Changes to legislation: *Commission Regulation (EC) No 1857/2006 is up to date with all changes known to be in force on or before 27 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001

COMMISSION REGULATION (EC) No 1857/2006

of 15 December 2006

on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001

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,

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 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[(2)] does not apply to activities linked to the production, processing or marketing of products listed in Annex I to the Treaty.

(3) The Commission has applied Articles 87 and 88 of the Treaty to small and medium-sized enterprises active in the production, processing and marketing of agricultural products in numerous decisions and has also stated its policy, most recently in the Community guidelines for State aid in the agriculture sector[(3)]. In the light of the Commission's considerable experience in applying those Articles to small and medium-sized enterprises active in the production of agricultural products, it is appropriate, with a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, that the Commission should also make use of the powers conferred by Regulation (EC) No 994/98 for small and medium-sized enterprises active in the production of agricultural products, insofar as Article 89 of the Treaty has been declared applicable to such products.

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(4) Over the coming years, agriculture will have to adapt to new realities and further changes in terms of market evolution, market policy and trade rules, consumer demand and preferences and the enlargement of the Community. These changes will affect not only agricultural markets but also local economies in rural areas in general. Rural development policy should aim at restoring and enhancing the competitiveness of rural areas and, therefore, contribute to the maintenance and creation of employment in those areas.

(5) Small and medium-sized enterprises play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive. However, their development may be limited by market imperfections. They often have difficulties in obtaining capital or credit, given the risk-shy nature of certain financial markets and the limited guarantees that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. Having regard to those considerations, the purpose of the aid exempted by this Regulation should be to facilitate the development of the economic activities of small and medium-sized enterprises, provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest. These developments should be encouraged and supported by simplification of the existing rules, as far as they apply to small and medium-sized enterprises.

(6) The production, processing and marketing of agricultural products in the Community is largely dominated by small and medium-sized enterprises. However, there are considerable differences between the structure of primary production, on the one hand, and processing and marketing of agricultural products, on the other hand. The processing and marketing of agricultural products would often appear similar to that of industrial products. Therefore, it would appear more appropriate to have a different approach for processing and marketing of agricultural products and include those activities in the rules for industrial products. Consequently, and contrary to the approach taken in Commission Regulation (EC) No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products[(4)], it appears useful to set up an exemption regulation targeted at the specific needs of primary agricultural production.

(7) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations[(5)] and Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)[(6)] have introduced specific State aid rules for certain rural development measures receiving Member State support without any Community financing.

(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 requirements of this Regulation. With a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, aid schemes

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and individual grants outside any aid scheme should contain an express reference to this Regulation.

(9) 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.

(10) This Regulation should not exempt export aid or aid contingent upon the use of domestic over imported products. Such aid may be incompatible with the Community's international obligations. Aid towards the costs of participation 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.

(11) In order to eliminate differences that might give rise to distortions of competition, to facilitate coordination between different Community and national initiatives concerning small and medium-sized enterprises and for reasons of administrative clarity and legal certainty, the definition of 'small and medium-sized enterprises' used in this Regulation should be that set out in Annex I to Regulation (EC) No 70/2001.

(12) In accordance with established practice of the Commission, and with a view to ensuring that aid is proportionate and limited to the amount necessary, thresholds should normally be expressed in terms of aid intensities in relation to a set of eligible costs, rather than in terms of maximum aid amounts.

(13) In order to determine whether or not aid is compatible with the common market pursuant to this Regulation, it is necessary to take into consideration the aid intensity and thus the aid amount expressed as a grant equivalent. The calculation of the grant equivalent of aid payable in several instalments requires the use of market interest rates prevailing at the time of grant. 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* and on the Internet.

(14) In order to ensure transparency and effective monitoring, this Regulation should apply only to aid measures which are transparent. These are aid measures in which it is possible to calculate precisely the gross grant equivalent as a percentage of eligible expenditure *ex ante* without a need to undertake a risk assessment (for example, grants, interest rate subsidies and capped fiscal measures). Public loans should be considered to be transparent provided that they are backed by normal security and do not involve abnormal risk and are therefore not considered to contain a State guarantee element. In principle, aid measures involving State guarantees or public loans with a State guarantee element should not be considered as transparent. However, such aid measures should be considered as transparent if, before the implementation of the measure, the methodology used to calculate the aid intensity of the State guarantee has been accepted by the Commission following notification to the Commission after adoption of this Regulation. The methodology will be assessed by the Commission in line with the Notice on the application of Article 87 and 88 of the EC Treaty to State aid in the Forms of Guarantees[7]. Public participation and aid comprised in risk capital measures should

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not be considered as transparent aid. Aid measures which are not transparent should always be notified to the Commission. Notifications of non-transparent aid measures will be assessed by the Commission in particular in the light of the criteria set out in the Community guidelines for State aid in the agriculture and forestry sector 2007-2013.

(15) In accordance with established practice of the Commission for the evaluation of State aid in the agricultural sector, no differentiation between small enterprises and medium-sized enterprises is necessary. For certain types of aid, the establishment of maximum amounts of aid which a beneficiary may receive is appropriate.

(16) Aid ceilings should be fixed, in the light of the Commission's experience, at a level that strikes the appropriate balance between minimising distortions of competition in the aided sector and the objective of facilitating the development of the economic activities of small and medium-sized enterprises in the agriculture sector. In the interests of coherence with Community-financed support measures, the ceilings should be harmonised with those fixed in Regulation (EC) No 1257/1999 and in Regulation (EC) No 1698/2005.

(17) It is appropriate to establish further conditions that should be fulfilled by any aid scheme or individual aid exempted by this Regulation. Any restrictions on production or limitations of Community support under the common market organisations should be taken into account. Having regard to Article 87(3)(c) of the Treaty, aid should not 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 socio-economic benefits deemed to be in the Community interest. Unilateral 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 aids which are granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to constitute operating aids which are incompatible with the common market. Furthermore, such aids are 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 certain types of aid.

(18) This Regulation should exempt aid to small and medium-sized agricultural holdings (farms) regardless of location. Investment and job creation can contribute to the economic development of less favoured regions and areas as referred to in Article 36(a)(i), (ii) and (iii) of Regulation (EC) No 1698/2005. Small and medium-sized agricultural holdings (farms) in those areas suffer from both the structural disadvantage of the location and the difficulties deriving from their size. It is therefore appropriate that small and medium-sized enterprises in such areas should benefit from higher ceilings.

(19) Because of the risk of distortions resulting from targeted investment aid and in order to offer farmers freedom to decide about products invested in, investment aid exempted under this Regulation should not be limited to specific agricultural products. This condition should not prevent a Member State from excluding certain agricultural products from such aid or aid schemes, notably where no normal market outlets can be found. Also, certain types of investment should per se be excluded from this Regulation.

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(20) Where aid is granted to adapt to newly introduced standards at Community level, Member States should not be able to lengthen the adaptation period for farmers by delaying implementation of such rules. Therefore, the date from which new legislation can no longer be considered new should be clearly set out.

(21) Certain Council Regulations in the field of agriculture provide for specific authorisations for the payment of aid by Member States, often in combination with or in addition to Community financing. However, those provisions usually do not provide for an exemption from the duty to notify under Article 88 of the Treaty, insofar as such aid fulfils the conditions of Article 87(1) of the Treaty. Since the conditions for such aids are clearly specified in those Regulations, and/or there is a duty to communicate such measures to the Commission under the special provisions of those Regulations, no further and separate notification under Article 88(3) of the Treaty is necessary in order to allow for an assessment of these measures by the Commission. For reasons of legal certainty, a reference to those provisions should be included in this Regulation, and therefore notification of those measures under Article 88 of the Treaty should not be necessary, insofar as it can be ascertained in advance that such aid is exclusively granted to small and medium-sized enterprises.

(22) In order to ensure that the aid is necessary and acts as an incentive to develop certain activities, this Regulation should not exempt aid for activities in which the beneficiary would already engage under market conditions alone. No aid should be granted retroactively in respect of activities which have already been undertaken by the beneficiary.

(23) This Regulation should not exempt aid cumulated with other State aid, including aid granted by national, regional or local authorities, with public support granted within the framework of Regulation (EC) No 1698/2005 or with Community assistance, in relation to the same eligible costs, when such cumulation exceeds the thresholds fixed in this Regulation. Aid exempted under this Regulation should not be cumulated with *de minimis* support within the meaning of 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 sectors[(8)] in respect of the same eligible expenditure or investment project, if such cumulation would result in an aid intensity exceeding that fixed by this Regulation.

(24) 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 accordance with this Regulation, an aid scheme is implemented or individual aid is granted outside such a scheme, with a view to publication in the *Official Journal of the European Union*. For the same reasons, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation. For the purposes of the annual report to be submitted to the Commission by Member States, it is appropriate for the Commission to establish its specific requirements. In view of the wide availability of the necessary technology, the summary information and the annual report should be in computerised form.