



Agriculture and forestry sectors: European Commission consults on revised State aid block exemption, particularly for aid to SMEs

The European Commission has recently **published for consultation** a draft block exemption regulation for financial support provided by Member States to the agriculture and forestry sectors and for rural areas. This will replace the current Agricultural Block Exemption Regulation (ABER). The revised exemption will be particularly relevant to small and medium-sized enterprises active in the agricultural sector, whether at the primary production, processing or marketing levels, including self-employed farmers, family businesses, partnerships and cooperatives.

The Commission proposes to widen the scope of the exemption and introduce new categories of aid that can be provided without the need to seek approval from the Commission. This reflects the forthcoming new Rural Development Regulation and reforms to the Common Agriculture Policy. The revised ABER is part of wider reforms to the State aid regime, in particular to the General Block Exemption Regulation (GBER), which we considered in our **May** and **September** briefings.

In this briefing, we discuss the key changes which are expected to be adopted by early next year and to take effect on 1 July 2014. Should you wish to discuss any of the proposed changes, or need assistance in providing a response to the Commission's consultation, please contact one of our State aid team or your usual Burgess Salmon contact.

Background

The current ABER (which entered into force in 2007) allows a range of support measures in favour of small and medium sized enterprises (SMEs) active in the agricultural products sector, without the need for prior notification to and approval by the Commission. Since 2007, over 1,770 measures have been implemented by Member States under the ABER. In 2012 alone, over €1.25 billion of aid was provided under the ABER, representing 14% of all agricultural aid. As part of the modernisation of the EU State aid rules generally, the

Commission has proposed improving and expanding the revised ABER.

Scope of the new ABER

The new ABER will apply to the following categories of aid:

- aid to SMEs active in the primary production, processing or marketing of agricultural products
- aid to make good damage caused by natural disasters in the agricultural sector
- aid for conservation of cultural and natural heritage on agricultural land
- aid for forestry that is co-financed by the European Agricultural Fund for Rural Development

The ABER contains specific rules for the different categories of aid, including the maximum aid that can be granted, both in absolute terms and as a proportion of the total costs of the project, as well as the precise costs and activities that can be funded.

These are often complex and detailed and vary significantly for different categories of aid. The Commission has proposed the following revised thresholds above which aid must be notified to the Commissions, although the maximum permitted aid for many categories of aid is often significantly lower:

- aid for investments in agricultural undertakings: €400,000 per undertaking over any period of three fiscal years, or €500,000 if the undertaking is situated in a less developed region
- aid for investments in connection with processing and marketing of agricultural products: €7.5 million per undertaking per project
- aid for infrastructure investments in the forestry sector: €7.5 million per project
- aid for investment in processing agricultural products into non-agricultural products or the production of cotton: €7.5 million per project

The ABER will apply only to “transparent” aid, such as grants, interest rate subsidies, loans, guarantees, fiscal measures and repayable advances. It does not apply to capital injections and risk capital measures.

The ABER will also apply only to aid that has an “incentive effect” and is proportionate. In general, aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for aid before work on the project or activity has started.

Extension of aid to SMEs in the agriculture sector

Under the new ABER, SMEs are enterprises with fewer than 250 employees and which have turnover below €50 million and/or a balance sheet below €43 million. This will include many self-employed farmers, family businesses, partnerships and cooperatives.

More aid to SMEs active in primary production, processing and marketing of agricultural products will be brought within the ABER. Some categories of aid may be provided only to SMEs active in primary production; in others, aid may additionally be provided to SMEs active in processing or marketing. The new ABER will cover the following categories of aid to SMEs, which are particularly focused on investment aid, aid for business start-ups, aid to facilitate business development, and risk and crisis management aid:

- **aid for investment in agricultural holdings linked to primary production**, to improve their performance and sustainability, including the acquisition, leasing or improvement of land and buildings and the purchase or lease of equipment
- **aid for investment in the relocation of farm buildings**, to pursue an objective of public interest, such as improving the quality of life or environment of rural settlements
- **aid for investment connected to processing and marketing of agricultural products**, including the acquisition, leasing or improvement of land and buildings and the purchase or lease of equipment
- **start-up aid for young farmers and development of small farms**
- **start-up aid for producer groups and organisations**, where these have been recognised by the Member State after submission of a business plan. However, this is not available to co-operatives and similar organisations

- **aid for participation by producers in quality schemes** established under EU law (for wine, agricultural products and foodstuffs, organic products, spirit drinks and aromatised wine) or national law
- **aid for knowledge transfer and information actions**, including vocational training and skills acquisition
- **aid for advisory services** to improve economic and environmental performance, and climate resilience of agricultural holdings
- **aid for farm labour replacement services**
- **aid for promotional measures**, such as trade fairs and awareness raising
- **aid to compensate for adverse climatic events** which have led to losses of plants, animals or farm buildings
- **aid for combating diseases and pests**, to prevent or eradicate plant or animal diseases or pest infestations and to compensate losses caused by them
- **aid to the livestock sector**, including for genetic quality or yield testing of livestock, removal of fallen stock, destruction of carcasses and certain BSE related tests
- **aid for the payment of insurance premiums** for primary producers to cover losses from natural disasters, adverse climatic events, diseases and pest infestations
- **aid for R&D projects in the agricultural sector**

Other categories of aid: natural disasters, forestry, cultural and natural heritage

The new ABER will also apply to a number of other categories of aid, which are not limited to SMEs, including: to make good losses directly caused by natural disasters (including material damage to property and resulting lost income); and for the conservation of tangible cultural and natural heritage located on an agricultural holding.

The new ABER will also apply to aid for various forestry projects that are co-financed by the EAFRD and to additional national financing for such co-financed projects. These are not limited to SMEs. Aid may be provided for, amongst other categories: afforestation and creation of woodland; agroforestry systems; preventing and restoring damage caused by fire, natural disasters, adverse climatic events, diseases, pests and catastrophic events; improving the resilience and environmental value of forest ecosystems; Natura 2000 payments to private

forests; forest conservation; knowledge transfer and advisory services; investments in the development, modernisation or adaptation of forestry; and investments in forestry technologies and in processing, mobilising and marketing of forestry products.

Aid to SMEs in rural areas for non-agricultural production

The ABER will also cover certain aid to SMEs in rural areas that are not active in the agricultural sector, but which process agricultural products into non-agricultural products or produce cotton. These projects must be co-financed by the EAFRD. Aid can be provided for investments in land, buildings or equipment.

Aid can also be provided for business start-ups, advisory services and knowledge transfer.

Next steps

The Commission intends the new ABER to enter into force on 1 July 2014. It has invited comments on the draft ABER by 19 November 2013, before it adopts the new regulation in early 2014. For a link to the consultation, please click **here**. The closing date for responses is 19 November 2013.

Should you wish to discuss the Commission's proposals, or require assistance in responding to the consultation, please contact one of the members of our State aid team.

Burges Salmon Competition Unit

Burges Salmon's Competition Unit is one of the United Kingdom's leading Competition and State aid practices. We undertake the full range of high quality and challenging work. We have significant experience of applying competition and State aid law in the agricultural, forestry and food and drink sectors. In the State aid field, our lawyers advise public bodies, beneficiaries and third parties on the application of the State aid rules to specific projects, the application of block exemption regulations, notification and complaint proceedings before the European Commission and litigation before the EU courts in Luxembourg. This includes the funding of major projects, the rescue and restructuring of companies in difficulty and the provision of aid during the financial crisis. In the competition field, we advise on all aspects of UK and EU competition law including mergers, competition and regulatory investigations, compliance programmes and training, appeals and litigation in the UK and EU courts, procurement and related litigation, and the application of competition law to commercial agreements and strategies.

In 2012, we were awarded *The Lawyer's* "Competition and Regulatory Team of the Year" award for our representation of the Co-operative Group in its successful appeal to the Competition Appeal Tribunal against the Office of Fair Trading's Competition Act decision in *Tobacco*. We were runner-up for this award for 2013 for our successful defence of a substantial follow-on damages action brought against Cardiff Bus. Our work on these projects was also shortlisted for other awards organised by *Global Competition Review* and *Legal Week*.

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