



Brussels,
BW

**EXPLANATORY DOCUMENT CONCERNING THE IMPACT OF THE RURAL
DEVELOPMENT TRANSITIONAL RULES ON CERTAIN STATE AID
ASPECTS OF THE RURAL DEVELOPMENT PROGRAMMES**

1. Introduction

At the meeting of the Rural Development Committee on 20 February 2013, a PP scheme was presented explaining the impact of the transitional rules to be adopted through an amendment of Regulation (EC) No 1974/2006. Several Member States have expressed the wish to receive an explanatory document containing the substance of this PP scheme, which is the subject of this note.

This note examines several cases, and incorporates in each case the impact of the transitional rules on State aid aspects of the Rural Development Programmes.

2. First scenario: the measure in question falls within the scope of the transitional regulation amending Regulation (EC) No 1974/2006 AND relates to the agricultural sector and forestry (Axis 2)

The Guidelines for State aid in the agriculture and forestry sector¹ explicitly provide in Point 189 that "schemes covering State aid for measures that can also benefit from co-financing under Regulation (EC) No 1698/2005 should be limited to the duration of the programming period 2007–2013". This point has been interpreted as allowing the Commission to align the duration of State aid schemes involved with the duration of measures that can be co-financed. Therefore, when the State aid schemes are part of a decision of approval under the Guidelines for State aid in the agriculture and forestry sector for 2007-2013 (i.e. when it is an aid for the agricultural sector or to forestry Axis 2 measures (outside commercial forestry)), their duration can be aligned with the duration of rural development measures, which is extended when the measures are covered by the proposed transitional Regulation. Concretely, this means that two situations may arise:

- Either the top-up or the cofinanced part if it concerns forestry Axis 2, was approved under the guidelines 2007-2013 (under the normal procedure of Rural Development Programmes, namely by the transmission to the Commission of the appropriate fiches or, for forestry Axis 2 measures, by way of a normal notification AND the measure is included in the measures covered by the transitional Regulation. In this case, an extension of the State aid measure may be granted up to 2015 (based on the n +2 rule), as provided by the provisions of the 2007 Guidelines.

¹ Community Guidelines for State aid in the agriculture and forestry sector 2007-2013, OJ, C 319 – 27.12.2006, p.1.

- Either the top-up or the cofinanced part if it concerns axis 2 was not subject to approval and it is a new measure, but it is related to a measure covered by the transitional Regulation. In this case, a notification for new top ups as part of a Rural Development Programme or a normal notification if it concerns forestry Axis 2 measures can be made, covering a period up to 2015, as provided by the 2007 Guidelines.

2. Second scenario: the measure in question falls within the scope of the transitional Regulation amending Regulation (EC) No 1974/2006 AND does NOT concern agriculture and forestry sector (Axis 2)

In this case, it is impossible to use the clause 'duration alignment' under the guidelines for State aid in the agriculture and forestry sector. The normal rules for the duration of State aid schemes therefore apply.

Concretely, this means that it is possible to:

- Make payments in 2014-2015 if the scheme was approved before the end of 2013 under the current conditions for the period 2007-2013. In the State aid field, the date of the granting of aid is crucial (i.e. the date on which the beneficiary can claim a right to obtain aid, e.g. the publication of a legislative instrument or notification of an administrative act) in the field of State aid, while the date of actual payment is irrelevant.
- Notify an extension or a new notification before the end of 2013, with a commitment to adapt the scheme to new State aid rules that will come into force after 2013. Warning: this option is risky and requires the Member States to take the initiative to re-assess the scheme in the light of post-2013 provisions.
- Member States are therefore invited to consult the current amendments made to the rules on State aid for the period 2007-2013. If necessary, and in order to overcome the difficulties of the transition period, the provisions of the applicable *de minimis* Regulation² may be used to cover the period between the end of the previous regime (which expires in 2013) and the post-2013 period, providing time to put the schemes in compliance with the rules on State aid after 2013.

3. Third scenario: the measure in question does not fall within the scope of the transitional regulation amending Regulation (EC) No 1974/2006

In this case, there is of course no question of any extension of the commitments under the rural development programme, given the exclusion from the scope of application of the transitional measures. As for the possibility of granting measures outside the context of rural development, the general rules on State aid apply. Specifically, and regardless of whether a measure relates to agriculture or not, the principles under the second scenario apply *mutatis mutandis*.

² The applicable *de minimis* Regulations until the end of 2013 are from one side Regulation 1535/2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production and from the other side Regulation 1998/2006 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in all other sectors. These Regulations expire on 31 December 2013 and they are going to be replaced by other legislative documents that are on preparation for the moment.

Transitional rules post 2013 – State aid in link with Rural Development measures

Transitional rules and State aid

- Transitional rules allow for the possibility to enter into new commitments under the RD regulation 1698/2005 for 2014-2015, both for annex I and non-annex I activities
- List of measures is foreseen in the transitional rules

How are the State aid measures approved by RD programmes influenced by these transitional rules ?



Approval under agricultural State aid rules (annex I + non-commercial forestry)



Approval under COMP State aid rules

Covered by Transitional regulation

Excluded by transitional regulation

- Prolongation of approved schemes before 2013 is possible under current rules, but no new commitments
- Notification in 2013 + commitment to adapt to new State aid rules in 2014
- But : Risk on the MS, no full State aid clearance after 2013

- New commitments are possible in 2014-2015
- Notification in 2014-2015 under 2007 rules

- No possibility to have new commitments under 2007 State aid rules
- No prolongation possible
- In 2014 :New notification or block exemption under 2014 rules for State aid and RD
- Payments can be continued if commitment before end 2013