

## **Draft Copa and Cogeca Reply to the Public Consultations on the**

### **Draft Communication from the Commission on the endorsement of a draft Agricultural Block Exemption Regulation**

### **and the**

### **Draft Communication on Guidelines for State aid in the agricultural and forestry sectors and in rural areas**

#### **1. Background**

Copa and Cogeca welcome the possibility to contribute to these two draft Communications. Indeed, the two State aid instruments need to set out a specific, tailor-made framework for the allocation of public funds for the agricultural and forestry sectors and for rural areas, in line with the objectives of the Common Agricultural Policy (CAP), to ensure a fair standard of living for the agricultural community, to stabilise markets and to ensure the availability of supplies for consumers at reasonable prices.

Throughout the COVID-19 pandemic, EU farmers and agri-cooperatives were able to maintain a steady supply of safe, high-quality, and nutritious food for citizens across the EU, thus ensuring food security. This required hard work and sacrifices throughout the food supply chain.

At the moment of writing, the entire European farming community is carefully considering the development of the war in Ukraine with deep sorrow. Whilst looking out to the Ukrainian suffering people Copa and Cogeca are also looking at the impacts that this new crisis will bring to the EU agricultural sector. On the political and economic front, initial analyses clearly show the importance of these impacts in the short and medium term. This war which affects Europe will have worldwide repercussions for several years to come. Most productions will be directly or indirectly impacted. Some sectors already heavily affected by the price increases resulting from the Covid and energy crises must be supported without delay, while other farmers need clear policy guidance as they start sowing.

Food security is highly strategic and still very relevant. Farmers and cooperatives are waiting for concrete guidelines and actions as a solution to food, energy, climate, and environmental challenges.

With the rise of the Green Deal, the CAP remains the main European policy and the historical cement of the EU, but it is clear to us that the CAP is no longer the only policy that has a significant impact on agriculture. The Farm to Fork Strategy, the Biodiversity Strategy for 2030, the Soil Strategy, the Forest Strategy for 2030, and the Fit for 55 Package are all initiatives whose guiding principles were sketched out in 2021 and which will have to be translated into legislative proposals from 2022 onwards.

These initiatives propose profound changes and major investments that will redefine our agricultural model for the decades to come. On the ground, European farmers are engaged in these multiple transitions.

The revised State aid instruments must support a fair transition in which sustainability can be improved. However, this must be done in a manner that strikes a balance between the economic, environmental, and social dimensions, and does not leave anyone behind – especially farmers.

State aid support granted to farm holdings in Member States produces desirable economic impacts by enabling farmers to improve efficiency and product quality and by helping them invest. It also has additional positive impacts in terms of environmental public goods delivered by farmers, and it helps them improve environmental, climate as well as economic sustainability of European farming systems.

## **2. State aid adapted to reality on the ground**

State aid should take stock of the new reality and the lessons learnt from the Covid-19 pandemic and the strong current trend of increasing production costs for farmers (i.e. feed, fertilisers, energy) aggravated by the drastic consequences of the invasion of Ukraine by Russia. In this respect, apart from the detailed comments on the proposed draft provisions you will find below, we would like to underline that:

1. The Temporary Covid State Aid Framework has been exceptionally useful by allowing Member States to react quickly to this crisis. Continued flexibility and predictability for State aid remains crucial to allow liquidity and cash-flow for farmers. Going forward, this instrument must also provide for a way to deal with the persistent exceptional nature of the situation, simplifying and accelerating the implementation of the tool in an automatic way to allow support to the companies after exceptional events or crisis, as provided in TFUE.
2. We welcome the urgent consultation launched on 10th March by the European Commission to Member States on a draft proposal for a State aid Temporary Crisis Framework to support the EU economy in the context of Russia's invasion of Ukraine. European farmers and cooperatives should be eligible for support in the form of 1) guarantees and subsidised loans 2) Aid for additional costs due to exceptionally high gas and electricity prices. There is also the need to include an ad Hoc Aid linked to the “significant increases in input costs, in particular Energy, Fuels, Feed and Fertilizers” with the aim to alleviate the disruptions of the food supply chains coming from the current crisis in a context of input prices for farmers significantly above the already high levels observed in the period before the invasion.
3. A further significant increase of the De minimis aid ceiling would make it possible to tackle in a more effective way serious and urgent problems which could affect the economic viability of farms. This significant increase would make it possible to address issues which are not covered by the general state aid framework, but which require effective, urgent, and timely action.
4. It is needed to ensure the alignment of the already approved State aid support for projects granted but not yet financed. There are today requests of financing already accepted which did not receive financial compensations yet (for which the financial help will be allocated in 2023). The risk would be to have different treatments among companies, especially regarding the recovery and resilience plan before the new ABER and those after in a context of percentages for the investments that will raise.

### Summary

Detailed comments on both the ABER and Guidelines are provided below. Copa-Cogeca asks in particular specific improvements on the Commission proposals on:

1. Transparency - Publication and information
2. Aids:
  - ✓ For investments in the farms linked with primary agricultural production
  - ✓ For the participation of producers of agricultural products in quality scheme
  - ✓ To compensate farmers for damage caused by protected animals
  - ✓ For the promotion of agricultural products
  - ✓ To compensate farmers for disadvantages related to Natura 2000 areas
  - ✓ For agri-environment-climate commitments
  - ✓ Towards the costs of [...] damage caused by animal diseases
  - ✓ For Carbon farming
  - ✓ For closure of capacity for animal, plant or human health, hygiene, ethical, environmental or climate reasons

### **3. Agricultural Block Exemption Regulation (ABER)**

#### **Extension of the scope of the ABER**

*In general, the list of categories of aid that may be block exempted under this regulation including the new proposals adequately reflects the market and sector requirements. Below you will find additional suggestions to make ABER more operational and in line with the needs on the ground of farmers.*

As regards the agricultural sector, we propose the following comments/inclusions:

- **The limit for** average annual State aid budget **should be raised from the current 150 million euro to at least 250 million euro. (Art. 1)**

*Comments: Especially regarding the investments aid, if the percentage of the eligible aid raises, then it will be fundamental to increase the limit for the annual medium allocation, otherwise the consequences will be of less investments projects that will be supported, or the exemption regulation to be applied less. The crisis scenario that we are facing now risks having consequences for EU food supply chains for many years ahead and there is a need for more effective interventions. The threshold regarding the single investment would not be modified and this can guarantee that no distortion would take place neither inside the EU Member States nor in the domestic market.*

- **Definition:** art 2, par. 3 adverse climate conditions - *It would be necessary to align the percentages of damages with reg 2121/2115 on CAP Strategic plans and reduce it from 30% to 20%.*
- **Definition:** art 2, par. 58 - *In line with specificities of the agricultural sector the definition of “undertaking in difficulty” should be left to the Member states.*
- **Art 6: incentive effect:** *aid to compensate for the costs of the prevention, control and eradication of animal diseases and plant pests and for losses caused by those animal diseases should be excluded from the written application foreseen by par. 1 of art. 6.*

- **Proposal for an additional point in the eligible costs regarding precision farming and digital systems.**

*Comment: It is considered useful to specify that costs tied with precision farming and digital farming will be eligible.*

- **Reactivating the already existing simplification into ABER for the irrigation investments.** Raising the water saving percentage from 25% to 50% also appears too high.
- **Proposal to add to art 13**, within the objectives, a reference to the economic sustainability and income support for farms as in reg. UE 2021/2115.
- **Proposal for an additional point i in Art. 13 para. 3 and in para. 11: “(i) contributing to climate protection by improving the efficiency of the production, conservation, storage of feed nutrients and the utilisation of feed nutrients” in combination with Art. 13 para. 20 lit. a)**

*Comments: Extension of eligible investments for the establishment of systems and the application of processes for the efficient production, conservation and utilisation of nutrients in the feeding of livestock. Improving the efficiency of energy use in the feeding of livestock is accompanied by a reduction in the associated emissions. For example, silo slabs/driving silos that do not allow leachate to enter groundwater are essentially expensive non-productive investments.*

- **Proposal, at art. 13, par 15 to extend the scope to** cover also one specific sector as experience with ABER shows that control on distortion of competition is assured anyway.
- **Aid for the participation of producers of agricultural products in quality schemes (Art. 19)**

*Comments: The aim of the amendment is to put plant pests on an equal footing with animal diseases. With regard to the transformation of livestock farming, the question arises as to whether payments of animal welfare premiums would also be legally possible under Article 19, with which, for example, higher management costs or a loss of earnings could be compensated. What alternative legal basis would there be in this case? With regard to the transformation of livestock farming, the question arises as to whether payments of animal welfare premiums would also be legally possible under Article 19, with which, for example, higher management costs or a loss of earnings could be compensated. What alternative legal basis would there be in this case? Would aid for animal welfare commitments (point 1.1.5., para. 222 ff.) of the agricultural guidelines be preferable to Art. 19?*

*Are premium payments possible which are based only on the recording of the result, but not on verifiable improvements in the husbandry system? For example, is the payment of a ring-tail premium possible if the ring-tail is intact and thus an increase in animal welfare can be assumed, or must, for example, the house have been converted? Clarification is needed here.*

- **Aid for the promotion of agricultural products (Art. 23 (4) )**

*Comments: Concerning the symbolic prizes for competition winner an exemption up to EUR 5.000 is proposed instead of EUR 1.000. As a matter of principle, it would be helpful if prizes for competitions were no longer considered as aid in the future.*

- **Aid to compensate farmers for disadvantages related to Natura 2000 areas (art. 29)**

*Comments: It is already reality, that other areas with equivalent consideration as Natura 2000 areas, can suffer disadvantages related to environmental measures. The granting of compensation outside Natura 2000 areas is limited in Art. 29(3)(b) to 5 percent of Natura 2000 areas. This restriction should be deleted to ensure a provision adapted to the reality on the ground faced by farmers.*

- With regard to the **forestry sector** it is proposed to add certain aid measures (arts. 33 to 45) such as:
  - ✓ afforestation and creation of woodland;
  - ✓ agroforestry systems;
  - ✓ the prevention and restoration of damage to forests;
  - ✓ investments improving the resilience and environmental value of forest ecosystems;
  - ✓ area-specific disadvantages resulting from certain mandatory requirements;
  - ✓ investments in infrastructure related to the development, modernisation, or adaptation of the forestry sector;
  - ✓ investments in forestry technologies and in processing, mobilising, and marketing of forestry products;
  - ✓ conservation of genetic resources in forestry, and
  - ✓ start-up aid of producer organizations in the forestry sector.
- We welcome this additions but concerning **Aid for afforestation and the establishment of forests - non-native species** (Art. 33 (7) (d) and Art 36 (2): Paragraph 7 d) should be deleted or amended. It is not scientifically evident that only native tree species are best suited to adapt to the consequences of climate change. Rather, it is necessary to use those tree species that have been proven to be best adapted to the climate development to be expected for the respective location and are thus able to form stable and resilient stands (site-appropriate tree species).
- Proposal to introduce a specific measure '**Aid to the forestry sector**': '**Start-up aid for new forestry-related businesses**'. This is in line with the provisions of Article 75 of EU Regulation No 2021/2115 and for internal consistency with the proposal for a Regulation, which provides for a similar measure for agricultural undertakings and undertakings in other sectors other than forestry.
- Regarding **rural areas**, it is proposed to include (arts. 46 to 51):
  - ✓ aid for basic services and village renewal in rural areas, co-financed by the EAFRD;
  - ✓ aids for costs incurred by SMEs participating in community-led local development ('CLLD') or European Innovation
  - ✓ Partnership for agricultural productivity and sustainability (EIP) Operational Group operations and
  - ✓ limited amounts of aid to SMEs benefitting from CLLD or EIP Operational Group projects

#### 4. Guidelines for State aid in the agricultural and forestry sectors and in rural areas

These modifications concern in the most mentioned points both ABER and the Guidelines.

##### ➤ **Definitions (pars. 31, n.15/ art 2, n. 14)**

"Biosecurity measures" means management measures and physical measures to reduce the risk of introduction, development and spread of diseases **and plant pests into**, from or within (a) an animal population or (b) a holding, area, compartment, means of transport or other facilities, premises or locations c) **prevention measures**

*Comments: The proposed additions are intended to place plant pests on the same status as animal diseases and support also aid for prevention measures.*

##### ➤ **Transparency - Publication and information** (pars. 107/art. 9)

*Comments: The lowering of the threshold from the current 60.0000 euro to 10.000 euro provided in the draft under the Block Exemption Regulation and consequently the Guidelines raises concerns for the additional increased administrative burden that will bring. Such a reduction, especially so drastic, is not opportune. These thresholds, which are even below the de minimis level, are likely to lead to a considerable additional bureaucratic burden for Member States without any apparent added value. Furthermore, a lowering of the threshold would also counteract a simplification and facilitation of the implementation of aid measures. The publication obligations of the Exemption Regulation should lead to a balance between sufficient attractiveness of the corresponding aid scheme on the one hand and the necessary transparency on the other, so that the desired purpose of the aid is achieved and at the same time an unfair use of the aid is avoided. This balance is currently maintained under the existing publication obligation pursuant to the current Block Exemption Regulation and Guidelines.*

➤ **Aid for agri-environment-climate commitments** (pars. 198 ff)

*Comments: A new paragraph "214" should be added under "Eligible costs" in the area of agri-environmental and climate commitments. According to pars. 213, "result-based payment schemes, such as carbon farming schemes" should now be possible. We welcome this.*

*However, according to the Eligible costs, this cannot be implemented. Aid will still only be calculated on the basis of additional costs incurred and income foregone. Thus, it is not clear how "result-based payments" will be possible. In any case, cost-based measures should also be included in which financial incentives such as state aid should address CO<sub>2</sub>-sequestration in land use and forestry but also climate change mitigation in farming practices and adaptation measures to climate change.*

➤ **Aid towards the costs of [...] damage caused by animal diseases [...].** (pars. 360 ff/Art. 25)

*Comments: These provisions take into account the possibility of the emergence of completely new, not yet listed, animal diseases for which aid to affected livestock holdings could be useful. In addition to the conditions to be fulfilled under Article 6(2) of Regulation (EU) 2016/429 (animal health legislation), pars. 360 ff. list additional requirements that must be met in order for the aid to be possible. These listed requirements represent an enormous bureaucratic construct, which will not only place excessive demands on the farmer concerned, who will have to meet his obligations to provide proof, but would also require an unaffordable amount of technical, personnel and time effort from the Animal Diseases Fund as the control and decision-making authority.*

*It would be important to:*

*- Add a provision on biosecurity investments required by health authorities to prevent the spread of animal diseases or harmful organisms.*

*- In paragraph 4, for new animal diseases and harmful organisms, inserting the 30% threshold does not make sense: it should be aligned with the other parts of the regulation, i.e. leave it to the national authorities and only include the requirement that there is a regional or national eradication plan.*

*- Par 5: insert an exception for those costs imposed by the health authorities after the outbreak of the disease, not obligatory before*

*- Para 8 ff, (e) add slaughter not only killing or stamping out unless stamping out also involves slaughter*

➤ **Aid for the promotion of agricultural products** (pars. 454ff./ Art. 23)

*Comments: The Commission's draft provides for specifics and amendments which risk increasing the difficulties for state aid rules for information campaigns. Under certain conditions, state or state-supported information campaigns on regional value chains, regional products or regional marketing initiatives should be possible.*

➤ **Aid to compensate farmers for disadvantages related to Natura 2000 areas** (pars. 247/art. 29).

Comments: *It is already reality, that other areas with equivalent consideration as Natura 2000 areas, can suffer disadvantages related to environmental measures. The granting of compensation outside Natura 2000 areas is limited in Art. 29(3)(b) to 5 percent of Natura 2000 areas. This restriction should be deleted to ensure a provision adapted to the reality on the ground faced by farmers. Art. 29 should be modified in a way that all disadvantages regarding environmental measures based on Union-level actions can be compensated, also if these are not within the Natura 2000 Network. Compensation for environmental measures on agricultural and forestry areas should not be restricted in any way if the EU ambitious goals are to be reached.*

➤ **Agricultural investment aid (par. 141 to 161)**

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

Comments: *Setting a general aid intensity level of **65%** for aid in favour of both primary agricultural production and processing and marketing of agricultural products could be a good step in the direction of predictability and uniformity.*

- ✓ The current State aid rules allow for investment aid to help farmers **meet new requirements** imposed on them by Union law for a **maximum period of 12 months** from the date on which they become mandatory. It is proposed to remove such aid from the scope of the future rules.

Comments: *This modification raises concerns. A proper transition phase should be allowed to adapt to new requirements imposed on farmers.*

- ✓ Under the current rules, as regards agricultural and forestry investments, **aid for the purchase of land** is limited to 10% of the total eligible costs of the operation concerned, except for the purchase of land for operations concerning environmental conservation, where this can be higher. The new rules propose to extend this **possibility for operations concerning carbon-rich soil preservation.**

Comments: *We welcome this possibility.*

- ✓ As regards aid in favour of **restoration of the damage caused by adverse climatic events** and plant pests, if such events can be linked to climate change, it is proposed to introduce in the new rules the condition for the beneficiaries to include, where possible, **adaptation measures to climate change** as part of **the restoration**, in order to minimise damage and losses produced by similar events in the future.

Comments: *The limitation to adaptation measures to climate change could add an additional complexity to the aid instrument.).*

➤ **Aid to compensate for the damage caused by protected animals** (pars. 387 to 401)

Comments: *This approach, where compensation is only provided in the case of damage caused by protected animals, leads to the natural consequence that controlling wild animals falls under the farmer's responsibility.*

*We consider that the new ABER and the guidelines allowing aid to be granted for damage caused by protected animals negatively affect the legitimate expectations of farmers, the drastic rise in the population of large carnivores across the EU and the heavy damage suffered by European farmers.*

*We support aid for damage caused by wild animals. It should be possible to provide compensation for 100% of the damage caused by animals, including loss of income, as is already provided for with regard to damage resulting in a loss of production equipment. This should not just be limited to damage caused by protected animals. It should be added the*

*possibility to grant aid for damages caused by animals other than “protected animals” as for example wild boards as their presence is an obstacle to the biodiversity as they are omnivores. Compensations for damage caused by other animals should also be envisaged. The compensation paid to landowners for damage caused by animals has no influence on the internal market, which makes the limitation of national support to protected animals even more difficult to understand.*

➤ **Carbon farming (pars. 213, 540)**

- ✓ According to the Guidelines, ‘**carbon farming schemes**’ means “*aid schemes for **improved land management practices** resulting in carbon sequestration in living biomass, dead organic matter and soils by enhancing carbon capture and/or **reducing the release of carbon to the atmosphere**”.*
- ✓ Under the current rules, various carbon farming measures can already receive support. These measures will be maintained, e.g. investment aid, aid for agri-environment-climate commitments and animal welfare commitments, aid for disadvantages related to Natura 2000 and the Water Framework Directive, aid for organic farming etc.
- ✓ The proposed new rules envisage to make support also available for ‘collective schemes and result-based payment schemes’. Where such schemes are mentioned in the new GL (e.g. **aid for agri-environment-climate commitments (pars. 198 to 221)**, **Aid for forest-environment and climate services and forest conservation (pars. 537 to 544)**), it has been specified that this also includes carbon farming schemes.
- ✓ In addition to that, in order to increase the currently low uptake of forest-environment climate services, it is proposed to introduce the possibility of an **incentive payment of up to 120% of the eligible costs for biodiversity, climate, water or soil related services and collective and result-based schemes**, such as carbon farming schemes in forestry (par. 544).

Comments: *We welcome the introduction of this possibility. European farmers, forest owners and their cooperatives can truly become carbon capture and storage champions. The sector can provide society with overall climate benefits by increasing the carbon stored in long-lived wood products, bio-based materials, and soils by promoting circular approaches based on biogenic sources. Financial incentives such as state aid should address CO<sub>2</sub>-sequestration in land use and forestry but also climate change mitigation in farming practices and adaptation measures to climate change.. In particular, given the climate and site-dependent character of this type of farming the issues of timing of payments and where to market carbon credits should also be addressed and clarified. A market-based approach is key, allowing that carbon credits become an additional income for farmers.*

➤ **Closure of capacity for animal, plant or human health, hygiene, ethical, environmental or climate reasons (pars. 427)**

Beneficiaries of aid under this section must give a legally binding engagement that they will not carry out the activity in question elsewhere.

Comments: For clarification purposes, it should be added that in the case of aid supporting the closure of production capacity on land with certain site characteristics, the prohibition on (re)starting the closed activity elsewhere does not apply if starting the activity at the other site does not compromise the objective of the measure.

In order to conserve carbon-rich soils but also for nature conservation reasons, it may make sense to grant aid for the cessation of agricultural use on certain areas/sites. In this case, it is not detrimental to the objective of the measure if agricultural use is resumed elsewhere, provided, for example, that no carbon-rich soils or nature conservation areas are affected.