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(Acts whose publication is obligatory)

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

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 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 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 [4] (hereafter referred to as the 'agriculture 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 agricultural 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 small and medium-sized enterprises active in the production, processing and marketing of agricultural products, insofar as Article 89 of the Treaty has been declared applicable to such products. Due to the specificities of the agricultural sector, a Regulation covering only small and medium-sized enterprises active in this sector is justified.

(4) This Regulation is without prejudice to the possibility for Member States to notify aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products. Such notifications will be assessed by the Commission in the light of this Regulation and on the basis of the agriculture guidelines. Notifications pending on the date of entry into force of this Regulation should be assessed first in the light of this Regulation and, if the conditions it lays down are not fulfilled, then on the basis of the Agriculture Guidelines. It is appropriate to lay down transitional provisions 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.

(5) 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.

(6) 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,

[1] OJ L 142, 14.5.1998, p. 1.
[2] OJ C 194, 15.8.2003, p. 2.
[3] OJ L 10, 13.1.2001, p. 33.
[4] OJ C 28, 1.2. 2000, p. 2. (Corrected version OJ C 232, 12.8.2000, p. 19.)

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.

(7) The production, processing and marketing of agricultural products in the Community is largely dominated by small and medium-sized enterprises.

(8) 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 [1] has already introduced specific State aid rules for certain rural development measures receiving Member State support without any Community financing.

(9) 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. With a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, aid schemes and individual grants outside any aid scheme should contain an express reference to this Regulation.

(10) Aid granted towards costs linked to advertising as defined by the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products [2] should be excluded from the scope of this Regulation and continue to be covered only by those guidelines.

(11) 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.

(12) 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 under the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Agriculture. 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.

(13) 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 laid down in Regulation (EC) No 70/2001.

(14) 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.

(15) 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.

(16) 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.

(17) 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 the agriculture guidelines and in Regulation (EC) No 1257/1999.

[1] OJ L 160, 26.6.1999, p. 80.
[2] OJ C 252, 12.9.2001, p. 5.

(18) It is appropriate to establish further conditions that should be fulfilled by any aid scheme or individual aid exempted by this Regulation. Companies receiving investment aid should have to comply with the criteria concerning viability and respect of minimum standards provided for in Articles 5 and 26(1) of Regulation (EC) No 1257/1999. 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 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. 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 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 certain types of aid.

(19) This Regulation should exempt aid to small and medium-sized enterprises regardless of location. Investment and job creation can contribute to the economic development of less favoured regions and of Objective 1 regions in the Community. Small and medium-sized enterprises in those regions 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 less favoured and Objective 1 regions should benefit from higher ceilings.

(20) 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. Investment aid targeted at certain sectors may be justified and therefore exempted where the aid is limited to costs of the implementation of specific rules relating to the protection and improvement of the environment, the improvement of hygiene conditions of livestock enterprises or the welfare of farm animals. Investments for the processing and marketing of agricultural products undertaken at farm level, not entailing an increase in capacity and having total eligible expenses below the limit set under Article 7 of Regulation (EC) No 1257/1999, should be examined according to the rules established for investments for the production of agricultural products. On-farm investments for processing and marketing of agricultural products entailing an increase in production capacity, and/or having total eligible expenses above the limit set under Article 7 of Regulation (EC) No 1257/1999, should be examined according to the rules established for investments for the processing and marketing of agricultural products.

(21) Where aid is granted to adapt to newly introduced standards at Community level, Member States should not be in a position 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.

(22) Services offered at subsidised rates are often offered to farmers by companies which cannot be freely chosen by the farmer. In order to avoid aid being granted to the providers of the service, and not to the farmer, and in order to ensure that the farmer gets the best service at a competitive price, it should normally be ensured that such providers of services are chosen and remunerated according to market principles. However, for certain services, notably controls, and due to the nature of the service or the legal basis for the provision of the service, there may be only one provider.

(23) 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 aid 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.

(24) 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.

(25) 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 1257/1999 or with Community assistance, in relation to the same eligible costs, when such cumulation exceeds the thresholds fixed in this Regulation.

(26) 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.

(27) 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 aids exempted under this Regulation is such as to adversely affect trading conditions to an extent contrary to the common interest. The need to evaluate the cumulative effect of State aid is particularly high where the same beneficiary may receive aid granted by several sources, as is increasingly the case in the field of agriculture. It is therefore of primary importance that the Member State rapidly submits appropriate information before implementing aid under this Regulation.

(28) 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,

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 agricultural products.

2. This Regulation shall not apply to:

(a) aid granted towards costs linked to advertising as defined by the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products;

(b) aid granted to processing of Annex I agricultural products into non-Annex I products.

3. This Regulation shall not apply to aid for individual investments with eligible expenses in excess of EUR 12,5 million, or where the actual amount of aid exceeds EUR 6 million. Such aid shall be specifically notified to the Commission in accordance with Article 88(3) of the Treaty.

4. Without prejudice to Article 16(a) 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.

Article 2

Definitions

For the purpose of this Regulation:

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

2. 'agricultural product' means:

   (a) the products listed in Annex I to the Treaty, except fishery and aquaculture products covered by Council Regulation (EC) No 104/2000 [1];

   (b) products falling under CN codes 4502, 4503 and 4504 (cork products);

[1] OJ L 17, 21.1.2000, p. 22.

(c) products intended to imitate or substitute milk and milk products, as referred to in Article 3(2) of Council Regulation (EEC) No 1898/87 [1];

3. 'processing of an agricultural product' means an operation on an agricultural product where the product resulting from the operation is also an agricultural product;

4. 'small and medium-sized enterprises' (SME) means enterprises as defined in Annex I to Regulation (EC) No 70/2001;

5. 'gross aid intensity' means the aid amount expressed as a percentage of the project's eligible costs. All figures used shall be taken before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid. Aid payable in several instalments shall 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 a soft loan shall be the reference rate applicable at the time of grant;

6. 'quality product' is a product fulfilling the criteria of Article 24b(2) or (3) of Council Regulation (EC) No 1783/2003 amending Regulation (EC) 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) [2];

7. 'adverse climatic events which can be assimilated to natural disasters' means weather conditions such as frost, hail, ice, rain or drought which destroy 20 % of normal production in less-favoured areas and 30 % in other areas;

8. 'less-favoured areas' means areas as defined by Member States on the basis of Article 17 of Regulation (EC) No 1257/1999;

9. 'objective 1 regions' means regions referred to in Article 3 of Council Regulation (EC) No 1260/1999 [3];

10. 'newly introduced minimum standards regarding the environment, hygiene and animal welfare' means:

(a) in the case of standards which do not provide for any transitional period, standards to be made compulsory vis-à-vis operators not more than two years before the investment is actually started; or

(b) in the case of standards which provides for a transitional period, standards to be made compulsory vis-à-vis operators after the investment has actually been started;

11. 'young farmers' means producers of agricultural products as defined in Article 8 of Regulation (EC) No 1257/1999;

12. 'producer group' means a group which is set up for the purpose of jointly adapting, within the objectives of the common market organisations, the production and output of its members to market requirements, in particular by concentrating supply;

13. 'producer association' means an association which consists of recognised producer groups and pursues the same objectives on a larger scale.

14. 'TSE and BSE test costs' are all costs, including those for test kits, taking, transporting, testing, storing and destruction of samples necessary for tests undertaken in accordance with Annex X, Chapter C to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies [4].

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 19(1) 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*.

2. Aid schemes fulfilling all the conditions set out in 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:

(a) any aid that could be awarded under such scheme fulfils all the conditions set out in this Regulation;

(b) the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*;

(c) the summary information provided for in Article 19(1) has been submitted.

3. Aid granted under the schemes referred to in paragraph 2 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 aid granted directly fulfils all the conditions of this Regulation.

[1] OJ L 182, 3.7.1987, p. 36.
[2] OJ L 270, 21.10.2003, p. 70.
[3] OJ L 161, 26.6.1999, p. 1.
[4] OJ L 147, 31.5.2001, p. 1.