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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

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COMMISSION REGULATION (EC) No 1860/2004

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on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ⁽¹⁾, and in particular Article 2(1) thereof,

Having published a draft of this Regulation ⁽²⁾,

Having consulted the Advisory Committee on State Aid,

Whereas:

- (1) Regulation (EC) No 994/98 empowers the Commission to set out in a regulation a threshold below which aid measures are considered not to meet all the criteria of Article 87(1) of the Treaty and therefore do not fall under the notification procedure provided for in Article 88(3) of the Treaty.
- (2) The Commission has applied Articles 87 and 88 of the Treaty and has in particular clarified, in numerous decisions, the notion of ‘aid’ within the meaning of Article 87(1) of the Treaty. The Commission, most recently in Regulation (EC) No 69/2001 ⁽³⁾, has also stated its policy with regard to a *de minimis* ceiling, under which Article 87(1) can be considered not to apply. In view of the special rules which apply in the agriculture and fisheries sectors, and of the risks that even low levels of aid could fulfil the criteria of Article 87(1) of the Treaty in these sectors, Regulation (EC) 69/2001 does not apply to these sectors.
- (3) In the light of the experience acquired by the Commission, especially since the entry into force of 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 Regulation ⁽⁴⁾, and the Community guidelines for state aid in the agriculture sector ⁽⁵⁾, it can be affirmed that very low levels of aid granted in the agriculture sector do not fulfil the criteria of Article 87(1) of the Treaty, provided that certain conditions are met. This is the case where both the amount of aid received by individual producers remains small, and the overall level of aid granted to the agriculture sector does not go above a small percentage of the value of production. Agricultural production in the Community is normally characterised by the fact that every commodity is produced by a large number of very small producers, producing largely interchangeable goods within the framework of common organisations of the market. For this reason, the impact of small amounts of aid granted to individual producers over a given period of time should be related to the value of agricultural production at sectoral level over the same period of time. A ceiling in the form of an amount per Member State established on the basis of the value of output in the agriculture sector allows a consistent approach in all Member States, based on an objective economic reference value.

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 93, 17.4.2004, p. 9.

⁽³⁾ OJ L 10, 13.1.2001, p. 30.

⁽⁴⁾ OJ L 160, 26.6.1999, p. 80. Regulation as last amended by Regulation (EC) No 583/2004 (OJ L 91, 30.3.2004, p. 1).

⁽⁵⁾ Revised version OJ C 232, 12.8.2000, p. 19.

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- (4) In the light of the experience of the Commission in the assessment of State aid in the fisheries sector, especially since the entry into force of the Community guidelines for the examination of state aid to fisheries and aquaculture ⁽¹⁾, and of 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 ⁽²⁾, it can be affirmed that very low levels of aid granted in the fisheries sector do not fulfil the criteria of Article 87(1) of the Treaty, provided that certain conditions are met. Given the similarities of the production patterns in the fisheries sector and the agriculture sector, this is the case where both the amount of aid received by individual enterprises remains small, and the overall level of aid granted to the fisheries sector does not go above a small percentage of the value of production.
- (5) With a view to increasing transparency and legal certainty, it seems appropriate to lay down a *de minimis* rule for the agriculture and fisheries sector in a regulation.
- (6) In the light of the World Trade Organisation (WTO) Agreement on Agriculture ⁽³⁾, this Regulation should not exempt export aid or aid favouring domestic over imported products. Member States are under an obligation to refrain from granting any support contrary to the commitments contained in that Agreement. Aid towards the cost of participating in trade fairs, or towards studies or consultancy services needed for the launch of a new or existing product on a new market, does not normally constitute export aid. The European Court of Justice in its judgment of 19 September 2002 establishes that, once the Community has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it ⁽⁴⁾. This principle also applies in the fisheries sector. For this reason, this Regulation should not apply to aid the amount of which is fixed on the basis of price or quantity of products put on the market.
- (7) In the light of the Commission's experience, it can be affirmed that aid not exceeding a ceiling of EUR 3 000 per beneficiary over any period of three years, where the total amount of such aid granted to all enterprises over three years remains below a ceiling to be set by the Commission at around 0,3 % of the annual agricultural output or of the fisheries output, does not affect trade between Member States and/or does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty. The three-year period should be mobile, so that for each new grant of *de minimis* aid, the total amount of such aid granted during the previous three years needs to be determined. The *de minimis* aid should be considered to be granted at the moment when the legal right to receive the aid is conferred on the beneficiary. The *de minimis* rule is without prejudice to the possibility that enterprises may receive, for the same project, State aid authorised by the Commission or covered by a group exemption Regulation.
- (8) In the interest of transparency, equal treatment and the proper application of the *de minimis* ceilings, it is appropriate that Member States should apply the same method of calculation. In order to facilitate this calculation and in accordance with Regulation EC No 69/2001, it is appropriate that aid amounts not taking the form of a cash grant should be converted into their

⁽¹⁾ OJ C 19, 20.1.2001, p. 7.

⁽²⁾ OJ L 337, 30.12.1999, p. 10, as last amended by Regulation 1421/2004 (OJ L 260, 6.8.2004, p. 1).

⁽³⁾ OJ L 336, 23.12.1994, p. 22.

⁽⁴⁾ Case C-113/2000 Spain v./Commission, [2002] ECR 2002 I-7601, point 73.

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gross grant equivalent. Calculation of the grant equivalent of aid payable in several instalments, and calculation of 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 risk. 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.

- (9) The Commission has a duty to ensure that State aid rules are complied with, and in particular that aid granted under the *de minimis* rules adheres to the conditions thereof. In accordance with the cooperation principle laid down in Article 10 of the Treaty, Member States should facilitate the achievement of this task by establishing the necessary machinery to ensure that the total amount of aid, granted under the *de minimis* rule, does not exceed either the ceiling of EUR 3 000 per beneficiary or the overall ceilings established by the Commission on the basis of the value of agricultural or fishery output per Member State over a three-year period. To that end, it is appropriate that Member States, when granting a *de minimis* aid, should inform the enterprise concerned of the *de minimis* character of the aid, receive full information about other *de minimis* aid received during the previous three years, and carefully check that the *de minimis* ceilings will not be exceeded by the new *de minimis* aid. Alternatively, compliance with the ceilings may also be ensured by means of a central register.
- (10) Having regard to the Commission's experience 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, Member States should have an adjustment period of six months with regard to *de minimis* aid schemes which were covered by it. For the sake of legal certainty, it is appropriate to clarify the effect of this Regulation on aid granted before its entry into force,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation applies to aid granted to enterprises in the agriculture or fisheries sectors, with the exception of:

- (a) aid the amount of which is fixed on the basis of price or quantity of products put on the market,
- (b) aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to export activity,
- (c) aid contingent upon the use of domestic over imported goods.

Article 2

Definitions

For the purpose of this Regulation:

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1. 'enterprises in the agriculture sector' means enterprises active in the production ►**M1** ————— ◀ of agricultural products,
2. 'agricultural product' means the products listed in Annex I of the Treaty, except fisheries products as defined in point (5),

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4. 'enterprises in the fisheries sector' means enterprises active in the production, processing and marketing of fisheries products,
5. 'fisheries products' 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 ⁽¹⁾,
6. 'processing and marketing of a fisheries product' means all operations, including handling, treatment, production and distribution, performed between the time of landing or harvesting and the end-product stage.

*Article 3****De minimis aid***

1. Aid measures shall be deemed not to meet all the criteria of Article 87(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 88(3) of the Treaty, if they fulfil the conditions laid down in paragraphs 2 and 3.

2. The total *de minimis* aid granted to any one enterprise shall not exceed EUR 3 000 over any period of three years. This ceiling shall apply irrespective of the form of the aid or the objective pursued.

The cumulative amount thus granted to various enterprises in the agriculture sector shall not exceed the value per Member State set out in Annex I, over any three-year period.

The cumulative amount of aid granted to various enterprises in the fisheries sector shall not exceed the value set out per Member State in Annex II, over any three-year period.

3. The ceilings in paragraph 2 shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments shall be discounted to its value at the moment of its being granted. The interest rate to be used for discounting purposes and to calculate the aid amount in a soft loan shall be the reference rate applicable at the time of grant.

*Article 4***Cumulation and monitoring**

1. Where a Member State grants *de minimis* aid to an enterprise, it shall inform the enterprise about the *de minimis* character of the aid and obtain from the enterprise concerned full information about other *de minimis* aid received during the previous three years.

The Member State may only grant the new *de minimis* aid after having checked that this will not raise the total amount of *de minimis* aid received during the relevant three-year period to a level above either of the ceilings set out in Article 3(2).

2. Where a Member State has set up a central register of *de minimis* aid for agriculture and fisheries, respectively, containing complete infor-

⁽¹⁾ OJ L 17, 21.1.2000, p. 22.

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mation on all *de minimis* aid falling within the scope of this Regulation and granted by any authority within that Member State, the requirement in the first subparagraph of paragraph 1 shall no longer apply once the register covers a three-year period.

3. Member States shall record and compile all the information regarding the application of this Regulation. Such records shall contain all information necessary to demonstrate that the conditions of this Regulation have been fulfilled. Records regarding an individual *de minimis* aid shall be maintained for 10 years from the date on which the aid was granted, and the records regarding a *de minimis* aid scheme for 10 years from the date on which the last individual aid was granted under such scheme.

On written request the Member State concerned shall provide the Commission, within a period of 20 working days, or such longer period as may be fixed in the request, with all the information that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied with, in particular the total amount of *de minimis* aid received by any enterprise and by the agriculture or fisheries sector of the Member State concerned.

*Article 5***Transitional provisions**

1. This Regulation shall apply to aid granted before its entry into force, if it fulfils all the conditions laid down in Articles 1 and 3. Any aid which does not fulfil those conditions shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

2. Aid schemes falling under this Regulation shall continue to benefit from it during an adjustment period of six months following the date provided for in the second paragraph of Article 6.

During the adjustment period, the schemes may continue to be applied under the conditions of this Regulation.

*Article 6***Entry into force and applicability**

This Regulation shall enter into force on 1 January 2005.

It shall expire on 31 December 2008.

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



ANNEX I

Cumulative amounts for agriculture per Member State as referred to in Article 3 (2):

	<i>(in EUR)</i>
BE	22 077 000
DK	27 294 000
DE	133 470 000
EL	34 965 000
ES	106 755 000
FR	195 216 000
IE	17 637 000
IT	130 164 000
LU	789 000
NL	62 232 000
AT	17 253 000
PT	17 832 000
FI	11 928 000
SE	13 689 000
UK	72 357 000
CZ	9 696 000
EE	1 266 000
CY	1 871 100
LV	1 686 000
LT	3 543 000
HU	16 980 000
MT	474 000
PL	44 895 000
SI	3 018 000
SK	4 566 000

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ANNEX II

Cumulative amounts for fisheries per Member State as referred to in Article 3(2):

(in EUR)

BE	1 368 900
DK	6 341 400
DE	7 287 000
EL	2 036 370
ES	15 272 100
FR	11 073 300
IE	1 944 000
IT	9 413 400
LU	0
NL	3 548 100
AT	114 000
PT	2 703 300
FI	460 200
SE	1 557 900
UK	12 651 900
CZ	169 200
EE	407 400
CY	123 000
LV	510 300
LT	906 000
HU	144 180
MT	21 000
PL	1 652 100
SI	21 900
SK	86 100