Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the sector of agricultural production

COMMISSION REGULATION (EC) No 1535/2007

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on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production

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 2(1) 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 set out in a regulation a ceiling below which aid measures are considered 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 in particular clarified, in numerous decisions, the notion of aid within the meaning of Article 87(1) of the Treaty. It has also stated its policy with regard to a *de minimis* ceiling under which Article 87(1) of the Treaty can be considered not to apply, firstly in its communication on *de minimis* aid[(3)] and then 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* aid[(4)], replaced on 1 January 2007 by Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid[(5)]. In view of the special rules which apply in the agriculture sector and of the risks that even low levels of aid could fulfil the criteria of Article 87(1) of the Treaty in that sector, Regulation (EC) No 69/2001 excludes the agriculture sector from its scope. Regulation (EC) No 1998/2006 also excludes the sector of agricultural production from its scope.

(3) However, since the experience gained over the years has shown that the very small amounts of aid granted in the agriculture sector may also not meet the criteria of Article 87(1) of the Treaty where certain conditions are met, the Commission laid down rules allowing the grant of *de minimis* aid in that sector in Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty

to *de minimis* aid in the agriculture sector[6]. That Regulation, by virtue of which the total amount of *de minimis* aid granted to one and the same undertaking is regarded as not meeting all the criteria of Article 87(1) of the Treaty where it does not exceed EUR 3 000 per beneficiary over any period of three years or a cumulative amount laid down for each Member State representing 0,3 % of annual output in the agriculture sector, covers both primary production and the processing and marketing of agricultural products.

(4) Given the similarities between activities in the processing and marketing of agricultural products on the one hand and industrial activities on the other, activities in the processing and marketing of agricultural products were included in the scope of Regulation (EC) No 1998/2006, which governs *de minimis* aid for industrial activities. As a result, those activities were excluded from the scope of Regulation (EC) No 1860/2004. For the sake of clarity, Regulation (EC) No 1860/2004 should be repealed and replaced by a new Regulation applicable only to the agricultural production sector.

(5) In the light of the Commission's experience, the maximum amount of aid of EUR 3 000 per beneficiary over a period of three years may be increased to EUR 7 500 and the ceiling of 0,3 % of annual output in the agriculture sector may be increased to 0,75 % without trade between Member States being affected, without there being any distortion or threat of distortion of competition, and without aid being granted within those limits falling under Article 87(1) of the Treaty, provided that certain conditions are met. This increase will also help to reduce the administrative burden. The years to take into account are the fiscal years as used by the undertaking in the Member State concerned. The reference 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. It should not be possible for aid measures exceeding the ceiling of EUR 7 500 to be broken down into a number of smaller parts in order to bring such parts within the scope of this Regulation.

(6) This Regulation should not apply to export aid 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 product or an existing product on a new market does not normally constitute export aid.

(7) 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[7]. For this reason, this Regulation should not apply to aid whose amount is laid down on the basis of price or quantity of products purchased or put on the market.

(8) For the sake of transparency, equal treatment and the correct application of the *de minimis* ceiling, all Member States should apply the same method of calculation. In order to facilitate this calculation, aid amounts not taking the form of a grant should be converted into their gross grant equivalent. Calculation of the grant equivalent of forms

of transparent aid other than grants or 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 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. It may, however, be necessary to add additional basis points on top of the floor rate in view of the securities provided or the risk associated with the beneficiary.

(9) Again for the purposes of transparency, equal treatment and the correct application of the *de minimis* ceiling, this Regulation should apply only to *de minimis* aid which is transparent. 'Transparent aid' should be taken to mean aid for which it is possible to calculate precisely in advance the gross grant equivalent without the need to undertake a risk assessment. Such precise calculation can, for instance, be made as regards grants, interest rate subsidies and capped tax exemptions. Aid in the form of soft loans should be considered to be 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. Aid in the form of capital injections should not be considered to be transparent *de minimis* aid unless the total amount of the public capital injection is lower than the *de minimis* ceiling per beneficiary. Aid in the form of risk capital measures as referred to in the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises[8] should not be considered to be transparent *de minimis* aid unless the risk capital scheme concerned provides capital only up to the *de minimis* ceiling per beneficiary.

(10) It is 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 any potential effects reliably. This Regulation should therefore set a guarantee-specific ceiling based on the guaranteed amount of the underlying loan. This specific ceiling should be set on the basis of an assessment of the amount of State aid included in guarantee schemes covering loans in favour of viable undertakings. It should therefore not apply to ad hoc individual aid granted outside of the scope of a guarantee scheme or to guarantees on underlying transactions not constituting a loan, such as guarantees on equity transactions. The specific ceiling should be determined on the basis of the fact that taking account of a cap rate (net default rate) of 13 %, representing a worst case scenario for guarantee schemes in the Community, a guarantee amounting to EUR 56 250 can be considered as having a gross grant equivalent identical to the *de minimis* ceiling of EUR 7 500. Only guarantees covering up to 80 % of the underlying loan should be covered by this specific ceiling. A methodology approved by the Commission following notification on the basis of a Commission Regulation on State aid may also be used by the Member States to calculate the gross grant equivalent of the guarantee, if the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions concerned in the context of applying this Regulation.

(11) This Regulation should not apply to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty[9]

given the difficulties linked to determining the gross grant equivalent of aid granted to this type of undertaking.

(12) In accordance with the principles governing aid falling within Article 87(1) of the Treaty, *de minimis* aid should be considered to be granted at the moment the right to receive the aid is conferred on the undertaking under the applicable national legal regime.

(13) In order to avoid circumvention of maximum aid intensities laid down in different Community instruments, it should not be possible for *de minimis* aid to be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that laid down by Community rules in the specific circumstances of each case.

(14) This Regulation does not exclude the possibility that a measure adopted by a Member State might not be considered to be State aid within the meaning of Article 87(1) of the Treaty on a basis other than this Regulation, for instance in the case of capital injections or guarantees, because such measure has been decided in conformity with the principle of private investors operating in normal market-economy conditions.

(15) The Commission must ensure that State aid rules are complied with, and in particular that aid granted under the *de minimis* rules meets 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 to ensure that the total amount of aid granted under the *de minimis* rule does not exceed either the ceiling of EUR 7 500 per beneficiary or the overall ceilings established by the Commission on the basis of the value of agricultural output. To that end, when granting *de minimis* aid, the Member States should inform the undertaking concerned of the amount of aid granted and of its *de minimis* character, by referring to this Regulation. Moreover, prior to granting such aid the Member State should obtain from the undertaking a declaration about other *de minimis* aid received during the current fiscal year and the two previous fiscal years and carefully check that the new aid does not make the total amount of *de minimis* aid received exceed the applicable ceilings. Alternatively, compliance with the ceilings may also be ensured by means of a central register. In the case of guarantee schemes set up by the European Investment Fund, the latter may establish a list of beneficiaries and require Member States to inform the beneficiaries of the *de minimis* aid received.

(16) Regulation (EC) No 1860/2004 was initially due to expire on 31 December 2008. Since this Regulation has to enter into force before that date, the consequences of that as regards its applicability to aid granted to undertakings in the agricultural production sector under Regulation (EC) No 1860/2004 should be clarified.

(17) In the light of the Commission's experience and in particular the frequency with which it is generally necessary to revise State aid policy, the period of validity of this Regulation should be limited. Should this Regulation expire without having been extended, Member States should have an adjustment period of six months with regard to *de minimis* aid covered by it,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation applies to aid granted to undertakings in the agricultural production sector, with the exception of:

(a) aid the amount of which is fixed on the basis of price or quantity of products put on the market;

(b) aid to export-related activities, 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;

(c) aid contingent on the use of domestic over imported goods;

(d) aid granted to undertakings in difficulty.

Article 2

Definitions

For the purpose of this Regulation:

1. ‘undertakings in the sector of agricultural production’ means undertakings active in the primary production of agricultural products;

2. ‘agricultural products’ means the products listed in Annex I to the Treaty, except fisheries and acquaculture products covered by Council Regulation (EC) No 104/2000[(10)].

Article 3

***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 not fall under the notification requirement of Article 88(3) of the Treaty where they fulfil the conditions laid down in paragraphs 2 to 7 of this Article.

2 The total *de minimis* aid granted to any one undertaking shall not exceed EUR 7 500 over any period of three fiscal years. This ceiling shall apply irrespective of the form of the aid or the objective pursued. The period shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

Where the total amount of aid granted for an aid measure exceeds the ceiling referred to in the first subparagraph, none of that amount — not even the fraction not exceeding the ceiling — may benefit from this Regulation. In such cases no aid may be claimed for the measure under this Regulation, either at the time aid is granted or subsequently.

3 The cumulative amount of *de minimis* aid granted per Member State to undertakings in the agricultural production sector over any period of three fiscal years shall not exceed the value set out in the Annex hereto.