Commission Regulation (EU) No 702/2014 of 25 June 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

COMMISSION REGULATION (EU) No 702/2014

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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) and (b) thereof,

Having published a draft of this Regulation in accordance with Article 6 and Article 8(2) of Regulation (EC) No 994/98,

Having consulted 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 that notification requirement. In accordance with Article 108(4) of the Treaty the Commission may adopt regulations relating to those categories of aid. Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 109 of the Treaty, that certain categories of aid may be exempted from the notification requirement of Article 108(3) of the Treaty. On the basis of that Regulation, the Commission adopted Commission Regulation (EC) No 1857/2006[(2)] which applies until 30 June 2014.

(2) On 22 July 2013 Regulation (EC) No 994/98 was amended by Regulation (EU) No 733/2013[(3)] to empower the Commission to extend the block exemption to new categories of aid in respect of which clear compatibility conditions can be defined. Such new categories of aid in the agricultural and forestry sectors should include: aid in favour of heritage conservation, aid in favour of making good the damage caused by natural disasters and aid in favour of forestry which can, under certain conditions, be exempted from the notification requirement of Article 108(3) of the Treaty.

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EU) No 702/2014. 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*

(3) Article 42 of the Treaty provides that the rules on competition apply to the production of and trade in agricultural products only to the extent determined by the European Parliament and the Council. Article 211(1) of Regulation (EU) No 1308/2013 of the European Parliament and the Council[(4)] provides that State aid rules apply to aid for the production of and trade in agricultural products, subject to specific derogations. Article 211(2) of Regulation (EU) No 1308/2013 provides that State aid rules do not apply to payments made by Member States for measures provided for in that Regulation which are partly or wholly financed by the Union and for measures included in Articles 213 to 218 of that Regulation. Moreover, State aid rules do not apply to payments made by Member States pursuant to Regulation (EU) No 1305/2013 of the European Parliament and of the Council[(5)] nor to additional national financing, within the scope of Article 42 of the Treaty. Such payments intended to provide additional national financing within the scope of Article 42 of the Treaty, have to comply with the criteria of Regulation (EU) No 1305/2013 in order to be approved by the Commission as part of the rural development programme of a given Member State. Nevertheless, State aid rules apply, both to the part co-financed under the European Agricultural Fund for Rural Development (EAFRD) and to additional national financing for measures falling outside the scope of Article 42 of the Treaty.

(4) As the economic effects of aid do not change depending on whether or not it is partly financed by the Union, or whether it is financed by a Member State alone, there should be consistency and coherence between the Commission's policy in respect of the control of State aid, and the support which is granted under the Union's own common agricultural and rural development policy.

(5) The scope of this Regulation should therefore be aligned with that of Regulation (EU) No 1305/2013, in particular as regards aid in favour of the forestry sector and aid in favour of micro and small and medium-sized enterprises (SMEs) active in rural areas. This Regulation should apply to aid measures in favour of forestry and in favour of SMEs active in the rural areas which fall outside the scope of Article 42 of the Treaty which are covered by Regulation (EU) No 1305/2013 only and insofar as those measures are included in the rural development programmes and are co-financed by the EAFRD. On the other hand, this Regulation should not apply to aid to undertakings in rural areas for activities falling outside the scope of Article 42 of the Treaty or to the forestry sector where there is no direct link to the rural development programmes and no co-financing from the EAFRD. However, aid for knowledge transfer and information actions in the forestry sector and aid for advisory services in the forestry sector should be possible to be granted outside the rural development programmes wholly financed by the Member States, provided that they comply with the respective compatibility conditions laid down in this Regulation.

(6) A simplified procedure should be made available for Member States when they are required to obtain State aid clearance for both the co-financed part and the additional financing of their national rural development programmes, in accordance with Article 81(1) of Regulation (EU) No 1305/2013. In that respect such aid should be exempted

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from the notification requirement of Article 108(3) of the Treaty provided that it complies with the respective compatibility conditions laid down in this Regulation.

(7) With the Communication of 8 May 2012 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee on the Regions — EU State Aid Modernisation (SAM)[(6)], the Commission launched a wider review of the State aid rules. The main objectives of this 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 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.

(8) This Regulation should allow for a 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 Commission has applied Articles 107 and 108 of the Treaty to SMEs active in the production, processing and marketing of agricultural products in numerous cases, in particular in the framework of Regulation (EC) No 1857/2006, Commission Regulation (EC) No 800/2008[(7)] and the Community Guidelines on State aid in the agriculture and forestry sector 2007 to 2013[(8)]. It has thus gained considerable experience in this field. The Commission's experience has allowed it, on the one hand, to better define the conditions under which certain categories of aid can be considered compatible with the internal market and to extend the scope of block exemptions and, on the other hand, made clear the necessity to strengthen transparency as well as monitoring and allow for a proper evaluation of large schemes in light of their effect on competition in the internal market.

(10) 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 extent that is contrary to the common interest.

(11) Aid that fulfils all the conditions laid down in this Regulation, both general and specific to the relevant categories of aid, should be exempted from the notification requirement laid down in Article 108(3) of the Treaty. With a view to ensuring efficient supervision and simplifying administration, but without weakening Commission monitoring, exempted aid (aid schemes and individual aids) should contain an express reference to this Regulation.

(12) State aid within the meaning of Article 107(1) of the Treaty not covered by this Regulation remains subject to the notification requirement of Article 108(3) of the

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Treaty. This Regulation is without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation.

(13) In view of the greater potential impact of large schemes on trade and competition, aid schemes with an average annual State aid budget exceeding a threshold based on an absolute value should in principle be subject to State aid evaluation. The evaluation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, as well as the effectiveness of the aid measure in the light of its general and specific objectives and should provide indications on the impact of the scheme on competition and trade. In order to ensure equal treatment, State aid evaluation should be carried out on the basis of an evaluation plan approved by the Commission. While such plan should normally be drawn up at the moment of the design of the scheme and approved in time for the scheme to enter into force, this may not be possible in all cases. Therefore, in order not to delay their entry into force, this Regulation will apply to such schemes for a maximum period of six months. The Commission may decide to extend this period, upon approval of the evaluation plan. To this end, the evaluation plan should be notified to the Commission within 20 working days following the entry into force of the scheme. The Commission can also exceptionally decide that an evaluation is not necessary given the specificities of the case. The Commission should receive from the Member State the necessary information to be able to carry out the assessment of the evaluation plan and request additional information without undue delay allowing the Member State to complete the missing elements for the Commission to take a decision. In view of the novelty of this process, the Commission will provide, in a separate document, a detailed guidance on the procedure applicable during the 6 months period for the approval of the evaluation plan and the relevant templates through which the evaluation plans will have to be submitted. Alterations of schemes subject to evaluation, other than modifications which cannot affect the compatibility of the aid scheme under this Regulation or cannot significantly affect the content of the approved evaluation plan, should be assessed taking account of the outcome of such evaluation and should be excluded from the scope of this Regulation. The alterations such as purely formal modifications, administrative modifications or alterations carried out within the framework of the EU co-financed measures should not, in principle, be considered as significantly affecting the content of the approved evaluation plan.

(14) 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 another Member State or third country. 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.

(15) The Commission should ensure that authorised aid does not adversely affect trading conditions to an extent that is contrary to the general 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

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should be excluded from the scope of this Regulation with the exception of aid to make good the damage caused by certain natural disasters.

(16) 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 firms in difficulty[9] or their successor Guidelines in order to avoid their circumvention, with the exception, under certain conditions, of aid granted to compensate for damages caused by natural disasters, by an adverse climatic event which can be assimilated to a natural disaster, by animal disease or plants pest and aid for the restoration of damage to forests from fires, natural disasters, adverse climatic events, pests, diseases, catastrophic events and climate change related events, as stipulated by this Regulation. In addition, for reasons of public health protection and having in mind the emergency situation no distinction should be made, under certain conditions, as to the economic situation of an undertaking for aid for the costs of the eradication of animal diseases and for aid for the destruction and removal of fallen stock. 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.

(17) If a State aid or the conditions attached to it, including its financing method when it forms an integral part of it, entail a non-severable violation of Union legislation, the aid may not be declared compatible with the internal market. This Regulation should therefore not apply to aid which entails a non-severable violation of Union legislation.

(18) 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.

(19) Due to the high risk of adversely affecting trading conditions, large amounts of aid granted either individually or cumulatively should be assessed by the Commission upon notification. Thresholds by maximum aid amount should therefore be set for certain categories of investment aid falling within the scope of this Regulation at a level which takes into account the category of aid concerned and its likely effect on trading conditions. Any aid granted above those thresholds should remain subject to the notification requirement of Article 108(3) of the Treaty. The thresholds laid down in this Regulation should not be circumvented by the artificial splitting up of aid schemes or aid projects, for example into several aid schemes or projects with similar characteristics, objectives or beneficiaries. Other categories of aid, to the extent that the compatibility conditions and the maximum aid intensities or the maximum aid amounts laid down in this Regulation are respected, should not be considered as having a high risk of adversely affecting trading conditions.

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