Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union

COMMISSION REGULATION (EU) No 1388/2014

of 16 December 2014

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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 (EC) No 994/98 of 7 May 1998 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)(i) and (vi) thereof,

Having published a draft of this Regulation[(2)],

After consulting the Advisory Committee on State Aid,

Whereas:

(1) State funding meeting the criteria laid down in Article 107(1) of the Treaty constitutes State aid and requires notification to the Commission by virtue of Article 108(3) thereof. However, pursuant to Article 109 of the Treaty, the Council may determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) of the Treaty, the Commission may adopt regulations relating to those categories of aid.

(2) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 109 of the Treaty, that certain categories of aid may, under certain conditions, be exempted from the notification requirement. On the basis of that Regulation, the Commission adopted Commission Regulation (EC) No 736/2008[(3)] which provided that, under certain conditions, aid to small and medium-sized enterprises ('SMEs') active in the production, processing and marketing of fisheries products is compatible with the internal market and not subject to the notification requirement of Article 108(3) of the Treaty. Regulation (EC) No 736/2008 applied until 31 December 2013.

(3) The Commission has applied Articles 107 and 108 of the Treaty to SMEs active in the production, processing and marketing of fishery and aquaculture products in numerous decisions. It has also stated its policy in guidelines specific to that sector. In the light of the Commission's experience in applying those provisions to SMEs, it is appropriate for the Commission to continue making use of the powers conferred by Regulation (EC)

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No 994/98 in order to exempt aid to that category of undertakings from the notification requirement of Article 108(3) of the Treaty under certain conditions.

(4) On 22 July 2013 Regulation (EC) No 994/98 was amended by Council Regulation (EU) No 733/2013[(4)] to empower the Commission to extend the block exemption to new categories of aid in respect of which clear compatibility conditions can be defined. In the fishery and aquaculture sector, this is the case for aid to make good the damage caused by certain natural disasters, in light of the Commission's experience in applying Article 107(2)(b) of the Treaty to this category of aid.

(5) The compatibility of State aid in the fishery and aquaculture sector is assessed by the Commission on the basis of the objectives of both the Competition Policy and the Common Fisheries Policy. In the interests of coherence with Union-financed support measures, the maximum intensity of public aid allowed under this Regulation should be equal to that fixed for the same kind of aid in Article 95 of Regulation (EU) No 508/2014 of the European Parliament and of the Council[(5)] and the implementing acts adopted pursuant to that Regulation.

(6) It is essential that no aid is granted in circumstances where Union law, and in particular rules of the Common Fisheries Policy, are not complied with. An aid may therefore only be granted by a Member State in the fishery and aquaculture sector if the measures financed and their effects comply with Union law. Member States should ensure that beneficiaries of State aid comply with the rules of the Common Fisheries Policy.

(7) With its Communication on EU State Aid Modernisation (SAM)[(6)], the Commission launched a wider review of the State aid rules. The main objectives of that modernisation are: (i) to achieve sustainable, smart and inclusive growth in a competitive internal market, while contributing to Member State efforts towards a more efficient use of public finances; (ii) to focus Commission ex ante scrutiny of aid measures on cases with the biggest impact on the internal market, while strengthening Member State cooperation in State aid enforcement; and (iii) to streamline the rules and provide for faster, better informed and more robust decisions based on a clear economic rationale, a common approach and clear obligations. This Regulation is part of the SAM programme.

(8) This Regulation should allow for better prioritisation of State aid enforcement activities and greater simplification and should enhance transparency, effective evaluation and the control of compliance with the State aid rules at national and Union levels, while preserving the institutional competences of the Commission and the Member States. In accordance with the principle of proportionality, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(9) The general conditions for the application of this Regulation should be defined on the basis of a set of common principles that ensure that the aid serves a purpose of common interest, has a clear incentive effect, is appropriate and proportionate, is granted in full transparency and subject to a control mechanism and regular evaluation and does not adversely affect trading conditions to an extent that is contrary to the common interest.

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(10) Aid that fulfils all the conditions laid down in this Regulation both general and specific to the relevant categories of aid should be considered compatible with the internal market and exempted from the notification requirement laid down in Article 108(3) of the Treaty.

(11) State aid within the meaning of Article 107(1) of the Treaty not covered by this Regulation or by other Regulations adopted pursuant to Article 1 of Regulation (EC) No 994/98 remains subject to the notification requirement of Article 108(3) of the Treaty. This Regulation is without prejudice for Member States to notify aid potentially covered by this Regulation. Such aid should be assessed in the light of the Guidelines for the examination of State aid in the fishery and aquaculture sector or any successor guidelines[7].

(12) This Regulation should not apply to aid contingent upon the use of domestic over imported products or aid to export-related activities. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other Member States or third 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 in another Member State or third country should not normally constitute aid to export-related activities.

(13) The Commission should ensure that authorised aid does not adversely affect trading conditions to an extent that is contrary to the common interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market should be excluded from the scope of this Regulation, with the exception of aid schemes to make good the damage caused by natural disasters.

(14) Aid granted to undertakings in difficulty should be excluded from the scope of this Regulation, since such aid should be assessed under the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty[8], in order to avoid their circumvention, with the exception of aid schemes to make good the damage caused by natural disasters. In order to provide legal certainty, it is appropriate to establish clear criteria that do not require an assessment of all the particularities of the situation of an undertaking to determine whether an undertaking is considered to be in difficulty for the purposes of this Regulation.

(15) State aid enforcement is highly dependent on the cooperation of Member States. Therefore, Member States should take all necessary measures to ensure compliance with this Regulation, including compliance of individual aid granted under block-exempted schemes.

(16) In view of the need to strike the appropriate balance between minimising distortions of competition in the aided sector and the objectives of this Regulation, this Regulation should not exempt individual grants which exceed a fixed maximum amount, whether or not made under an aid scheme exempted by this Regulation.

(17) For the purpose of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid in respect of which it is possible to calculate

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precisely the gross grant equivalent *ex ante* without the need to undertake a risk assessment ('transparent aid').

(18) This Regulation should define the conditions under which certain specific aid instruments, such as loans, guarantees, tax measures, and, in particular, repayable advances may be considered transparent. Aid comprised in guarantees should be considered as transparent if the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down for the respective type of undertaking. In the case of SMEs, the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees[(9)] indicates levels of annual premium above which a State guarantee would be deemed not to constitute aid. For the purposes of this Regulation, capital injections and risk capital measures should not be considered transparent aid.

(19) In order to ensure that the aid is necessary and acts as an incentive to further develop activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would in any case engage even in the absence of the aid. Aid should only be exempted from notification requirement of Article 108(3) of the Treaty in accordance with this Regulation, where the activity or the work on the aided project starts after the beneficiary has submitted a written application for the aid.

(20) Automatic aid schemes in the form of tax advantages should continue to be subject to a specific condition concerning the incentive effect, due to the fact that this kind of aid is granted under different procedures than other categories of aid. Such schemes should already have been adopted before work on the aided project or activity started. However, this condition should not apply in the case of fiscal successor schemes provided the activity was already covered by the previous fiscal schemes in the form of tax advantages. For the assessment of the incentive effect of such schemes, the crucial moment is the moment when the tax measure was set out for the first time in the original scheme, which is then replaced by the successor scheme.

(21) For the calculation of aid intensity, only eligible costs should be included. This Regulation should not exempt aid which exceeds the relevant aid intensity as a result of including ineligible costs. The identification of eligible costs should be supported by clear, specific and up-to date documentary evidence. All figures used should be taken before any deduction of tax or other charges. Aid payable in several instalments should be discounted to its value on the date of granting of the aid. The eligible costs should also be discounted to their value on the date of granting. The interest rate to be used for discounting purposes and for calculating the amount of aid in the case of aid which does not take the form of a grant should be respectively the discount rate and the reference rate applicable at the time of the grant, as laid down in the Commission Communication on the revision of the method for setting the reference and discount rates[(10)]. Where aid is granted by means of tax advantages, aid tranches should be discounted on the basis of the discount rates applicable on the various dates when the tax advantages become effective. The use of aid in the form of repayable advances should be promoted, since such risk-sharing instruments are conducive to strengthened incentive effect of aid. It

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is therefore appropriate to establish that where aid is granted in the form of repayable advances the applicable aid intensities referred to in this Regulation may be increased.

(22) In the case of tax advantages on future taxes, the applicable discount rate and the exact amount of the aid tranches may not be known in advance. In such cases, Member States should set in advance a cap on the discounted value of the aid respecting the applicable aid intensity. Subsequently, when the amount of the aid tranche at a given date becomes known, discounting can take place on the basis of the discount rate applicable at that time. The discounted value of each aid tranche should be deducted from the overall amount of the cap ('capped amount').

(23) To determine whether the notification thresholds and the maximum aid intensities referred to in this Regulation are respected, the total amount of public support for the aided activity or project should be taken into account. Moreover, this Regulation should specify the circumstances under which different categories of aid may be cumulated. Aid exempted by this Regulation and any other compatible aid exempted under other regulations or approved by the Commission may be cumulated as long as those measures concern different identifiable eligible costs. Where different sources of aid are related to the same — partly or fully overlapping — identifiable eligible costs, cumulation should be allowed up to the highest aid intensity or aid amount applicable to that aid under this Regulation. This Regulation should also set out special rules for cumulation of aid measures with *de minimis* aid. *De minimis* aid is often not granted for or attributable to specific identifiable eligible costs. In such a case, it should be possible to freely cumulate *de minimis* aid with State aid exempted under this Regulation. Where, however, *de minimis* aid is granted for the same identifiable eligible costs as State aid exempted under this Regulation, cumulation should only be allowed up to the maximum aid intensity as referred to in Chapter III of this Regulation.

(24) Given that State aid within the meaning of Article 107(1) of the Treaty is, in principle, prohibited, it is important for all parties to be able to check whether an aid is granted in compliance with the applicable rules. Transparency of State aid is, therefore, essential for the correct application of Treaty rules and leads to better compliance, greater accountability, peer review and ultimately more effective public spending. To ensure transparency, Member States should be required to establish comprehensive State aid websites, at regional or national level, setting out summary information about each aid measure exempted under this Regulation. That obligation should be a condition for the compatibility of the individual aid with the internal market. Following the standard practice regarding publication of information in Directive 2013/37/EU of the European Parliament and of the Council[11], a standard format should be used which allows the information to be searched, downloaded and easily published on the Internet. The links to the State aid websites of all the Member States should be published on the Commission's website. In accordance with Article 3 of Regulation (EC) No 994/98, as amended by Regulation (EU) No 733/2013, summary information on each aid measure exempted under this Regulation should be published on the website of the Commission.

(25) To ensure effective monitoring of aid measures in accordance with Regulation (EC) No 994/98, as amended by Regulation (EU) No 733/2013, it is appropriate to establish