

**Contribution of the Czech Republic to the public consultation on the 1<sup>st</sup> draft Commission Agricultural Block Exemption Regulation for aid in the agricultural and forestry sectors and in rural areas (“ABER”)**

**Comments regarding the content:**

- **On recital (39) in the Preamble:** We recommend to add in the last sentence the following text: “...and in that way to ensure the development of economic activities **and in many cases the fulfilment of environmental functions of ecosystems in those sectors**.”. In forestry sector, the primary motive for compensating the referred to damages in forests is the preservation of all forest functions and the non-productive functions (ecological – soil protection, climatic, water management etc.) in particular.
- **On recital (59) in the Preamble:** In the list of categories of aid, under which aid shall be granted to final aid beneficiaries indirectly, in kind (in the form of subsidised services), the first category mentioned is “*research*”. We believe, however, that that the condition of providing aid in the form of subsidised services does not arise from Article 32 (Aid for research and development in the agricultural and forestry sectors) and therefore this category of aid can be granted to the beneficiaries directly. Thus, we ask the Commission to clarify this recital of the Preamble, or to delete the word “*research*” from the referred to list.
- **On Art. 1(3)(a):** In order to make sure that the approval procedure of the evaluation plan does not result in unreasonably long assessment by the Commission comparable in its duration to the regular notification procedure, the maximum time limit should be set by which the Commission must decide on the evaluation plan. For these reasons the time limit should not exceed 3 months.
- **On Art 1(5):** We welcome that the exemption of aid for information actions in the agricultural sector (Art. 20) be included. Nonetheless, we believe that a similar exemption should be allowed also for the analogous category of aid in the forestry sector (Art. 39).
- **On Art. 1(5)(g)(iv):** The provision includes an erroneous reference to Art 35(5)(d) (it should most likely refer to Art. 35(2)(d).
- **On Art. 2 Definitions** We recommend that the definitions are not arranged alphabetically according to the English language, but rather in logical units (e.g. first the general definitions, definitions of sectors, followed by definitions by category of aid) as it is the case e.g. in the FIBER so that it is clear also in other language versions.
- **On Art. 2(1):** We find it necessary to finalize the definition of “*active farmer*” as defined in Art. 4(5) of Regulation (EU) 2021/2115. The term “*minimum level of agricultural activity*” is unclear.
- **On Art. 2(3):** It is unclear from the proposed definition whether it also applies to aid proposed for the forestry sector, to be specific to aid under Art. 35, or whether it is used solely for the purpose of aid to compensate damage. If it were to apply also to forestry, then the proposed wording is inappropriate. Small holdings (prevailing in majority of Member States) cannot generate steady income from the forest (i.e. production), especially in such

a short period of time. The earlier definition of damage as 20 % of forest potential therefore seems much more appropriate for these purposes.

- **Art. 2(38):** We disagree with the proposed definition, i.e. with limiting the operations prior to industrial processing of wood to activities carried out until the wood arrives at the sawmill. This condition will substantially limit, or make entirely impossible, granting the so far very well-functioning aid for the development of wood processing plants as implemented in the Czech Republic under the rural development, i.e. the aid for micro and small enterprises or municipalities engaged in forestry activities and logging and basic wood processing. If innovative investments cannot be made in sawmills, it will be impossible to increase the production of wood products, and thus also to improve the regional use of timber. By limiting the aid solely to activities carried out until the wood arrives at the sawmill, granting the aid to these enterprises is made virtually impossible. Moreover, this definition is in contradiction with the aim to enhance the competitiveness of forestry and to promote diversification of forest holdings. Hence, one of the objectives of the existing National Forest Management Policy of the Czech Republic, namely the creation of conditions to increase domestic wood processing and consumption, would be impossible to fulfil.

In our opinion, it is inappropriate to set out conditions, the control of which consists in verifying that the applicant did not exceed the maximum volume of input raw material (such control depends on whether or not the applicant submitted all the documents concerning the purchase of input raw material in the given year). Furthermore, this condition is unnecessary to ensure the objective of the operation – to provide aid to primary, pre-industrial processing of wood. This can be achieved by detailed specification of eligible expenditure, where the Czech Republic proposes to increase the diversification of income of forest holdings by providing aid to them specifically for production of sawn timber, its drying and impregnation, and production of small lumber-based products for regional use. The submitted arguments concerning the sawing capacity were accepted by the European Commission as part of the modification of the CZ programming document for the period 2014–2020 in 2016, when the European Commission agreed to delete the referred to condition from the respective operation (8.6.2 Technical equipment of wood processing plants). Therefore, we request that this definition be deleted or substantially revised.

- **On Art. 2(41):** We believe that there are wrong references in the definition of plant pests (instead of referring to Art. 5(1) of Regulation 2016/2031 it should refer to Art. 5(2) of this Regulation and instead of referring to Art. 32(2) it should refer to Art. 32(3)).
- **On Art. 2(45):** If this definition is to be used also for the aid to the forestry sector, we request the addition of a new purpose, namely “*achieving sustainable management, balanced income or joint management*”. The main purpose of setting up of groups of forest owners does not necessarily have to be to sell timber jointly, but rather to achieve sustainable management, which is easier in case of larger forest units than in forests of small forest owners.
- **On Art. 5(3):** We recommend extending the list of transparent forms of aid by “*subsidised services*” so that it is consistent with the allowed methods of granting aid in selected aid categories. In some cases (e.g. promotion activities when publishing information on the Internet etc.), the number of aid beneficiaries cannot be determined and thus the amount of aid to final aid beneficiaries cannot be determined either.

- **On Art. 6(2):** We request that the following condition is included in the proposal: *"In case of information under points (d) and (e), this information is not requested in the application provided it is explicitly and clearly defined already in the legal background of the aid scheme."* Furthermore, point (e) should than be amended as follows: *"...needed for the project/activity or the method of calculation of this amount."*

- **On Art. 6(4):** This paragraph establishes an exception to the application of the incentive effect conditions for tax measures establishing a right to aid. The Czech Republic again notes that this condition can also be met by other non-tax State aid measures, in which the right to aid is also embedded in law. A general exception to the application of the incentive effect for measures establishing a right to aid was included in the Guidelines for 2007-14 period. This exception should therefore adequately apply to all measures where the right to aid is already established by law.

- **On Art. 6(5):** We request that the **list of categories of aid which are not required to have an incentive effect** or shall be deemed to have an incentive effect be extended to include the **aid for the payment of insurance premiums under Article 27.**

The request above is motivated by the following reasons describing the situation in the field of livestock and crop insurance in the Czech Republic:

In our opinion, the established practice in taking out an insurance policy for agricultural holdings shall be considered when determining the start of works on the project. In practice, the insurance taken out by the applicants usually include automatic renewal (extension) for the following period.

Insurance protection for the respective year is conditional on the payment of premium. Thus, if the insured entity fails to pay the premium for the entire respective year, the insurance for the entire respective year will not be taken out. Requiring a separate contract for each year represents an administrative burden with no apparent benefit and, in our view, the introduction of this restriction also unnecessarily interferes with the insurance market.

The requirement that at the time of submission of aid application the undertaking is not in any relationship whatsoever with the insurance company would be completely unjustified, formalistic and would result in ridiculous consequences. If applicants had to terminate their current insurance policies before submitting the application for aid and only then take out new insurance policy, they would always end up uninsured for some time, which is completely undesirable with respect to the objectives of aid and unacceptable in terms of risk management of undertakings.

On the contrary, thanks to the continuous extension of insurance no situation arises when the insured entity is without insurance coverage, which is desirable both in terms of eliminating the business risk in the agricultural sector and in terms of the objectives of aid provided for the payment of insurance premiums. Without the existence of the State aid in question, which is intended to encourage undertakings to take out insurance every year, the desired take-up rate with respect to the respective risks in agriculture would not be achieved, given the costs of insurance and the limited resources of agricultural holdings.

The aid provided to insurance aims to encourage the undertakings active in primary agricultural production to eliminate the risks arising from the damage incurred due to adverse climatic events or animal diseases through insurance coverage. The experience of aid providers shows that the actual incentive effect of similar aid for the payment of

insurance can be seen in the effect that the introduction of aid has on the overall take-up rate with respect to the risks concerned. It is usually thanks to the State aid that the desired situation is achieved, when a large proportion of undertakings has necessary insurance coverage which is maintained in effect on a long-term basis, i.e. the situation which would certainly not be achieved without the aid.

- **On Art. 9(1)(c) and (2): We strongly disagree with the proposed reduction of the transparency threshold for the publication of aid in the TAM system** to EUR 10 000 in primary agricultural production, or EUR 100 000 in processing, forestry and rural areas. In view of the long-term trend of rising prices, which are logically reflected in the amount of eligible costs, this step would in practice bring a disproportionate increase in the administrative burden since information on almost each and every aid granted would have to be published. On top of that, the proposed limits are significantly lower than the limits for *de minimis* aid (EUR 25 000, or EUR 200 000 respectively), which is exempted from this obligation. For the reasons above, we are convinced that the **current publication thresholds (EUR 60 000 and EUR 500 000)** should be maintained, because they represent a balanced compromise both in terms of transparency of the State aid and reasonable level of administrative burden for the granting authorities. The existing range of amounts for primary agricultural production is EUR 0.06-0.5 million. We recommend maintaining this range since the proposed reduction will bring about an increase in bureaucratic burden.

As concerns the entering of the aid in the TAM, it would be desirable to simplify the procedural steps in particular (it should be possible to enter and approve as well as publish the aid under the same role). We would also appreciate the possibility to import the data in the xml format. We also request that the option be introduced to integrate the Member States' information systems into the transparency module by calling a Web Service (machine to machine).

Furthermore, we bring to your attention that the requirement is duplicate with the transparency requirements under Art. 98 of Regulation (EU) 2021/2116 of the European Parliament and of the Council, particularly in conjunction with Article 49(3)(a), (b), (d) to (j) and (l) and Article 49(4) of Regulation (EU) 2021/1060.

- **On Art. 9(1)(c)(ii):** We recommend amending the wording of point (ii) as follows: “..., *the forestry sector or other activities falling outside the scope of Article 42 of the Treaty.*” Forestry is also a sector falling outside the scope of Art. 42 of TFEU.
- **On Art. 9(3):** The text of the paragraph contains an incorrect reference to paragraph 2 of the article. It should be replaced by a reference to paragraph 1(c) of the article.
- **On Art. 13(3)(a):** We propose that the description of this objective is extended, or that the aid to circular bioeconomy – the use of wastes to reduce production costs – is emphasized.
- **On Art. 13(3)(b):** We suggest to add to the description of the objective the improvement of animal health and disease resistance through procedures alternative to the use of antimicrobials.

- **On Art. 13(11)(f)(iv):**

- We request that the original wording of this provision in the currently applicable ABER be retained since it is clearer and easier to apply.
- We request that the term “*installation or infrastructure with a high degree of efficiency*” is clarified and clearly defined. We request the same for the term “*installation or infrastructure with a low degree of efficiency*”, namely in relation to the sentence “...where the current degree of efficiency (prior to investment) is low...”.
- Does the percentage of water savings mean the water savings at the level of the supported investment, or the entire agricultural holding?
- We request the explanation as to how the percentage of water savings should be handled in the case of a brand-new irrigation in places where there was no irrigation before and therefore there is no installation or infrastructure to be replaced.
- We also request that the **requirement for potential water savings of at least 5 % in case of investments in installation or infrastructure with a high degree of efficiency applies exclusively to drip irrigation**. The reason behind is the already high percentage of water savings in this type of irrigation and especially its specificity compared to other types of irrigation. For other types of irrigation, we request modification described below.
- **In the case of investments in the existing installation with a low degree of efficiency (except for drip irrigation), we request that the water savings are set at 5 – 25 %.** The achievement of water savings of at least 25 % is unrealistic in our opinion since the irrigation technology is very diverse and its specific use depends on various irrigation needs. They include particularly the specific type of crop grown, the type of soil, the slope of the terrain, the long-term course of growing seasons or the climatic characteristics of the area concerned. Based on these factors the farmers choose the specific type of irrigation that best suits the given situation and needs. There are very different types of irrigation such as spray irrigation, strip irrigation machines, linear irrigation machines, central pivot irrigation machines etc. These installations have very specific features and thus it is impossible to set general water savings for all possible applications in the real setting. If the applicant grows a certain type of crop that is best watered for example by strip irrigation machines, then the worn-out machines need to be replaced with new ones. In this situation, water savings of 25 % or more compared to the original installation cannot be achieved. They could be achieved only by using e.g. the drip irrigation, which, however, may not be suitable or feasible for the given area, acreage of fields, type of farming, and type of crops. The applicants would not be able to meet such a condition as it is unrealistic, and thus they would not receive the aid. The ultimate consequence thereof could be e.g. even the cessation of their farming activities. The programme that would have to be modified in line with the proposed wording of the submitted guidelines would thus become useless and it would not be possible to grant aid e.g. to farmers in drier areas adversely affected by climate change.
- The requirement of 50 % effective reduction in water use is high. In the case of drip irrigation, water savings of 25-50 % are claimed, depending on the specific technology. For this reason, **we request to reduce the condition of effective reduction in water use to the maximum of 25 %.**



- **On Art. 13(21)(b):** We consider it important to clarify the conditions under which 100 % aid intensity can be used. In this context, what is actually meant by the term “*off-farm infrastructure in agriculture*”? Does it mean the land outside the agricultural holding? Thus, could 100 % aid intensity be used for example for water pipes, pumps, filters and other related irrigation technologies provided they are located off-farm?
- **On Art. 19(2)(a)(iii):** It is necessary to replace the already expired Council Regulation (EC) No 834/2007 with the currently applicable Regulation (EU) 2018/848 of the European Parliament and of the Council. The footnote No 33 related to this point shall be amended accordingly.
- **On Art. 20(3)(a):** Please note that the category of eligible costs stated in the Czech translation of the draft ABER Regulation does not correspond at all to the English original or to the other language versions. We request that the eligible costs under point (a) read as follows: „*a) náklady na organizování odborného vzdělávání, činností v oblasti získávání dovedností, včetně vzdělávacích kurzů, workshopů a odborného vedení, demonstračních činností nebo informačních akcí;*“ (“(a) the costs of organising the vocational training, skills acquisition actions, including training courses, workshops and coaching, demonstration activities or information actions;”) as is also the case in other language versions of the draft Regulation.

We also recommend to emphasise in the above referred to provision that the eligible costs also include the costs of production, printing and distribution of periodicals and other training and information materials, including the preparation and creation of websites.

- **On Art. 21(3):** We request to retain the element from Art. 22(3)(c) of the currently applicable ABER, namely the “*measures aiming at modernisation, competitiveness building, sectoral integration, innovation, market orientation as well as the promotion of entrepreneurship*” since we are convinced that it fulfils the specific objectives listed in Art. 6 of Regulation (EU) 2021/2115 on the CAP strategic plans.
- **On Art. 21(8) and (9):** The percentage of eligible costs for the aid for advice covering the issues enumerated in paragraph 4 of this article is not specified. The percentage of eligible costs must be defined also for these areas or it shall be specified how the eligible costs under point 4 are recognised.
- **On Art. 23(5):** We recommend adding also the costs of production and distribution of publications to the eligible costs. Restricting the aid to the costs of publishing the publications only will make the production of publications with public funds contributions impossible.
- **On Art. 25:** Please note that Regulation (EU) 2016/429 of the European Parliament and of the Council, to which this article refers, does not apply to the African swine fever virus.
- **On Art. 25(8):** We propose to add to the eligible costs under the new point (g) additional eligible costs entitled “*professional veterinary and consultancy activities related to the eligible costs under paragraph 8(a) to (f)*”.
- **On Art. 25(10)(a):** We propose to add that apart from the calculation of compensation based on the market value, it is also possible to compensate at least partially for the loss of production caused by the loss of an animal (e.g. the pro rata amount based on the

average yield per herd for a limited period of at least 3 months). This is because the breeder does not lose only the animal, but also the expected production, e.g. milk or eggs.

- **On Art. 25(13)(a) and (b):** It is unclear why there is a reference to paragraph 8, **point (e)**, also in paragraph 13, points (a) and (b), i.e. in different eligible costs. We ask for clarification.
- **On Art. 26(5)(b):** We disagree with the proposed reduction of aid intensity in case of destruction from the existing 100 % to the proposed 75 %, and we request that the existing aid intensity is retained.
- **Art. 26(5)(b) and (c):** It is unclear why there is a reference to paragraph 2, **point (e)**, also in paragraph 5, points (b) and (c), i.e. in different eligible costs. We ask for clarification.
- **On Art. 32:** We request that it be explicitly added that this article can also be applied to aid in favour of research entities involved in the Operational Groups of the European Innovation Partnership.

### **General comments on Section 5 – Aid in favour of forestry**

- We welcome the extension of the scope of the draft regulation to other national aids to the forestry sector. It is good that the Commission has responded to the long-standing request of the Member States to simplify notification procedures. We also welcome the fact that Section 5 does not stipulate explicitly the lists of eligible beneficiaries.

Generally speaking, we consider the proposals to be well prepared and ensuring a consistent approach by the Commission and the continuity of the existing aid schemes.

We particularly welcome the extended possibilities for the provision of forest-environmental payments, brought about primarily by removing the area-based limit of aid. We believe that the proposed conditions will help better set and introduce payment schemes for forest ecosystem services and other aid, carbon management inclusive.

We appreciate the removal of the limit of aid for advisory services, which cover a wide range of services in terms of the subject matter and costs, since the existing limit may therefore be limiting for the provision of advice in the sectors concerned. We appreciate the inclusion of an appropriate legal basis for the use of selected eco-friendly technologies in forest management.

Below, we also point out the inconsistent approach to aid in the forestry sector, where, in our opinion, the Commission gained sufficient experience in the past with the assessment of their compatibility and impact on competition, and yet the aid is not covered by the proposal. For more details see below.

Besides, we note that the Czech version of the proposal does not fully correspond to the English version, and that full consistency between the language versions should be emphasised when final versions are prepared.

- **On the scope of Section 5:** Even though the proposal covers a part of the national aid so far included only in the AGRI Guidelines (2014), we request that possible extension of the scope of the proposal to the aid under Sections 2.6 and 2.8 of the AGRI Guidelines of 2014 be carefully considered. It is unclear why these types of aid have not been included in the

proposal, because they fully meet the conditions set out in the proposal for aid listed in Section 5 of the draft ABER, i.e. that the Commission has already gained sufficient experience in the assessment of its compatibility and that it did not give rise to significant distortion of competition, and therefore, for the sake of simplification and cost-effectiveness of the procedure, it should be possible to exempt it from notification under the draft Regulation. Moreover, Section 2.8 of the AGRI Guidelines 2014 covers the aid of strongly non-productive nature and clearly defines the types of activities that can be supported and the conditions for granting the aid.

- 2.8.1 and 2.8.2 – they aim to contribute to maintaining or restoring forest ecosystems, biological diversity or the traditional landscape – under this section the Czech Republic has notified aid for natural regeneration, artificial regeneration through soil-improving species, use of pioneer tree species, forest stand tending, which constitutes the fundamental measure for increasing the stability of forest stands, improving the quality of forest soil (e.g. by leaving logging residues in forest stands); this aid has been repeatedly assessed by the Commission;
- 2.8.3 – Restoration and maintenance of natural pathways, landscape elements and features and natural habitat for animals in the forestry sector,
- 2.8.4 – Aid for maintaining roads to prevent forest fires,
- 2.8.5 – Aid to make good the damage in forests caused by protected animals
- 2.8.6 – Aid for establishing forest management plans (FMP) – for explanation see the separate comment on the legal basis for forest management plans below

We also recommend considering the inclusion of aid for cooperation in forestry sector defined in Section 2.6 of the draft AGRI Guidelines.

- **Appropriate legal basis for establishing forest management plans (FMP)** – the Czech Republic has for long been pointing out that neither the AGRI Guidelines 2014, nor the currently submitted draft ABER Regulation contain an appropriate legal basis to support the establishing of forest management plans, despite it is a tool whose use has been promoted by the Commission's strategic documents (in the Biodiversity Strategy and the new EU Forest Strategy) and it is an essential tool for ensuring sustainable forest management and all forest functions.

We believe that the inclusion of eligible expenditure on establishing FMP under Articles 33, 34, 36, 41 and 42 of the draft Regulation is non-systemic and, above all, inappropriate since it does not take into account the nature and the principle of the FMP, which is a specific tool for planning forest management activities, particularly logging, restoration and forest stand tending, and the restrictions imposed on these activities adopted by the national legislation to ensure sustainable management. FMPs are usually drawn up for the entire property of the forest owner, or for individual forest management units in the case of larger property, usually for a period of at least 10 years. Articles 33 and 34 do not apply to the existing forests.

With regard to Articles 41 and 42 of the draft Regulation, for the reasons described above, the aid for establishing FMPs cannot be combined with the investments in forest infrastructure or technology. The FMPs are not established as part of the investments in forestry equipment or technology, but as a separate planning tool. Moreover, under these articles it is impossible to provide the aid amounting to 100 % of the costs of establishing the plans, which we also consider a condition contradicting the introduction of FMPs. As to



the inclusion under Article 36, the primary objective of the FMPs is not to increase the resilience or ecological value of the forest, but to maintain the forest ecosystem and its functions (sustainable management). Moreover, if the national legislation allows to restore the forests using non-native tree species, then the condition of excluding non-native tree species cannot be fulfilled while applying this article (note that in the Czech Republic the legislation permits the use of only one non-native tree species (*Douglas fir*) in forest restoration and this species is present on less than 0.4 % of forest land).

For these reasons we request that the introduction of a specific legal basis (in both the draft ABER and AGRI Guidelines) for the establishment of FMPs is considered, namely as a direct aid, not in the form of subsidised services (since this is not an advisory service), as has been the case in the Guidelines so far, and is proposed again. While the draft ABER does not include the condition of subsidised services for the aid for establishing FMPs, the AGRI Guidelines do. The Czech Republic has repeatedly discussed the aid for establishing FMPs with the Commission within the notification procedures.

- **On Art. 33 and 36** (requirement for native tree species): We request that this condition is applied only to areas protected under the European laws, while in the other areas the definition of eligible tree species shall be governed by the national legislation and the proposal does not provide any reasons for full restriction of non-native tree species. We are convinced that the submitted proposal is interfering with the principle of responsibility of the Member States for forests, while at the same time going against some EU objectives, including ensuring the adaptation of forest ecosystems to climate change. As long as clear criteria are set, certain non-native species can help improve the resilience of forest ecosystems to the impacts of climate change. The Czech national legislation provides for a single non-native tree species (*Douglas fir*) that can be used in forest restoration.

In protected areas, its use is excluded during the approval process of forest management plans, which includes a binding opinion issued by nature conservation authorities. The total area under this tree species is below 0.4 % of the forest stand area (this figure also includes the area under other coniferous trees that are not considered as main coniferous trees and are indigenous to the Czech Republic, the total area under this tree species is therefore less than 0.4 % of the forest stand area).

For the aforementioned reasons, this requirement will prevent the use of the block exemption for the existing national forestry aid schemes. With a view to ensuring equal access to aid, regardless of the source of funding, we believe it would be reasonable if the condition concerning the use of non-native tree species is assessed in the framework of and included e.g. in the evaluation plan. That would allow the Commission to assess the appropriateness of the measure and at the same time it would not further increase the administrative burden of aid preparation, where in such cases the Member State (e.g. in the case of the Czech Republic because of a single tree species) will have to undergo the regular notification procedure.

- **On Art. 33, 35, 41 and 42 (requirement for presentation of information from forest management plans and equivalent instruments):** We request that the original wording of the condition is maintained, i.e. the determination of the area of forest property, which when exceeded will establish the obligation for the forest owners (holders) to submit the referred to information. The proposed wording does not take into account the fact that also all municipalities, regardless of their size, are large undertakings (in line with the Commission's opinion). Not only in the Czech Republic the condition of management based

on the FMP or equivalent instruments is applied to forests exceeding certain size. From the forestry viewpoint, the FMP has no major benefit for the forest property below this area and will again place an excessive burden on small applicants (e.g. even on very small municipalities managing only units of hectares of forests). The condition to manage the forest based on the FMP and equivalent instruments is in most of the Member States set by the national forestry legislation, therefore the obligation imposed by the EU State aid rules is again considered to be a violation of the principle of national responsibility for forests. Furthermore, this requirement should be limited to beneficiaries - forest owners (holders). For the other undertakings that do not own forests the requirement does not make any sense.

We also do not understand why the requirement to present information from the FMPs is linked only to selected articles and does not apply, for example, to aid under Articles 36, 37 and 38, and having said that we would appreciate some justification.

- **On Art. 35(2)(c):** We request that the text be added as follows: “*establishing, improving and use of forest fire, pest and diseases monitoring facilities...*”. The impacts of climate change and the damage to forests resulting therefrom are becoming increasingly intense, and in the case of fires and pests, for example, aerial monitoring, which is provided centrally by the state for larger areas, can be a cost-effective way of prevention and protection against such damage.
- **On Art. 35(5)(c):** We request to add the possibility that this proof will be submitted by the aid provider if such adaptation measures are an integral part of the aid scheme concerned. In that case they are subject to a control of applications and it is illogical for the aid beneficiary to submit such proof separately. In such cases the proof submitted by the aid provider is considered equivalent.
- **On Art. 35(7):** The paragraph stipulates that the eligible costs cannot include the coverage of income foregone due to fires, natural disasters, adverse climatic events which can be assimilated to a natural disaster, other adverse climatic events, plant pests, catastrophic events and climate change-related events.

We believe there is a contradiction between the description of the scope of the draft ABER in the Preamble, which in recital 39 states that aid measures to make good damages to (inter alia) forestry are considered to be a suitable tool, but this aid is not covered by the proposal (Art. 35 does not include compensation for damage caused by listed phenomena among eligible expenditure). In the case of natural disasters, this approach is only logical as it exempts such aid from the notification requirement under GBER. However, in the case of damage caused by adverse climatic events, catastrophic events and plant pests, GBER does not cover the aid to compensate for such damage. Moreover, there are clear compatibility criteria defined in the applicable AGRI Guidelines 2014 (in point 594a).

**We ask the Commission to consider exempting this aid from the notification obligation as well, or to provide reasons why such aid is not exempted.** In forestry, with its extremely long economic cycle, such damage can be much greater than in the case of mostly annual agricultural production, and the impacts on the viability of undertakings are huge. The Czech Republic continues to struggle with the impacts of unprecedented bark beetle calamity, the root causes of which were beyond the control of current forest owners, yet in its wake they have lost the stocks of timber created over tens to hundreds of years, and therefore the income that they should invest in forest restoration until the first income

from newly planted stands (i.e. for 40 years at least), which on its own has already been devastating for many and is yet to be for others. Therefore, as in the agricultural sector, the State should be able to compensate for such damages and, with respect to the conditions as laid down in point 594a of the AGRI Guidelines 2014, it is appropriate to consider exempting this aid from the notification obligation.

- **On Art. 38(3):** Reference should be made to paragraph 2 rather than to paragraph 4 so that the first sentence reads as follows: *“The aid shall compensate beneficiaries for all or part of the additional costs and income foregone as a result of undertaking the commitments referred to in paragraph 2.”*.
- **On Art. 39(2):** In order to increase legal certainty, we recommend that the scope of the aid for knowledge exchange and information actions provided for under Articles 20(2) and 39(2) be harmonised. Both articles should have identical eligible forms of training. Taking into account the current wording of ABER for the forestry sector, we prefer to use the definition of aid as laid down in Article 20(2) in the proposed Regulation also for the purposes of Article 39(2) of the proposal.
- **On Art. 39(3):** We request that the eligible cost related to the provision of replacement services during the absence of the participants in the forest holding be added.
- **On Art. 39(5):** We request that the paragraph 5 *“Bodies providing knowledge exchange and information actions shall have the appropriate capacities in the form of staff qualifications and regular training to carry out such tasks.”*. This condition is not mentioned in Regulation (EU) 2021/2115 and therefore in interventions notified under ABER it would have to be explicitly required, while it would not be the case in interventions under Article 42 TFEU.
- **On Art. 40(3):** We request that the text be amended as follows: **“The Member State shall ensure that the system of advisory services covers as a minimum issues...”**. It is hard to imagine that each advice focused on a specific field (e.g. protection of forests) will at the same time always includes advice covering the listed areas of EU legislation.
- **On Art. 41(4)(d):** We very much welcome the establishment of a specific legal basis for the aid for the use of horses in forest management as an eco-friendly technology under this article (so far the EC has assessed this aid based on the legal basis for area-based payments and the Czech Republic has for a long time pointed out the inappropriateness of such approach). We also request that included under this expenditure be also other forest-friendly technologies, specifically the cable systems for yarding the logs.
- **On Art. 41 and 42:** Without prejudice to the CZ comments on the introduction of an appropriate legal basis for the aid for forest management plans, for the purposes of aid for establishing forest management plans the condition of presenting information from forest management plans does not make sense and an exemption should be offered regarding this eligible expenditure since the purpose of the condition is to encourage the introduction of FMPs, and this objective is fulfilled already by the aid for establishing the FMPs.
- **On Art. 41(3) and Art 42(3):** If, after the modification, this condition continues to be directed at the management based on the approved forest management plan or the adopted forest management guidelines, it can be applied to projects of investments in

forestry technology and infrastructure similarly as it is applied to forest-environmental project measures. To apply the condition to the projects of large undertakings would then not be a problem even for municipalities and operations set up by them (forest management planning instruments are available to them thanks to the financial support from the State). However, we cannot agree with the application of the condition to the projects of undertakings that are not forest owners and are active in forest management as providers of forestry services or operators of forest nurseries, or are engaged in wood processing and purchase the raw material from forest owners. For these entrepreneurs who are not forest owners, there are no specific instruments available ensuring the compliance with sustainable forest management (the forest management planning instruments are intended for forest owners). Thus, we request that the condition be narrowed down to only those projects that are submitted by forest holders for the development of forest management in their own forests.

- **On Art. 44(2):** The Commission proposal fails to take into account the fact that in line with the Commission's opinion also all municipalities are large undertakings, regardless of their size, and that they can manage units of hectares of forests and their association into groups is equally necessary for them as it is for the other small forest owners. Hence, we recommend that the introduction of exemption for municipalities be considered.
- **On Art. 44(5):** We request that the costs linked to the wage of qualified forest manager be included among the eligible costs.
- **On Art. 50:** We cannot agree with the provision of aid solely to SMEs, because large undertakings are supported not only through the Local Action Groups (LAGs), but also under the Operational Groups of the European Innovation Partnership. As stipulated, this aid is intended also for LAGs and for their operating costs or the costs of LAG cooperation projects. In LAGs, which are non-profit entities, it is very difficult to determine the size of the undertaking, especially due to the composition of LAGs that are made up also of representatives of public authorities, municipalities etc., which are considered to be large undertakings. This definition would make it impossible to provide aid to the listed activities under the ABER. Given that, we request that the aid under this article be applicable **also to large undertakings** (e.g. municipalities, LAGs, forest holdings).
- **On Art. 50(2)(b):** We request adding the eligible costs of "*implementation of approved operations*" so that it is obvious that they include also the investment expenditure, namely both in case of the European Innovation Partnership and LEADER.
- **On Art. 51(2):** We disagree with the set out total amounts of aid (EUR 200 000 for CLLD projects and EUR 350 000 for EIP Operational Group projects). We propose to increase these amounts. In the case of the European Innovation Partnership, the upper limit would e.g. limit potential innovation.
- **On Art. 50 and 51:** Article 50 defines the aid for costs incurred by small and medium-sized enterprises participating in CLLD or the EIP Operational Group projects. Article 51 covers the aid to small and medium-sized enterprises benefitting from CLLD or EIP Operational Group projects. The difference between these two articles is unclear, which is why we ask for an explanation.

**Procedural comment:**

- Under Commission Regulation (EU) 2020/2008, the period of application of the existing ABER was extended until 31 December 2022, with the possible exemption of aid schemes during an adjustment period of additional 6 months (in line with Art. 51(4) of the currently applicable ABER), i.e. until 30 June 2023. In line with Art. 54 of the submitted draft ABER, the new ABER should enter into force on the XX day following that of its publication in the Official Journal of the European Union. If the new ABER enters into force on 1 January 2023 and all the existing aid schemes will have to be adjusted and re-notified on 30 June 2023 at the latest, the aid providers will face a very difficult situation. Practically speaking, such short period of time is inadequate and can collide with the ongoing administration of aid schemes announced every year. Hence, the conditions for applicants would change in the middle of the grant period, which is highly undesirable. In order to ensure maximum legal certainty for applicants and providers, we request that the **adjustment period for the possible exemption of aid schemes exempted under the currently applicable ABER be extended from the current 6 to 12 months**, i.e. until 31 December 2023. Moreover, if a one-year adjustment period for the possibility to adjust the aid notified under the currently applicable AGRI Guidelines (see the CZ comment on the draft AGRI Guidelines) were allowed under the future AGRI Guidelines, a disproportionate situation would arise where aid schemes notified in the form of a block exemption under ABER would have a shorter period for possible adaptation to the conditions of the new Regulation compared to the aid notified under the AGRI Guidelines.

**On Annex I to ABER:**

- **On Annex I Art. 1:** The definition of an enterprise is incomplete and the following text should be added to the provision: *“An enterprise is also a natural person not doing business but earning income from rent/lease. An enterprise is also a natural person not doing business who holds majority of shares or stocks in an entity and at the same time controls that entity by interfering directly or indirectly in its management.”*
- **On Annex I Art. 3(3):** We believe that the provision *“Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.”* shall be further specified, namely as follows:
  - It should be added who is understood to be a natural person and a group of natural persons acting jointly – this shall be specified from the perspective of natural persons doing business and natural persons not doing business, and it is also necessary to define the term “family ties” (close, larger family).
  - The definition of the “*same relevant market*” should be added.
- **On Annex I Art. 4:** An important condition regarding the assessment as a consequence of the so-called exogenous change, i.e. the change in the ownership structure of the undertaking, shall be added.
- **On Annex I Art. 5:** The definition of the staff headcount should be added – cumulative (non-)inclusion of the same person in multiple enterprises (1 person = max. 1 annual work unit). We also suggest considering whether to clearly state when counting of the links ends – e.g.



the Judgment in case of K Chimica Srl, when the applicant – linked enterprise – partner enterprise/end of counting.

### **Formal comments and comments regarding the translation of ABER into the Czech language:**

- We recommend aligning the use of the phrases “*subsidised services*”, “*in kind aid*” or “*aid shall not involve direct payments to the beneficiaries*”. We believe that the meaning is the same and it would help make the interpretation of the text unambiguous if only the term “***subsidised services***” as laid down in Art. 2(53) of the draft ABER is used as it is the case in the submitted draft AGRI Guidelines.
- **On Art. 1(4)(a) and recital (12) in the Preamble:** In order to align the condition for an outstanding recovery order with its wording in the other established rules and regulations (AGRI and FISH Guidelines) we request to specify in the Czech version that it concerns an **outstanding** recovery order (the translation should be thus: “***doposud neuhrazený příkaz k navrácení podpory***”).
- **On Art. 2(33):** In the Czech version of the draft ABER, in the wording of the definition of the term “*marketing of agricultural products*” the words “*zemědělských produktů*” (“*of agricultural products*”) shall be added after the words “...se považuje za uvádění...” (“is considered as marketing”) so that the Czech translation corresponds to the other language versions.
- **On Art. 2(36):** We request that the natural disaster of “*floods*” be translated into the Czech language as “***povodně***”, not as “*záplavy*” which is the term used here. This term shall also be corrected in the form included in Annex II to the ABER, in the Type of natural disaster. In the Czech Republic, these two terms have different meaning. The term “*záplava*” is defined as the formation of a consistent body of water which for a certain period of time stands or flows at the given place and can be caused also by other sources than water courses, e.g. by rainfall or snowmelt, when the soil is unable to absorb water quickly enough and water finds its own runoff. Whereas “*povodeň*” means inundation of small or larger territorial units by water from water courses or dams overflowing their banks or causing their failure.
- **On Art. 8(7):** The provision refers to aid for investments aimed at the restoration of agricultural production potential as referred to in Article 14(3), point (e). However, this numbering no longer corresponds to the new ABER (the numbering is most likely the relic of the currently applicable ABER). It should therefore be replaced with a reference to Article 13(3), point (e).
- **On Art. 23(4):** We request that in the Czech version the word “*organizování*” is replaced with the word “*pořádání*”, as it is the case in paragraph 2, point (a) of this Article.
- **On Art 24(1):** In the Czech version, the word “*náhraně*” should be corrected to “*náhradě*”.
- **On Art. 24(9):** The negative wording of the condition in the opening sentence “*Podpora se sníží o 50 %, pokud není poskytnuta příjemcům, kteří uzavřeli pojištění...*” (“Aid shall be reduced by 50 % if it is **not** granted to beneficiaries who have taken out insurance...”) is



illogical. Therefore, we recommend rewording of the sentence as follows: „*Podpora se sníží o 50 %, pokud **je** poskytnuta příjemcům, kteří **neuzavřeli** pojištění...*“, (“Aid shall be reduced by 50 % unless granted to beneficiaries who have not taken out insurance...”) as in point 359 of the draft AGRI Guidelines.

- **On Art. 28(2):** We request that the word “*chráněného*” (“protected”) is added, which is missing in the Czech translation of the draft ABER: “*Členský stát musí prokázat přímou příčinnou souvislost mezi vzniklou škodou a chováním **chráněného** zvířete.*“ (“The Member State shall establish a direct causal link between the damage suffered and the behaviour of the protected animal.”).

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- Finally, **we would appreciate to extend EC platform “eWiki” for agricultural State aid rules.**