than most other sectors of the economy to climate change. Therefore, agriculture both has a key role to play and a vital interest in helping to achieve the commitments of the Paris' Agreement (as also the main objective of the EU Green Deal). The new CAP foresees mitigation technologies, carbon sink through better soil management, biomass production, reduction in fossil fuel intensity of farm production, and reduction in agricultural production losses and waste, as possible contributors to this target.	See above.
SDG 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss	One of the underlying objectives of the reformed CAP is the protection, restoration and promotion of sustainable use of terrestrial ecosystems and the fight against land degradation and biodiversity loss.	See above.

Annex 4: Analytical methods

This impact assessment employs a multi-criteria analysis to assess the economic and environmental impacts of the different policy options. Social impacts, being less relevant, are not assessed.

The economic impact of the policy options is assessed based on the following criteria:

- contribution to the effectiveness of State aid rules;
- contribution to administrative simplification of State aid rules;
- impact on SMEs.

The environmental impact of the policy options is assessed based on the following criteria:

- contribution to the attainment of CAP objectives;
- contribution to the attainment of Green Deal objectives.

The different policy options are mainly analysed qualitatively. The administrative burden reduction in option 2, which will result from the extension of the ABER, is analysed quantitatively, in terms of working time reduction, based on data collected in the targeted consultation (cf. Annex 2.3) and monetised afterwards.

For the consultation of stakeholders, the Commission used a combination of public consultations, questionnaires and meetings with Member States, to ensure a transparent and comprehensive methodology.

This impact assessment is furthermore based on case experience and in-house data analysis of State aid statistics.

Annex 5: Tables

Table 1: Scope of the 2014 Guidelines and ABER

GUIDELINES FOR STATE AID IN THE AGRICULTURAL AND FORESTRY SECTORS AND IN RURAL AREAS	
AGRICULTURAL SECTOR	
“Rural development like” measures	Measures financed exclusively by national funds
<p>Investments</p> <ul style="list-style-type: none"> - Primary agricultural production - Cultural and natural heritage on agriculture holdings - Relocation of farm buildings - Processing and marketing of agricultural products <p>Other RD-like</p> <ul style="list-style-type: none"> - Start-up aid for young farmers and development of small farms - Transfer of agricultural holdings - Agri-environmental-climate commitments - Animal welfare commitments - Natura 2000 and Water Framework Directive - Areas facing natural constraints - Organic farming - Participation in quality schemes - Technical support (incl. knowledge and information actions; advisory services; farm replacement services) - Cooperation 	<p>Risk and crisis management</p> <ul style="list-style-type: none"> - Natural disasters and exceptional occurrences - Adverse climatic events - Animal diseases and plant pests - Fallen stock - Protected animals - Insurance premiums - Mutual funds <p>Other</p> <ul style="list-style-type: none"> - Closing production capacity - Livestock sector - Promotion - Outermost regions & Aegean islands - Land consolidation - Research & development
FORESTRY SECTOR	
“Rural development like” measures	Measures financed exclusively by national funds
<p>Investments</p> <ul style="list-style-type: none"> - Afforestation - Agro-forestry systems - Prevention and restoration of damage to forests - Forestry ecosystems - Forestry technologies - Infrastructure for development & modernisation <p>Other</p> <ul style="list-style-type: none"> - Natura 2000 forestry areas - Forest environment-climate service and forest conservation - Knowledge transfer and information actions - Advisory services - Cooperation - Start-up aid for producer groups 	<p>Ecological, protective & recreational objectives</p> <ul style="list-style-type: none"> - Maintenance or restoration of forest ecosystems, biodiversity or traditional landscape - Soil quality and balanced tree growth - Pathways, landscape elements and natural habitats for animals - Maintenance of roads to prevent forest fires - Compensation of damage caused by regulated animals - Forest management plans <p>Other</p> <ul style="list-style-type: none"> - Research & development - Forestry land consolidation
NON-AGRICULTURAL ACTIVITIES IN RURAL AREAS	

Measures financed by the EAFRD	
<p>Investments</p> <ul style="list-style-type: none"> - Processing of agricultural products into non-agricultural products - Cotton production - Diversification into non-agricultural activities <p>Other rural development measures</p> <ul style="list-style-type: none"> - Basic services and village renewal - Start-up aid for non-agricultural activities - Environmental-climate commitments (other land managers than farmers/foresters) - Natura 2000 (other land managers than farmers/foresters) - Knowledge transfers and information actions - Advisory services - Participation in quality schemes for cotton and foodstuff - Information and promotion activities - Cooperation - Setting-up of mutual funds 	
AGRICULTURAL BLOCK EXEMPTION REGULATION	
AGRICULTURAL SECTOR	
Rural development like measures	Measures financed exclusively by national funds
<p>Investments</p> <ul style="list-style-type: none"> - Primary agricultural production - Cultural and natural heritage on agriculture holdings - Relocation of farm buildings - Processing and marketing of agricultural products <p>Other RD-like</p> <ul style="list-style-type: none"> - Start-up aid for young farmers and development of small farms - Start-up aid for producer groups - Participation in quality schemes - Technical support (incl. knowledge and information actions; advisory services; farm replacement services) - Farm replacement services 	<p>Risk and crisis management</p> <ul style="list-style-type: none"> - Natural disasters and exceptional occurrences - Adverse climatic events - Animal diseases and plant pests - Fallen stock - Insurance premiums <p>Other</p> <ul style="list-style-type: none"> - Promotion - Land consolidation - Research & development
FORESTRY SECTOR	
Measures financed by the EAFRD	“Rural development like measures”
<p>Investments</p> <ul style="list-style-type: none"> - Afforestation - Agro-forestry systems - Prevention and restoration of damage to forests - Forestry ecosystems - Forestry technologies - Infrastructure for development & modernisation <p>Other</p> <ul style="list-style-type: none"> - Natura 2000 forestry areas - Forest environment-climate service and forest conservation - Conservation of genetic resources - Start-up aid for producer groups 	<ul style="list-style-type: none"> - Knowledge transfer and information actions - Advisory services

Measures financed exclusively by national funds
<ul style="list-style-type: none"> - Research & development - Land consolidation
NON-AGRICULTURAL ACTIVITIES IN RURAL AREAS
Measures financed by the EAFRD
<p>Investments</p> <ul style="list-style-type: none"> - Processing of agricultural products into non-agricultural products - Cotton production <p>Other</p> <ul style="list-style-type: none"> - Basic services and village renewal - Knowledge transfers and information actions - Advisory services - Participation in quality schemes for cotton and foodstuff - Information and promotion activities

Table 2: State aid measures contributing to Green Deal objectives

STATE AID MEASURES CONTRIBUTING TO GREEN DEAL OBJECTIVES	
Agriculture	Forestry
<ul style="list-style-type: none"> • Investment aid for: <ul style="list-style-type: none"> - sustainability of agricultural holdings - improvement of the natural environment, hygiene and animal welfare standards, beyond Union standards - infrastructure related to supply and saving of energy and water - achievement of agri-environment-climate objectives, including biodiversity, Natura 2000 and other high natural value systems - purchase of land for operations concerning environmental conservation • Aid for agri-environment-climate commitments and animal welfare commitments • Aid for disadvantages related to Natura 2000 and Water Framework Directive • Aid for organic farming • Aid for cooperation for joint actions undertaken with a view to mitigating or adapting to climate change • Aid to make good damages caused by protected animals 	<ul style="list-style-type: none"> • Investment aid for: <ul style="list-style-type: none"> - afforestation and creation of woodland - agro-forestry systems - improvement of the resilience and the environmental value of forests ecosystems. • Aid for disadvantages related to Natura 2000 forest areas • Aid for forest-environment, climate services and forest conservation • Aid for maintenance and restoration of forest ecosystems, biodiversity and traditional landscapes • Aid for maintenance and improvement of soil quality and a balanced and healthy tree growth • Aid for restoration and maintenance of natural pathways, landscape elements and features and natural habitat for animals • Aid for cooperation for joint actions undertaken with a view to mitigating or adapting to climate change
Non-agricultural activities in rural areas	
<ul style="list-style-type: none"> • Aid for agri-environment-climate commitments to land managers not active in agriculture • Aid for disadvantages related to Natura 2000 areas to land managers not active in agriculture • Aid for cooperation for joint actions undertaken with a view to mitigating or adapting to climate change 	

Annex 6: Details on the compatibility presumption clause

The compatibility presumption clause is ring-fenced to measures co-financed under the CAP and is limited to the Guidelines. It lays down precise conditions under which co-financed measures that fall outside the scope of Article 42 TFEU can be considered compatible with the internal market. The new draft Guidelines, in the version sent to Member State authorities (for information purposes) ahead of the Advisory Committee Meeting on the ABER in September 2022 include the following wording:

“The Commission will consider aid referred to in point (495) – co-financed measures in favour of the forestry sector and (629) – co-financed measures in rural areas compatible with the internal market under Article 107(3), point (c), of the Treaty if it complies with the following conditions:

a) the aid is included in a CAP Strategic Plan pursuant to and in conformity with Regulation (EU) 2021/2115 either as aid co-financed by the EAFRD or as additional national financing to such aid;

b) the aid is not granted in favour of working capital, except where aid is provided in the form of financial instruments;

c) the aid is not granted as operating aid, unless exceptions are expressly provided for in the relevant Union legislation;

d) the aid is not granted to undertakings in difficulty;

e) the aid is not granted to an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.”

Aid for investments in energy saving and renewable energies as well as aid for forest-based industries do not fall within the scope of the compatibility presumption clause (as they are excluded from the scope of the Guidelines altogether).

The clause is built upon the prior assessment and approval of the Strategic Plans by the Commission. The compliance of the plans with the internal market under Article 107(3) TFEU is then assessed in the course of the State aid procedure.

The clause reconciles the subsidiarity approach envisaged under the CAP in the Strategic Plans Regulation and the State aid control requirements for which the Commission maintains its exclusive competence.