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Amended New De minimis block exemption

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, [...] 2006
C(2006)

Draft

COMMISSION REGULATION (EC) No .../..

of [...]

on the application of Articles 87 and 88 of the EC Treaty to de minimis aid

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COMMISSION REGULATION (EC) No .../..

of [...]

on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid¹, and in particular Article 2 thereof,

Having published a draft of this Regulation²,

Having consulted the Advisory Committee on State aid,

Whereas:

- (1) Regulation (EC) No 994/98 empowers the Commission to set out in a regulation a threshold under which aid measures are deemed not to meet all the criteria of Article 87(1) of the Treaty and therefore do not fall under the notification procedure provided for in Article 88(3) of the Treaty.
- (2) The Commission has applied Articles 87 and 88 of the Treaty and has in particular clarified, in numerous decisions, the notion of aid within the meaning of Article 87(1) of the Treaty. The Commission has also stated its policy with regard to a *de minimis* ceiling, below which Article 87(1) can be considered not to apply, initially in its notice on the *de minimis* rule for State aid³ and subsequently in Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid⁴. In the light of the experience gained in applying that Regulation and in order to take account of the evolution of inflation and gross domestic product in the Community up to and including 2006 and of the likely developments through the period of validity of this Regulation, it appears appropriate to revise some of the conditions laid down in Regulation (EC) No 69/2001 and to replace that Regulation.
- (3) In view of the special rules which apply in the sectors of primary production of agricultural products, fisheries and aquaculture and of the risk that smaller amounts of

1 OJ L 142, 14.5.1998, p. 1

2 OJ C 137, 10.6.2006, p. 4.

3 OJ C 68, 6.3.1996, p. 9.

4 OJ L 10, 13.1.2001, p. 30

aid than those set out in this Regulation could fulfil the criteria of Article 87(1) of the Treaty in those sectors, it is appropriate that this Regulation should not apply to those sectors. For the same reasons, with regard to the transport sector, the Commission finds appropriate to extend the scope of the de minimis Regulation to the whole of this sector with the exception of the road transport sector. This, however, does not call into question the Commission's favourable approach with regard to State aid for cleaner and more environmentally friendly vehicles. In view of Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry⁵, this regulation should not apply to the coal sector.

- (4) Considering the similarities between the processing and marketing of agricultural products, on the one hand, and of non-agricultural products, on the other hand, this Regulation should apply to the processing and marketing of agricultural products, provided, however, certain conditions are met. Neither on-farm activities necessary for preparing a product for the first sale, like harvesting, cutting and threshing of cereals, packing of eggs etc., nor the first sale to resellers or processors should be considered as processing or marketing in this respect. As from the entry into force of this Regulation, aid granted in favour of undertakings active in the processing or marketing of agricultural products should no longer be subject to Regulation (EC) No 1860/2004 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the agriculture and fisheries sector⁶. Regulation (EC) No 1860/2004 should be amended accordingly. The Court of Justice of the European Communities has established that, once the Community has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. For this reason, this Regulation should not apply to aid, the amount of which is fixed on the basis of price or quantity of products purchased or put on the market; nor should it apply to de minimis support which is linked to an obligation to share it with primary producers.
- (5) This Regulation should not apply to de minimis export aid or de minimis aid favouring domestic over imported products. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market does not normally constitute export aid.
- (6) In the light of the Commission's experience, it can be established that aid not exceeding a ceiling of EUR 200 000 over any period of three years does not affect trade between Member States and/or does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty.
- (7) The years to take into account for this purpose are the fiscal years as used for fiscal purposes by the beneficiary in the Member State concerned. The relevant period of three years should be assessed on a rolling basis so that, for each new grant of de minimis aid, the total amount of de minimis aid granted in the fiscal year concerned, as well as during the previous two fiscal years, needs to be determined. Aid granted by

⁵ OJ L 205, 02.08.2002, p.1.

⁶ OJ L 325, 28.10.2004, p. 4.

any State authority or organ should be taken into account for this purpose even when financed entirely or partly from Community resources. Aid exceeding the de minimis ceiling cannot be broken down into a number of smaller parts in order to bring such parts within the scope of this Regulation.

- (8) Consistent with the principles governing aid falling within Article 87(1) of the Treaty, de minimis aid is considered to be granted at the moment the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.
- (9) In order to avoid circumvention of maximum aid intensities provided in different Community instruments de minimis aid may not be cumulated with State aid in respect of the same project.
- (10) For the purposes of transparency, equal treatment and the correct application of the de minimis ceiling, it is appropriate that Member States should apply the same method of calculation. In order to facilitate this calculation and in accordance with the present practice of application of the de minimis rule, it is appropriate that aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. Calculation of the grant equivalent of transparent types of aid other than grants or of aid payable in several instalments requires the use of market interest rates prevailing at the time of granting such aid. With a view to a uniform, transparent and simple application of the State aid rules, the market rates for the purposes of this Regulation should be deemed to be the reference rates, provided that the transaction underlying the aid measure is backed by normal security and does not involve abnormal risk. The reference rates should be those which are periodically fixed by the Commission on the basis of objective criteria and published in the Official Journal of the European Union or on the Internet.
- (11) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to de minimis aid which is transparent. Transparent aid is aid for which it is possible to calculate precisely the gross grant equivalent *ex ante* without a need to undertake a risk assessment. Such precise calculation can, for instance, be realised as regards grants, interest rate subsidies and capped tax exemptions. Aid comprised in capital injections should not be considered as transparent de minimis aid, unless the total amount of the public injection is lower than the de minimis ceiling. Aid comprised in risk capital measures as referred to in the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises⁷ should not be considered as transparent de minimis aid, unless the risk capital scheme concerned provides public capital only up to the de minimis ceiling to each target undertaking. Aid comprised in loans should be treated as transparent de minimis aid when the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time of grant and the loan is backed by normal security and does not involve abnormal risk. Therefore, loans provided to an undertaking in difficulty are not considered as transparent de minimis aid. This regulation does not exclude the possibility that a measure, adopted by a Member State, shall not be considered as State aid in the meaning of Article 87(1) of the Treaty on the basis of other grounds than those mentioned in this regulation, for instance, in the

⁷ OJ C 194, 18.8.2006, p. 2.

case of capital injections, because such measure has been decided in conformity with the market investor principle.

- (12) The Commission considers it necessary to provide legal certainty for guarantee schemes which do not have the potential to affect trade and distort competition and in respect of which sufficient data is available to assess these potential effects reliably. Such data is available for guarantee schemes in favour of viable small and medium enterprises as defined in Annex I of Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises⁸. This Regulation should therefore provide for a specific ceiling transposing the general de-minimis ceiling of EUR 200 000 into a guarantee-specific ceiling based on the total amount of the individual loan underlying such guarantee. It is appropriate to calculate this specific ceiling using a methodology assessing the State aid amount included in guarantee schemes covering loans in favour of viable small and medium-sized enterprises, up to a maximum of 80 % of the loan. The methodology and the data used to calculate the guarantee-specific ceiling exclude undertakings in difficulty as referred to in the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁹. This specific ceiling should therefore apply neither to ad hoc individual aid granted outside the scope of a guarantee scheme nor to aid granted to undertakings in difficulty. The specific ceiling has been set at a level representing a worst case scenario for the sample concerned, on the basis of a cap rate of 15%.
- (13) Upon notification by a Member State, the Commission may examine whether an aid measure which does not consist in a grant, loan, guarantee, capital injection or risk capital measure leads to a gross grant equivalent that does not exceed the EUR 200 000 ceiling and could therefore be covered by the provisions of this Regulation.
- (14) The Commission has a duty to ensure that State aid rules are respected and in particular that aid granted under the de minimis rules adheres to the conditions thereof. In accordance with the cooperation principle laid down in Article 10 of the Treaty, Member States should facilitate the achievement of this task by establishing the necessary machinery in order to ensure that the total amount of de minimis aid, granted to the same beneficiary under the de minimis rule, does not exceed the ceiling of EUR 200 000 over a period of three fiscal years. To that end, it is appropriate that Member States, when granting a de minimis aid, should inform the undertaking concerned of the amount of the aid and of its de minimis character, by referring to this Regulation. Moreover, prior to granting such aid a Member State should obtain from the beneficiary a declaration about other de minimis aid received during the fiscal year concerned and the two previous fiscal years and carefully check that the de minimis ceiling will not be exceeded by the new de minimis aid. Alternatively respect for the ceiling may also be ensured by means of a central register.
- (15) Regulation (EC) No 69/2001 expires on 31 December 2006. This Regulation should therefore apply from 1 January 2007. Provided that certain conditions are met, this Regulation should apply to aid granted before its entry into force, including to aid granted in the transport sector - except the road transport sector - and in the sector of

⁸ OJ L 10, 13.1.2001, p. 33.

⁹ OJ C 244, 1.10.2004, p. 2.

processing and marketing of agricultural products, which were excluded from Regulation (EC) No 69/2001. Moreover, any individual aid granted in accordance with Regulation (EC) No 69/2001 during the period of application of the latter Regulation should remain unaffected by this Regulation.

- (16) Having regard to the Commission's experience and in particular the frequency with which it is generally necessary to revise State aid policy, it is appropriate to limit the period of application of this Regulation. Should this Regulation expire without being extended, Member States should have an adjustment period of six months with regard to de minimis aid covered by this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation applies to aid granted to undertakings in all sectors, with the exception of:
 - (a) aid granted to undertakings for activities in the road transport sector;
 - (b) aid granted to undertakings for activities in the fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000¹⁰;
 - (c) aid granted to undertakings for activities in the primary production of agricultural products as listed in Annex I to the Treaty;
 - (d) aid granted to undertakings for activities in the processing and marketing of agricultural products as listed in Annex I to the Treaty, in the following cases:
 - when the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned,
 - when the aid is conditional on being partly or entirely passed on to primary producers;
 - (e) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
 - (f) aid contingent upon the use of domestic over imported goods;
 - (g) aid granted to undertakings active in the coal sector, as defined in Regulation (EC) No 1407/2002.
2. For the purposes of this Regulation:

¹⁰ OJ L 83, 4.4.2000, p. 35.

(a) “agricultural products” means products listed in Annex I to the EC Treaty, with the exception of fishery products;

(b) “processing of agricultural products” means any operation on an agricultural product resulting in a product which is also an agricultural product, except on farm activities necessary for preparing an animal or plant product for the first sale;

(c) “marketing of agricultural products” means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose.

Article 2

De minimis aid

1. Aid measures shall be deemed not to meet all the criteria of Article 87(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 88(3) of the Treaty, if they fulfil the conditions laid down in paragraphs 2 and 3.

2. The total de minimis aid granted to any one undertaking shall not exceed EUR 200 000 gross over any period of three fiscal years. This ceiling shall apply irrespective of the form of the de minimis aid or the objective pursued and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Community origin. The period shall be determined by reference to the fiscal years used by the beneficiary in the Member State concerned.

When an overall aid amount exceeds this ceiling, that aid amount cannot benefit from this Regulation, even for a fraction not exceeding that ceiling. In such a case, the benefit of this Regulation cannot be claimed for this aid either at the time the aid is granted or at any subsequent time.

3. The ceiling in paragraph 2 shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments shall be discounted to its value at the moment of its being granted. The interest rate to be used for discounting purposes and to calculate the gross grant equivalent shall be the reference rate applicable at the time of grant.

4. This Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without need to undertake a risk assessment (“transparent aid”). In particular:

Aid comprised in loans shall be treated as transparent de minimis aid when the beneficiary is not an undertaking in difficulty and the gross grant equivalent has been calculated on the basis

of market interest rates prevailing at the time of the grant and the loan is backed by normal security.

Aid comprised in capital injections shall not be considered as transparent de minimis aid, unless the total amount of the public injection does not exceed the de minimis ceiling.

Aid comprised in risk capital measures shall not be considered as transparent de minimis aid, unless the risk capital scheme concerned provides public capital only up to the de minimis ceiling to each target undertaking.

Individual aid provided under a guarantee scheme to small and medium-sized enterprises which are not undertakings in difficulty shall be treated as transparent de minimis aid when the total loan underlying the individual guarantee provided under such scheme is not larger than EUR 1 700 000 per beneficiary undertaking and the guarantee does not exceed 80% of the loan.

5. De minimis aid may not be cumulated with State aid in respect of the same project.

Article 3

Monitoring

1. Where a Member State intends to grant de minimis aid to an undertaking, it shall inform that undertaking in writing of the prospective amount of the aid (expressed as gross grant equivalent) and of its de minimis character, making express reference to this Regulation, and citing its title and publication reference in the *Official Journal of the European Union*. Where the de minimis aid is granted to different beneficiaries on the basis of a scheme and different amounts of individual aid are granted to those beneficiaries under the scheme, the Member State concerned may choose to fulfil this obligation by informing the beneficiaries of a fixed sum corresponding to the maximum aid amount to be granted under the scheme. In such case, the fixed sum shall be used for determining whether the ceiling provided in Article 2(2) is met. The Member State shall also obtain, prior to granting the aid, from the undertaking concerned a declaration in written or electronic form about any other de minimis aid received during the previous two fiscal years and the current fiscal year.

The Member State shall only grant the new de minimis aid after having checked that this will not raise the total amount of de minimis aid received by the beneficiary during the period covering the fiscal year concerned, as well as the previous two fiscal years in that Member State, to a level above the ceiling laid down in Article 2(2).

2. Where a Member State has set up a central register of de minimis aid containing complete information on all de minimis aid granted by any authority within that Member State, the first subparagraph of paragraph 1 shall cease to apply from the moment the register covers a period of three years.

3. Member States shall record and compile all the information regarding the application of this Regulation. Such records shall contain all information necessary to demonstrate that the

conditions of this Regulation have been complied with. Records regarding individual de minimis aid shall be maintained for 10 years from the date on which it was granted and regarding a de minimis aid scheme, for 10 years from the date on which the last individual aid was granted under such scheme. On written request the Member State concerned shall provide the Commission, within a period of 20 working days, or such longer period as may be fixed in the request, with all the information that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied with, in particular the total amount of de minimis aid received by any undertaking.

Article 4

Amendment

Regulation (EC) No 1860/2004 is amended as follows:

- (a) In Article 2.1, the words “processing and marketing” are deleted;
- (b) Article 2.3 is deleted.

Article 5

Transitional measures

1. This Regulation shall apply to aid granted before its entry into force, if it fulfils all the conditions laid down in Articles 1 and 2. Any aid which does not fulfil those conditions shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.
2. Any individual de minimis aid granted between 2 February 2001 and 30 June 2007, which fulfils the conditions of Regulation (EC) No 69/2001, shall be deemed not to meet all the criteria of Article 87(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 88(3) of the Treaty.
3. At the end of the period of validity of this Regulation, any de minimis aid which fulfils the conditions of this Regulation may be validly implemented for a period of six months.

Article 6

Entry into force and period of validity

1. This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007 until 31 December 2013.

2. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the Commission
Neelie Kroes
Member of the Commission

