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COMMISSION REGULATION (EU) .../...

of 13.12.2023

on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest

(Text with EEA relevance)

COMMISSION REGULATION (EU) .../...

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on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid¹, and in particular Article 2(1) thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) State funding that meets the criteria set out in Article 107(1) of the Treaty on the Functioning of the European Union constitutes State aid and requires notification to the Commission pursuant to Article 108(3) of the Treaty. However, pursuant to Article 109 of the Treaty, the Council may determine categories of aid that are exempted from that notification requirement. In accordance with Article 108(4) of the Treaty, the Commission may adopt regulations relating to those categories of State aid. In Regulation (EU) 2015/1588, the Council decided, in accordance with Article 109 of the Treaty, that *de minimis* aid (that is to say, aid granted to the same undertaking over a specific period of time that does not exceed a certain fixed amount) could constitute one such category. On that basis, *de minimis* aid is deemed not to meet all the criteria laid down in Article 107(1) of the Treaty and is therefore not subject to the notification procedure.
- (2) The Commission has, in numerous decisions, clarified the notion of aid within the meaning of Article 107(1) of the Treaty. The Commission has also stated its policy on a *de minimis* ceiling below which Article 107(1) of the Treaty may be considered not to apply.
- (3) The Commission's experience in applying the State aid rules to undertakings that provide services of general economic interest within the meaning of Article 106(2) of the Treaty has shown that the ceiling below which advantages granted to such

¹ OJ L 248, 24.9.2015, p. 1, ELI: <http://data.europa.eu/eli/reg/2015/1588/oj>.

undertakings may be deemed not to affect trade between Member States or not to distort or threaten to distort competition can, in some cases, differ from the general *de minimis* ceiling established in Regulation (EU) XXX/XXX². Indeed, at least some of those advantages are likely to constitute compensation for additional costs linked to the provision of services of general economic interest. Moreover, many activities that qualify as services of general economic interest have a limited territorial scope. Pursuant to Article 2(2) of Commission Regulation (EU) No 360/2012³, aid granted to undertakings that provide a service of general economic interest should be deemed not to affect trade between Member States or not to distort or threaten to distort competition provided that the total amount of aid granted for the provision of services of general economic interest received does not exceed EUR 500 000 over any period of 3 fiscal years.

- (4) In light of the experience gained in applying Regulation (EU) No 360/2012, it is appropriate to adjust the *de minimis* rules for aid for services of general economic interest to reflect some of the adjustments applied to the general *de minimis* Regulation (EU) XXX/XXX⁴, in order to ensure consistency, taking at the same time into account the specific characteristics of services of general economic interest.
- (5) It is also appropriate to increase the ceiling of *de minimis* aid for services of general economic interest that a single undertaking may receive per Member State over any period of 3 years to EUR 750 000. That ceiling reflects the inflation that took place since the entry into force of Regulation (EU) No 360/2012 and the estimated developments during the period of validity of this Regulation. That ceiling is necessary to ensure that any measure falling under this Regulation may be deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition.
- (6) State aid granted by a Member State should be taken into account even when financed entirely or partly by resources of Union origin under the control of that Member State. It should not be possible for aid measures exceeding the *de minimis* ceiling to be broken down into smaller parts in order to bring such parts within the scope of this Regulation.
- (7) For the purposes of the rules on competition laid down in the Treaty, an undertaking is any entity, be it a natural or a legal person, engaged in an economic activity, regardless of its legal status and the way in which it is financed⁵. The Court of Justice of the European Union has clarified that an entity ‘owning controlling shareholdings in a company’ and which ‘actually exercises that control by involving itself directly or indirectly in the management thereof’ must be considered as taking part in the economic activity of that company. The entity itself must therefore be regarded as an

² Commission Regulation (EU) XXX/XXX of XXX on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L, XXX. [OP: please fill in the reference corresponding to C(2023)9700]

³ Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8, ELI: <http://data.europa.eu/eli/reg/2012/360/oj>.

⁴ Commission Regulation (EU) XXX/XXX of XXX on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L, XXX. [OP: please fill in the reference corresponding to C(2023)9700]

⁵ Judgment of the Court of Justice of 10 January 2006, *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

undertaking within the meaning of Article 107(1) of the Treaty⁶. The Court of Justice has ruled that all entities that are controlled (on a legal or on a *de facto* basis) by the same entity are to be considered as a single undertaking⁷.

- (8) For the sake of legal certainty, and in order to reduce administrative burden, this Regulation should provide a clear and exhaustive list of criteria for determining when two or more enterprises in the same Member State should be considered as a single undertaking. The Commission has selected criteria that are appropriate for the purposes of this Regulation from the well-established criteria for defining ‘linked enterprises’ as part of the definition of small or medium-sized enterprises (SMEs) in Commission Recommendation 2003/361/EC⁸ and in Annex I to Commission Regulation (EU) No 651/2014⁹. The criteria should be applicable, given the scope of this Regulation, to both SMEs and large undertakings and should ensure that a group of linked enterprises is considered as one single undertaking for the application of the *de minimis* rule. However, as recognised by Article 14 of the Treaty, services of general economic interest occupy a special place in the shared values of the Union and have a particular role in promoting social and territorial cohesion. Services of general economic interest should meet the needs of users as fully as possible and Member States should be able to cater for those needs in the most appropriate way taking into consideration the specificity of each Member State as regards in particular the provision of social services. For this reason, enterprises performing services of general economic interest that have no relationship with each other, except for the fact that each of them has a direct link to the same public body or bodies, or to the same non-profit entity or entities, should not be treated as being linked to each other. The specific situation of enterprises controlled by the same public body or bodies, or by the same non-profit entity or entities, in which the enterprises may have independent power of decision, should therefore be taken into account.
- (9) This Regulation should apply only to aid granted for the provision of a service of general economic interest. The beneficiary undertaking should therefore be entrusted in writing or in electronic form with the service of general economic interest in respect of which the aid is granted. While the entrustment act should inform the undertaking of the service of general economic interest in respect of which the aid is granted, it need not necessarily contain all of the detailed information as set out in Article 4 of Commission Decision 2012/21/EU¹⁰.
- (10) In view of the special rules that apply to the primary production sectors (notably the primary production of agricultural products, and the primary production of fishery and aquaculture products), of the fact that undertakings in those sectors are rarely

⁶ Ibid, paragraphs 112 and 113.

⁷ Judgment of the Court of Justice of 13 June 2002, *Netherlands v Commission*, C-382/99, ECLI:EU:C:2002:363.

⁸ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36, ELI: <http://data.europa.eu/eli/reco/2003/361/oj>).

⁹ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1, ELI: <http://data.europa.eu/eli/reg/2014/651/oj>.

¹⁰ Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.1.2012, p. 3, ELI: [http://data.europa.eu/eli/dec/2012/21\(1\)/oj](http://data.europa.eu/eli/dec/2012/21(1)/oj).

entrusted with services of general economic interest, and of the risk that amounts of aid below the ceiling set out in this Regulation could nonetheless fulfil the criteria set out in Article 107(1) of the Treaty, this Regulation should not apply to those sectors.

- (11) Considering the similarities between the processing and marketing of agricultural products and of non-agricultural products, this Regulation should apply to the processing and marketing of agricultural products, if certain conditions are met. On-farm activities necessary for preparing a product for the first sale (for example, harvesting; cutting and threshing of cereals; or packing eggs) or the first sale to resellers or processors should not be considered as processing and marketing in this respect and this Regulation should therefore not apply to those activities.
- (12) Equally, considering the nature of the activities in the processing and marketing of fishery and aquaculture products, and the similarities between those activities and other processing and marketing activities, this Regulation should apply to undertakings active in the processing and marketing of fishery and aquaculture products, provided that certain conditions are met. Neither on-farm or on-board activities necessary for preparing an animal or plant for the first sale (including cutting, filleting or freezing), nor the first sale to resellers or processors should be considered as processing or marketing in this respect and this Regulation should therefore not apply to those activities.
- (13) The Court of Justice of the European Union has determined that, once the Union has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are obliged to refrain from taking any measure that might undermine or create exceptions to it¹¹. For that reason, this Regulation should not apply to aid for amounts fixed on the basis of the price or quantity of products purchased or put on the market in the agricultural sector. It should also not apply to aid linked to an obligation to share the aid with primary agricultural producers. These principles also apply to the fishery and aquaculture sector.
- (14) This Regulation should not apply to export aid or aid contingent upon the use of domestic goods or services over imported ones. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other Member States or third countries. The Court of Justice of the European Union has ruled that Regulation (EC) No 1998/2006¹² ‘does not exclude all aid which may have an impact on exports, but only that which has as its direct purpose, by its very form, the promotion of sales in another State’ and that ‘investment aid, on condition of it not being, in one form or another, determined, in principle and in its amount, by the quantity of the goods exported, is not included within ‘aid to export-related activities’ within the meaning of Article 1(1), point (d), of Regulation (EC) No 1998/2006 and does not therefore come within the scope of application of that provision, even if the investments thus supported facilitate the development of goods intended for export’¹³. Aid towards the costs of participating in trade fairs or towards the costs of studies or consultancy services needed to launch a new or existing

¹¹ Judgment of the Court of Justice of 12 December 2002, *France v Commission*, C-456/00, ECLI:EU:C:2002:753, paragraph 31.

¹² 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, OJ L 379, 28.12.2006, p. 5, ELI: <http://data.europa.eu/eli/reg/2006/1998/oj>.

¹³ Judgment of the Court of Justice 28 February 2018, *ZPT AD v Narodno sabranie na Republika Bulgaria and Others*, C-518/16, ECLI:EU:C:2018:126, paragraph 55 and 56.

product on a new market in another Member State or third country does not generally constitute export aid.

- (15) The period of 3 years to be taken into account for the purposes of this Regulation should be assessed on a rolling basis. For each new grant of *de minimis* aid, the total amount of *de minimis* aid granted in the previous 3 years needs to be taken into account.
- (16) Where an undertaking is active in one of the sectors excluded from the scope of this Regulation and is also active in other sectors or has other activities, this Regulation should apply to those other sectors or activities, provided that the Member State concerned ensures, by relying on appropriate means, such as separation of activities or separation of accounts, that the activities in the excluded sectors do not benefit from the *de minimis* aid. The same principle should apply where an undertaking is active in sectors to which lower *de minimis* ceilings apply. If an undertaking is not able to ensure that the activities in sectors to which lower *de minimis* ceilings apply only benefit from *de minimis* aid up to those lower ceilings, the lowest ceiling should apply to all activities of the undertaking.
- (17) Rules should be laid down to ensure that it is not possible to circumvent maximum aid intensities set out in the relevant State aid regulations or Commission decisions. Clear rules on cumulation should also be established.
- (18) This Regulation does not exclude the possibility that a measure might not be considered to be State aid within the meaning of Article 107(1) of the Treaty on grounds other than those set out in this Regulation, for instance, when the measure complies with the market economy operator principle or does not involve a transfer of State resources. In particular, Union funding centrally managed by the Commission that is not directly or indirectly under the control of the Member State does not constitute State aid and it should not be taken into account in determining whether the ceiling laid down in this Regulation is exceeded.
- (19) This Regulation does not encompass all situations where a measure may not have any effect on trade between Member States and may not distort or threaten to distort competition. There may be situations where a beneficiary supplies goods or services to a limited area (for example in an island region or an outermost region) within a Member State and that beneficiary is unlikely to attract customers from other Member States, and that it could not be foreseen that the measure would have more than a marginal effect on the conditions of cross-border investments or establishment. Such measures should be assessed on a case-by-case basis.
- (20) This Regulation should not affect the application of Regulation (EU) XXX/XXX [OP: please fill in the reference corresponding to C(2023)9700] to undertakings that provide services of general economic interest. Member States should remain free to rely either on this Regulation or on Regulation (EU) XXX/XXX [OP: please fill in the reference corresponding to C(2023)9700] as regards aid granted for the provision of services of general economic interest.
- (21) The Court of Justice has, in its *Altmark* judgment¹⁴, identified a number of conditions which must be fulfilled in order for compensation for the provision of a service of

¹⁴ Judgment of the Court of Justice of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, and Oberbundesanwalt beim Bundesverwaltungsgericht*, C-280/00, ECLI:EU:C:2003:415, paragraphs 88 to 93.

general economic interest not to constitute State aid. Those conditions ensure that compensation limited to the net costs incurred by efficient undertakings for the provision of a service of general economic interest does not constitute State aid within the meaning of Article 107(1) of the Treaty. If those conditions are not respected, compensation constitutes State aid which may be declared compatible on the basis of the applicable Union rules. In order to avoid this Regulation being applied to circumvent the conditions identified in the *Altmark* judgment, and in order to avoid *de minimis* aid granted under this Regulation affecting trade due to its cumulation with other compensation for the same service of general economic interest, *de minimis* aid under this Regulation should not be cumulated with any other compensation in respect of the same service, regardless of whether or not it constitutes State aid under the *Altmark* judgment or compatible State aid under Decision 2012/21/EU or under the Communication from the Commission - European Union framework for State aid in the form of public service compensation¹⁵.

- (22) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to *de minimis* aid for which it is possible to calculate the precise gross grant equivalent *ex ante* without any need to carry out a risk assessment ('transparent *de minimis* aid'). Such a precise calculation is possible, for instance, for grants, interest rate subsidies, capped tax exemptions or other instruments that provide for a cap, ensuring that the relevant ceiling is not exceeded. Providing for a cap means that, as long as the precise amount of aid is not known, the Member State has to assume that the amount is equal to the cap for the measure to ensure that several aid measures do not together exceed the ceiling set out in this Regulation and to apply the rules on cumulation.
- (23) For the purposes of transparency, equal treatment and the correct application of the *de minimis* ceiling, all Member States should apply the same calculation method to the calculation of the total amount of aid granted. To facilitate the calculation, aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. Calculating the gross grant equivalent of transparent types of aid, other than grants and aid payable in several instalments, requires the use of the market interest rates prevailing at the time such aid is granted. To facilitate a uniform, transparent and simple application of the State aid rules, the market rates applicable for the purposes of this Regulation should be the reference rates set in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates¹⁶.
- (24) Aid comprised of loans, including *de minimis* risk finance aid taking the form of loans, should be considered transparent *de minimis* aid if the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time the aid is granted. To simplify the treatment of small loans of short duration, it is necessary to set out a clear rule that is easy to apply and takes into account both the amount of the loan and its duration. Loans that are secured by collateral covering at least 50 % of the loan and that do not exceed either EUR 3 750 000 and a duration of 5 years or EUR 1 875 000 and a duration of 10 years may be considered as having a gross grant equivalent not exceeding the *de minimis* ceiling. This is based on the Commission's

¹⁵ Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011) (OJ C 8, 11.1.2012, p. 15).

¹⁶ Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

experience and given the inflation which has taken place since the entry into force of Regulation (EU) No 360/2012 and the estimated development of inflation during the period of application of this Regulation. Given the difficulties in determining the gross grant equivalent of aid granted to undertakings that may not be able to repay the loan (for example, because the undertaking is subject to collective insolvency proceedings or because it fulfils the criteria under its national law for being placed in collective insolvency proceedings at the request of its creditors), this rule should not apply to such undertakings.

- (25) Aid comprised of capital injections should not be considered as transparent *de minimis* aid unless the total amount of the public injection does not exceed the *de minimis ceiling*. Aid comprised of risk finance measures taking the form of equity or quasi-equity investments, as referred to in the risk finance guidelines¹⁷, should not be considered as transparent *de minimis* aid unless the measure concerned provides capital that does not exceed the *de minimis ceiling*.
- (26) Aid comprised of guarantees, including *de minimis* risk finance aid taking the form of guarantees, should be considered as transparent if the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice for the type of undertaking concerned¹⁸. This Regulation should set out clear rules that take into account both the amount of the underlying loan and the duration of the guarantee. Setting out clear rules should help to simplify the treatment of guarantees of short duration securing up to 80 % of a relatively small loan, where losses are sustained proportionally and in the same way by the lender and the guarantor, and net recoveries generated from the recuperation of the loan from the securities given by the borrower reduce proportionally the losses borne by the lender and the guarantor. Those rules should not apply to guarantees on underlying transactions that do not constitute a loan, such as guarantees on equity transactions. Based on the Commission's experience and given the inflation which has taken place since the entry into force of Commission Regulation (EU) No 360/2012 and the estimated development of inflation during the period of validity of this Regulation, the guarantee should be considered as having a gross grant equivalent not exceeding the *de minimis ceiling* where (i) the guarantee does not exceed 80 % of the underlying loan; (ii) the amount guaranteed does not exceed EUR 5 625 000; and (iii) the duration of the guarantee does not exceed 5 years. The same applies where (i) the guarantee does not exceed 80 % of the underlying loan; (ii) the amount guaranteed does not exceed EUR 2 813 036; and (iii) the duration of the guarantee does not exceed 10 years.
- (27) In addition, Member States may use a methodology to calculate the gross grant equivalent of guarantees that has been notified to the Commission under another Commission Regulation in the State aid area applicable at that time and that has been accepted by the Commission as being in accordance with the Guarantee Notice¹⁹ or any successor notice. Member States may only do this if the accepted methodology

¹⁷ Communication from the Commission – Guidelines on State aid to promote risk finance investments (OJ C 508, 16.12.2021, p. 1).

¹⁸ For instance, Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).

¹⁹ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, 20.6.2008, p. 10.

explicitly addresses the type of guarantee and the type of underlying transaction at stake as part of the application of this Regulation.

- (28) Upon notification by a Member State, the Commission should examine whether a measure that does not consist in a grant, loan, guarantee, capital injection, or risk-finance measure taking the form of an equity or quasi-equity investment, capped tax exemptions or other instruments that provide for a cap, leads to a gross grant equivalent that does not exceed the *de minimis* ceiling and could therefore fall within the scope of this Regulation.
- (29) The Commission has a duty to ensure that State aid rules are complied with and are in accordance with the principle of sincere cooperation laid down in Article 4(3) of the Treaty on European Union. Member States should facilitate the fulfilment of this task by having in place the necessary tools to ensure that the total amount of *de minimis* aid granted to a single undertaking for the provision of services of general economic interest under the *de minimis* rule does not exceed the overall permissible ceiling. Member States should monitor the aid granted to ensure that the ceiling laid down in this Regulation is not exceeded and the cumulation rules are complied with. To comply with that obligation, Member States should provide complete information on *de minimis* aid granted in a central register at national or Union level, at the latest from 1 January 2026, and check that any new grant of aid does not exceed the ceiling laid down in this Regulation. The central register will help reducing the administrative burden for undertakings. Undertakings will no longer be required, under this Regulation, to keep track of and declare any other *de minimis* aid received, once the central register contains data for a period of 3 years. For the purposes of this Regulation, control of compliance with the ceiling laid down in this Regulation shall in principle be based on the information included in the central register.
- (30) Each Member State may set up a national central register. Existing national central registers satisfying the requirements laid down in this Regulation can continue to be used. The Commission will set up a central register at the Union level that can be used by Member States as from 1 January 2026.
- (31) Considering that administrative burden and regulatory obstacles constitute a problem for the majority of SMEs and that the Commission targets to reduce by 25% the burden stemming from reporting requirements²⁰, any central register should be set up in such a way as to reduce administrative burden. Good administrative practices, such as those laid down in the Single Digital Gateway Regulation²¹, may be used as reference for the setting up and operation of the central register at Union level and of the national central registers.
- (32) Transparency rules aim to ensure better compliance, greater accountability, peer review and ultimately more effective public spending. The publication, in a central register, of the name of the aid beneficiary serves the legitimate interest in transparency by providing information to the public on the use of Member State funds. It does not unduly interfere with beneficiaries' right to protection of their

²⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - SME Relief Package, COM(2023) 535 final.

²¹ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/1724/oj>).

personal data as long as the publication in the central register of personal data complies with the Union rules on data protection²². Member States should have the option to pseudonymise specific entries where necessary to comply with the Union data protection rules.

- (33) This Regulation should lay down a set of conditions according to which any measure within the scope of this Regulation can be deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition. For this reason, this Regulation should also apply to aid granted before its entry into force if all the conditions set out in it are fulfilled. Similarly, support which complied with the criteria in Regulation (EU) No 360/2012 granted between 29 April 2012 and 31 December 2023 should be considered as exempt from notification under Article 108(3) of the Treaty.
- (34) Having regard to the frequency with which it is generally necessary to revise State aid policy, the period of application of this Regulation should be limited. This Regulation replaces Regulation (EC) No 360/2012 upon its expiry.
- (35) Should the period of application of this Regulation expire without being extended, Member States should have an adjustment period of 6 months for *de minimis* aid covered by this Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Scope

- 1. This Regulation applies to aid granted to undertakings providing a service of general economic interest in all sectors, with the exception of:
 - (a) aid granted to undertakings active in the primary production of fishery and aquaculture products;
 - (b) aid granted to undertakings active in the processing and marketing of fishery and aquaculture products, where the amount of the aid is fixed on the basis of price or quantity of products purchased or put on the market;
 - (c) aid granted to undertakings active in the primary production of agricultural products;
 - (d) aid granted to undertakings active in the processing and marketing of agricultural products, in one of the following cases:

²² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119 4.5.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/679/oj>; Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39, ELI: <http://data.europa.eu/eli/reg/2018/1725/oj>.

- (i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;
 - (ii) where the aid is conditional on being partly or entirely passed on to primary producers;
- (e) aid granted to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, the establishment and operation of a distribution network, or other current expenditure linked to the export activity;
- (f) aid contingent upon the use of domestic goods and services over imported goods and services.
2. Where an undertaking is active in one of the sectors referred to in paragraph 1, points (a), (b), (c) or (d) and is also active in one or more of the other sectors falling within the scope of this Regulation or has other activities falling within the scope of this Regulation, this Regulation shall apply to aid granted in respect of the latter sectors or activities, provided that the Member State concerned ensures, by relying on appropriate means, such as separation of activities or separation of accounts, that the activities in the sectors excluded from the scope of this Regulation do not benefit from the *de minimis* aid granted in accordance with this Regulation.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
- (a) ‘agricultural products’ means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products falling within the scope of Regulation (EU) No 1379/2013 of the European Parliament of the Council²³;
 - (b) ‘primary agricultural production’ means the production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing the nature of such products;
 - (c) ‘processing of agricultural products’ means any operation on an agricultural product resulting in a product that is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
 - (d) ‘marketing of agricultural products’ means holding or displaying an agricultural product with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing of agricultural products if it takes place in separate premises reserved for that purpose;

²³ Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000, OJ L 354 28.12.2013, p. 1, ELI: <http://data.europa.eu/eli/reg/2013/1379/oj>.

- (e) ‘fishery and aquaculture products’ means the products defined in Article 5, points (a) and (b), of Regulation (EU) No 1379/2013;
 - (f) ‘primary production of fishery and aquaculture products’ means all operations relating to the fishing, rearing or cultivation of aquatic organisms, as well as on-farm or on-board activities necessary for preparing an animal or plant for the first sale, including cutting, filleting or freezing, and the first sale to resellers or processors;
 - (g) ‘processing and marketing of fishery and aquaculture products’ means all operations, including handling, treatment and transformation, performed following the time of landing – or harvesting in the case of aquaculture – that result in a processed product, as well as the distribution thereof;
 - (h) ‘non-profit entity’ means an entity irrespective of its legal status (organised under public or private law) or way of financing, whose primary purpose is to undertake social tasks, which reinvests any profits gained and which predominantly engages in non-commercial activities. Where such entity also pursues commercial activities, it must ensure accounting separation for the financing, the costs and the revenues of those commercial activities from the non-commercial activities.
2. ‘Single undertaking’ means, for the purposes of this Regulation, all enterprises having at least one of the following relationships with each other:
- (a) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;
 - (b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
 - (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or pursuant to a provision in its memorandum or articles of association;
 - (d) one enterprise which is a shareholder in, or member of, another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.

Enterprises having any of the relationships referred to in points (a) to (d) through one or more other enterprises shall also be considered to be a single undertaking. However, enterprises performing services of general economic interest that have no relationship with each other, except for the fact that each of them has a direct link to the same public body or bodies, or to the same non-profit entity or entities, shall not be treated as a single undertaking for the purposes of this Regulation.

Article 3

De minimis aid

1. Aid measures granted to undertakings for the provision of a service of general economic interest shall be deemed not to meet all the criteria set out in Article 107(1) of the Treaty and shall therefore not be subject to the notification requirement of Article 108(3) of the Treaty if they fulfil the conditions laid down in this Regulation.

2. The total amount of *de minimis* aid granted per Member State to a single undertaking providing services of general economic interest shall not exceed EUR 750 000 over any period of 3 years.
3. *De minimis* aid shall be deemed granted at the moment that the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime, irrespective of the date of payment of the *de minimis* aid to the undertaking.
4. The ceiling laid down in paragraph 2 shall apply irrespective of the form of the *de minimis* aid or the objective pursued by it and irrespective of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin.
5. For the purposes of the ceiling laid down in paragraph 2, aid shall be expressed as a cash grant. All figures used shall be gross that is, before any deduction of tax or other charge. When aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
6. Aid payable in several instalments shall be discounted to its value at the moment it is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time the aid is granted.
7. Where the ceiling laid down in paragraph 2 would be exceeded by the grant of new *de minimis* aid for services of general economic interest, that new aid shall not benefit from this Regulation.
8. In the case of mergers or acquisitions, all prior *de minimis* aid granted to any of the merging undertakings shall be taken into account when determining whether any new *de minimis* aid to the new or the acquiring undertaking exceeds the ceiling laid down in paragraph 2. *De minimis* aid lawfully granted before the merger or acquisition shall remain lawful.
9. If one undertaking splits into two or more separate undertakings, *de minimis* aid granted before the split shall be allocated to the undertaking that benefited from it, which is in principle the undertaking taking over the activities for which the *de minimis* aid was used. If such an allocation is not possible, the *de minimis* aid shall be allocated proportionately on the basis of the book value of the equity capital of the new undertakings at the effective date of the split.

Article 4

Calculation of gross grant equivalent

1. This Regulation shall apply only to aid in respect of which it is possible to precisely calculate the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment ('transparent *de minimis* aid').
2. Aid comprised of grants or interest rate subsidies shall be considered as transparent *de minimis* aid.
3. Aid comprised of loans shall be considered as transparent *de minimis* aid if:
 - (a) the beneficiary is neither subject to collective insolvency proceedings nor fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors. For large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least 'B-'; and either

- (b) the loan is secured by collateral covering at least 50% of the loan and the loan amounts to either EUR 3 750 000 over 5 years or EUR 1 875 000 over 10 years; if a loan is for less than those amounts or is granted for a period of less than 5 or 10 years respectively, the gross grant equivalent of that loan shall be calculated as a corresponding proportion of the ceiling laid down in Article 3(2) of this Regulation; or
 - (c) the gross grant equivalent has been calculated on the basis of the reference rate applicable at the time of the grant.
- 4. Aid comprised of capital injections shall only be considered as transparent *de minimis* aid if the total amount of the public injection does not exceed the ceiling laid down in Article 3(2).
- 5. Aid comprised of risk finance measures taking the form of equity or quasi-equity investments shall only be considered as transparent *de minimis* aid if the capital provided to a single undertaking does not exceed the ceiling laid down in Article 3(2).
- 6. Aid comprised of guarantees shall be considered as transparent *de minimis* aid if:
 - (a) the beneficiary is neither subject to collective insolvency proceedings nor fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors. For large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least 'B-'; and either
 - (b) the guarantee does not exceed 80% of the underlying loan at each moment in time, losses are sustained proportionally and in the same way by the lender and the guarantor, net recoveries generated from the recuperation of the loan from the securities given by the borrower proportionally reduce the losses borne by the lender and the guarantor, and either the amount guaranteed is EUR 5 625 000 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 2 813 036 and the duration of the guarantee is 10 years; if the amount guaranteed is less than these amounts or the guarantee is for a period of less than 5 or 10 years respectively, the gross grant equivalent of that guarantee shall be calculated as a corresponding proportion of the relevant ceiling laid down in Article 3(2); or
 - (c) the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice; or
 - (d) before implementation,
 - (i) the methodology used to calculate the gross grant equivalent of the guarantee has been notified to the Commission under another Commission Regulation in the State aid area applicable at that time and accepted by the Commission as being in line with the Guarantee Notice or any succeeding notice; and
 - (ii) that methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation.
- 7. Aid comprised of other instruments shall be considered as transparent *de minimis* aid if the instrument provides for a cap that ensures that the ceiling laid down in Article 3(2) of this Regulation is not exceeded.

Article 5

Cumulation

1. *De minimis* aid granted in accordance with this Regulation may be cumulated with *de minimis* aid granted in accordance with other *de minimis* Regulations²⁴.
2. *De minimis* aid under this Regulation shall not be cumulated with any compensation in respect of the same service of general economic interest, regardless of whether or not it constitutes State aid.
3. *De minimis* aid granted in accordance with this Regulation shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or decision adopted by the Commission. *De minimis* aid that is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission.

Article 6

Monitoring and reporting

1. Member States shall ensure that, from 1 January 2026, information on *de minimis* aid granted for services of general economic interest is registered in a central register at national or Union level. Information in the central register shall contain the identification of the beneficiary, the aid amount, the granting date, the granting authority, the aid instrument and the sector involved on the basis of the statistical classification of economic activities in the Union ('NACE classification'). The central register shall be set up in such a way as to enable easy public access to the information whilst ensuring compliance with the Union rules on data protection, including through the pseudonymisation of specific entries where necessary.
2. Member States shall register the information listed in paragraph 1 in the central register on *de minimis* aid granted by any authority within the Member State concerned within 20 working days following the grant of the aid. Member States shall take appropriate measures to ensure the accuracy of the data contained in the central register.
3. Member States shall keep records of the registered information on *de minimis* aid for 10 years from the date on which the aid was granted.
4. A Member State shall grant new *de minimis* aid in accordance with this Regulation only after it has verified that the new *de minimis* aid will not raise the total amount of *de minimis* aid granted to the undertaking concerned to a level above the ceiling laid

²⁴ Commission XXX/XXX of XX December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L, XXX [OP: please fill in the reference corresponding to C(2023)9700)]; Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector, OJ L 352, 24.12.2013, p. 9, ELI: <http://data.europa.eu/eli/reg/2013/1407/oj>; Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45, ELI: <http://data.europa.eu/eli/reg/2014/717/oj>.

down in Article 3(2) of this Regulation and that all the conditions laid down in this Regulation are complied with.

5. Member States using a central register at national level shall submit to the Commission by 30 June every year aggregated data on *de minimis* aid granted for the previous year. The aggregated data shall contain the number of beneficiaries, the overall amount of *de minimis* aid granted and the overall amount of *de minimis* aid granted per sector (using the ‘NACE classification’). The first data submission shall be for *de minimis* aid granted from 1 January to 31 December 2026. Member States may report to the Commission on earlier periods where the aggregated data are available.
6. On written request by the Commission, the Member State concerned shall provide the Commission, within 20 working days or a longer period set out in the request, with all the information that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied with, and in particular the total amount of *de minimis* aid within the meaning of this Regulation and of other *de minimis* regulations received by any undertaking.

Article 7

Transitional provisions

1. This Regulation shall apply to aid granted before its entry into force if the aid fulfils all the conditions laid down in this Regulation.
2. Any individual *de minimis* aid that was granted between 29 April 2012 and 31 December 2023 and that fulfils the conditions set out in Regulation (EU) No 360/2012 shall be deemed not to meet all the criteria in Article 107(1) of the Treaty and shall therefore be exempt from the notification requirement in Article 108(3) of the Treaty.
3. At the end of the period of validity of this Regulation, any *de minimis* aid which fulfils the conditions of this Regulation may be validly granted for a further period of 6 months.
4. Until the central register is set up and covers a period of 3 years, where a Member State intends to grant *de minimis* aid to an undertaking in accordance with this Regulation, that Member State shall inform the undertaking in written or electronic form of the amount of the aid expressed as a gross grant equivalent and its *de minimis* character, referring directly to this Regulation. Where *de minimis* aid is granted to different undertakings in accordance with this Regulation on the basis of a scheme and different amounts of individual aid are granted to those undertakings under that scheme, the Member State concerned may choose to fulfil its obligation by informing the undertakings of an amount corresponding to the maximum aid amount to be granted under that scheme. In such cases, the fixed sum shall be used for determining whether the ceiling laid down in Article 3(2) of this Regulation is complied with. Before granting the aid, the Member State shall obtain a declaration from the undertaking concerned, in written or electronic form, about any other *de minimis* aid received to which this Regulation or other *de minimis* regulations apply over any period of 3 years.

Article 8

Entry into force and period of application

This Regulation shall enter into force on 1 January 2024.

It shall apply until 31 December 2030.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13.12.2023

For the Commission
The President
Ursula VON DER LEYEN