Commission Regulation (EU) 2019/316 of 21 February 2019 amending Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector

COMMISSION REGULATION (EU) 2019/316

of 21 February 2019

amending Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector

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)],

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

After consulting the Advisory Committee on State Aid,

Whereas:

(1) State funding meeting the criteria in Article 107(1) of the Treaty on the Functioning of the European Union ('the Treaty') constitutes State aid and requires notification to the Commission pursuant to Article 108(3) of the Treaty. However, in accordance with Article 109 thereof, 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 State aid. Pursuant to Regulation (EU) 2015/1588 and in accordance with Article 109 of the Treaty, the Council decided that *de minimis* aid could constitute one such category. On that basis, *de minimis* aid, being aid granted to a single undertaking over a given period of time that does not exceed a certain fixed amount, is deemed not to meet all the criteria laid down in Article 107(1) of the Treaty and is therefore not subject to the notification procedure. However, Member States should be reminded that, even if *de minimis* aid is considered not to constitute State aid, such aid should not entail a breach of EU law.

(2) The Commission has adopted a number of regulations establishing rules on *de minimis* aid granted in the agriculture sector, the latest of which was Commission Regulation (EU) No 1408/2013[(3)].

(3) In the light of the experience gained in applying Regulation (EU) No 1408/2013 and taking into account the variety of the use of *de minimis* aid in Member States, it is appropriate to adjust some of the conditions laid down therein. The maximum amount

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of aid to be granted to a single undertaking over a period of 3 years should be increased to EUR 20 000 and the national cap increased to 1,25 % of the annual output.

(4) Taking into account the increased need to use *de minimis* aid in some Member States, it is appropriate to allow for a further increase both of the maximum aid amount per single undertaking to EUR 25 000 and of the national cap to 1,5 % of the annual output, subject to additional conditions necessary to safeguard the proper functioning of the internal market. The experience gained over the first years of application of Regulation (EU) No 1408/2013 has shown that the concentration of *de minimis* aid in a certain product sector could lead to a potential distortion of competition and trade. Therefore, the prerequisite for using the higher individual ceiling and national cap should be the application of a sector cap preventing Member States from granting more than 50 % of the total cumulative amount of *de minimis* aid over any period of 3 fiscal years for measures that benefit only one specific product sector. The sector cap should ensure that any measure falling under Regulation (EU) No 1408/2013 can be deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition.

(5) Presently, it is optional for Member States to use a national central register to verify that neither the *de minimis* individual ceiling, nor the national cap is exceeded. However, the use of a central register would become necessary in those Member States that opt for a higher individual ceiling and national cap, given that the sector cap which is a condition for that option calls for an even closer monitoring of the aid granted. Therefore, for such Member States the use of a central register should be made mandatory, in order to keep a record of all *de minimis* aid granted, so as to be able to verify that neither the individual ceiling, nor the national or sector cap, are exceeded.

(6) The criteria for calculating the gross grant equivalent for loans and guarantees should be adjusted according to the increased *de minimis* ceilings.

(7) In the light of the increased need for use of *de minimis* aid and given that the current ceilings are unduly constraining, it is necessary to amend Regulation (EU) No 1408/2013 before its date of expiry, *i.e.*31 December 2020. The time span between the entry into force of this Regulation and the end of the period of application of Regulation (EU) No 1408/2013 would be very short. For reasons of procedural economy and in order to ensure continuity and legal certainty, the period of application of Regulation (EU) No 1408/2013 should therefore be extended until 31 December 2027.

(8) Regulation (EU) No 1408/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1408/2013 is amended as follows:

(1) in Article 2, the following paragraphs 3 and 4 are added:

3. For the purposes of this Regulation, "product sector" means a sector listed in Article 1(2)(a) to (w) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council[(4)].

4 For the purposes of this Regulation, "sector cap" means a maximum cumulative aid amount applying to aid measures which benefit only one single product sector, which corresponds to 50 % of the maximum amount of *de minimis* aid granted per Member State set out in Annex II.;

(2) Article 3 is replaced by the following:

Article 3

De minimis aid

1 Aid measures shall be deemed not to meet all the criteria in Article 107(1) of the Treaty, and shall therefore be exempt from the notification requirement in Article 108(3) of the Treaty, if they fulfil the conditions laid down in this Regulation.

2 The total amount of *de minimis* aid granted per Member State to a single undertaking shall not exceed EUR 20 000 over any period of 3 fiscal years.

3 The cumulative amount of *de minimis* aid granted per Member State to undertakings active in the primary production of agricultural products over any period of 3 fiscal years shall not exceed the national cap set out in Annex I.

3a By way of derogation from paragraphs 2 and 3, a Member State may decide that the total amount of *de minimis* aid granted to a single undertaking shall not exceed EUR 25 000 over any period of 3 fiscal years and that the total cumulative amount of de minimis aid granted over any period of 3 fiscal years shall not exceed the national cap set out in Annex II, subject to the following conditions:

a for aid measures which benefit only one single product sector, the total cumulative amount granted over any period of 3 fiscal years shall not exceed the sector cap defined in Article 2(4);

b the Member State shall have in place a national central register in accordance with Article 6(2).

4 *De minimis* aid shall be deemed granted at the moment the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime, irrespective of the date of payment of the *de minimis* aid to the undertaking.

5 The *de minimis* ceilings and the national and sector caps referred to in paragraphs 2, 3 and 3a 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 Union origin. The period of 3 fiscal years shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

6 For the purposes of the *de minimis* ceilings and the national and sector caps referred to in paragraphs 2, 3 and 3a, aid 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 granted 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 it is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time the aid is granted.

7 Where the *de minimis* ceilings, the national caps or the sector cap referred to in paragraphs 2, 3 and 3a would be exceeded by the grant of new *de minimis* aid, none of that new aid may benefit from this Regulation.

8 In the case of mergers or acquisitions, all prior *de minimis* aid granted to any of the merging undertakings shall be taken into account in determining whether any new *de minimis* aid to the new or the acquiring undertaking exceeds the relevant *de minimis* ceilings, the relevant national cap or the sector cap. *De minimis* aid lawfully granted before the merger or acquisition shall remain lawful.

9 If one undertaking splits into two or more separate undertakings, *de minimis* aid granted prior to the split shall be allocated to the undertaking that benefited from it, which is in principle the undertaking taking over the activities for which the *de minimis* aid was used. If such an allocation is not possible, the *de minimis* aid shall be allocated proportionately on the basis of the book value of the equity capital of the new undertakings at the effective date of the split.;

(3) Article 4 is amended as follows:

(a) in paragraph 3, point (b) is replaced by the following:

(b) for measures falling under Article 3(2), the loan is secured by collateral covering at least 50 % of the loan and the loan amounts to either EUR 100 000 over 5 years or EUR 50 000 over 10 years, or, for measures falling under Article 3(3a), to either EUR 125 000 over 5 years or EUR 62 500 over 10 years; if a loan is for less than those amounts and/or if it is granted for a period of less than 5 or 10 years respectively, the gross grant equivalent of that loan shall be calculated as a corresponding proportion of the de minimis ceilings laid down in Article 3(2) or (3a); or;

(b) paragraph 4 is replaced by the following:

4. Aid comprised in capital injections shall only be considered as transparent *de minimis* aid if the total amount of the public injection does not exceed the relevant *de minimis* ceiling.;

(c) paragraph 5 is replaced by the following:

5. Aid comprised in risk finance measures taking the form of equity or quasi-equity investments shall only be considered as transparent *de minimis* aid if the capital provided to a single undertaking does not exceed the relevant *de minimis* ceiling.;

(d) in paragraph 6, point (b) is replaced by the following:

(b) for measures falling under Article 3(2), the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed is EUR 150 000 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 75 000 and the duration of the guarantee is 10 years, or, for measures falling under Article 3(3a), the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed is EUR 187 500 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 93 750 and the duration of the guarantee is 10 years; if the amount guaranteed is lower than these amounts and/or if the guarantee is for a period of less than 5 or 10 years respectively, the gross grant equivalent of that guarantee

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shall be calculated as a corresponding proportion of the *de minimis* ceilings laid down in Article 3(2) or (3a); or;

(4) Article 6 is amended as follows:

(a) in paragraph 2, the following second subparagraph is added:

Where a Member State grants aid in accordance with Article 3(3a), it shall have in place a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within that Member State. Paragraph 1 shall cease to apply from the moment the register covers a period of 3 fiscal years.;

(b) paragraph 3 is replaced by the following:

3. A Member State shall grant new *de minimis* aid in accordance with this Regulation only after having checked that this will not raise the total amount of *de minimis* aid granted to the undertaking concerned to a level above the relevant ceilings and national caps and the sector cap referred to in Article 3(2), (3) and (3a) and that all the conditions laid down in this Regulation are complied with.;

(5) in Article 8, the second paragraph is replaced by the following:

It shall apply until 31 December 2027.;

(6) the Annex is replaced by the text in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 21 February 2019.

For the Commission

The President

Jean-Claude JUNCKER