

Short Communication

CHANGES TO STATE AID EUROPEAN GUIDELINES FOR FINANCING COMPENSATION AND PREVENTION MEASURES

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In November 2018, the European Commission amended its Guidelines for State aid in the agriculture sector¹, enabling full compensation of damages and protection measures related to large carnivores. Until this change, while the direct costs for an animal killed or equipment destroyed could be compensated by a Member State, compensation for indirect costs such as treatment costs of wounded animals could only be covered up to 80%. Additionally, Member States could only finance investments into protection measures up to 80%, except in case of collective investments (although such measures could be funded up to 100% in the framework of Rural Development Programmes).

This situation had been criticised by managing authorities and stakeholders as disadvantaging farmers experiencing depredation of livestock². The European Commission therefore decided to amend the State aid Guidelines to permit up to 100% financing of compensation for indirect costs as well as for supporting prevention measures with state budgets.

In February 2019, the European Commissioner for the Environment, Maritime Affairs and Fisheries, Karmenu Vella and the European Commissioner for Agriculture and Rural Development, Phil Hogan

wrote a joint letter³ to the Ministers for the Environment and Agriculture in the EU Member States. This highlighted *inter alia* the available financial support for coexistence with large carnivores under the European Agricultural Fund for Rural Development (EAFRD) and under the EU's environment and climate programme (LIFE), as well as the new opportunities to support livestock managers experiencing depredation through State aid.

1. Support for damage prevention measures

Rural Development Programmes, under the EU Common Agricultural Policy, can provide support for protection measures that help eliminate or reduce the risk of damage from large carnivores as non-productive investments up to 100%. Such protective measures can include installation of electrified fences; training of shepherds on best practices in protecting livestock against wild animals; purchase of livestock guarding dogs; construction of shelters for shepherds to stay near herds; as well as studies to analyse methods of extensive animal rearing in the presence of carnivores. These are financed as one-off payments cover-

ing costs of materials, training or studies. Furthermore, maintenance costs covering additional labour costs for farmers to check and maintain protective fences or to move fences, as well as for feed and veterinary costs for livestock guarding dogs, may be covered by agri-environment-climate payments⁴. These should be paid as annual payments over a set time period (normally five years). Such measures are not available everywhere and depend on the priorities set at national or regional level⁵. The procedures to apply for financing from Rural Development Programmes also vary between countries and regions⁶. Similar measures can also be funded entirely by national or regional governments if they follow State aid rules (see below).

2. State aid

State aid is defined as “any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU)”. The Treaty of the Functioning of the European Union (TFEU) in general, prohibits State aid. However, under certain circumstances it is allowed to address specific market failures. Exceptions for the specific situation of land use management are described in the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020⁷.

According to the Guidelines, allowable financial support includes the state component of rural development support i.e. co-financing for Rural Development Programmes (Pillar 2 of the Common Agricultural Policy (CAP), supported under the European Agricultural Fund for Rural Development (EAFRD)). For the above-described measures included in Rural Development Programmes, approval of the programme includes approval of the co-financing of the measures within it, so no additional measures for State aid compliance are needed.

Protection measures can be funded either through the EAFRD (see above) or through State aid, or through a mixture of the two. Compensation for damages caused by large carnivores is not possible under rural development; it is only possible as pure State aid. In these cases, the Member States must submit a “notification” to the Commission, describing the intended aid scheme and must wait for Commission approval before putting the measures in place.

Member States may also make use of the specific de minimis aid regime for the agricultural sector, exempting aid under certain thresholds from the notification requirement⁸. In February 2019 the Commission increased both the maximum aid amount per single undertaking (from €15,000 to €20,000 over any period of three fiscal years) and national caps (from 1% to 1.5% of annual output)⁹. Higher thresholds may be applied if certain additional conditions are fulfilled (sector cap and use of national central register).

When paying compensation, according to the Guidelines¹⁰, Member States must also ensure that farmers are incentivised to minimise risk and take “reasonable prevention measures, such as safety fences where possible, livestock guarding dogs, which are proportionate to the risk of damage caused by protected animals in the area concerned”. Furthermore, the Guidelines require a direct causal link between the damage suffered and the behaviour of the protected animal to be established by the Member State.

3. Recent changes to the measures to finance compensation and prevention measures

The 2018 amendment to the Guidelines for State aid in the agricultural sector does not change the measures included in Rural Development Programmes¹¹ co-financed under the EAFRD. It only



(Photo: Elena Tsingarska)



affects Member States' abilities to finance compensation and prevention measures under their own budgets. The changes are summarized in Table 1. The extract from the Guidelines with the changes marked is shown in Box 1.

(Photo: Elena Tsingarska)

Table 1 Impact of amendment to Guidelines for State aid in the agricultural sector.

| | |
|---|---|
| | Compensation for direct costs |
| Compensation covers | Damage for animals killed, plants destroyed. Material damage to: farm equipment, machinery and farm buildings and stocks. |
| Funding source | Member State financing only (national / regional government) under de minimis or through a State aid notification. |
| Permitted % support until 2018 amendment | 100% of market value of animals or plants. Repair cost or economic value of the affected asset before the event that caused the damage. |
| Permitted % support after 2018 amendment | No change. |
| | Compensation for indirect costs |
| Compensation covers | Veterinary costs from the treatment of wounded animals. Labour costs related to the search for missing animals. |
| Funding source | Member State financing only (national / regional government). |
| Permitted % support until 2018 amendment | 80% of total costs. |
| Permitted % support after 2018 amendment | 100% of total costs. |
| | Prevention measures |
| Compensation covers | Costs associated with prevention measures such as fencing, livestock guarding dogs or shepherding. |
| Funding source | EAFRD co-financed with national / regional budgets. Or Member state financing only (national / regional government). |
| Permitted % support until 2018 amendment | 100% if under non-productive investment measure or agri-environment-climate measures within Rural Development Programmes (co-funded by EAFRD). 100% if under de minimis. 80% if notified under State aid – 100% for collective investments. |
| Permitted % support after 2018 amendment | 100% if under non-productive investment measure or agri-environment-climate measures within RDPs (co-funded by EAFRD). 100% if under de minimis. 100% if notified under State aid. |

Box 1 Extract of the guidance with amendments marked.

(underlined = addition; crossed-out = subtraction)

Protection measures: Aid for investment in tangible assets and intangible assets on agricultural holdings linked to primary agricultural production [...]

(143) The investment must pursue at least one of the following objectives:

(e) the restoration of agricultural production potential damaged by natural disasters, exceptional occurrences or adverse climatic events which can be assimilated to a natural disaster, animal diseases and plant pests, protected animals and the prevention and risk mitigation of damage caused by those before-mentioned events and factors; [...]

(155) As regards investment with preventive objectives in point (143)(e), the maximum aid intensity must not exceed 80%. However, it may be increased up to 100% if the investment is carried out collectively by more than one beneficiary or if the objective is to prevent damage caused by protected animals.

Compensation measures: Aid to compensate for the damage caused by protected animals

(390) Damage to equipment, infrastructure, animals and plants caused by protected animals is a growing problem. The success of Union conservation policy depends partly on the effective management of conflicts between protected animals and farmers. As a consequence, and in respect of the principle of proportionality, the Commission will consider aid to compensate for the damage caused by protected animals compatible with the internal market under Article 107(3)(c) of the Treaty if it complies with the common assessment principles of these Guidelines and with the following conditions. [...]

Aid intensity:

(401) Compensation may be granted up to 100% of the eligible costs.

(402) ~~Compensation for indirect costs must be proportionate to the direct costs and must not exceed 80% of the total indirect eligible costs.~~

(403) The aid and any other payments received to compensate for the damage, including payments under other national or Union measures or insurance policies for the damage receiving aid, must be limited to 100% of the ~~direct eligible costs and 80% of the indirect eligible costs.~~

¹ European Commission news release, November 2018, Amendments to the State aid Guidelines for the agriculture sector to better address damages caused by wolves and other protected animals: https://ec.europa.eu/info/news/amendments-state-aid-guidelines-agriculture-sector-better-address-damages-caused-wolves-and-other-protected-animals-2018-nov-08_en

² E.g. discussed in Goslar, Germany at the 2018 Regional workshop of the EU Platform on Coexistence between People and Large Carnivores: http://ec.europa.eu/environment/nature/conservation/species/carnivores/pdf/EU%20LC%20Platform_Workshop_statement_Goslar.pdf

³ EU Platform website: <http://ec.europa.eu/environment/nature/conservation/species/carnivores/pdf/190211LETTER%20VELLA-HOGAN%20to%20ENV-AGRI%20Ministers.pdf>

⁴ See the EU Platform for Coexistence between People and Large Carnivores webpage on Rural Development Programmes for examples: http://ec.europa.eu/environment/nature/conservation/species/carnivores/case_studies_sub_rural_development_programmes.htm

⁵ See EU Platform for Coexistence between People and Large Carnivores webpage on Rural Development Programmes for overview of where such measures are in place: http://ec.europa.eu/environment/nature/conservation/species/carnivores/pdf/145_Case%20studies%20and%20RD-update.pdf

⁶ See ENRD country data for contact points in each country: https://enrd.ec.europa.eu/contact/country-data_en

⁷ European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.204.01.0001.01.ENG&toc=OJ:C:2014:204:TOC

⁸ Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013R1408>

⁹ Commission Regulation (EU) 2019/316 of 21 February 2019 amending Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0316>

¹⁰ European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.204.01.0001.01.ENG&toc=OJ:C:2014:204:TOC

¹¹ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC1109\(04\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC1109(04)&from=EN)