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EU LAW AND STATE AIDS IN AGRICULTURE

PRÁVO EÚ A ŠTÁTNE PODPORY V POĽNOHOSPODÁRSTVE

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I. Introduction

From the very beginning of the Single European Market the definition of an active competition policy of the European Communities played a crucial role in its shaping and further development. Among the competition rules we can distinguish between rules for undertakings and rules for States. The latter ones aim at the definition of a legal framework within that the Member States can legally implement their national measures (prevailing of a protectionist nature) for the support of their markets and subjects participating in it. Supportive measures called generally as state aids[(1)] were always the core element of these interventions. By opening of the national markets and their joining into a single one – the EU internal market, these interventions had to receive necessarily a firm “jacket” in the form of binding legal rules preventing the states to restrict and distort the competitive environment on the EU internal market. The basic legal Framework governing State aid control is set out in Articles 108 and 108 of the Treaty on the Functioning of the European Union (TFEU), of which the substantive rules are contained in article 107. The structure of this article means that the State Aid control instructs the EU Commission to prohibit activities that could harm competition unless they are sufficiently good grounds to permit these activities

Unlike the most of other provisions of the EU competition law, the State Aid rules are addressed to the governments and aim at regulation of their conduct rather than the conduct of undertakings. On the other side, this gives to the State

(1) The main rationale for including State aid control as part of the EEC Establishing Treaty was to avoid State support for a national champion triggering retaliatory support from another Member State which could ultimately result in a „subsidy race“ which might undermine the creation and functioning of the internal market (see W. Mederer, N. Pesaresi and M. Van Hoof , EU Competition Law – Volume IV: State Aid , Claeys & Casteels, Leuven 2008. Pp. 26 – 28.

Abstract (EN)

Regulation of state aids form an integral part of the EU law from its very origin. Various special rules on provision of state aids were created as secondary law rules by the EU Council and EU Commission. They distinguish between horizontal and sectoral state aid. Horizontal aid concerns schemes potentially benefiting all undertakings regardless of their industry. Sectoral aid is targeted at specific industries or sectors. The paper deals with the legal framework of state aid rules in the agriculture sector. As first, it discusses the extent to which the State aid rules have been generally applied in the agriculture sector by the EU Council under Article 36 of the Treaty, together with the extent to which they have been specifically applied under the regulations which govern both the .common organizations of the market and rural development. Following chapter analyses the agriculture *de minimis* Regulation, which sets out circumstances in which agricultural aid is sufficiently small that Article 107/1 TFEU will be not applied. Thereafter the paper focuses on the provisions of the Agriculture Block Exemption Regulation and, finally, on agricultural aid that falls to be notified to the Commission as being authorized under the Agriculture Guidelines.

Keywords (EN)

state aids in sector of agriculture, *de minimis* Regulation, block exemptions in agriculture, Agriculture Guidelines

Abstrakt (SK)

Právna úprava štátnych podpôr tvorí od vzniku práva EÚ jeho neoddeliteľnú súčasť. Radou EÚ a Európskou Komisiou bolo prijatých niekoľko pravidiel určených výlučne na poskytovanie štátnych podpôr, napríklad prostredníctvom sekundárnych prameňov práva EÚ. Tieto normy rozlišujú medzi horizontálnymi a sektorovými štátnymi podporami. Horizontálne podpory sa týkajú tých schém, ktoré sú potenciálnou výhodou pre všetky podniky v štáte alebo regióne, bez ohľadu na ich odvetvové začlenenie. Sektorová podpora je zameraná na konkrétne odvetvie alebo sektor ekonomiky. Príspevok sa zaoberá právnym rámcom pravidiel pre štátne podpory v poľnohospodárskom sektore. Úvod je zameraný na vymedzenie rozsahu, v rámci ktorého sú zahrnuté všeobecné ustanovenia o štátnych podporách aplikované na poľnohospodárstvo na základe článku 36 SFEU a zároveň miera, v akej sú aplikované špecifické nariadenia regulujúce organizáciu trhu s poľnohospodárskymi produktmi a rozvoj vidieka. Nasledujúca kapitola analyzuje nariadenia o podporách *de minimis* v poľnohospodárstve, ktoré stanovujú podmienky pre tie prípady, kedy je poľnohospodárska podpora natoľko nízka, že sa na ňu nevzťahuje článok 107 SFEU. Príspevok sa ďalej zameriava na ustanovenia nariadenia Rady EU o blokových výnimkách pre poľnohospodárstvo a v závere na tie poľnohospodárske podpory, ktoré nemusia byť notifikované Komisiou, keďže sú prípustné podľa ustanovení pokynov Komisie pre poľnohospodársky sektor.

Kľúčové slová (SK)

štátne podpory v poľnohospodárskom sektore, podpory *de minimis*, blokové výnimky v poľnohospodárstve, pokyny Komisie pre poľnohospodárstvo

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Aid a very significant political dimension to the discourse between the two main actors of the EU (governments and EU Commission). It is only underlined by the fact that the range of benefits that the Commission can consider in the context of balancing harms of the State aid measures against potential benefits of the aid when assessing whether a concrete State subsidy should benefit from a derogation from the general prohibition of State Aids. Such a derogation means that the permitted measure is regarded as compatible with the EU internal market.(2)

In Practice however, the Commission has limited discretion to approve State Aid through a mixture of secondary legislation and soft law in the form of detailed guidelines. On one hand, this comprehensive set of rules makes it easier for the Commission to resist political pressure in individual cases by committing itself to particular tests and standards. On other hand, using of the soft law and secondary legislation allows the Commission to handle an increasing workload more efficiently and provides greater certainty to Member States when planning their actions.

Among the quite numerous secondary rules we can quote the 2008 General Block Exemption Regulation (GBER) providing a package of measures with the objective to achieve better targeted State Aid, a more refined economic approach, more efficient and transparent procedures and shared responsibility between Member States and the Commission.(3)

In assessing the State aid measures, the Commission distinguishes between horizontal and sectoral State aid. Horizontal aid concerns schemes potentially benefiting all undertakings regardless of their industry. Sectoral aid is targeted at specific industries or sectors and, accordingly, on companies in those sectors.(4)

II. Methodology (Materials and methods)

The paper analyses the overall framework of state aid rules in the agriculture sectors and. In Chapter IV. bellow we discuss the extent to which the State aid rules have been generally applied in the agriculture sector by the Council under Article 36 of the Treaty, together with the extent to which they have been specifically applied under the regulations which govern both the .common organizations of the market and rural development. Chapter V. analyses the Agriculture de minimis Regulation, which sets out circumstances in which agricultural aid is sufficiently small that Article107/1 is deemed not to apply. Chapter VI. Compares the provisions of the Agriculture Block Exemption Regulation with the general TFEU rules on the state aids. Finally, agricultural aid that falls to be notified to the Commission as it may be authorized under the Agriculture Guidelines will be discussed in chapter VII.

III. State aids in Agriculture

The agriculture (and fisheries) sectors have always been subject to special treatment under the Treaty, set out in Title II of the TFEU (Articles 38 to 44).2 This reflects the special status granted to farmers in the Union, the justification for which has developed over the years. The special treatment of this sector extends, in principle, to the rules on competition. Article 42 TFEU therefore provides that the Treaty rules on competition ‚shall apply to production of and trade in agricultural products only to the extent determined by the Council ... account being taken of the objectives of the common agricultural policy.(5) In order to discuss and analyse the extent to which the State aid rules have in fact been applied to the agriculture sector by secondary legislation, it is necessary first to understand the basic principles underlying the common agricultural policy (CAP). The objectives of the CAP are described in Article 39, para. 1 TFEU as being to

- increase agricultural productivity by promoting technical progress and ensuring the rational development of agricultural production, as well as the optimum utilization of the factors of production, in particular labor;
- ensure a fair standard of living for the agricultural community, in particular by increasing individual earnings;
- stabilize markets;
- assure the availability of supplies and
- ensure that supplies reach consumers at reasonable prices.

Where these objectives conflict it is for the EU institutions to identify such conflicts and, where necessary, grant one or more objectives temporary priority in order to satisfy the demands of economic factors or conditions.

A further important milestone of the CAP is the recognition of regional differences within the EU. Article 39 para. 2 TFEU provides that such differences must be taken into account in working out the common agricultural policy and its application. This general principle has been particularly relevant in the State aid rules, which frequently differentiate according to the region in that the aid is to be granted.

Following substantial reforms under Agenda 2000(6) the regulatory framework of the CAP is divided into two pillars:

1. price support and market management (with key elements being the Single Common Market Organization and the regime providing direct payments for farmers)
2. rural development.

Specific State aid rules apply under both pillars.

The Single Common Market Organization (‚Single CMO‘) has in principle applied since 1 January 2008. It brings under

(2) The range of benefits that the Commission can consider in this context is very broad and gives the Commission a very broad discretion on deciding whether the benefits of an aid outweigh the harm to competition

(3) State Aid Action Plan: Less and better targeted State aid: a roadmap for state aid reform 2005-2009, COM (2005) 107 final, para 18

(4) Cf. Barents, R, Directory of EC Case Law on state aids. Kluwer Law International, 2008. If , in 1992, sectoral aid accounted for 48% of EU State aid notified to the Commission, then in 2009 this number has dropped to 15% only, excluding agriculture, fisheries and transport (see data available on the EU-Commission website)

(5) See also Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 (‘Agriculture Guidelines’) [2006] OJ C319/1, para I: ‘Recourse to State aid can only be justified if it respects the objectives of this policy‘

(6) Agenda 2000: for a stronger and wider Union, COM (97) 2000

one umbrella the 21 common organizations of the market which were previously in force.[7] These included, in particular, the common organizations of the market in beef and veal, milk and milk products, sheep meat and goat meat, cereals and the sugar sector. This amalgamation of earlier measures constitutes a central plank in the ongoing process of simplifying common agricultural policy legislation.[8] However, certain products are still unregulated by any common organization of the market, such as potatoes (other than starch potatoes). In accordance with the art. 34 para. 2 TFEU, the Single CMO governs, in particular, the regulation of prices, aids for production and marketing of the various products, storage and carryover arrangements and common machinery for stabilizing imports or exports.

The regime which provides direct payments for farmers was substantially reformed by the mid-term review of the common agricultural policy, agreed on 26 June 2003.[9] Most direct payments are now comprised within a single farm payments[10]. This is understood to be separated from production, in that no specific form of production, or indeed production at all, is required for its receipt. All direct payments (not only the single farm payment) are, nevertheless, dependent upon the observance of three conditions:

1. farmers must respect statutory management requirements in the areas of public, animal and plant health, environment and animal welfare;
2. farmers must maintain all agricultural land in good agricultural and environmental condition;
3. Member States are to ensure maintenance of the land under permanent pasture.[11]

The ‚second pillar' of the common agricultural policy – rural development – was introduced by the Agenda 2000 reforms, with earlier measures brought together under a single umbrella[12]. The current legislative framework is provided by the Rural Development Regulation.[13] This implements the objectives of rural development through four ‚Axes'.

A. improving the competitiveness of the agricultural and forestry sector:
B. improving the environment and the countryside;
C. quality of life in rural areas and diversification of the rural economy;
D. “Leader”[14] initiative related to local rural development action groups.

The Rural Development Regulation covers the programming period from 1 January 2007 to 31 December 2013, and central to its operation is the principle of subsidiarity. Thus, within its legislative framework, Member States are responsible for implementing their rural development programmes at the appropriate territorial level, according to their own institutional arrangements. Strategic guidelines are, however, provided at the EU level and national strategy plans must ensure that Community aid for rural development is consistent with these guidelines.[15]

IV. Application of State aid rules in the agriculture sector

As set out above, under Article 42 TFEU the Treaty rules on competition apply to production and trade in agricultural products only to the extent determined by the Council. In the case of State aids, the determination has been made that, as a general rule, Article 108 para. 1 and the first sentence of Article 108 para. 3 of the TFEU shall apply to aid granted for production or trade in the products listed in Annex I to the Treaty.[16] That means that, under Article108/1, the Commission will keep under constant review the systems of aid existing in Member State s and shall propose any appropriate measures required by the progressive development or by the functioning of the common market; and under the first sentence of Article 108/3 the Commission must be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. This is a relatively light degree of control by comparison with the full provisions of Article 108 applying to other sectors.

In addition, the State aid rules were applied in full to the individual common organizations of the market, and this approach was continued on enactment of the Council Regulation (EC) 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (‚Single CMO Regulation'). Thus, Article 180 of the Single CMO Regulation stipulates that, save as otherwise provided in the Single CMO Regulation, Articles 107, 108 and109 of the Treaty shall apply to the production of and trade in the following products: cereals, rice, sugar, dried fodder, seeds, hops, olive oil and table olives, flax and hemp, bananas, live plants and products of floriculture, raw

(7) Council Regulation (EC) 1234/2007 establishing a common organization of agricultural markets and on specific provisions for certain agricultural products (‘Single CMO Regulation') [2007] 0J L299/1.

(8) See eg. Communication from the Commission on simplification and better regulation for the common agricultural policy, COM(2005) 509; and Single CMO Regulation.

(9) See M Cardwell, The European Model of. Agriculture (Oxford University Press, 2004), pp 159 – 74 or J.A. McMahon, EU Agricultural Law (Oxford University Press, 2007), pp 250 – 8.

(10) Rules are set by Council Regulation (EC) 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (2003). 0J L270/l.

(11) Different rules apply for the ‘old' and ‘new' EU Member States.

(12) Council Regulation (EC) 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (1999) 0J L160/80.

(13) Council Regulation (EC) 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (‘Rural Development Regulation') [2005] OJ L277/1.

(14) Abbreviation for the French title ‘Liaison entre actions de developpement de l'economie rurale'.

(15) See Council Decision 200.61 144/EC on Community strategic guidelines for rural development (programming period 2007 to 2013) (2006) OJ L55/20.

(16) Council Regulation (EC) 1184/2006 applying certain rules of competition to the production of and trade in, agricultural products [2006] OJ L214/7.

tobacco, beef and veal, milk and milk products, pigmeat, sheepmeat and goatwear, eggs, poultrywear, ethyl alcohol of agricultural origin, apiculture products, and silkworms, as well as a miscellany of ‚other products' specified in Part XXI of Annex I to the Single CMO Regulation. Specific provisions apply for the milk and milk products sector.(art. 181) and specific national provisions include authority (for Member States which have reduced their sugar quota by more than 50% from the level fixed on 20 February 2006) to grant temporary State aid during the period for which transitional aid for beet growers is being paid under the European Community direct payments regime (art. 182). In addition, by provisions outside the Single CMO Regulation, the State aid rules are applied to the fruit and vegetable and wine sectors.[17]

Where the State aid rules are applied to a common organization of the market, but the regulations concerned contain specific provisions or derogations, it is established that the State aid rules remain subordinate to the specific provisions or derogations. More generally, the Commission may not approve State aid which is incompatible with the provisions governing a common organization of the marker, or which would interfere with its proper functioning.

As indicated above, certain products are still unregulated by any common organization of the market. Nevertheless, under the general rule these are still subject to Article 108/1 and the first sentence of Article108/3 of the TFEU. The Commission will also take into account the risk of aid for such products benefiting the production of products subject to a common organization of the market. The danger of such cross-subsidization is considered especially great in the potato sector (comp. the Agriculture Guidelines, para 21).

As with the first pillar of the common agricultural policy, the State aid rules are applied by specific provision to the second pillar. Thus, the Rural Development Regulation stipulates that, save as otherwise provided, Articles 107, 108 and 109 of the Treaty shall apply to support for rural development by Member States (art. 88 para 1 of the Regulation). As a general rule, rural development expenditure is subject to co-financing by the European Agricultural Fund for Rural Development (EAFRD) with the balance being provided by the Member States. Article108/1 of the Rural Development Regulation expressly confirms that the State aid rules are not applicable to the financial contributions provided by Member States as a counterpart of Community support. Accordingly, the State aid rules are not applied to expenditure by Member States necessary co co-finance rural development measures.

The Annex to the Rural Development Regulation sets out the maximum aid intensity for individual measures (for example, setting up support for young farmers is limited to € 55,000). Detailed provisions govern the circumstances in which these maximum aid intensities may be exceeded. Thus, while aid for the modernization of agricultural holdings is not to exceed the percentages or amounts set out in the Annex, this prohibition is relaxed in the case of investments undertaken preferentially in the public interest and related co the conservation of traditional landscape shaped by agricultural and forestry activities or to the relocation of farm buildings, investments relating to the protection and improvement of the environment, investments relating to the improvement of the hygiene conditions of livestock undertakings and animal welfare, and those with regard to occupational safety at the workplace. (Rural development Regulation, art. 88 para. 2) Specific rules also govern rural development measures relating to compensation for natural handicaps in mountain areas and in other areas with handicaps (art. 34 of the Regulation), agri-environmental and animal welfare commitments (art. 39 and 40), and meeting standards based on both the Union and national legislation in the fields of environmental protection, public health, animal and plant health, animal welfare and occupational safety (art. 31).

Any State aid intended to provide additional financing for rural development for which an EU support is granted must be notified by Member State s and approved by the Commission as part ofits rural development programming (art. 89). In these circumstances, the procedure under the Article108/3 THEU does not apply.[18]

V. The rule for *de minimis* state aids in agriculture

Even where the State aid rules have been applied to the agriculture sector, aid measures will not require notification to the Commission if they fall within the *de minimis* rules[19]. In such cases, Article107/1 TFEU shall not apply. The general *de minimis* regime is governed by Commission Regulation of 2006.[20] This covers aid for the processing and marketing of agricultural products. The de minimis rules for the primary production of agricultural products are, however, set out in the Agriculture de minimis Regulation[21]. This reflects the fact that even low levels of State aid in the agricultural sector could fulfil the criteria of Article107/1 of the Treaty.

The scope of the Agriculture de minimis Regulation includes aids granted to undertakings in the agricultural production sector, subject to four exceptions:

[17] Council Regulation (EC) 1182/2007 laying down specific rules as regards the fruit and vegetable sector [2007] OJ L273/1, Article 43; and Council Regulation (EC) 479/2008 on the common organization of the marker in wine [2008] OJ LI48/1, Article 127. This separate application of the State aid rules was necessitated by the fact that, on establishment of the Single CMO, the fruit and vegetable and wine sectors were subject to ongoing reform.

[18] Where State aid has to be notified to the Commission, notifications are proceeded by the Directorate General for Agriculture and Rural Development (DG Agri).

[19] The *de minimis* rule was introduced by the Commission in order to exempt small aid amounts. It sets a ceiling below which aid is deemed not to fall within the scope of Article 107(1) TFEU and is therefore exempt from the notification requirement laid down in Article 108(3) TFEU.

[20] Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid. (2006) OJ L 379/5.

[21] Commission Regulation (EC) 1535/2007 on the application of Articles 107 and 108 of the Treaty to *de minimis* aid in the sector of agricultural production (Agriculture de minimis Regulation') [2007] OJ L337/35.

a) aid whose amount is fixed on the basis of price or quantity of products put on the market,
b) aid to export-related activities,
c) aid contingent on the use of domestic over imported goods, and
d) aid granted to undertakings in difficulty.

For the purposes of the Regulation, undertakings in the sector of agricultural production must be active in the primary production of agricultural products, and agricultural products are defined as the products listed in Annex I to the Treaty, with the exception of fisheries and aquaculture products.

The Agriculture de minimis Regulation exempts *de minimis* aid granted to any one undertaking up to 7,500 € over any period of three fiscal years. Where the total amount of aid exceeds that ceiling, then all the aid is subject to the State aid rules. In addition, a ceiling is imposed at Member State level: the cumulative amount of *de minimis* aid granted per Member State to undertakings in the agricultural production sector over any three fiscal years is limited to the value set out in the Annex to the Regulation. Further exemption can only be conferred where it is possible to calculate precisely the gross grant equivalent of the aid *ex ante*, without need to undertake a risk assessment[22].

VI. Agriculture Block Exemption Regulation

Even if an aid is granted in amounts exceeding the relevant *de minimis* threshold, it may still be exempted from the notification duty provided that it satisfies the conditions of one of the State aid block exemptions. All of the exemptions contained in the new General Block Exemption Regulation (thereinafter ‚GBER')[23], including the exemptions for aid to small and medium enterprises (SMEs), apply to aid for the processing and marketing of agricultural products. The GBER also applies to certain horizontal aids favouring activities in the primary production of agricultural products, namely: training aid, aid in the form of risk capital, aid for research and development, environmental aid, and aid for disadvantaged and disabled workers (art. 1 para. 3(b) of the Regulation. However, most aid for SMEs active in the production of agricultural products is governed by the specific Agriculture Block Exemption Regulation[24].

The scope of the Agriculture Block Exemption Regulation covers only transparent aid granted to small and medium-sized agricultural holdings (farms) active in the primary production of agricultural products. It does not apply to aid granted for expenditure linked to the processing and marketing of agricultural products as well as to aid to export-related activities or aid contingent upon the use of domestic over imported goods. For these purposes the definition of SMEs is the same as that far the general regime implemented under the GBER. Agricultural products are specifically defined as those listed in Annex I to the Treaty, with the exception of fishery and aquaculture products, cork products, and products intended to imitate or substitute milk and milk products (Art. 2 para. 2 of the Regulation). Where the conditions for exemption are satisfied, then the aid is deemed compatible with the common market within the meaning of Article 107 para. 3 TFEU, and may be implemented without notification to the Commission (art. 3, para 1 to 3). Otherwise, the aid must be notified and will be assessed in accordance with the criteria laid down by the Agriculture Guidelines.

The Agriculture Block Exemption Regulation applies to 14 categories of aid: investment in agricultural holdings, conservation of traditional landscapes and buildings, relocation of farm buildings in the public interest, aid for setting up of young farmers, aid for early retirement, aid for producer groups, aid in respect of animal and plant diseases and pest infestations, aid for losses due to adverse climatic events, aid towards the payment of insurance premiums, aid for land reparcelling, aid to encourage the production of quality agricultural products, the provision of technical support in the agricultural sector, support for the livestock sector and aid under certain Council Regulations.

Aid may be granted for investment in agricultural holdings within the EU for primary production of agricultural products (except the manufacture of products which imitate or substitute for milk and milk products (art. 4 paras. 1 and 10). The gross aid intensity must not exceed percentages which vary according to the measure and region. Thus, it must not exceed 50% of eligible investments in less-favoured areas or in areas designated as eligible for natural handicap payments to farmers in mountain; areas, payments to farmers in areas with handicaps (other than mountain areas) and Natura 2000 payments and payments linked to the Water Framework Directive (art. 4 para 2/a/)[25] In other regions, the gross aid intensity must not exceed 40%. However, in the case of investments made by young farmers within five years of setting up, a 10% increment is applied, so that the maximum percentages are raised respectively to 60% and 50%. Specific provisions apply where investments result in extra costs relating to the protection and improvement of the environment, the improvement of hygiene conditions of livestock enterprises or the welfare of farm animals. As has been seen, such measures are central to the vision of a ‚multifunctional' model of European agriculture and they attract heightened support. Thus, it is 75% in less-favored areas, and elsewhere the ceiling is 60% (art, 4 para. 2 (d) and (e)). Such investment must go beyond the minimum EU requirements in force or be made to comply with newly introduced

[22] For further details see Janků, M., Mikušová, J.: Veřejné podpory v soutěžním právu EU. C.H. Beck, 2012, Praha, pp. 56 - 68.

[23] Commission Regulation (EC) 800/2008 declaring certain categories of aid compatible with the common market in application of Articles107 and108 of the Treaty (General Block Exemption Regulation) ('GBER') (2008) OJ L214/3.

[24] Commission Regulation (EC) 1857/2006 on the application of Articles 107 and 108 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products ('Agriculture Block Exemption Regulation') (2006) OJ L358/3.

[25] For the purpose of this paper, all these areas will be collectively referred to as 'less-favoured areas'.

minimum standards.[26]

Other conditions set for agricultural holdings include:

- investments must pursue the reduction of production costs, improvement and re-deployment of production, improvement of quality, or the preservation and improvement of the natural environment or the improvement of hygiene conditions or animal welfare standards;
- aid may not be granted to enterprises in difficulty; and
- aid must not be granted in contravention of any prohibitions or restrictions laid down in Council regulations establishing common organizations of the market.(Art. 4, paras. 3 to 6)

Further, aid must not, as a rule, be limited to specific agricultural products, and it must not be granted in respect of the purchase of production rights, animals and annual plants, the planting of annual plants, drainage works or irrigation equipment and irrigation works, unless this leads to a reduction of previous water use by at least 25%, and simple replacement investments. On the other hand, aid may be granted for the purchase of land (other than land for construction purposes) reaching up to 10% of the eligible expenses of the investment. The maximum amount for individual enterprise is limited to 400,000 € over any period of three fiscal years, except where the enterprise is situated in a less-favoured area, in which case the maximum amount increases up to 500,000 €.

Aid may be granted for up to 100% of the real costs incurred for investments or capital works intended for the conservation of non-productive heritage features located on agricultural holdings, such as archaeological or historical features. Such costs may include reasonable compensation for the work undertaken by the farmer himself, or his workers, up to 10,000 € per year. 78 Again the gross aid intensity varies depending on whether or not the farm is situated within a less-favoured area. If the farm is situated in a less-favoured area, the ceiling is 75%, while otherwise the ceiling is 60%. In either case the investment should not entail any increase in production capacity. If there is an increase in production capacity, the aid rates applicable to investments in agricultural holdings are to apply as regards eligible expenses resulting from undertaking the relevant work using normal contemporary materials. Additional aid may be granted at a rate of up to 100% to cover the extra costs incurred by using traditional materials necessary to maintain the heritage features of the building.

Aid may be gran ted for up to 100% of the actual costs incurred where a relocation in the public interest consists of the dismantling, removal and re-erection of existing facilities. Where the relocation results in the farmer benefiting from more modern facilities, he must contribute a percentage of the increase in value of the facilities concerned after relocation, this percentage being at least 60% or, in less-favoured areas, at least 50%. On the other hand, if the beneficiary is a young farmer, the contribution is reduced respectively to 55% or 45%. The same differentiated contribution rates (in respect of both less-favoured areas and young farmers) apply where the relocation results in an increase in production capacity.

The Agriculture Block Exemption Regulation covers both aid for setting up young farmers and aid for early retirement. In the case of aid for early retirement, it is expressly provided that the cessation of commercial farming activities must be permanent and definitive, and in both cases the detailed criteria set out in the Rural Development Regulation must be satisfied.

The detailed criteria governing aid for setting up young farmers require that the beneficiaries be less than 40 years old, and must be setting up for the first time on an agricultural holding as head of the holding.(Rural Development Regulation, Article 22 para 1a). They must also possess adequate occupational skills and submit a business plan for the development of their farming activities. The maximum amount of support is 55,000 € (art. 22 para. 2 of the Regulation).

The detailed criteria governing aid for early retirement are complex. Aid is available not only to farmers who decide to stop their agricultural activity for the purpose of transferring their holding to other farmers, but also to farm workers who decide to stop all farm work definitively upon the transfer of the holding. In the case of transferors, they must be not less than 55 years old but not yet of normal retirement age at the time of the transfer or not more than ten years younger than the normal retirement age in the Member State concerned at the time of the transfer. They must also stop all commercial farming activity definitively and have practiced farming for the ten years preceding the transfer. The transferee must either succeed the transferor by setting up as a young farmer or be a farmer of less than 50 years old or a private law body and take over the agricultural holding to increase the size of their holding. In the case of farm workers, the criteria similarly require that they must be not less than 55 years old, but not yet of normal retirement age or not more than ten years younger than the normal retirement age in the Member State concerned. In addition, they must have devoted at least half of their working time to farm work during the preceding five years, either as a farm helper or farm worker; they must have worked on the agricultural holding for at least the equivalent of two years full-time during the four-year period preceding the early retirement of the transferor; and they must belong to a social security scheme. The maximum duration of early retirement support is 15 years and it shall not continue, in any event, beyond the seventieth birthday of the transferor and the normal retirement age of the farm worker. The maximum amount of support is € 18,000 per transferor per year, subject to a total amount of 180,000 € or 4,000 € per worker per year, subject to a total amount of 40,000 € (art. 23 para 6 of the regulation).

A further exempt category is start-up aid for the constitution of producer groups or producer associations. Provided that they are entitled to financial assistance under the legislation of their own Member State, this covers aid to producer groups or producer associations involved in the production of agricultural products and/or associations of producers responsible for the supervision of the use of geographical indications and designations of origin or quality marks in con-

[26] This is consistent with the 'provider gets' principle: see eg. Commission Communication : Directions towards sustainable agriculture [1999] OJ C173/2, 17.

formity with the EU law.[27] The internal rules of the producer group or association must require producers to remain members for at least three years and to give at least 12 months' notice of withdrawal. They must also provide common rules on production, relating, in particular, to such matters as product quality or the use of organic or other practices designed to protect the environment. The agreements concluded in the framework of the producer group or association must, in any event, comply fully with all relevant provisions of competition law and, in particular, Articles 101 and 102 of the TFEU The total amount of aid granted to a producer group or association must not exceed 400,000 € (see Agriculture Block Exemption Regulation, art. 9 para.7).

Aid to compensate farmers for the costs of prevention and eradication of animal or plant diseases or pest infestations falls under the Agriculture Block Exemption Regulation, provided that the gross intensity does not exceed 100% and the aid is granted in kind by means of subsidized services which do not involve direct payments of money to producers (art. 10 para 1 of the Regulation). Exemption is also conferred on aid to compensate farmers for losses caused by animal or plant diseases or pest infestations. In this case, there is a specific requirement that compensation must be calculated only: in relation to the market value of animals killed or plants destroyed by the disease or pest infestation or of animals killed or plants destroyed by public order as part of a compulsory public prevention or eradication program; and in relation to in co me losses due to quarantine obligations and difficulties in restocking or replanting. As with aid for the costs of prevention and eradication of animal or plant diseases or pest infestations, up to 100% compensation may be paid but the aid must be limited to losses caused by diseases for which an outbreak has been formally recognized by public authorities. (Art. 10, Para 6) In all cases payments must be made as part of a public program at the Union, national or regional level for the prevention, control or eradication of the disease or pest concerned.

The Agriculture Block Exemption Regulation extends to aid that compensates farmers for losses of plants or animals or farm buildings caused by adverse climatic events which can be assimilated to natural disasters (art. 11 of the Regulation). This may not exceed 80% (or 90% in less-favoured areas) of the reduction in income from the sale of the product resulting from the adverse climatic event. The same intensities apply to damage suffered by farm buildings and farm equipment. The adverse climatic event which can be assimilated to a natural disaster must be formally recognized as such by public authorities. As from 1 January 2010, the amount of compensation offered has been reduced by 50%, unless the farmer has taken our insurance covering at least 50% of his average annual production or production-related income and the statistically most frequent climatic risks in the Member State or region concerned. As from 1 January 2011, aid for losses caused by drought is been paid only by a Member State which has fully implemented the Water Framework Directive in respect of agriculture and which ensures that the costs of water services provided to agriculture are recovered through an adequate contribution from the sector[28].

Among further types of aid covered by the Regulation we find

- Aid towards the payment of insurance premiums
- Aid for land reparcelling
- Aid to encourage the production of quality agricultural products
- Aid for the provision of technical support in the agricultural sector, including. i.a. aid for the education and training of farmers and farm workers and farm replacement services
- Support for the livestock sector

The various aid ceilings apply whether or not the support for the aided project or activity is financed entirely by the Member State or is partly financed by the Community. Aid exempted is not to be cumulated with other State aid, financial contributions provided by the Member States or financial contributions by the Community in relation to the same eligible costs, if such accumulation would result in an aid intensity exceeding the maximum laid down by the Agriculture Block Exemption Regulation. Further, aid exempted by the Agriculture Block Exemption Regulation is not to be cumulated with *de minimis* support in respect of the same eligible expenditure or investment project, if such accumulation would again result in an aid intensity exceeding the maximum laid down by the Agriculture Block Exemption Regulation.

VII. Agriculture Guidelines

Where aid is not covered by the GBER, the Agriculture Block Exemption Regulation or the de minimis rules, it must be notified to the Commission and, consequently, is assessed under the Agriculture Guidelines.[29] Unlike the Agriculture Block Exemption Regulation and the Agriculture de minimis Regulation, the Agriculture Guidelines extend not just to the production of agricultural products, but also to the processing and marketing of such products. The Agriculture Guidelines also contain rules for the forestry sector, including aid for the afforestation of agricultural land. The Guidelines do not, however, apply to aid in the fisheries and aquaculture sector.

It is a general rule of Guidelines that the Commission may not approve any State aid which is incompatible with the provisions governing common organization of the market or which would interfere with its proper functioning. Nor will the Commission authorize aid to export-related activities or aid contingent on the use of domestic over imported goods. Finally, since environmental protection requirements have been integrated into both agricultural and competition

[27] The shift to quality production has become a central plank of common agricultural policy reform, conforming which public expectations: see eg. Commission Europeans, agriculture and the common agricultural policy: Special Eurobarometer 294 (Brussels, 2008).

[28] Water Framework Directive, Directive 2000/60/EC of the European Parliament and of the Council [200OJ OJ L327/1.

[29] Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 (Agriculture Guidelines') [200G] OJ C319/1.

policy of the EU, particular attention is to be given to environmental issues in future aid notifications, even where the aid schemes are not specifically concerned with environmental issues (Guidelines, paras 11 and 12).

The Agriculture Guidelines contain four main sections. The first three are directed to the agricultural sector, being respectively rural development measures, risk and crisis management and other types of aid. The fourth section is directed to the forestry sector.

7.1 Rural development measures

Aid for investment in agricultural holdings is compatible with Article 107 para. 3(c) TFEU if it is linked to the primary production of agricultural products and meets all the conditions of Article 4 of the Agriculture Block Exemption Regulation. Aid may also be granted in respect of specific products and in respect of drainage works or irrigation equipment and irrigation works which do not lead to a reduction of previous water use of 25%. The maximum amounts per individual enterprise as set out in the Agriculture Block Exemption Regulation do not apply. Similarly, provided that it meets the relevant conditions of the Agriculture Block Exemption Regulation, aid may also be declared compatible if it is for the conservation of traditional landscapes and buildings, for the relocation of farm buildings in the public interest and for investments resulting in extra costs relating to the protection and improvement of the environment, the improvement of hygiene conditions of livestock enterprises or the welfare of farm animals. Investments which result in an increase in production capacity are excluded. Further, no aid is to be authorized for investments to comply with existing Community or national standards, except in the case of young farmers as part of their business plan, when the maximum aid intensity is 50% (or 60% in less favoured areas).

Notwithstanding the promotion of diversification under the Rural Development Regulation, aids granted to promote the diversification of primary producers into other activities connected with the processing and marketing of agricultural products are to be treated in the same way as aid granted to agricultural processing and marketing firms that are independent of primary producers. Similarly, if the diversified activities are not connected with the production, processing and marketing of agricultural products (such as agri-tourism), they are not covered by the Agriculture Guidelines, and instead continue to be assessed in accordance with the usual principles applicable to the assessment of aids outside the agricultural sector.

In order to be authorized by the Commission, environmental aid schemes in the agricultural sector must give sufficient priority to the elimination of pollution at source and to the correct application of the "polluter pays" principle.[30] In addition, in order to qualify for environmental and animal welfare aid, farmers must meet the ‚cross-compliance' obligations imposed by Regulation 1782/2003 (see Guidelines, para. 49). State aid should not normally be paid simply for respecting these obligations. Aid for agri-environmental or animal welfare commitments may be approved under Article 107 para. 3(c) TFEU if, in particular, it fulfils all the requirements as set out in Articles 39 and 40 respectively of the Rural Development Regulation. For example, as a general rule, the commitments must be undertaken for a period between five and seven years. Aid over and above the amounts fixed in the Annex to the Rural Development Regulation may in principle only be authorized if granted for demonstrated additional costs or income foregone where the case is exceptional (taking into account special circumstances to be duly justified) and where exceptional benefits for environmental protection can be shown. Aid may also be approved under Article 107 para. 3(c) TFEU if it fulfils all the conditions set Out in Article 38 of the Rural Development Regulation (relating to Natura 2000 payments and payments linked to the Water Framework Directive). Otherwise, aid in favour of environmental protection will be examined by the Commission on the basis of the Environmental Aid Guidelines, which the Agriculture Guidelines expressly declare to be applicable to the agriculture sector.

The Commission will approve aid to meet standards under Article107/3(c) EC if, in particular, if fulfils all the conditions set by Articles 31 and 88 para. 5 of the Rural Development Regulation. Article 31 provides support to farmers towards part of the costs incurred and income foregone as a result of compliance with standards in the fields of environmental protection, public health, animal and plant health, animal welfare and occupational safety. The standards must be newly introduced in national legislation implementing the EU law and must impose new obligations or restrictions on farming practice which have a significant impact on typical farm operating costs and concern a significant number of farmers. The detailed rules include a requirement that any such aid must be flat rate, temporary and degressive, granted on an annual basis for a maximum duration of five years from the date that the standard becomes mandatory under the EU law.(Rural Delevlompent Regulation, art. 3). Article 88 para. 5 permits additional aid over and above the maximum amount fixed in the Annex to the Rural Development Regulation (€10,000 per holding) where it helps farmers to comply with national legislation exceeding The EU standards. The additional aid must not, however, cover more than 80 % of the costs incurred and income foregone by farmers. Moreover, taking into account all Union support, the total amount of support must not exceed 12,000 € per holding[31]. Support may only be granted in relation to standards which, if calculated for an average farm of the sector and Member State concerned, can be shown to be the direct cause of an increase in operating costs for the product or products concerned of at least 5% or of an income loss equal to at least 10% of net profits from the products or products. Further, there must be such an increase in operating costs or loss of income for at least 25% of all farms in the sector or subsector in the Member State concerned.

The Agriculture Guidelines also provide for the approval

[30] On the polluter pays prineiple generally see eg de Sadeleer, N.: Environmental principles.from political slogans to legal rules (Oxford University Press, 2002) pp 21-60.

[31] This amount is not to be exceeded over any five-year period in the case of compensation granted for meeting more than one standard.

of aid for other rural development and ancillary measures. These measures include aid for the setting up of young farmers, aid for early retirement or the cessation of farming activities, aid for producer groups (with a focus on ‚srart-up' aids for SMEs, aid for land reparcelling, aid to encourage the production of quality agricultural products to primary producers, and to companies active in the processing and marketing of agricultural products (support being limited to SMEs), the provision of technical support in the agricultural sector (again support being limired to SMEs and aids in the livestock sector (again support being limited to SMEs).

7.2 Risk and crisis management

Good risk and crisis management is understood to be a key tool for a sustainable and competitive agricultural sector in the EU. State aid is considered appropriate for such measures, provided that no undue distortions of competition ensue. The focus, nonetheless, is upon support to those involved in primary production, since companies active in processing and marketing of agricultural products would normally have much greater opportunities to hedge risks.

In the case of all aids to compensate for damage to agricultural production or the means of agricultural production, the Commission may not generally approve proposals submitted more than three years after the occurrence of the event, and aid must not be paid out more than four years following the event. This type of aid is divided into four categories:

1. aid to make good the damage caused by natural disasters or exceptional circumstances,
2. aid to compensate for losses caused by adverse weather conditions,
3. aid for combating animal and plant diseases, and
4. aid towards the payment of insurance premiums.

The first category applies to the whole of the agriculture sector, but the others are confined to support gran ted to primary production,

Further on, the Commission will approve aid for the closing of capacity under Article 107 para. 3(c) TFEU, either in sectors where excess capacity exists or, even if excess capacity does not exist, where the aid is in the interest of the sector as a whole (a condition which can be met for animal or human health, sanitary or environmental reasons). In the former case, the aid for capacity reduetion must be part of a programme for the restructuring of the sector, with defined objectives and a specific timetable. The duration of aid schemes should normally be limited to not more than six months for collecting applications for participation and a further 12 months for actually closing down. Legally binding commitments must be obtained from the beneficiary that the closure is definitive and irreversible and that the beneficiary will not recommence the same activity elsewhere. The commitments must also bind future purchasers of the facility. This type of aid is only open to farmers who have actually been producing and in respect of production capacities that have actually been in constant use for the five years prior to closure. In order to avoid erosion and other negative effects on the environment, open farmland or orchards taken out of production should, as a general rule, be afforested, although, alternatively, it is possible that they may be re-used after 15 years. The amount of aid should be strictly limited to compensation for loss of the value of the assets, together with an incentive payment of up to 20% of that value. Since continuing economic operators in the sector ultimately benefit from closure aid, the sector must provide a cash contribution of at least 50% of the actual public expenditure incurred, except where capacity is closed for health or environmental reasons. If a Member State introduces an aid scheme for closing capacity, it must undertake not to grant aid for new production capacities in the sector for five years following termination of the closure programme.

7.3 Other types of aid

The Agriculture Guidelines also cover other types of aid, in particular aids for employment, aid for research and development and aid for advertising of agricultural products. In the case of aid for advertising of agricultural products, there is again emphasis on ‚added-value' production. Accordingly, the advertising campaign must be earmarked for quality products, Community- recognized denominations (whether protected designations of origin, protected geographical indications or other designations of origin which are protected under the EU legislation) or national or regional quality labels. In the case of national or regional quality labels, the origin of the product may be mentioned, but only as a subsidiary message, so as not to reinforce the preferences of domestic consumers in favour of products from their Member State. The rate of direct aid may not exceed 50%, but where the sector contributes to at least 50% of the costs the aid rate may rise to 100%. Aid for advertising up to 100% is also permitted if generic in character and for the benefit of all producers of the product concerned (although in this case no mention may be made of product origin).

4. Forestry sector

The Agriculture Guidelines depart from the earlier 2000 guidelines in providing a specific policy on aids in the forestry sector. The Commission will approve aid up to 100% under Article107 para. 3(c) TFEU where the Member State can demonstrate that the measures directly contribute to maintaining or restoring ecological, protective and recreational functions of forests, biodiversity and a healthy forest ecosystem. Such measures encompass planting, pruning and felling of trees and other vegetation in forests; maintaining and improving the soil quality in forests and ensuring a balanced and healthy tree growth, preventing, eradicating and treating pests, pest damage and tree diseases; restoration and maintenance of natural pathways, landscape elements and features and the natural habitat for animals; constructing, improving and maintaining forest roads; the costs of information materials and activities; and the purchase of forestry land used or to be used as nature protection areas. Provided that it meets all the conditions laid down in Articles 43 to 49 of the Rural Development Regulation, the Commission may also permit aid for the afforestation of agricultural and non-agricultural land, the establishment of agroforestry systems on agricultural land, Natura 2000 payments, forest-environment payments, restoration of forestry potential and the introduction of prevention actions as well as non-productive investments. The Commission may also authorize aid for the additional costs and income foregone due to the use under voluntary commitments of environmentally friendly forestry technology going beyond the relevant mandatory requirements. Provided that specified conditions in the Agriculture Block Exemption Regulation are fulfilled, authorization may extend to aid for the purchase of forestry land, aid for training forest owners and forest workers and for consultancy services and aid for the setting up of forestry associations.

VIII. Conclusions

Competition is a main driver of economic growth. It plays a crucial role in strengthening the internal market. The maintenance of a system of free and undistorted competition is one of the basic principles of the EU. In respect to State aids the EU competition policy seeks to ensure free competition, an efficient allocation of resources and the unity of the EU market, whilst respecting the international commitments of the EU.

State aid rules in the agricultural sector are based on three different principles:

1. general principles of competition policy.
2. coherence with the EU's common agricultural and rural development policies.
3. compatibility with EU international obligations, in particular the WTO Agreement on Agriculture.

These principles have led to a specific legal regime concerning the state aids rules. The regime is created by legal instruments that have been analysed in our paper:

a) Agricultural de minimis Regulation
b) Agricultural Block Exemption Regulation
c) Community Guidelines for State aid in the agriculture and forestry sector

Specific forms for State aid in the agricultural sector are contained also in the Regulation on notification forms of 2004. All these instruments together create tolls for a specific approach of the Union towards one of the most sensitive areas of the economy of all Member States. They represent a fair compromise between the efforts of Member States' in protecting their farmers' interests and the aims of the EU to minimise the state influence and intrusion to the competition on the internal market.

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