



STATE AID GUIDANCE RELATED TO THE EIP FOR AGRICULTURAL PRODUCTIVITY AND SUSTAINABILITY

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Programming period 2014-2020

This guidance does not represent a binding legal interpretation of the EU rules. It is therefore essentially non-binding in nature and complements the related legal acts. Considerations contained in this document are without prejudice to any further position taken by the Commission acting as a collegiate body or to any future judgement of the European Court of Justice, which later alone is competent to hand down legally binding interpretations of Union law.

1. WHAT IS STATE AID

The notion of State aid is an objective and legal concept defined directly by the Treaty in Article 107(1) TFEU as follows: "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods in so far as it affects trade between Member States*". This concept is further clarified via the interpretation by the Court of Justice of the European Union.¹ Any public support (under an aid scheme or individual cases) fulfilling that definition constitutes State aid and in such cases the substantive and procedural State aid rules should be complied with. This means that prior to granting such support, approval by the European Commission under Article 108(3) of the Treaty is required (following the regular State aid notification procedure), except where such support is exempted under a block exemption regulation or complies with a de minimis regulation.

¹ Please see for further details, the draft Communication from the Commission on Draft Commission Notice on the notion of State aid pursuant to Article 107(1) TFEU", available at: http://ec.europa.eu/competition/consultations/2014_state_aid_notion/draft_guidance_en.pdf

2. STATE AID AND EIP-AGRI PROJECTS FUNDED BY THE EADR

The following sections provide guidance on **when EAFRD funded projects by EIP Operational Groups (funded under art.35 Reg. (EU) 1305/2013)** could be exempt from State aid control and when it is mandatory to request for State aid clearance.

In order to be eligible for support from the EAFRD under EIP co-operation, Operational Groups must comply with rural development rules/ policies as well as State aid rules. In practical terms, this means that even when the co-operation measure allows for total flexibility in terms of support rates for costs that cannot be covered by other rural development measures² (most prominently investments), there may indeed be limits related to state aid rules (for example related to eligible costs or support rates). Subsequently, such conditions stemming from the State aid framework must be respected.

Summing up compliance requirements for EIP co-operation measure:



2.1. Cases where support can be considered as non-aid (limited)

Where an EIP Operational Group works on an innovation or development project, which does not give the participants any economic advantage or where no good or service is marketed, it may be a case of non-aid. This is because the concept of "economic activity" or "advantage" may not be met. In this case, the activities of the EIP operational groups can be considered as non-aid and therefore exempted from State aid control³.

It is the managing authority, which grants the EAFRD support to the Operational Group, which will assess whether support for a given operation can qualify as non-aid. In order to achieve legal certainty and avoid the potential consequences of unlawful and illegal aid, managing authorities are advised to notify such operations considered as non-aid measures

² Article 35(6) second paragraph of R 1305/2013 lays down : "Where support is paid as a global amount and the project implemented is of a type covered under another measure of this Regulation, the relevant maximum amount or rate of support shall apply."

³ Please note that the Commission have been developing a guidance document on the notion of State aid which will give possible examples what may be considered non-aid : http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

to the Commission before putting them into effect. The Commission will then conclude whether this is a case of non-aid or State aid (within the meaning of TFEU 107).

Many EIP projects will be subject to State aid rules (Articles 107-109 TFEU), which means that the conditions laid down in the applicable State aid rules (eligibility conditions, aid intensities, etc.) and the applicable legal procedures must be respected. There are, however, a number of exceptions which may be triggered by the agricultural nature of some EIP projects. These are described in the following section.

2.2. Cases where State Aid rules do not apply

According to Article 42 TFEU, the provisions of the Chapter of the Treaty relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council. On the basis of this Article, the Legislator stated in Article 81(2) of Regulation (EU) No 1305/2013 that "Articles 107, 108 and 109 TFEU shall not apply to payments made by Member States pursuant to, and in conformity with, this Regulation, [...] within the scope of Article 42 TFEU".

As regards aid for cooperation in the agricultural sector, some guidance on the scope of Article 42 TFEU can be drawn from the Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020⁴. According to the conditions set out in the Guidelines,⁵ aid for cooperation falls within the scope of Article 42 TFEU if it benefits only the agricultural sector. However, it is inherent to the nature of cooperation that it also involves actors that are not active in the agricultural sector. Hence, aid for cooperation measures granted pursuant to, and in conformity with, Regulation (EU) No 1305/2013 may enter the scope of Article 42 TFEU – and therefore not be subject to State aid rules – provided that the measure has been set up for the sole benefit of the agricultural sector.

Although the assessment of the applicability of State aid rules should be done on a case-by-case basis, in principle, the above-mentioned condition is met in the following cases:

- 1) when the cooperation project concerns exclusively the improvement of the production of or trade in agricultural products; or
- 2) when the cooperation project concerns the creation/improvement of a good or service which is used exclusively in the agricultural activities of agricultural holdings.

Where an operational group will carry out the types of activities described in the following two sections, the start-up support for their activities does not require a State aid clearance.

⁴ OJ C 204, 1.7.

⁵ See in particular points 16-17, 21, 23 and 313 et s. of the Guidelines.

2.2.1. *The cooperation project concerns exclusively the improvement of the production of or trade in agricultural products*

Agricultural products means the products listed in Annex I to the Treaty.

This principle can be illustrated by a number of cases simplified for the purpose of this guidance:

Example: Optimization of direct selling of farm products to restaurants/shops

Project aiming at improving the logistics for the marketing of Annex I products of 5 farms in one region, involving five farmers, a research institute specialised in logistic, a facilitator and a few interested restaurants. Together they want to develop the best route and an IT tool to improve the speed of sale to these restaurants/shops.

Condition to benefit from exemption from State aid control: Where non-Annex I products are also involved in the project, the EIP project needs State aid cover.

Example: Regional alternative plant oils

Optimisation of the cultivation of specific oil crops, oil production, quality assurance and marketing of vegetable oil.

This can only be exempted from State aid control if both the oil crop and the processed vegetable oil constitute Annex I product.

Example: Recovery of protein crops

Project aiming at examining the peeling of Faba beans in order to increase the protein content, the amino-acid content and the digestibility. The project is searching for solutions to process larger amounts, which is interesting for mills, thus a mill operator is also involved as a partner of the operational group. Farmers involved in the cooperation test various production practices that may influence the peeling characteristic.

As the further processing of Faba beans still constitute Annex I product, the fact that a mill operator is involved in the project is irrelevant as the operation itself concerns Annex I product

Example: Integrated climate farming

In order to develop a strategy for sustainable plant production on sandy soils, a trial will be put in place on parcels of an already existing agro-forestry system which in itself combines agricultural production with wood production. While the wood is sold on the market as standard practice, the EIP project will test several location-specific crops rotations and various farming measures related to tillage, nitrogen provision, management of wild herbs, etc.

Agro-forestry systems are borderlines on farming and forestry activities. Therefore, the State aid clearance depends on the emphasis of the project, whether it targets the production of agricultural product on the already existing agro-forestry system or more wood production. Live tree production itself concerns Annex I product. However, if the project works with wood production for the market, there is always need for State aid clearance under forestry rules.

2.2.2. *The cooperation project concerns the creation/improvement of a good or service which is used exclusively in the agricultural activities of agricultural holdings*

This could for instance be cases where renewable energy is produced by farmers/group of farmers for their own consumption (in other words: not for the market) or where infrastructural investments are carried out for the local interest of agricultural holdings. In such cases, there is no need for State aid clearance as it is considered to benefit the agricultural sector.

EIP operations co-financed by EAFRD can benefit from this approach, even if the concerned products are non-Annex I products. However, it is a requirement that the benefit of the Operational Group's project are restricted to the agricultural holdings involved and the support rates of rural development measures as set in Annex II are respected.

This principle can be illustrated by a number of cases:

Example: Creation of a database

A project with several partners, including a private company, will develop a calculation tool for agricultural emission evaluation of farms. The database will be used to give free individual advice to farmers, for example on climate change related issues.

Example: Model farm for innovative energy production

The project works to create a system where the movement of cattle generates energy for the use of the agricultural holding only. The system could involve the development of motion sensing tags that collect physical energy of the steps of the cow, reporting devices, and ICT programmes.

Note: The energy produced by the project should only be used at the farm (no production for the energy market).

If the farmer sells the energy produced to his neighbour, State aid rules apply.

Example: Energy from biomass farm level projects

a) The project would develop a system for producing energy from renewable sources, such as biomass and manure, for exclusive use of those agricultural holdings participating in the project. 9 farmers get together supplying the farm of 10th participant in the project, as the 10th participant already has a biogas plant on his holding. Project aim: to test optimal output from various input mix. The output is used only on the agricultural holdings involved, including farm households.

b) The project would develop a system for producing energy from biomass and manure for the exclusive use of those agricultural holdings participating in the project. 10 farmers get together and bring the supply materials from their holdings to develop an optimal output product for the exclusive use of their own farms. They construct on one of the holdings a small plant with a capacity supplying energy for the self-consumption of the farms and their household involved in the project.

Note: where the energy is produced for the energy market, and not exclusively for the holdings involved in the co-operation or for their farm's households, State aid rules do apply.

Example: Water saving at farm level:

An operational group composed of a research institute specialised in irrigation, an irrigation consortium, a number of farmers and a training body carries out experimental tests on farms. The subsequent data processing and the study parameters will be included in a software tool. The software tool is to be given to farmers participating in the operational groups for improving their irrigation performance.

Promotion of compost distribution in the field

Various fertilisation compost amounts are examined in view of comparing their impacts on soil fertility, reduction of nitrogen leaching and erosion on agricultural land. 10 farmers and a research institute work together in the Operational Group.

As the project benefits agricultural production on the holding of participating farmers, it can be exempted from State aid control.

2.3. Cases where State aid clearance is needed for EIP projects

Where EAFRD support for EIP Operational Groups and their activities constitute State aid within the meaning of Article 107 TFEU, and no exemption from State aid control is provided for, the procedural and substantive State aid rules should be complied with. This is the case where the projects of the Operational Groups concern non-Annex I products such as for instance forestry activities and support for the forest sector.

- *Where the operational group works together for converting farm waste into adhesives, which is not an Annex I product, there is always a need for a State aid clearance.*
- *Where operation group developed new technologies to process wood, prior to industrial processing, there is always a need for State aid clearance.*

Where projects fall under State aid control, there is always a need for State aid clearance for the support for setting up the operation groups carrying out those activities. Where the operational group carries out a project covering both agricultural and non-agricultural aspects, their setting up costs can be covered in compliance with the conditions of general de minimis regulation¹.

3. OVERVIEW ON STATE AID PROCEDURES AND APPLICABLE INSTRUMENTS

Depending on the aim and the conditions of the support, State Aid clearance may be obtained by ensuring compliance with the substantive (eligible costs, aid intensities, incentive effect, notification obligation of specific projects over certain size, etc.) and procedural rules of the applicable European State aid instruments. Where Member States do not comply with the de general de minimis regulation, they have to transmit their support scheme via the SANI system for block exemption or notify the support scheme, to the European Commission for its approval prior to putting the scheme into effect. Block exempted schemes are published by the Commission. Notified support schemes will be assessed by the European Commission in line with the applicable State aid rules.

Member State authorities could establish comprehensive ex-ante State aid scheme, either via block exempting various measures supported by EAFRD (and their national co-financing part) or via notifying a general scheme to the European Commission, within which framework they will support the individual projects implemented by the operational groups.

When notifying/block exempting EAFRD support schemes under State aid rules, Member States can consider notifying or block exempting the budget of the EIP operation together with clearing the budget of the rural development support measures. They can indicate that

the projects by the EIP Operational Groups are eligible for support in line with the same conditions as notified to the Commission or as published in the case of block exempted scheme.

The public budget (EAFRD, national co-financing and any additional national top ups) will have to be indicated in the State aid form sent for the European Commission. Any essential modifications on the content of the approved or published State aid scheme will need further amendment; implicating the same State aid clearance procedure. This does not apply to cases, where the difference in the budget for the aid scheme (approved by the Commission or published in the case of the block exempted scheme) is not more than 20%.

Example: Member State authority notifies to the Commission for State aid approval the rural development programme measure investments in forestry technologies and in the processing, marketing and mobilising forest products. In the notification form, they include also the budget and beneficiaries of EIP projects for similar operations ensuring that the eligible costs of the EIP projects (for example for mobilising forest products), aid intensities and other conditions equally fulfil the same conditions as required under State aid rules for such types of rural development measure.

Where support for an EIP operation constitutes State aid, the potentially applicable European State aid instruments may be the following, depending on the case:

- General block exemption regulation,⁶
- Framework for state aid for research and development and innovation,⁷
- European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020⁸,
- Commission Regulation (EU) No 702/2014 of 25 June 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 Union,⁹
- Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020¹⁰

⁶ Commission Regulation (EU) No 651/2014, OJ L 187, 26.6.2014, p1

⁷ OJ C 198, 27.6.2014, p1

⁸ OJ C 204, 1.7.2014, p. 1–97

⁹ OJ L 193, 1.7.2014, p. 1

¹⁰ OJ C 200, 28.6.2014, p. 1–55

➤ General de minimis regulation¹¹.

Example:

Member State authority block exempt under Article 25 R 651/2014, an EIP operation group activity which tests innovative approaches to tackling climate change challenges. The experimental actions concerns mixing tree species which can be more resilient and sustainable to the recently occurring plant pests migrating from the South and at the same time takes into account the unfavourable dry conditions of the macro-region. The EIP operational group is composed of 5 forest owners, a forest management group and a research body.

The eligible costs can cover

- (a) personnel costs (researchers and other supporting staff to the extent employed on the project);
- (b) costs of instruments and equipment to the extent and for the period used for the project, taking into account depreciation costs to the life of the project;
- (c) costs of land, including the commercial transfer
- (d) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
- (e) operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project.

The aid intensity for the project can go up to 50% of the eligible costs, where all beneficiaries are medium size enterprises and the results of the project are widely disseminated through conferences, publication, open access, repositories.

¹¹ Commission Regulation 1407/2013

Example:

If the forestry project mentioned in the previous box were to be notified and approved under Section 2.6 of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, different eligible costs and aid intensities would apply:

- 100% of eligible costs for the feasibility studies and for forest management plan,
- 100% of running costs of co-operation,
- 100% of the direct costs of investments in afforestation and investments in improving the resilience and environmental value of forests.

Example of a notified EIP project under Section 3.10 of European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020- Promotion of compost distribution in the field

10 farmers, a research institute and an enterprise which will promote the project outcome for fertiliser industry, work together in the EIP Operational Group. The project will test plant coal (biochar, charcoal) as fertilizer.

The project takes into account recent experiments on carbon sequestration to produce negative carbon dioxide emissions and uses biochar for particular purposes, especially as a soil amendment.

Cost of studies, costs of animation on the area, the running cost of the co-operation and cost for promotion activities can be covered up to 50% of eligible costs.

Where compliance is ensured with the general de minimis regulation, the total amount of any de minimis aid to a single undertaking over any period of three fiscal years should not exceed the amount of EUR 200 000. As for the participants in the EIP Operational Groups, the amount of EUR 200 000/ 3 fiscal years can count at the level of beneficiaries, provided that the participants are not single undertakings¹².

¹² Single undertaking within the meaning of Art.2(2) Regulation 1407/2013 : ‘Single undertaking’ includes, for the purposes of this Regulation, all enterprises having at least one of the following relationships with each other:

- (a) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;
- (b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
- (d) one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.

Enterprises having any of the relationships referred to in points (a) to (d) of the first subparagraph through one or more other enterprises shall also be considered to be a single undertaking.