

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2019/289

of 19 February 2019

amending Regulation (EU) No 702/2014 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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid ⁽¹⁾, and in particular Article 1(1)(a) and (b) thereof,

Having published a draft of this Regulation in accordance with Article 6 and Article 8(2) of Regulation (EU) 2015/1588 ⁽²⁾,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) Commission Regulation (EU) No 702/2014 ⁽³⁾ declares that certain categories of aid are compatible with the internal market and exempted from the requirement that they must be notified to the Commission before they are granted.
- (2) The State aid rules laid down in Articles 107, 108 and 109 of the Treaty on the Functioning of the European Union ('the Treaty') apply to support provided for under Regulation (EU) No 1305/2013 of the European Parliament and of the Council ⁽⁴⁾, with the exception of payments and additional national financing falling within the scope of Article 42 of the Treaty.
- (3) By virtue of Article 42 of the Treaty, State aid rules thus do not apply to rural development support related to the production, processing and marketing of agricultural products.
- (4) However, State aid rules apply to rural development support for activities which do not fall within the scope of Article 42 of the Treaty, as regards both the part co-financed by the European Agricultural Fund for Rural Development (EAFRD) and the additional national financing.
- (5) The provisions of Regulation (EU) No 702/2014 were therefore aligned with those of Regulation (EU) No 1305/2013 in the context of the latest Union State aid review in 2014, so as to facilitate the State aid procedures applicable to rural development support for the forestry sector and for non-agricultural activities in rural areas.

⁽¹⁾ OJ L 248, 24.9.2015, p. 1.

⁽²⁾ OJ C 421, 21.11.2018, p. 1.

⁽³⁾ 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 (OJ L 193, 1.7.2014, p. 1).

⁽⁴⁾ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

- (6) The alignment of rules between Regulation (EU) No 702/2014 and Regulation (EU) No 1305/2013 is affected by the entry into force on 1 January 2018 of Regulation (EU) 2017/2393 of the European Parliament and of the Council ⁽⁵⁾, which amended some of the provisions of Regulation (EU) No 1305/2013 that are reflected in Regulation (EU) No 702/2014.
- (7) As a result, the conditions for exempting State aid under Articles 32, 33, 35, 38 to 41 and 44 to 48 of Regulation (EU) No 702/2014 no longer fully correspond to the provisions laid down in Regulation (EU) No 1305/2013. It is therefore appropriate to adapt those rules in as far as this is necessary to maintain the possibility to exempt rural development support from notification in the same way as heretofore.
- (8) Article 1(5)(a) and (b) should be aligned to Article 1(4)(a) and (b) of Commission Regulation (EU) No 651/2014 ⁽⁶⁾, as amended by Regulation (EU) 2017/1084 ⁽⁷⁾.
- (9) Regulation (EU) No 702/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 702/2014 is amended as follows:

- (1) in Article 1(5), points (a) and (b) are replaced by the following:
- ‘(a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market;
 - (b) ad hoc aid to an undertaking referred to in point (a)’;
- (2) in Article 6(5), the following point (j) is added:
- ‘(j) aid for the participation of active farmers in quality schemes for cotton and foodstuffs where the conditions laid down in Article 48 are fulfilled’;
- (3) Article 32 is amended as follows:
- (a) in paragraph 8, in the first subparagraph, the introductory wording is replaced by the following:
‘Save where support is provided in the form of financial instruments, aid for afforestation and the creation of woodland related to investment operations shall cover the following eligible costs.’;
 - (b) in paragraph 9, the following second subparagraph is added:
‘The first subparagraph shall not apply to aid which is granted in the form of financial instruments.’;
- (4) Article 33 is amended as follows:
- (a) in paragraph 4, the first subparagraph is replaced by the following:
‘The aid for agroforestry systems shall cover the costs of establishment, regeneration or renovation and an annual premium per hectare.’;
 - (b) in paragraph 5, in the first subparagraph, the introductory wording is replaced by the following:
‘Save where support is provided in the form of financial instruments, the aid for agroforestry systems related to investment operations shall cover the following eligible costs.’;

⁽⁵⁾ Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ L 350, 29.12.2017, p. 15).

⁽⁶⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

⁽⁷⁾ Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs (OJ L 156, 20.6.2017, p. 1).

(c) in paragraph 6, the following second subparagraph is added:

‘The first subparagraph shall not apply to aid which is provided in the form of financial instruments.’;

(d) paragraph 7 is replaced by the following:

‘7. The following costs for establishment, regeneration or renovation of the agroforestry system may be eligible:

- (a) the costs for planting trees, including the costs of the plantation material, the plantation, the storing and the treatments of seedlings with the necessary prevention and protection materials;
- (b) the costs for converting existing forests or other wooded land, including the costs for felling trees, thinning and pruning and protection against grazing animals;
- (c) other costs directly linked to the establishment, regeneration or renovation of an agroforestry system, such as costs for feasibility studies, establishment plan, soil examination, soil preparation and protection;
- (d) the costs of silvopastoral, namely, grazing system watering and protective facilities;
- (e) the costs of the necessary treatment connected to the establishment, regeneration or renovation of an agroforestry system, including watering and cutting;
- (f) the costs for replanting during the first year after the establishment, regeneration or renovation of an agroforestry system.’;

(e) in paragraph 9, the introductory wording is replaced by the following:

‘Member States shall determine the minimum and maximum number of trees per hectare, taking account of the following.’;

(f) in paragraph 11, point (a) is replaced by the following:

‘(a) 80 % of the eligible costs for investment operations and of the costs for establishment, regeneration or renovation referred to in paragraphs 5 and 7; and’;

(5) Article 35 is amended as follows:

(a) in paragraph 5, the following second subparagraph is added:

‘The first subparagraph shall not apply to aid which is provided in the form of financial instruments.’;

(b) in paragraph 6, in the first subparagraph, the introductory wording is replaced by the following:

‘Save where support is provided in the form of financial instruments, the aid shall cover the following eligible costs.’;

(c) in paragraph 7, the first subparagraph is replaced by the following:

‘Save where support is provided in the form of financial instruments, costs other than those referred to in paragraph 6(a) and (b) connected with leasing contracts, such as lessor’s margin, interest refinancing costs, overheads and insurance charges shall not be considered to be eligible costs.’;

(6) Article 38(2) is amended as follows:

(a) in the first subparagraph, the following second sentence is added:

‘Infrastructure installed as a result of demonstration may be used after the operation is completed.’;

(b) the following fourth subparagraph is added:

‘Aid for demonstration projects which is co-financed under the EAFRD or granted as additional national financing to such aid, and which is provided in the form of financial instruments, may cover eligible costs other than those referred to in paragraph 3(b), provided that the costs are fully eligible under Regulation (EU) No 1305/2013 and that the aid is identical to the underlying measure included in the rural development programme approved under that Regulation.’;

(7) in Article 39(4), the following third subparagraph is added:

‘Aid which is co-financed under the EAFRD, or granted as additional national financing to such co-financed aid, may be paid to the Managing Authority referred to in point (a) of Article 65(2) of Regulation (EU) No 1305/2013.’;

(8) Article 40 is amended as follows:

(a) in paragraph 4, the following second subparagraph is added:

‘The first subparagraph shall not apply to aid which is provided in the form of financial instruments.’;

(b) in paragraph 6, the introductory wording is replaced by the following:

‘Save where support is provided in the form of financial instruments, the aid shall cover the following eligible costs.’;

(c) in paragraph 7, the first subparagraph is replaced by the following:

‘Save where support is provided in the form of financial instruments, costs other than those referred to in paragraph 6(a) and (b) connected with leasing contracts, such as lessor’s margin, interest refinancing costs, overheads and insurance charges shall not be considered to be eligible costs.’;

(9) Article 41 is amended as follows:

(a) in paragraph 4, the following second subparagraph is added:

‘The first subparagraph shall not apply to aid which is provided in the form of financial instruments.’;

(b) in paragraph 6, the introductory wording is replaced by the following:

‘Save where support is provided in the form of financial instruments, the aid shall cover the following eligible costs.’;

(c) in paragraph 7, the first subparagraph is replaced by the following:

‘Save where support is provided in the form of financial instruments, costs other than those referred to in paragraph 6(a) and (b) connected with leasing contracts, such as lessor’s margin, interest refinancing costs, overheads and insurance charges shall not be considered to be eligible costs.’;

(d) in paragraph 9, the second, third and fourth subparagraphs are replaced by the following:

‘Save where support is provided in the form of financial instruments, the following conditions shall apply:

(a) the investments in renewable energy infrastructure that consume or produce energy shall comply with minimum standards for energy efficiency for, where such standards exist at national level;

(b) investments in installations, the primary purpose of which is electricity production from biomass, shall not be eligible for aid unless a minimum percentage of heat energy, to be determined by the Member States, is utilised;

(c) aid to bioenergy investment projects shall be limited to bioenergy meeting the applicable sustainability criteria laid down in Union legislation, including in Article 17(2) to (6) of Directive 2009/28/EC.’;

(10) Article 44 is amended as follows:

(a) in paragraph 5, the following second subparagraph is added:

‘The first subparagraph shall not apply to aid which is provided in the form of financial instruments.’;

(b) in paragraph 7, the introductory wording is replaced by the following:

‘Save where support is provided in the form of financial instruments, the aid shall cover the following eligible costs.’;

(c) in paragraph 8, the first subparagraph is replaced by the following:

‘Save where support is provided in the form of financial instruments, costs other than those referred to in paragraph 7(a) and (b) connected with leasing contracts, such as lessor’s margin, interest refinancing costs, overheads and insurance charges shall not be considered to be eligible costs.’;

(11) Article 45 is amended as follows:

(a) in paragraph 6, the following third subparagraph is added:

‘The business plan shall have a maximum duration of five years.’;

(b) in paragraph 7, the first paragraph is replaced by the following:

‘The aid shall be paid in at least two instalments.’;

(12) in Article 46(5), the second sentence is replaced by the following:

‘The aid shall be paid to the provider of the advisory services or to the Managing Authority referred to in point (a) of Article 65(2) of Regulation (EU) No 1305/2013.’;

(13) Article 47(3) is amended as follows:

(a) in the first subparagraph, the following second sentence is added:

‘Infrastructure installed as a result of demonstration may be used after the operation is completed.’;

(b) the following third subparagraph is added:

‘Aid for demonstration projects which is provided in the form of financial instruments may cover other eligible costs than those referred to in point (b) of paragraph 4, provided that the costs are fully eligible under Regulation (EU) No 1305/2013.’;

(14) Article 48 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Aid for new participation, or participation in the five preceding years, of active farmers and groups of farmers that operate as SMEs, in quality schemes for cotton and foodstuffs shall be compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty and shall be exempted from the notification requirement of Article 108(3) thereof where it fulfils the conditions laid down in paragraphs 2 to 7 of this Article and in Chapter I of this Regulation.’;

(b) in paragraph 6, the following second subparagraph is added:

‘If the initial participation in the quality scheme started before the application for support, the maximum period of five years shall be reduced by the number of years which have elapsed between that initial participation and the time of the application for support.’.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 February 2019.

For the Commission
The President
Jean-Claude JUNCKER
