

Revision of the State aid Guidelines in the Agriculture and Forestry sectors and in rural areas

ClientEarth's reply to the public consultation

ClientEarth is a not-for-profit environmental law organisation comprising legal, scientific, policy, and communications experts working to shape and enforce the law to tackle environmental challenges. For several years, ClientEarth has been advocating for State aid rules to align with environment and climate protection objectives that are now contained in the European Green Deal and for an effective internalisation of pollution costs.

In the agriculture sector, our objective is to contribute to the development of green, fair and just food systems. We strive to ensure that agricultural practices are built on environmental and climate positive foundations rather than short-term objectives. The main legal framework on which we focus is the Common Agricultural Policy (CAP), to ensure that public subsidies support the transition towards regenerative agricultural practices. Through our activities, we aim to contribute to better integration of EU agricultural and environmental legislation, therefore our approach connects a variety of legal frameworks, ranging from water protection to reduction of industrial emissions.

In the forestry sector, we are working to prevent the destruction of forests caused by the growing global demand for agricultural commodities and timber. We advocate for strong and enforceable laws to combat illegal logging and ensure transparency and accountability in the global supply chains of the agricultural commodities which provide much of the food consumed in developed nations. In the EU, we focus on developing and strengthening the implementation and enforcement of the EU's legislative framework

governing legal and deforestation-free commodities, in particular the EU Timber Regulation (EUTR) and the upcoming regulation on deforestation-free products¹.

ClientEarth welcomes the opportunity to provide comments on the Commission's draft for revised State aid Guidelines in the agricultural and forestry sectors and in rural areas (hereafter 'Guidelines') and the Agriculture Block Exemption Regulation (hereafter 'ABER'), in the context of the public consultation open from 11 January to 13 March 2022. Our observations will focus jointly on the revision of the Guidelines and of the ABER and will specify if they relate to both instruments or one of the instruments only. We of course remain available to discuss any of our observations or to provide any additional clarifications.

1. General remark: Environmental protection should suffer no compromise

The purpose of this revision of the Guidelines and the ABER is to ensure that public support is "*well targeted and leads to modern, economically viable and **environmentally sustainable agricultural production and forests***". In this respect, they should be aligned and contribute to achieving the policy objectives of the EU Green Deal, especially the Farm to Fork Strategy and the Biodiversity Strategy.²

In order to be consistent with these policy objectives as well as truly future-proof³, the Guidelines and the ABER must also fully integrate (i) the principle of sustainable development of Article 3 (3) TEU and Article 11 TFEU, (ii) the polluter pays principle and precautionary principle of Article 191 TFEU, (iii) the objective to phase out environmentally harmful subsidies, (iv) the increased level of ambition in the Fit for 55 package, notably the increased targets for renewables and emission reduction targets, (iv) the objective to transition towards green, resilient and just food systems, that benefit climate, nature and human health.

Aid measures must be consistent with and actively contribute to reaching these principles, targets and objectives. No aid measure should allow a Member State to slow down its own and the Union's trajectory towards meeting them, according to their obligations of sincere cooperation and solidarity. When trade-offs need to be made to take into account different areas and policies, environmental and human health protection requirements must prevail in the assessment.

¹ Proposal for a regulation of the European Parliament and the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, COM (2021) 706 final.

² Explanatory note to this public consultation, pp.1-2.

³ The Guidelines and the ABER do not have an end date.

2. The common provisions

In this section, we make general observations with respect to Part I of the Guidelines (Common Provisions) as well as the preamble and Chapters I and II of the ABER (Common provisions and procedural requirements).

2.1. Compliance with Union environmental law

Member States are primarily responsible to assess whether an aid measure or the supported activities **complies with Union law, in particular environmental law**, subject to the Commission's and the CJEU's control. Individuals and organisations also have a role to play and can support Member States in this respect. We therefore recommend adding the following point in the introduction of the Guidelines and the preamble of the ABER, inspired from point 11 of the Guidelines on State aid for Climate, environment and energy 2022 (hereafter "CEEAG"):

"Member State authorities should ensure that the aid measure, the conditions attached to it, the procedures for adopting it and the supported activity do not contravene Union environmental law. Member State authorities should also ensure that the public concerned has the opportunity to be consulted in decision-making on aids. Finally, individuals and organisations should be given the opportunity to challenge the aid or measures implementing the aid before national courts where they can adduce evidence that the Union environmental laws are not complied with".

We also refer to our practical recommendations for the implementation of this obligation to verify compliance with Union law.⁴

Although we understand that the nature of the ABER and the Guidelines differ and therefore imply a different language, we note that the condition of compliance with Union law, notably EU environmental law, is weaker in the ABER than in section 3.1.3 of the Guidelines, although such compliance is paramount in order to grant State aid. We therefore suggest to strengthen article 1 (7) ABER as follows "*This regulation shall not apply to aid which entails, by itself, by the conditions attached to it, by its financing method, or by the activity it finances, a non-severable violation of Union law, in particular: (...) (c) aid or a supported activity which violates relevant EU environmental legislation*⁵". In addition, the following clause is mentioned in several occasions in different aid categories (Articles 13, 33, 34, 41, 42 ABER) but should constitute an overarching condition for all aid categories in the ABER and therefore moved into Chapter I ABER:

"The investment shall be in conformity with Union legislation and with national laws of the Member State concerned on environmental protection. For investment requiring an environmental impact assessment under Directive 2011/92/EU the aid shall be subject to the condition that such assessment shall have been carried out and the development consent shall have been granted for the investment project concerned before the date of granting the individual aid."

⁴ ClientEarth, "[Why the Hinkley Point C ruling obliges to implement the Green Deal in State aid practice](#)", 4 May 2021.

⁵ Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44; Judgment of the Court of Justice of 14 October 2010, *Nuova Agricast v. Commission*, C-67/09 P, EU:C:2010:607, paragraph 51.

2.2. The balancing test

With respect to the balancing test and the positive environmental and climate impact of an aid measure (points 136 to 138 of the Guidelines), we welcome the clear reference to article 11 TFEU. Although compliance with relevant Union law implies compliance with Environmental Impact Assessment Directive⁶, we suggest to explicitly include in the core text of point (136) that *“For investment requiring an **environmental impact assessment** under Directive 2011/92/EU of the European Parliament and of the Council, the aid shall be subject to the condition that such assessment has been carried out and the development consent has been granted for the investment project concerned before the date of granting the individual aid.”*, similarly to Article 13 (10) ABER.

In addition, we recommend to add the following paragraph to section 3.2.6 of the Guidelines: *“Furthermore, as part of the assessment of the negative effects on competition and trade, the Commission will take into account, where relevant, **negative externalities of the aided activity** where such externalities adversely affect competition and trade between Member States to an extent contrary to the common interest by creating or aggravating market inefficiencies including in particular those externalities that may hinder the achievement of the climate targets set under Union law.”*⁷

2.3. The definitions

Regarding the **definitions** in the Guidelines and the ABER, we suggest several amendments and noticed a lack of coherence between both instruments regarding the following concepts.

a. Carbon farming

“Carbon farming schemes” is defined as *“aid schemes for improved land management practices resulting in carbon sequestration in living biomass, dead organic matter and soils by enhancing carbon capture and/or reducing the release of carbon to the atmosphere”*.

This definition reflects the one used by the Commission in its communication on “Sustainable Carbon Cycles”⁸. However, while in the Communication on Sustainable Carbon Cycles it is specified that carbon farming should be *in respect of ecological principles favourable to biodiversity and the natural capital overall*, such a safeguard is not included in the State Aid Guidelines. This is a key element to ensure that aid in support of carbon farming does not negatively impact on biodiversity, and moves from the acknowledgement that the climate and biodiversity crises are intimately linked and must be tackled jointly. Therefore, the definition of carbon farming as in the State Aid Guidelines should be reviewed to ensure that the aid is allocated only if these schemes, besides reducing greenhouse gas emissions, help restore soil organic matter and generally contribute to increase soil’s health all across the EU. The schemes should be granted support only if they are fully compliant with the objectives of future EU legislation that the EU Commission will put forward in the near future, namely the EU Nature Restoration Law and EU Soil Health Law. Indeed, carbon farming schemes should account for all GHG fluxes and deliver clear benefits for other environmental dimensions, such as soil health, biodiversity, water.

⁶ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, p. 1

⁷ The same wording is used in point (72) of the Guidelines on State aid for Climate, environment and energy 2022(CEEAG).

⁸ Communication from the Commission to the European Parliament and the Council *Sustainable Carbon Cycles*, {SWD(2021) 450 final} - {SWD(2021) 451 final}, Brussels, 15.12.2021 COM(2021) 800 final.

The scope of carbon farming presented in the Guidelines seems to be limited to CO₂ removal, without taking into account other GHG emissions for which the agriculture and land use sectors are responsible. Not only fluxes of carbon dioxide (CO₂) but also of methane (CH₄) and nitrous oxide (N₂O) should be addressed. Effective carbon farming requires a holistic approach. Carbon farming schemes should be based on the consideration that different forms of carbon - besides CO₂ - are emitted and can be sequestered by soil and they should account for the full greenhouse gas balance of a production system.

Carbon farming schemes certainly need a varied mix of public and private support to ensure they are successfully taken up by both small and large farmers. From this perspective, this type of aid is timely and welcomed. However, nature-based carbon sequestration solutions must not be considered fungible for emissions reductions, due to reversibility concerns, measurement uncertainties⁹, the different timescales of fossil and biogenic carbon cycles, and the fact that CO₂ emissions raise CO₂ levels in the atmosphere more than what equivalent CO₂ removals reduce. Aid should not be allocated to carbon farming schemes that undermine the EU climate actions or that are very narrow solutions, unable to bring about results in the long run.

b. Forest

The ABER does not contain a definition of “forest” whereas the Guidelines do. We recommend inserting a definition in the ABER as well.

In the Guidelines, ‘forest’ is currently defined as follows: *“an area of land spanning more than 0,5 hectares with trees higher than 5 meters and a canopy cover of more than 10 %, or trees able to reach these thresholds in situ; and does not include land that is predominantly under agricultural or urban land use. A Member State or region may choose to apply another forest definition based on existing national legislation or inventory system. The Member States or regions must provide such definition in the notification and when it relates to a rural development intervention, it should be provided in the CAP Strategic Plan”.*

Firstly, it should be ensured that the definition of ‘forest’ be in line with the EU regulation on deforestation-free products, once this is adopted¹⁰. Moreover, the second sentence (underlined above) should be substituted by the following: *“A Member State or region may choose to apply another definition of ‘forest’ based on existing national legislation or inventory system where it is demonstrated that such a definition ensures a higher level of protection of the environment in comparison with the definition adopted in these Guidelines and is in line with the precautionary principle.”* This would ensure better compliance with the principles enshrined in the EU Treaties (namely, Article 3(3) TEU and Article 191 TFEU) and limit diverging interpretations by different Member States which could negatively impact environmental protection and the level playing field, while leaving some room for flexibility where justified.

⁹ Setting up successful result-based carbon farming schemes requires a sound evidence base, good data collected over extended periods of time, the active and meaningful involvement of the key stakeholders, including farmers, as well as adequate investment in advice and support. COWI, Ecologic Institute and IEEP (2021), Technical Guidance Handbook - setting up and implementing result-based carbon farming mechanisms in the EU Report to the European Commission, DG Climate Action, under Contract No. CLIMA/C.3/ETU/2018/007. COWI, Kongens Lyngby.

¹⁰ Proposal for a regulation of the European Parliament and the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, COM (2021) 706 final.

c. Producer group or organisation

The guidelines do not define the notion of “producer group or organisation” whereas the ABER contains a definition. We suggest to insert a definition in the Guidelines too.

d. Protected animal

The definition of “**protected animal**” is more precise in the Guidelines than in the ABER. Given the nature of the ABER, requiring it to be as specific and straightforward as possible given the lack of *ex ante* control by the Commission, we suggest to retain the definition of the Guidelines for both instruments.

e. Research and know-ledge-dissemination organisation

The definition of “research and know-ledge-dissemination organisation” is also more precise in the Guidelines than in the ABER. For the reasons set out for the concept of “protected animal”, we suggest to retain the definition of the Guidelines for both instruments.

f. Undertaking in difficulty

The notion of “undertaking in difficulty” differs between the Guidelines and the ABER. Whereas the Guidelines refer to the Rescue and Restructuring Guidelines for define undertaking in difficulty, the meaning of which is set out in point (19) of the latter guidelines, point (58) ABER sets out its own definition which aligns closely with the one of the Rescue and Restructuring Guidelines except with respect to sub-point (d). Hence, in light of coherence, it occurs to us that a harmonized definition would be advisable.

2.4. Transparency

We welcome the lower thresholds in Article 9 ABER for publication of the aid measure in the Commission’s transparency award module or on a website at Member State level. However, we struggle to understand why measures falling into Article 51 of the ABER can be exempted from the general publication obligation.

In addition, the ABER does not address some **key transparency issues**. The public should be enabled to monitor the planned aid measures, not only after the aid is granted and the Commission publishes the information on its State Aid Transparency Public Search. Moreover, beyond the fact that the information provided by Member States on their websites is often incomplete or simply not accessible (and therefore in violation of Article 9(3)), the deadline for publication by Member States is too long to enable close monitoring and unjustified given the much shorter deadline to report similar information to the Commission (Article 11(1)). Hence, to increase transparency and effective monitoring by the public, we strongly believe that:

- (i) Member States should be required to report and publish their commitment to grant aid before it is granted and to confirm it in due form once the aid is granted;
- (ii) Member States should publish the information on the national/regional website at the same time as they report similar information to the Commission, i.e within 20 working days following the entry into force of the aid measures;
- (iii) The Commission should publish the information on the aid measures as reported by the granting authorities within one month upon receipt thereof (there is currently no time period to do so);

- (iv) The Commission should actively monitor the Member States transparency and reporting obligations and, if need be, withdraw the benefit of the block exemption in case of recurring violations, pursuant to Article 10 ABER.

2.5. Aid to go beyond Union standards

As indicated specifically for agricultural investment aid in the explanatory note to this public consultation (p.7), aid granted merely to cover the cost of adapting to Union standards has, in principle, no incentive effect. We therefore suggest to specify this in section 3.1.2 of the Guidelines as follows:

“The Commission considers that aid granted merely to cover the cost of adapting to Union standards has, in principle, no incentive effect. As a general rule, only aid to go beyond Union standards can have an incentive effect. However, in cases where the relevant Union standard has already been adopted but is not yet in force, aid can have an incentive effect if it incentivises the investment to be implemented and finalised at least 18 months before the standard enters into force. In order not to discourage Member States from setting mandatory national standards that are more stringent or ambitious than the corresponding Union standards, aid measures may have an incentive effect irrespective of the presence of such national standards, unless otherwise indicated in sections 1.1.1.1, 1.1.1.4, 1.4, 1.5 and 2.3. The same is true of aid granted in the presence of mandatory national standards adopted in the absence of Union standards.”

3. Aid categories regarding agriculture

3.1. Aid for investments in agricultural holdings linked to primary agricultural production (1.1.1.1 of the Guidelines and Article 13 ABER)

Support for production of biofuels for self-consumption by farmers

Member States can grant support to farmers for the production of biofuels if it meets the current sustainability and greenhouse gases emissions saving criteria in the REDII (point 147 Guidelines). **The sustainability criteria currently set out under Renewable Energy Directive (REDII)¹¹ for biomass are however not sufficiently protective of the environment**, in particular because they do not consider the full carbon lifecycle of the biomass, the different impact of using different types of biomass on the climate and biodiversity, or the limited supply of truly-sustainable feedstock. These criteria need to be reinforced in the ongoing revision of REDII, notably taking into account the following aspects¹²:

- Increased renewable energy target at 40% should not result in an increase recourse to forest biomass as feedstock for energy production. The effort to reach this new target should be based on the deployment of other renewable technologies.
- the proposal to phase-out support for electricity-only installations using biomass from 2027, although this is not sufficient, should apply as soon as the amended REDII enters into force and be extended to the much more widespread biomass based cogeneration.

¹¹ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, OJ L 328, 21.12.2018, p. 82–209.

¹² On the impact of forest biomass combustion on climate and environment see ClientEarth et al., *Unsustainable and Ineffective: Why EU Forest Biomass Standards won't stop destruction*, May 2021.

- The prohibition of support for the use of some bioenergy feedstocks (i.e. saw logs, veneer logs, stumps and roots) to produce energy is a necessary, though modest first step. Saw-logs and veneer-logs are generally not burnt since they are too valuable on the market. The Commission should however focus on ending the burning of tree trunks and whole trees that are not of saw-log quality.

In any event, the Guidelines and the ABER should be adapted to reflect the changes foreseen in the proposal for a revision of REDII, taking into account those recommendations.

Investment aid for irrigation

The EU agricultural sector is dependent on the availability of the water resources, but it can also significantly affect the ecological, chemical and quantitative status of waterbodies. In the context of climate change, sustainably managing water resources is even more important. Therefore, aid for irrigation in new and existing irrigated areas should not be granted whenever it has the potential to negatively impact the quality and/or the quantity of the waterbodies¹³.

The rules on state aid for irrigation (points 155 and 156 Guidelines) echo the wording of Article 46 of the EU Regulation on European Agricultural Fund for Rural Development (EAFRD)¹⁴ as well as of Article 74 of Regulation (EU) on the CAP Strategic Plans (CAP SPR)¹⁵, which only partially amends the previous provision. The shortcomings that civil society organisations have highlighted with reference to the CAP¹⁶ are valid, *mutatis mutandis*, in the context of the Guidelines under analysis. The conditions that must be fulfilled for the allocation of the aid risk being too weak to effectively prevent the financing of new irrigated areas or investments in irrigation modernisations that worsen the quantitative state and extraction pressure on rivers, aquifers and wetlands.

In particular, in line with Article 74 CAP SPR, point (155) (c) of the Guidelines establishes that “*an investment in an improvement to an existing irrigation installation or element of irrigation infrastructure is eligible only if:*

- (i) *it is assessed ex ante as offering potential water savings reflecting the technical parameters of the existing installation or infrastructure;*
- (ii) *if the investment affects bodies of ground- or surface water whose status has been identified as less than good in the relevant river basin management plan for reasons related to water quantity, an effective reduction in water use must be achieved contributing to the achievement of good status of these water bodies, as laid down in Article 4(1) of Directive 2000/60/EC of the European Parliament and of the Council.*

¹³ The most significant environmental impacts associated with irrigation are: (i) a combination of over-abstraction of groundwater supplies, salinisation and severe pollution by nutrients, pesticides and other farm inputs in significant areas of intensive irrigated agriculture; (ii) soil erosion, arising both from intensive irrigation itself, and from the abandonment of formerly hand-irrigated, traditional terrace agriculture in the hills; (iii) the desiccation of former wetlands. IEEP (2000), The environmental impact of the irrigation in the European Union.

¹⁴ 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.

¹⁵ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013.

¹⁶ See, for instance <https://www.wwf.es/?39782/Informe-Modernizacin--de-Regados>

Member States must set percentages for potential water savings and effective reduction in water use as an eligibility condition [...].”

These **conditions are not coherent with the objective of increased efficiency in water use** because, in the case of expanded irrigated areas, an increased share of the water is actually consumed by the crops, which means lower returns to soil. Moreover, the following shortcomings should be taken into account:

- (i) it is difficult to assess ‘ex-ante’ water savings with certainty, and no common procedure has been set up at EU level for such assessment;
- (ii) Member States are responsible for setting percentages for potential water savings and effective reduction in water use as an eligibility condition but there is no guarantee that Member States will be ambitious when setting them;
- (iii) public authorities are not required to verify whether the water savings is achieved after the completion of the investment.

It should be considered that when irrigation efficiency increases, the ratio between the quantity of water abstracted and the quantity of water used by the crop decreases, limiting water losses which would have been reattributed to waterbodies¹⁷. A modernised irrigated area can be associated with an increase in productions – which, overall, demand more water - or with the introduction of new, more water-demanding crops¹⁸. As investments in more efficient irrigation systems does not necessarily lead to reduced water consumption, aid for investments aimed at modernizing irrigation systems should be carefully assessed. Technological innovation risks creating the so-called “rebound effect”, meaning that the overall environmental benefits expected from the deployment of new technologies may remain below potential, as increased production – and water consumption – negatively counterbalances water savings. For these reasons, the wording of point 155 of the Guidelines is not adequate to guarantee that aid for irrigation are beneficial to waterbodies, especially if the irrigated area increases where water bodies are under stress.

In light of the above, **additional safeguards are needed to ensure that the granted aid does not negatively impact on the water bodies**, especially in those areas where water bodies are already failing to achieve good quantitative status. Thus, the Guidelines should provide additional safeguards to make sure that any modernisation and/or expansion of irrigation comply with Article 4(7) of the Water Framework Directive¹⁹ on the basis of a case-by-case assessment, as well as undergoes a full ordinary environmental impact assessment according to Annex II, Environmental Impact Assessment Directive²⁰.

3.2. Start-up aid for young farmers and start-up aid of agricultural activities (1.1.2 Guidelines and Article 17 ABER)

We note that the aid is conditional on the submission of a **business plan** (point 183 Guidelines) and acknowledge that one of the objectives of the revision of the guidelines is to simplify the State aid procedure. However, the current draft no longer indicates what the business plan should at least contain and therefore seems to leave it entirely up to the Member State to decide this. This may lead to diverging

¹⁷ Playà, E. and Mateos, L. (2006), *Modernization and Optimization of Irrigation Systems to Increase Water Productivity. Agricultural Water Management* and Lopez-Gunn, E., Mayor, B. and Dumont, A. (2012), *Implication of the modernization of irrigation systems. Water, Agriculture and the Environment in Spain: can we square the circle*?, p. 241-256.

¹⁸ European Economic Interest Grouping Alliance Environment (2019), *Evaluation of the impact of the CAP on water*.

¹⁹ Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy

²⁰ Annex II, Environmental Impact Assessment Directive includes under Point 1 (c) Water management projects for agriculture, including irrigation and land drainage projects.

interpretations amongst Member States, which is especially undesirable for aid falling into the scope of the ABER given the lack of notification to the Commission. Especially the following requirement mentioned in the current guidelines whereby “*details of the actions, including those related to environmental sustainability and resource efficiency, required for the development of the activities of the agricultural holding,*” are required, is important in our view. Providing start-up aid to an activity which is not in line with such objectives would undermine the Green Deal.

The same reasoning applies for Article 17 (5) ABER.

3.3. Aid for agri-environment-climate commitments (1.1.4 Guidelines)

Carbon farming

Our comments with respect to carbon farming are developed under section 2.3 (a) above.

Incentive effect

In point (202), we suggest to reduce the period during which aid can be granted for commitments to comply with national requirements that go beyond Union law to a maximum of **18 months until** the date on which the national requirements become mandatory. The current draft whereby aid can be granted up to 24 months after the national requirements become mandatory may indirectly incentivise late implementation of new national standards. It is also not in line with the condition that aid should provide an “incentive effect” and would run counter the objectives of the Green Deal.

3.4. Aid for animal welfare commitments (1.1.5 Guidelines)

Aid for animal welfare commitments should be granted if it does not jeopardise the climate and environmental commitments under EU environmental law. The Guidelines seem to go towards this direction as, under point (228), they specify that “*Member States must ensure that aid granted under this Section is consistent with the support granted under Article 28 of Regulation XXX [SPR].*”. It is likely that the intention is to refer to Article 31 of Regulation (EU) 2021/2115 – also called CAP SPR - regarding *schemes for the climate, the environment and animal welfare* (“eco-schemes”). Article 31 CAP SPR requires eco-schemes to cover at least two areas among climate, environment, animal welfare and antimicrobial resistance. This means that CAP Pillar 1 support can be allocated only if, next to animal welfare objectives, eco-schemes create also climate and environmental benefits. The same *ratio* should be used in the context of these Guidelines.

For point (227), we make the same suggestion as for point (202) for aid for agri-environment-climate commitments described in section 3.3 above.

Finally, point (227) allowing aid to comply with national requirements seems contrary with point (224) that states that aid covers only those commitments going beyond mandatory requirement established by national and Union law.

3.5. Aid for organic farming (1.1.8 Guidelines)

As set out under point 3.3 above, in order to respect the principle of incentive effect of the aid, we suggest to reduce the period during which aid can be granted for commitments to comply with national requirements that go beyond Union law to a maximum of **18 months until** the date on which the national requirements become mandatory. The current draft does not incentivise timely implementation of the national requirements.

3.6. Aid to compensate for damage caused by adverse climatic event which can be assimilated to a natural disaster (1.2.1.2 Guidelines and Article 24 ABER)

Adverse climatic events that can be assimilated to natural disasters are likely to occur more frequently in the future as a consequence of climate change. It is therefore important that any support to an activity which has suffered damage from an adverse climatic event that can be assimilated to a natural disaster not only serves to compensate the damage but also to adapt to climate change.

We understand that this aid category only compensates for the losses occurred, namely the material damage to assets and the loss of income, and does not cover investment aid as would be the case for aid under section 1.1.1 of the Guidelines. However, for aid that serves to cover the material damage, we recommend to **add a requirement whereby beneficiaries that receive aid to rebuild or repair assets must, or at the very least should endeavour to include in the reparation, adaptation measures to climate change**, in order to minimise damage and losses produced by similar events in the future. Such condition could be similar to the one set out in point 150 (g) of the Guidelines.

In addition, to incentivise compliance with that requirement, a lower maximum aid intensity (such as 50% as it is the case for lack of insurance) should apply to beneficiaries which have benefitted from the same type of aid before but did not, without due justification, include climate adaptation measures in the preparation of the material damage.

Similar requirements should be added to Article 24 ABER as well.

3.7. Aid for closing production capacity (1.2.2 Guidelines)

For animal, plant or human health, sanitary, ethical, environmental or climate reasons

It is unclear whether aid under this category is provided for **voluntary and/or mandatory closure of production capacity** by the aid beneficiary. Although we acknowledge that no aid can be given for closure in case the undertaking does not fulfil Union Standards (point 430), national or regional authorities may oblige undertakings to close down due to national mandatory rules²¹. We therefore suggest to clarify this as compulsory and voluntary closure may lead to a different level of compensation.

In addition, in case of mandatory closure by a certain date (by analogy with aid to support the phase out of coal in the CEEAG), the Guidelines could provide for different (more attractive) aid intensities depending on whether an undertaking decides to close down its capacity ahead of the closure date.

²¹ For instance, in the Netherlands and Flanders, certain undertakings in the agriculture sector are obliged to close capacity (mainly livestock) due to excessively high NH₃ and NO_x levels which gravely harm the environment.

We also note that the **maximum aid intensity** can be up to 120% where the closure is done for environmental (and we assume also climate) reasons: 100% for the loss of value of assets and 20% as an incentive payment. However, we struggle to understand how an aid intensity of more than 100% can be in line with the condition that aid should be proportionate and does not lead to overcompensation, at least in the event of a mandatory closure of the undertaking.

Furthermore, in the event the beneficiary continues economic activities following the partial closure or complete closure of capacity²² (point 426 Guidelines), we suggest to add the following requirement *“aid received for closure of capacity should be shown in the profit-and-loss accounts of the beneficiary as a separate item of revenue distinct from turnover. Where the beneficiary continues trading or operating after closing down the relevant capacity, it must keep precise and separate accounts for those activities. The aid granted must be managed in such a way that there is no possibility of it being transferred to other economic activities of the same undertaking.”*²³

Also, the reference to climate reasons is lacking in point (426) whereas the title of the aid category indicates it. We recommend to also specify it in point (426) for clarity and coherence.

For other reasons

This aid category allows aid to close down capacity for reasons of **diversification of activities**. ClientEarth considers that aid for the mere diversification of activities, where the beneficiary fully or partially maintains production capacity, should not be considered compatible with the internal market. We struggle to see how it can be justified in light of the common assessment criteria: if a business plan for diversification of activities is economically viable, the aid to develop that activity would not have an incentive effect.

In any event, we suggest to add a similar clause concerning separation of accounts as suggested for closing of capacity due to animal, plant or human health, sanitary, ethical, environmental or climate reasons (see above).

4. Aid categories regarding forestry

4.1. Investments in forest area development and improvement of the viability of forests (2.1 Guidelines)

Investments in reforestation which are not consistent with climate and environmental objectives should be included amongst the costs that are not eligible for aid under point (499) of the Guidelines.

Moreover, the reference to “climate and environmental objectives” under that same point should not be limited to *“sustainable forest management principles, as developed in the Pan-European Guidelines for Afforestation and Reforestation”*. This should be merely considered as a minimum threshold for considering the eligibility of the costs for aid, rather than the standard to comply with. This reference should also expressly include biodiversity objectives as an additional standalone category, and be clearer as to what legal instruments and principles must be observed.

²² In case the beneficiary undertakes different agricultural activities and only (has to) close(s) down one activity.

²³ A similar provision has been inserted for aid to cover exceptional costs in case of closure of coal, peat or oil shale activities (point 447 CEEAG).

4.2. Aid for afforestation and creation of woodland (2.1.1 Guidelines and Article 33 ABER)

The **growing of trees for energy production should not benefit from aid**²⁴. This should apply to all trees and not only to *fast growing* trees as it is currently stated in the Guidelines. Such a limitation is not justified from an environmental and biodiversity perspective and would erroneously allow aid for planting of trees, other than fast growing trees, for energy production. Therefore, point (502) should be amended as follows: “*No aid may be granted for the planting of trees for short rotation coppicing, Christmas trees or fast-growing trees for energy production.*” The same goes for Article 33 (5) ABER.

Moreover, point (503)(d)(i) should be amended as follows: “*the planting of ecologically adapted species and/or species resilient to climate change in the bio-geographical area concerned, which have been found, through an assessment of impacts and in line with the precautionary principle, not to have an adverse effect on biodiversity and ecosystem services, or to have a negative impact on human health;*”. This amended wording would allow the provision to be better in line with the principles enshrined in the EU Treaties (namely, Article 3(3) TEU and Article 191 TFEU) and ensure that, where there is uncertainty as to the existence or the extent of the risks to the environment, a precautionary approach is taken with regard to the planting of species in any given area.

4.3. Aid for investments improving the resilience and environmental value of forest ecosystems (2.1.4 Guidelines and Article 36 ABER)

We recommend to amend point (521) of the Guidelines as follows: “*Investments shall aim at fulfilling environmental commitments with a view to providing ecosystem services, enhancing the public amenity value of forests and woodland in the area concerned or improving the climate change mitigation and adaptation potential of ecosystems, ~~without excluding economic benefits in the long term.~~*”

Whether or not an investment towards improving the resilience and environmental value of forests can benefit from aid should in no way be subject to such an intervention not excluding economic benefits in the long term. Such a wording potentially allows aid to truly environment-positive and climate-positive investments be refused on the basis that not better defined “economic benefits in the long term” may be affected. The difference in the understanding and assessment of “economic benefits in the long term” across the Union prevents a clear outlook as to what the consequences of such a limitation might be on investments which should be merely in favour of environment-positive and climate-positive investments, leaving an excessively wide discretion in how that assessment is conducted.

4.4. Aid for investments in infrastructure related to the development, modernisation or adaptation of forestry (2.1.6 Guidelines and Article 41 ABER)

We strongly recommend to amend point (529) of the Guidelines as follows: “*The aid covers investment in tangible and intangible assets which concern infrastructure related to the development, modernisation or adaptation of forestry, including access to forest land, land consolidation and improvement, and the supply of sustainable renewable energy, energy efficiency, supply of ~~energy and water~~, and including the use of livestock instead of machinery. Such forms of aid can be granted only if these investments have been*

²⁴ On the impact of forest biomass combustion on climate and environment see ClientEarth et al., *Unsustainable and Ineffective: Why EU Forest Biomass Standards won't stop destruction*, May 2021.

found not to have, through an assessment of impacts and in line with the precautionary principle, an adverse effect on biodiversity and ecosystem services, or to have a negative impact on human health. The aid concerning any supply of sustainable renewable energy should be subject to the **cascading principle**²⁵ be complied with when it regards energy produced by using biomass as feedstock.” The reasons for this are the following:

- Firstly, it is unclear why would forests need any “modernisation” – we deem this to be a typo and we infer that it refers to the modernisation of the *forestry sector* rather than of *forests*, and that it goes together with its adaptation.
- Secondly, the reference to supply of energy is repeated twice – we deem this to be a typo and we infer that the second reference should be deleted for clarity.
- Thirdly, the aid should be limited to the supply of sustainable *renewable* energy. When this refers to the supply of energy produced by using biomass as feedstock, the Guidelines should require that any aid would be granted only where the cascading principle is observed.
- Fourthly, the granting of any aid under this category should be subject to the negative result of an assessment of impacts of the investments, in line with the precautionary principle, with regard to their effects on biodiversity and ecosystem services, as well as on human health.

A similar adaptation is necessary for Article 41 (4) ABER.

In addition, there should be caution as to a potential overlap of eligible costs between this aid category and investment aid under Section 4.1 of the CEEAG of article 41 GBER. A clear delimitation between both aid regimes and clear accumulation rules to avoid overcompensation may be appropriate.

4.5. Aid for investments in forestry technologies and in processing, in mobilising and in marketing of forest products (2.1.5 Guidelines and Article 42 ABER)

We recommend to amend point (524) of the Guidelines as follows: “*Aid may be granted for investments enhancing forestry potential or relating to processing, mobilising and marketing adding value to forest products that fulfil the legality and deforestation-free requirements.*” This is a key requirement to ensure that these Guidelines are in line with the EU regulation on deforestation-free products, once this is adopted²⁶. This should also be specified in Article 42 (1) ABER.

In addition, point (525) should be amended as follows: “*Investments related to the improvement of the economic value of forests must be justified in relation to the expected improvements to ~~forests~~ forest resilience on one or more holdings and may include investments for soil-friendly and resource-friendly*

²⁵ In line with the cascading principle, woody biomass should be used according to its highest economic and environmental added value in the following order of priorities: 1) wood-based products, 2) extending their service life, 3) re-use, 4) recycling, 5) bio-energy and 6) disposal. Where no other use for woody biomass is economically viable or environmentally appropriate, energy recovery helps to reduce energy generation from non-renewable sources. Aid for bioenergy should therefore be limited to such feedstocks for which little market competition exists with the material sectors, and subject to the finding that its sourcing is considered positive for both climate and biodiversity, in order to avoid negative incentives for unsustainable bioenergy pathways, as identified in the JRC report ‘The use of woody biomass for energy production in the EU’.

²⁶ Proposal for a regulation of the European Parliament and the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, COM (2021) 706 final.

harvesting machinery and practices.” The wording “improvements to forests” is too vague and leaves too much room for misinterpretation and misapplication. By substituting this with “improvements to forest resilience”, these Guidelines would contribute to a more concrete progress towards climate-positive and environmental-positive management of forests. Article 42 (6) ABER should be amended to the same extent.

Finally, point (526) should be amended as follows: “*Investments related to the use of wood as a raw material or energy source must be limited to all working operations prior to industrial processing; any use of wood as feedstock for energy must be limited to residues from forestry industries and must occur in full compliance with the cascading principle.*”. Article 42 (7) ABER should also be amended in this sense.

4.6. Aid for forest-environment and climate services and forest conservation (3.2 Guidelines)

As aid under this category includes carbon farming schemes, we refer to our observations and recommendations on carbon farming as such under section 3.3 (a) above.

We also note that the **maximum aid intensity** can be up to 120% of the eligible cost for biodiversity, climate, water or soil related services, collective schemes and result-based payments schemes, such as carbon farming schemes. We understand that the 20% are an incentive payment on top of the 100% compensation. Although we welcome aid for these purposes in principle, we struggle to understand how an aid intensity of more than 100% can be in line with the condition that aid should be proportionate and not lead to overcompensation.

4.7. Aid for knowledge exchange and information actions in the forestry sector (2.4 Guidelines and Article 39 ABER)

We recommend to amend point (547) of the Guidelines as follows: “*Aid under this Section may cover costs of any relevant action to promote innovation, training and advice, drawing up and updating of plans, studies, as well as exchange and dissemination of knowledge and information which contribute to achieving one or more of the specific objectives set out in Article 6 [XXX] of the SPR Regulation, Article 9 of Regulation (EU) 2020/852²⁷, as well as in the 2003 Forest Law Enforcement Governance and Trade (FLEGT) Action Plan. Member States must be able to demonstrate that the advice given is impartial and that advisors have no conflict of interest.*” Article 39 (1) ABER should be amended accordingly.

It is key that the “environmental objectives” listed in Article 9 of the Taxonomy Regulation are included in this provision as this would ensure coordination and consistency in the objectives pursued between aid and financial instruments falling within the scope of the Taxonomy Regulation: (a) climate change mitigation; (b) climate change adaptation; (c) the sustainable use and protection of water and marine resources; (d) the transition to a circular economy; (e) pollution prevention and control; (f) the protection and restoration of biodiversity and ecosystems. It is equally important that the activities falling within this category are eligible for aid when pursuing the objectives of the 2003 Forest Law Enforcement Governance and Trade (FLEGT) Action Plan. Moreover, Member States should be required to keep records of the advice received, of the assessment conducted with regard to its impartiality and with regard to any conflict of interests.

²⁷ Regulation (EU) 2020/852²⁷ of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

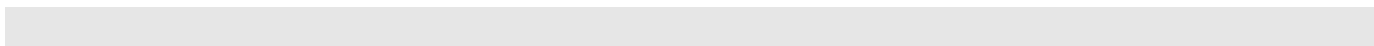
Contacts:

For Agriculture: Lara Fornabaio (lfornabaio@clientearth.org)

For Forest: Jody Quirke (jquirke@clientearth.org) and Filippo Mattioli (fmattioli@clientearth.org)

For State aid (in general): Stéphanie Nieuwbourg (snieuwbourg@clientearth.org)

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