Commission Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products

COMMISSION REGULATION (EC) No 736/2008

of 22 July 2008

on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products

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 aid[(1)], and in particular Article 1(1)(a)(i) thereof,

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

Having consulted the Advisory Committee on State aid,

Whereas:

(1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty, that, under certain conditions, aid to small and medium-sized enterprises (SMEs) is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.

(2) Commission 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 enterprises[(3)] does not apply to activities linked to the production, processing or marketing of fishery and aquaculture products covered by Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products[(4)].

(3) The Commission has applied Articles 87 and 88 of the Treaty in numerous decisions to SMEs active in the production, processing and marketing of fisheries products and has also stated its policy, most recently in the Guidelines for the examination of State aid to fisheries and aquaculture[(5)] (hereafter referred to as the 'fisheries guidelines'). In the light of the Commission's considerable experience in applying those Articles to SMEs active in the production, processing and marketing of fisheries products, it is appropriate, with a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, that the Commission should make use of the powers conferred by Regulation (EC) No 994/98 also for SMEs active in the production, processing and marketing of fisheries products, in so far as Article 89 of the Treaty has been declared applicable to such products.

(4) The compatibility of State aid in the fisheries sector is assessed by the Commission on the basis of the objectives of both the Competition Policy and the Common Fisheries Policy (CFP).

(5) This Regulation should cover types of aid granted in the fisheries sector which have been systematically approved by the Commission for many years. This aid does not require a case-by-case assessment of its compatibility with the common market from the Commission, provided that it complies with the conditions laid down in Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund[6] and Commission Regulation (EC) No 498/2007 of 26 March 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund[7] and with certain other conditions. Although Regulation (EC) No 1198/2006 has only been in force from 4 September 2006, the Commission has gained on the basis of existing fisheries guidelines sufficient experience in applying similar conditions for the type of measures concerned in order to establish that the conditions of that Regulation are sufficiently accurate to justify not requiring case-by-case assessment.

(6) This Regulation should be without prejudice to the possibility for Member States of notifying aid to SMEs active in the production, processing and marketing of fisheries products. Such notifications should be assessed by the Commission in the light of this Regulation and on the basis of the fisheries guidelines.

(7) Aid that Member States intend to grant in the fisheries sector but which does not fall within the scope of this Regulation, or of other Regulations adopted pursuant to Article 1 of Regulation (EC) No 994/98, should remain subject to the notification requirement of Article 88(3) of the Treaty. Such aid will be assessed in the light of this Regulation and the fisheries guidelines.

(8) This Regulation should exempt any aid that meets all the requirements it lays down, and any aid scheme, provided that any aid that could be granted under such scheme meets all the relevant requirements of this Regulation. Individual aid granted under an aid scheme and ad-hoc aid should contain an express reference to this Regulation.

(9) In the interests of coherence with Community-financed support measures, the ceilings of aid covered by this Regulation should be equal to those fixed for the same kind of aid in Annex II to Regulation (EC) No 1198/2006.

(10) It is essential that no aid is granted in circumstances where Community law, and in particular rules of the Common Fisheries Policy, are not complied with. An aid can therefore only be granted by a Member State in the fisheries sector if the measures financed and their effects comply with Community law. Before granting any aid, Member States should ensure that beneficiaries of State aid comply with the rules of the Common Fisheries Policy.

(11) With a view to ensuring that aid is proportionate and limited to the amount necessary, thresholds should, whenever possible, be expressed in terms of aid intensities in relation to a set of eligible costs. For the purpose of calculating aid intensities, aid payable in several instalments should be discounted to its value at the moment of granting. The

interest rate to be used for discounting purposes and for calculating the aid amount in aid not taking the form of a grant, should be the reference rate applicable at the time of grant as laid down in the Communication from the Commission on the revision of the method for setting the reference and discount rates[8].

(12) 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, it should not exempt individual grants which exceed a fixed maximum amount, whether or not made under an aid scheme exempted by this Regulation.

(13) This Regulation should not apply to export-related activities or 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 should not normally constitute export aid.

(14) Aid granted to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty[9] should be assessed under those guidelines in order to avoid their circumvention. Aid to such undertakings should therefore be excluded form the scope of this Regulation. In order to reduce the administrative burden for Member States, when granting aid covered by this Regulation, the definition of what is to be considered as an undertaking in difficulty should be simplified as compared to the definition used in those guidelines. Moreover, SMEs are incorporated since less than three years should not be considered as being in difficulty for this period for the purposes of this Regulation, unless it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings. These simplifications should be without prejudice to the qualification of these SMEs under those guidelines as regards aid not covered by this Regulation, which remains subject to the full definition provided for in those guidelines.

(15) The Commission has to ensure that authorised aid does not alter trading conditions in a way 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 common market, should be excluded from the scope of this Regulation. As a consequence, any ad-hoc aid paid out to such a beneficiary and any aid scheme not containing a provision explicitly excluding such beneficiaries remains subject to the notification requirements of Article 88(3) of the Treaty. This provision should not affect the legitimate expectations of beneficiaries of aid schemes which are not subject to outstanding recovery orders.

(16) In order to eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Community and national initiatives concerning SMEs, the definition of ‘small and medium-sized enterprises’ used in this Regulation should be that defined in Annex I to Regulation (EC) No 70/2001.

(17) For the purpose of transparency, equal treatment and effective monitoring, this Regulation should apply only to 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. Aid comprised in loans, in particular, should be considered as transparent where the gross grant equivalent has been calculated on the basis of the reference rate as laid down in the Communication from the Commission on the revision of the method for setting the reference and discount rates[10]. Aid comprised in fiscal measures should be considered as transparent where the measure provides for a cap ensuring that the applicable threshold is not exceeded.

(18) Aid comprised in guarantee schemes should be considered as transparent when the methodology to calculate the gross grant equivalent has been approved following notification of this methodology to the Commission. The Commission will examine such notifications on the basis of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees[11]. Aid comprised in guarantee schemes should also be considered as transparent where the beneficiary is an SME and the gross grant equivalent has been calculated on the basis of the safe-harbour premiums laid down in Sections 3.3 and 3.5 of that Notice.

(19) In view of the difficulty in calculating the grant equivalent of aid in the form of repayable advances, such aid should be covered by this Regulation only if the total amount of the repayable advance is inferior to the applicable individual notification threshold and the maximum aid intensities provided under this Regulation.

(20) Having regard to Article 87(3)(c) of the Treaty, aid should not normally have the sole effect of continuously or periodically reducing the operating costs which the beneficiary would normally have to bear, and should be proportionate to the handicaps that have to be overcome in order to secure the socioeconomic benefits deemed to be in the Community interest. State aid measures which simply seek to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aid which is granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to constitute operating aid which are incompatible with the common market. Furthermore, such aid is also likely to interfere with the mechanisms of the common organisations of the markets. It is therefore appropriate to limit the scope of this Regulation to aid for investments, as well as to aid for certain socioeconomic measures.

(21) In order to ensure that the aid is necessary and acts as an incentive to develop certain activities, this Regulation should not apply to aid for activities in which the beneficiary would already engage under market conditions alone. Such incentive should be considered to be present when, before the activities relating to the implementation of the aided project or activities are initiated, the beneficiary has submitted an application to the Member State.

(22) In order to determine whether the individual notification thresholds and the maximal aid intensities laid down in this Regulation are respected, the total amount of public support for the aided activity or project should be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.

(23) This Regulation should cover the following aid: aid for permanent and temporary cessation of fishing activities, aid for the financing of socioeconomic measures, aid for productive investments in aquaculture, aid for aqua-environmental measures, aid

for public health and animal health measures, aid for inland fishing, aid for processing and marketing of fisheries and aquaculture products, aid for measures of common interest which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisation recognised by the Member States, aid for measures of common interest intended to protect and develop aquatic fauna and flora while enhancing the aquatic environment, aid for investments in public or private fishing ports, landing sites and fishing shelters, aid for measures of common interest intended to implement a policy of quality and value enhancement, development of new markets or promotional campaigns for fisheries and aquaculture products, aid for pilot projects, aid for modification for reassignment of fishing vessels, and aid for technical assistance.

(24) When tax exemptions provided for in Article 14 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[(12)] are applied equally to the whole fisheries sector, the Commission considers that they may contribute to the development of the sector and serve the common interest. These exemptions have been applied equally by Member States and experience in the application of these measures under Regulation (EC) No 1595/2004 has shown that these have not adversely affected trading conditions and are helping in attaining the objectives of the Common Fisheries Policy by assuring sustainable economic and social conditions. Considering the transparency of the measure, with the aid being calculated on the actual amount of fuel used by the vessel, and in the light of the fact that this regulation only applies to SMEs and that the vast majority of fishing undertakings in the European Union are SMEs (the majority of undertakings benefiting from these tax exemptions are smaller enterprises owning just one vessel), the Commission considers that such measures will not unduly distort competition and affect trading conditions to an extent contrary to the common interest. Consequently, such tax exemptions should, as far as they constitute State aid, be declared compatible with the common market and exempt from the notification requirement of Article 88(3) of the EC Treaty provided that they comply with those Directives and that they are applicable to the whole fisheries sector. Moreover, this Regulation should also, under certain conditions, declare compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty, tax exemptions or reductions applicable to inland fishing and piscicultural works which Member States may introduce pursuant to Article 15 of Council Directive 2003/96/EC.

(25) In order to ensure transparency and effective monitoring, in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard format in which Member States should provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme or individual aid is implemented. The Commission will attribute an identification number to each aid measure which is communicated to it. The fact that such number is attributed to an aid measure does not imply that the Commission has examined whether the aid fulfils the conditions of this Regulation. It creates therefore no legitimate expectations for the Member State or beneficiary as regards the compatibility of the aid measures with this Regulation.