

# Agricultural and Fisheries State Aid – A Personal Perspective



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It is rare that you will see the words exciting and state aids in the same paragraph let alone the same sentence, but I do believe that 2011 has proved to be a exciting year for the world of agricultural and fisheries state aid practitioners.

When I first strode into the hallowed halls of Defra (Department for Environment Food and Rural Affairs) on a bleak winter morning in 2005 I knew very little about state aids and had never dealt with any state aid issues before. To be honest, I had never even heard of this area of European Regulation. I was directed to an empty desk given a dusty pile of regulations and the details of a new proposed scheme and left to my own devices. At the end of the day I was asked what did I make of it? I mumbled something about I thought I was getting the hang of it when in truth I was clueless and contemplating ringing my old section to see if it was too late to return! Even with my limited knowledge of state aid, I knew this wasn't the way to introduce someone to this complex area of work.

With the help of colleagues I soon began to grasp the principles of state aid and understand how the clearance system worked. As soon as possible I booked myself onto a state aid course which is where I first came across the phrase, "but this does not apply to the agricultural and fisheries sectors." These branches of state aid seemed to be the unwanted stepchild of the state aid family in that while the training courses would cover the generalities much of the detailed information was different for our sectors and not covered in these courses.

What we needed was a training course specifically aimed at our sectors. Then in 2011, after all those years of waiting, we finally got a training course! On 29-30 September the European Academy for Taxes, Economics and Law held a two day conference in Berlin; while covering the rules they are also looking at some of the more practical issues in how to notify schemes.

So why all of a sudden have training courses become available? I consider that there are two reasons:

1. To meet a demand that has always been there
2. In the present economic crisis many of the governments of Member States are cutting back on their agricultural investment programmes. They are therefore looking at introducing more innovative schemes which will give a better return. These tend to be new types of scheme and as such are pushing at the boundaries of the present state aid rules and regulations. A more highly trained state aid practitioner having niche knowledge is therefore required to discuss these schemes with the European Commission and obtain state aid approval.

The present agricultural and fisheries rules are due to expire on 31 December 2013. Practitioners need to be in a position to discuss with colleagues next year what changes they would like to see made in the rules and feed that into the European Commission. To do that the practitioner needs to fully understand the present rules and come to a view about which parts of the rules may need amending to allow the more innovative schemes to take place.

## **So what is state aid?**

Article 107 of the Treaty on the Functioning of the European Union (TFEU) defines indirectly what state aid is.

*"Any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."*



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In other words aid is where public money is being spent in such a way as to give a business, or selected businesses, an economic advantage over its competitors in other member states of the EU.

This does not mean that all such assistance is prohibited. The European Commission has a complex set of Guidelines and Regulations setting out the conditions when such aid is allowed and how you obtain clearance from the Commission. There are a number of different set of rules covering sectors such as industry, agriculture, fisheries and transport. In order to award aid under these rules you must notify the Commission of your intentions before the aid is put into effect – more on this later.

I like to think of state aid as rather like international football where the European Commission plays the part of the referee. While the Commission does not take away the natural advantage that some member states enjoy through their size or their financial position it does try to ensure that all sides in the tournament are playing to the same set of rules; it will also ensure where necessary that these rules are enforced.

State aids can come in all sizes, from a scheme aimed specifically at one small business to a schemes aimed at running large investment programmes aimed at a number of farms. In the worst case scenario payments of aid which are contrary to the state aid rules can lead to the Commission ordering that the illegal payments are recovered from the beneficiary with compound interest. In my particular area this would normally be the farmers and fishermen we are attempting to assist. This is of course the worst case scenario but it is an important point because if we get this wrong it is the very individuals we are trying to assist who have to repay the aid, not the organisations financing the schemes.

The UK, as do many other member states, have specialist teams in place who are able to advise administrators about whether or not state aid clearance may be required and how to go about obtaining clearance in the UK. The UK's agricultural and fisheries state aid unit is part of Defra. We encourage administrators to contact us as early as possible so they can build the state aid clearance process into their scheme's project plan.

### **How can I identify if my scheme may need state aid clearance?**

Article 107(1) of the TFEU sets out the conditions required to meet state aid, commonly known as the 4 tests, all of which must be met, or it is not state aid.

- Aid is granted by the State or through State resources.
- Aid favours certain undertakings or the production of certain goods.
- Aid distorts or threatens to distort competition.
- Aid affects trade between Member States.

This is not as simple as it sounds. Some cases are obvious while others are not so straightforward. If you can ask yourself a few simple questions it will help you come to a conclusion whether there may be a state aid involved.

Does my scheme involve the use of public resources? It is important to bear in mind here that public resources are not just central government or local council grants but can also be subsidised or free services. Aid could also be where the state directs how money is spent, for example if a levy board has legislation in place making contributions mandatory to the levy board. If there is no public money or public control of how money is spent there will not be a state aid.

Who are the beneficiaries? It is common to have a scheme whose objective is to do one thing but when you consider it from a state aid point of view the beneficiary can be different. For example, you are running a training course to teach individuals how to build traditional stone walls. On the face of this the activity doesn't sound like an agricultural state aid. However most of these schemes carry out the training on farm land. The farmer is therefore potentially the beneficiary of agricultural state aid as he is getting his walls repaired for nothing. Clearly in this example the aim of the scheme is to provide training to save a dying skill but from a state aid perspective the end beneficiary is someone totally different. By identifying the beneficiary you should be able to identify if a state aid is taking place and which set of rules to apply.

Does the scheme provide a select economic advantage? You need to look closely here at what the scheme is actually spending money on and not at what the objectives of the scheme are. For example, if a scheme provides farmers with general advice on how to improve their output and this information was placed on a public web site it would not provide an economic advantage because the information was potentially open to any farmer who cared to look for it. If however the same information was placed on a website which only those with a password could open then this information could potentially be of economic advantage because it was now only be made available to a selected few. In my experience



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this is not always as easy as it sounds as sometimes the administrators are not always able to inform you exactly what the money is being spent on especially if the scheme is at an early stage. It is however still worth their while contacting us at an early stage as they at least then have an understanding which activities are likely to require state aid clearance.

### **The Defra experience**

Most member state Government websites will contain some helpful information on what state is and how to notify schemes to the commission. Defra is no different and here is a link to our web site

<http://archive.defra.gov.uk/foodfarm/policy/farm/state-aid/index.htm>

We have found it especially helpful for schemes to contact us early on when they are developing their project as this allows the administrator to know if the scheme

- involves state aid
- will require state aid clearance
- complies with the state aid rules
- If certain activities need to be modified to comply with the state aid rules.

It is difficult to be precise when saying how long state aid clearance will take as this will depend on the complexity of your scheme and which type of state aid cover is required. Unfortunately I have seen a number of schemes which have been delayed as a result of them not asking the right questions about state aid until they had finalised their schemes. In some cases the schemes had to be revised to become state aid compliant causing lengthy delays. All of my colleagues in Defra have had similar experiences. It is important to remember that your failure to think about getting state aid clearance in good time may put your scheme at risk. The Commission will not give you priority unless there is an urgent objective reason to do so.

If your scheme is part of a larger programme, such as the Rural Development Programme, it may well be that it has already obtained state aid cover. In such cases we have found there are usually a small number of people in the organisation who worked with us to obtain the cover and administrators should talk to their colleagues first in those cases before contacting us.

At this point we are also able to advise the administrator which state aid route is best suited to obtain the cover they need for their scheme.

### **The routes by which state aid cover may be obtained**

- 1. Non Aid.** This is by far the easiest route. This is where we come to a conclusion that no state aid is involved. For example if public money is being spent on certain activities such as to improve the national infrastructure it would not be state aid or if public money was being spent but did not provide an economic advantage. For example, if Defra was spending some money to help protect birds by putting up some bird boxes on farm land this would not be state aid as it does not provide an economic advantage to the land owner.
- 2. Full Notifications.** This is the most difficult route to obtain approval. These tend to be used for the larger more complex schemes or the more innovative cutting edge schemes. In a full notification we are asking the Commission's approval that the scheme can start. These schemes can take a long time to clear: factor in a minimum of 6 months and I have known schemes take over 2 years of intense discussion before the Commission were able to come to a decision.
- 3. Exemption Regulations.** The Commission quickly came to the conclusion that if they had to clear all state aids via the full notification route then it would be very difficult to clear schemes on a timely basis. They therefore drafted a set of Exemption Regulations. If your scheme complies with the rules of the exemption regulations, as long as you present the information in the agreed format all you need to do is inform the Commission about your scheme and you can start. The difference between the full notification and the exemption route is that in one we are asking for Commission approval and in the exemption regulation we are simply informing it that the scheme is going to start and it complies with the exemption regulations. These schemes can be cleared much more quickly, how quickly depends on the complexity of the drafting that is required. There are a number of different exemption regulations and they all have slightly different rules and notification procedures.



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**4. De Minimis.** As long as the amount per beneficiary is below a set limit and checks show that additional payments would not take the beneficiary above this limit you can use de minimis. There is no need to obtain the commission's approval to allow de minimis schemes. There are a number of different sets of de minimis rules in force covering different sectors. Each of these has its own set of restrictions and their own financial de minimis limit. The de minimis limits are:

*Industrial 200,000 Euros – per beneficiary over a 3 year period (this also covers forestry)*

*Fisheries 30,000 Euros- per beneficiary over a 3 year period*

*Agriculture 7,500 Euros- per beneficiary over a 3 year period*

#### **Why do the Agricultural and fisheries sectors have their own rules?**

The agricultural and fishery sectors are predominantly small and medium sized enterprises and as such, small amounts of state aid are more likely to impact these sectors. It is also much more likely that providing resources to these industries will be state aid, i.e. that it will meet the 4 tests. For the same reason that small amounts of aid have a bigger effect in these sectors the commission have kept their de minimis limits much lower than those set in the industrial sector.

#### **UK Experience**

The UK has now got a small number of highly trained agricultural and fisheries state aid practitioners. We have developed a good team spirit and hold 6 monthly network meetings to discuss areas of interest. Each region takes a turn in hosting these meetings. All these practitioners help in the training of new colleagues and we have developed an informal network which allows us to discuss difficult cases amongst ourselves.

We have also found that we can add value to the process of developing new schemes apart from just obtaining state aid clearance. We have literally seen hundreds of schemes over the years, while for many of those developing a new scheme this will be only their first or second scheme. We can help in the following areas:

- Signpost them to similar existing schemes who may be able to advise them on potential pitfalls;
- Identify if such a scheme already exists. It may be easier to amalgamate the two schemes if they are doing the same thing;
- Suggest different things they want to consider amending to make the scheme more effective
- Ensure that the scheme complies with Government policy;
- Adding different elements to the scheme to make it more cost effective.

So you can see that in the UK the role of the official agricultural and fisheries state aid practitioner is far more than just ensuring a scheme meets the EC regulatory requirement it is also to ensure that the UK's agricultural and fisheries sector makes the most out of public investment.

As I strolled out of the hallowed halls of Defra into a sunny London July evening I couldn't help but think it was perhaps just as well I did not make that call to the Radiocommunication's Agency.

#### **About the author**

Mr. Marr has been involved in interpreting and enforcing regulations since 1987. He has worked in the Police Complaints Authority, the Directors Disqualification Unit and the Enforcement Unit at the Radiocommunications Agency. He joined the Agricultural state aids team of the Department for Environment Food and Rural Affairs in 2005. This team also became responsible for fisheries state aid in 2008. In this role he has facilitated the notification of a large number of schemes. During this period he has trained a number of colleagues in this area and given a number of presentations on different aspects of state aid.