Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the fisheries sector and amending Regulation (EC) No 1860/2004

COMMISSION REGULATION (EC) No 875/2007

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on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004

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)],

After consulting 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 laid down in 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) On the basis of that Regulation, the Commission adopted 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[(3)], which sets a ceiling of EUR 100 000 per beneficiary over a period of three years. Originally that Regulation did not apply to the agriculture, fisheries and aquaculture and transport sectors, in view of the special rules which apply in those sectors.

(3) As regards the agriculture and fisheries sector, 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 and fisheries sector[(4)] established a specific ceiling of EUR 3 000 per beneficiary per three-year period to apply to those sectors, as in the light of the experiences acquired by the Commission, it could be affirmed that very low levels of aid granted in those sectors do not fulfil the criteria of Article 87(1) of the Treaty, provided that certain conditions are met. This is the case where both the amount of aid received by individual producers remains small, and the overall level of aid granted to these sectors does not go above a small percentage of the value of production.

(4) Owing to changed economic circumstances and in the light of the experiences gained in applying the existing general *de minimis* rules, changes to those rules have been deemed necessary. For that reason the Commission adopted 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)]. That regulation replaced Regulation (EC) No 69/2001, increased the general *de minimis* ceiling from EUR 100 000 to EUR 200 000, extended its application to the sector concerning the processing and marketing of agricultural products and introduced a new *de minimis* threshold of EUR 100 000 for State aid to the road transport sector.

(5) Recent experience in applying the rules on State aid to the fisheries sector, and in particular the *de minimis* ceiling set in Regulation (EC) No 1860/2004 and the Guidelines for the examination of State aid to fisheries and aquaculture[(6)] has shown that the risk of distortion of competition by *de minimis* aid is lower than was projected in 2004.

(6) In the light of the experience gained by the Commission, aid to undertakings in the fisheries sector not exceeding EUR 30 000 per beneficiary over any three-year period may be deemed not to affect trade between Member States and/or not to distort or threaten to distort competition where the total amount of such aid granted to all undertakings in the fisheries sector over three years is below a ceiling of around 2,5 % of the annual fisheries output. It is therefore appropriate to state that such aid does not fall under Article 87(1) of the Treaty. The years to take into account for this purpose are the fiscal years as used for fiscal purposes in the Member State concerned. The relevant 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 such aid granted in the fiscal year concerned, as well as during the previous two fiscal years needs to be determined.

(7) Other State aid granted by a Member State should also be taken into account when granting a *de minimis* aid.

(8) It should not be possible for State aid measures exceeding the *de minimis* ceiling to be broken down into a number of smaller parts in order to bring such parts within the scope of this Regulation.

(9) Consistent 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 when the legal right to receive the aid is conferred on the beneficiary under the applicable national regime.

(10) The Court of Justice of the European Communities has established that, once the Community had 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)]. This principle also applies in the fisheries sector. For this reason, this Regulation should not apply to aid the amount of which is fixed on the basis of price or quantity of products put on the market.

(11) This Regulation should not apply to export aid or *de minimis* aid favouring domestic over imported products. Moreover this Regulation should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the costs 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 does normally not constitute export aid.

(12) 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[8] in view of the difficulties linked to determining the gross grant equivalent of aid granted to this type of undertakings.

(13) Having regard to the objectives of the common fisheries policy, aid serving to increase fishing capacity and aid granted for the construction or purchase of fishing vessels should not fall within the scope of this Regulation, except for aid for modernisation over the main deck as referred to in Article 11 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy[9].

(14) For the purpose of transparency, equal treatment and the correct application of the *de minimis* ceiling, it is appropriate that Member States should apply the same method of calculation. In order to facilitate this calculation and in accordance with Regulation (EC) No 1998/2006, it is appropriate that aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. Calculation of the grant equivalent of transparent types of aid other than grants 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.

(15) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to *de minimis* 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. Such precise calculation can, for instance, be realised as regards grants, interest rate subsidies and capped tax exemptions. Aid comprised in capital injections should not be considered as transparent *de minimis* aid, unless the total amount of the public injection is lower than the *de minimis* ceiling. Aid comprised in risk capital measures as referred to in the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises[10] should not be considered as transparent *de minimis* aid, unless the risk capital scheme concerned provides capital only up to the *de minimis* ceiling to each target undertaking. Aid comprised in loans should be treated as 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.

(16) This Regulation does not exclude the possibility that a measure, adopted by a Member State, might not be considered as State aid within the meaning of Article 87(1) of the Treaty on the basis of other grounds than those set out in this Regulation, for instance, in the case of capital injections, because such measure has been decided in conformity with the market investor principle.

(17) It is necessary to provide legal certainty for guarantee schemes which do not have the potential to affect trade or distort competitions and in respect of which sufficient data is available to assess any potential effects reliably. This Regulation should therefore transpose the general *de minimis* ceiling of EUR 30 000 per beneficiary into a guarantee-specific ceiling based on the guaranteed amount of the individual loan underlying such guarantee. It is appropriate to calculate this specific ceiling using a methodology assessing the State aid amount included in guarantee schemes covering loans in favour of viable undertakings. The methodology and the data used to calculate the guarantee-specific ceiling should exclude undertakings in difficulty as referred to in the Community guidelines on State aid for rescuing and restructuring firms in difficulty. This specific ceiling should therefore not apply to ad hoc individual aid granted outside of the scope of a guarantee scheme, to aid granted to undertakings in difficulty, 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 225 000 can be considered as having a gross grant equivalent identical to the *de minimis* ceiling established in this Regulation. Only guarantees covering up to 80 % of the underlying loan should be covered by this specific ceiling.

(18) The Commission has a duty to ensure that State aid rules are complied with, and in particular that aid granted under the *de minimis* rules adheres to the conditions thereof. In accordance with 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* rules, does not exceed either the ceiling of EUR 30 000 per beneficiary or the overall ceiling established by the Commission on the basis of the value of the fishery output per Member State over a period of three fiscal years. To that end, it is appropriate that Member States, when granting a *de minimis* aid, should inform the undertaking concerned about the amount of the aid and its *de minimis* character of the aid, by referring to this Regulation. Moreover, prior to granting such aid the Member State concerned should obtain from the undertaking a declaration about other *de minimis* aid received during the fiscal year concerned and the two previous fiscal years, and carefully check that the *de minimis* ceilings will not be exceeded by the new *de minimis* aid. Alternatively, compliance with the ceilings may also be ensured by using a central register.

(19) For reasons of clarity and as the ceiling for *de minimis* aid for the fisheries sector thus differs from the ceiling for *de minimis* aid to the agriculture sector, a specific regulation applicable only to the fisheries sector should be adopted and Regulation (EC) No 1860/2004 should be amended accordingly.

(20) Having regard to the Commission's experience and in particular the frequency with which it is generally necessary to revise State aid policy, and in particular having regard to the period of application of Regulation (EC) No 1998/2006 and Regulation (EC) No 1860/2004, it is appropriate that the period of application of this Regulation be limited until 31 December 2013. Should this Regulation expire without being extended,

Member States should have an adjustment period of six months with regard to *de minimis* aid covered by it. For the sake of legal certainty, it is appropriate to clarify the effect of the Regulation on aid granted before its entry into force,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation applies to aid granted to undertakings in the fisheries 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, aid to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;

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

(d) aid serving to increase fishing capacity, expressed in terms of tonnage or power, as defined in Article 3(n) of Regulation (EC) No 2371/2002, unless it concerns aid for modernisation over the main deck as referred to in Article 11(5) of that Regulation;

(e) aid for the purchase or construction of fishing vessels;

(f) aid granted to undertakings in difficulty.

Article 2

Definitions

For the purposes of this Regulation:

(a) ‘undertakings in the fisheries sector’ means undertakings active in the production, processing and marketing of fisheries products;

(b) ‘fisheries products’ means the products defined in Article 1 of Council Regulation (EC) No 104/2000[(11)];

(c) ‘processing and marketing’ means all operations, including handling, treatment, production and distribution, performed between the time of landing or harvesting and the end-product stage.

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 be exempt from the notification requirement of Article 88(3) of the Treaty, if they fulfil the conditions laid down in this Article and in Articles 4 and 5 of this Regulation.