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)

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

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EU) 2019/289. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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.

(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:

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EU) 2019/289. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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:;

(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:

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EU) 2019/289. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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