Commission Regulation (EC) No 1595/2004 of 8 September 2004 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 fisheries products

COMMISSION REGULATION (EC) No 1595/2004

of 8 September 2004

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 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,

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 fisheries' products in numerous decisions and has also stated its policy, most recently in the Guidelines for the examination of State aid to fisheries and aquaculture[(3)] (the Fisheries Guidelines). In the light of the Commission's considerable experience in applying those Articles to small and medium-sized enterprises 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 on it by Regulation (EC) No 994/98 also for small and medium-sized enterprises active in the production, processing and marketing of fisheries products, insofar as Article 89 of the Treaty has been declared applicable to such products.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1595/2004. (See end of Document for details)*

(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 aid granted in the fisheries sector which has been routinely approved by the Commission for many years. Such 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 for structural funds in Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements for Community structural assistance in the fisheries sector[(4)] and with certain other conditions.

(6) Accordingly, this Regulation should cover the following aid: aid for promotion and/or advertising of fisheries products, aid for producer groups, aid for protection and development of aquatic resources, aid for innovative measures and technical assistance, aid for fishing port facilities, aid for scrapping of fishing vessels, aid for certain socio-economic measures, aid for investments for processing and/or marketing of fisheries products, aid for investments for aquaculture and inland fishing.

(7) For the purpose of legal certainty, tax exemptions applicable to the whole of the fisheries sector which Member States introduce pursuant to Article 15 of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment[(5)], or to Article 14 or Article 15(1) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[(6)] are, to the extent they constitute State aid, compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty. Tax exemptions which Member States are obliged to introduce according to those provisions do not constitute State aid.

(8) This Regulation should be without prejudice to the possibility for Member States of notifying aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products. Such notifications will be assessed by the Commission in the light of this Regulation and on the basis of the Fisheries Guidelines.

(9) 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 the Fisheries Guidelines. This is in particular the case for aid for fleet renewal and for the equipment or modernisation of fishing vessels, for aid for financial compensation for the temporary cessation of fishing activities, for aid to permanent transfer of fishing vessels to a third country, for income aid and operating aid, for aid to make good damage caused by natural disaster or exceptional occurrences.

(10) 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. Aid schemes and individual grants outside any aid scheme should contain an express reference to this Regulation.

(11) 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 Regulation (EC) No 2792/1999.

(12) 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 may 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 therefore ensure that beneficiaries of State aid comply with the rules of the Common Fisheries Policy.

(13) 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.

(14) 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.

(15) In order to eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Community and national initiatives concerning small and medium-sized enterprises, the definition of 'small and medium-sized enterprises' used in this Regulation should be that laid down in Regulation (EC) No 70/2001.

(16) 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 and aid in the form of a soft loan 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, provided that, in the case of a soft loan, the loan is backed by normal security and does not involve abnormal risks. The reference rates should be those which are 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.

(17) 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 socio-economic 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 is considered to constitute operating aid which is 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 socio-economic measures.

(18) 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 in respect of activities which have already been undertaken.

(19) 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 2792/1999 or with Community assistance, in relation to the same eligible costs, when such cumulation exceeds the thresholds fixed in that Regulation.

(20) 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 is implemented or an individual aid outside such schemes is granted, 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.

(21) Failure by a Member State to comply with the reporting obligations established in this Regulation may make it impossible for the Commission to perform its monitoring task under Article 88(1) of the Treaty and, in particular, to assess whether the cumulative economic effect of the aid exempted under this Regulation is such as to adversely affect trading conditions to an extent contrary to the common interest. It is therefore of primary importance that the Member States rapidly submit appropriate information when implementing aid under this Regulation. It is particularly necessary to evaluate the cumulative effect of State aid where the same beneficiary may receive aid granted by several sources.

(22) Having regard to the Commission's experience in this area, and in particular the frequency with which it is generally necessary to revise State aid policy, it is appropriate to limit the period of application of this Regulation. Should this Regulation expire without being extended, aid schemes already exempted by this Regulation should continue to be exempt for six months.

(23) It is appropriate to lay down transitional provisions for notifications pending on the date of entry into force of this Regulation and for aid which was granted before the entry into force of this Regulation and was not notified in breach of the obligation in Article 88(3) of the Treaty,

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 1595/2004. (See end of Document for details)*

HAS ADOPTED THIS REGULATION:

CHAPTER 1

SCOPE, DEFINITIONS AND CONDITIONS

Article 1

Scope

1 This Regulation shall apply to aid granted to small and medium-sized enterprises active in the production, processing or marketing of fisheries products.

2 This Regulation shall not apply to:

a 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;

b aid contingent upon the use of domestic over imported goods.

3 This Regulation shall not apply to aid for individual projects with eligible expenses in excess of EUR 2 million, or where the amount of aid exceeds EUR 1 million per beneficiary per year.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

1. ‘aid’, means any measure fulfilling all the criteria laid down in Article 87(1) of the EC Treaty;

2. ‘fisheries product’, means both products caught at sea or in inland waters and the products of aquaculture listed in Article 1 of Council Regulation (EC) No 104/2000[7];

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

4. ‘small and medium-sized enterprises’ (SMEs), means enterprises as defined in Annex I to Regulation (EC) No 70/2001.

Article 3

Conditions for exemption

1 Individual aid outside any scheme, fulfilling all the conditions of this Regulation, shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the summary information provided for in Article 16(1) of this Regulation has been submitted and that it contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*.