

# STATE AID IN AGRICULTURE

FREEK JANMAAT  
EUROPEAN COMMISSION  
8 DECEMBER 2005

# OUTLINE

---

- What is state aid?
- What is agriculture?
- The application of state aid rules to agriculture
- Notification procedures
- Compatibility of aid
- Aid which does not need to be notified
- Transitional measures for new member states

# WHAT IS STATE AID?

---

Same as for any other sector, Article 87.1 of the EC Treaty:

1. Economic advantage granted by MS or through state resources
2. Favour certain undertakings or the production of certain goods
3. Impact on intra-community trade
4. Distorts or threatens to distort competition

# WHAT IS AGRICULTURE?

---

- Agriculture is any activity related to the **production, processing and marketing** of products included in **Annex I** to the EC Treaty
- Only first-stage processing (if end-product is still Annex-I) is considered agriculture
- Other products dealt with by DG COMP

# APPLYING STATE AID RULES (Art. 87/88 EC) TO AGRICULTURE

---

- State aid rules of the EC Treaty are not directly applicable to agriculture. The Council makes them applicable through Regulations.
- In practice state aid rules apply to most agricultural products (through Regulations on common market organisations)

# NOTIFICATION PROCEDURE

---

- The Commission has to assess whether aid granted by MS is compatible with the common market
- New state aid must be notified to the Commission and cannot be implemented before it has been authorised (stand-still cl.)

- 
- Aid put into effect in breach of the obligation to notify, or before it is approved, is considered **unlawful**.
  - Unlawful aid can be successfully **challenged before national courts**.
  - Unlawful aid which the Commission finds to be incompatible with the common market must be **recovered** from the beneficiaries.

---

The Commission has 2 months time to examine a new notification. It may:

- Decide that the measure is not an aid;
- Find the aid is compatible;
- Ask the MS for additional information;
- Decide to initiate the formal investigation procedure (in case of serious doubts or misuse of aid)



---

## Role of the Court of Justice:

- A MS can challenge Commission decisions before the Court of Justice. However, referral of the matter to the Court of Justice does not have suspending effect

# COMPATIBILITY OF AID

---

- Art. 87 EC describes the aids which are or may be considered compatible
- The Commission in interpreting art. 87 assess the notified aid using Guidelines, Frameworks and Regulations (Commission website on agriculture)
- Aid complying with these texts will be found compatible

# Main legal bases in the agricultural sector

---

- Community Guidelines for State Aid in the Agricultural Sector (OJ 28/2000) **(to be changed next year)**
- Block exemption regulations (for SME's, *de minimis*, employment aid, training aid, research and development aid)
- Community Guidelines for State aid for advertising of agricultural products (OJ C 252/2001)
- Community Guidelines for State aid concerning TSE tests, fallen stock and slaughterhouse waste (OJ C 324/2002)
- Other Guidelines/Frameworks may apply also apply to agriculture, but are not specific to it.
- These texts are available on the website of DG Agriculture, [http://www.europa.eu.int/comm/agriculture/stateaid/leg\\_en.htm](http://www.europa.eu.int/comm/agriculture/stateaid/leg_en.htm)

# EXAMPLES OF AID WHICH MAY BE FOUND COMPATIBLE

---

- Investment aid
- Aid for the setting up of young farmers
- Agri-environmental measures
- Aid to compensate for losses due to bad weather or animal/plant diseases
- Aid for the advertising of agricultural products
- Aid for TSE tests or removal of fallen stock

# EXAMPLES OF INCOMPATIBLE AID

---

- Operating aid
- Aid which does not have an incentive effect (e.g. granted retrospectively)
- Aid which interferes with common market organisations

# AID WHICH DOES NOT HAVE TO BE NOTIFIED

---

## **Block exemptions:**

- Regulation 1/2004 – aid in favour of SMEs in the agricultural sector
- Regulation 1860/2004 – *de minimis* aid in the agricultural sector
- Regulation 69/2001 – general *de minimis* regulation
- Regulations on training, R&D and employment

## Special cases:

- Rural development regulation
- Simplified procedure (art. 4 of Reg. 794/2004)

# TRANSITIONAL MEASURES FOR NEW MEMBER STATES

---

- As a transitional measure for NMS, aid put into effect before accession and still granted afterwards will enjoy the status of EXISTING AID for three years after accession

# EXISTING AID STATUS

---

- If a measure is considered EXISTING AID:
- MS **may continue to grant** such aid for 3 years after accession (after that it must be brought in line with EU state aid rules)
- The Commission may at any time request a MS to align an existing aid measure to EU rules (“appropriate measures”)
- **However, aid enjoying “existing aid status” is not subject to recovery**



# Existing aid status: conditions

---

- The aid must have “existed” already before accession (it must have been put into effect)
- The aid measure must be included in the LIST OF EXISTING AID, to be submitted by NMS at the latest 4 months after accession

# NEW AID

---

- A measure existing before accession but **not included in the list** will be considered NEW AID. If found incompatible, such aid **must be recovered as from the date of accession**
- Measures put into effect after accession are NEW AID and must be notified (art. 88.3)

# Conclusion: A vast choice of instruments for NMS

---

- **Existing aid** until 3 years after accession
- Aid **exempted** from notification under one of the block exemption Regulations
- **Co-financed aid** under rural development – which is **not** state aid
- **Top-ups** to co-financed rural development
- **Aid subject to notification**