



Ref. SEKIBU

Den 18. marts 2022

Ref.: 22-0140-000005

## **Written contribution from Denmark on drafts for new ABER and AGRI Guidelines**

DK welcomes the opportunity to provide comments on drafts for new ABER and AGRI Guidelines. We have the following comments that we hope the Commission will take into consideration:

### **Preamble 12/ABER – outstanding recovery**

According to preamble 12, “the Commission should ensure that authorized aid does not adversely affect trading conditions to an extent that is contrary to the general interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market should be excluded from the scope of this Regulation. However, it is important to act rapidly in the context of compensation aid in risk and crisis situations, such as aid to make good the damage caused by natural disasters or plant pests and aid for the costs of prevention, control and eradication of animal diseases. Therefore, the exclusion from aid should not apply in such situations.”

DK proposes to add a reference to Article 25 in Article 1, (3)(d)(a)(i), and to include the corresponding considerations in the AGRI Guidelines point (25).

### **Preamble 39/ABER - SME and large undertakings**

According to preamble 39 “it is also appropriate to consider that agriculture and forestry are sectors specifically exposed to adverse climatic events, animal diseases, plant pests and damages caused by protected animals. Experience shows that these sectors are hit extraordinarily by such events and that farmers and foresters suffer considerable damage from these events. Aid measures to make good such damages are therefore considered to be a suitable tool to help undertakings to recover from such damages and, thus, to remain in business and in that way to ensure the development of economic activities in those sectors.”

In addition DK wishes to emphasize that Union legislation in the area of health and food safety are applicable for all undertakings, i.e. SME's as well as large undertakings, as the aims of prevention, control and eradication of animal diseases are a common concern in EU regardless the size of the undertaking concerned. In that respect the exclusion of large companies in ABER is inconsistent.

In order to make the aid measures concerning aid to make good the damages caused by animal diseases a truly suitable tool to help undertakings recover from the damages, DK proposes to adapt the ABER accordingly and hence to include large undertakings as beneficiaries as far as aid for the costs of the prevention, control, and eradication of animal diseases are concerned.

#### **Article 1/ABER – scope of the ABER**

**A.** According to Article 1(a)(i) the categories of aid in Articles 13-14, 17, 22 and 24-29 only apply to SMEs active in primary agricultural production. According to the definitions set out in Article 2 “primary agricultural production” means the production of products of the soil and of stock farming, listed in annex I to the Treaty, without performing any further operation changing the nature of such products.

Hence, the criteria “stock farming” is essential when defining the scope of e.g. the beneficiary of aid for the costs of the prevention, control and eradication of animal diseases. The definition of the term “stock farming” is also crucial in order to distinguish between the scope of ABER and GBER concerning beneficiaries active in agricultural production.

To our knowledge, there is no established definition of the term “stock farming” in EU-legislation available.

We propose a definition of the term “stock farming” in ABER.

**B.** In Article 1(a)(ii) a new term is introduced: “non-agricultural activities in rural areas”. The term is not defined in Article 2.

We propose a definition of the term “non-agricultural activities in rural areas” in ABER.

#### **Article 1(5)(g)(ii)/ABER – Undertaking in difficulty**

DK is concerned that the condition is preventing or even counterproductive for the adherence of the Animal Health Law (Regulation 429/2016) and, therefore, a hindrance to an effective eradication of critical animal diseases.

#### **Article 9(1)(c)/ABER – threshold of EUR 10.000**

DK has noticed that the threshold for reporting aid awarding has been significantly lowered from EUR 60.000 to EUR 10.000 for beneficiaries active in the primary agricultural production. We find that the limit of EUR 10.000 for reporting aid award too low as this will de facto increase our

administrative burden. We propose that the current threshold is maintained.

#### **List of animal diseases, Article 25(3)/ABER & Guidelines point (367)**

The scope of animal diseases are not aligned in the ABER and the guidelines. In addition, the Danish version is not aligned with the English version.

The listed animal diseases referred to in ABER, article 25(3): Regulation (EU) 2016/429, Annex III of Regulation (EU) 2021/690 or the list established by OIE differs from the diseases referred to in point (367) of the Guidelines: article 5 (1) of Regulation (EU) 2016/429, the list of zoonoses laid down in Annex III of Regulation (EU) 2021/690 and the list established by OIE. The current drafts implies that the scope of the eligible animal diseases in ABER are wider than the scope of the Guidelines. It is unclear whether this difference in scope is intentional.

We also request that it be clarified whether the eligible animal diseases must be listed in Regulation (EU) 2016/429, Annex III of Regulation (EU) 2021/690 *and* the list established by OIE? In the Danish version of the draft ABER, it is not cumulative, whereas in the English version it is a criterion that the animal diseases are referred to in both the regulations and the list of OIE.

Same clarification is requested concerning the Guidelines.

#### **Other animal diseases/emerging diseases, Article 25(4)/ABER & Guidelines point (368)**

It is proposed to enlarge the state aid rules in favour of emerging animal diseases. Hence, the scope of article 25 in the ABER is enlarged with “other animal diseases” than those referred to in Regulation (EU) 2016/429, in Annex III of Regulation (EU) 2021/690 and list of OIE and the scope of the Guidelines are enlarged with “emerging diseases, which meet the criteria laid down in Article 6(2) of Regulation (EU) 2016/429”.

According to the above referred the scope of “emerging diseases” in ABER and the guidelines are not aligned. Whereas “other animal” are eligible according to ABER, the Guidelines are only applicable to “emerging diseases, which meet the criteria laid down in article 6 (2) of Regulation (EU) 2016/429” (point 368). We have difficulties seeing whether this difference is intentional and if so, we ask for further clarification on this matter in the forthcoming draft. If not, we propose that ABER and Guidelines are aligned.

We also kindly request that it is clarified how the beneficiaries can meet the requirements of insurance or contributions to mutual funds, when no insurance coverage or mutual funds are available or accredited in the MS concerned (ABER, Article 25(4) (b), and point (368) (b) in the Guidelines). It is unclear whether MS, where no insurance or mutual funds are

available, are excluded from awarding aid to make good the damage caused by animal diseases.

**Article 33 (7) and Article 36 (2)/ABER – native or non-native species in forestry**

Article 33(7) reads:

*Aid shall not be granted for planting the following trees:*

- a) trees for short rotation coppicing;*
- b) Christmas trees;*
- c) fast growing trees for energy production;*
- d) species non-native to the area, save where support is provided in the framework of the CAP Strategic Plan.*

Furthermore, Article 36(2) of the draft Commission Regulation reads:

*[...] Species non-native to the area shall be excluded, save where support is provided in the framework of the CAP Strategic Plan.*

DK notes that by only supporting species native to the area, the following activities will be excluded from support:

- Adjustment or preparation of forests for projected climate change. One climate change adaptation strategy could be planting tree species which are adapted to e.g. a Southern European climate at our latitude in expectation of a warmer climate. Such tree species would most likely not be species native to the area.
- Plantation of tree species with a high growth rate in order to increase CO<sub>2</sub> uptake. For instance, the majority of coniferous trees are non-native to Denmark but are common in Danish forests. Coniferous trees generally have a high growth rate and a fast CO<sub>2</sub> uptake. In granting State aid for species non-native to the area, a requirement of a percentage of species native to the area intermixed with non-native species, to limit the possibility of exclusive plantation of species non-native to the area.

The wording of the Regulation is quite restrictive in relation to the possibility of politically promoting aforementioned agendas. Instead, we propose an open-ended wording, as is the case in the draft AGRI Guidelines, which reads:

*(503) The following minimum environmental requirements apply in the context of the afforestation and creation of woodland:*

*[...]*

*b) the selection of species, varieties, ecotypes and provenances of trees must take account of the need for resilience to climate change and to natural disasters and the pedologic and hydrologic condition of the area concerned, as well as of the potential invasive character of the species under local conditions as defined by Member States. [...]*

DK notes that the reason behind this discrepancy in the wording of ABER and the Guidelines is unclear. We also suggest including in the ABER the

possibility of local assessments of which tree species are locally adapted, including the potential invasive nature of such species, but not necessarily, whether they are native or non-native species.

### **General remarks on ABER and AGRI Guidelines:**

#### *Support of the green transition*

DK requests that it be considered whether the new rules and guidelines are sufficient to support the green transition, especially Green Deal. If a state aid approval under the different set of rules is requested to initiate schemes supporting the green transition, it seems difficult if MS cannot initiate measures without distinguishing between different beneficiaries and different set of rules. DK proposes to insert a provision corresponding to article 17(1)(b) in regulation 1305/2013 in the suggestions. Also more specific provisions on carbon farming are welcome.

#### *Description of interventions in the CAP-plan*

In the explanatory note p. 3 the following is said: "The revised State aid rules therefore propose a general compatibility presumption clause for rural development interventions included in the strategic plans, for which a State aid cover is required." The current RDP-rules require that a number of elements to be described in details in the LDP program such as: the rate of support, conditions of support and obligations. It is still unclear to us how detailed the descriptions in the CAP-plan must be to comply with ABER or Guidelines. We ask for further guidance on this matter.