

## COMMISSION REGULATION (EC) No 1535/2007

of 20 December 2007

on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production

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 <sup>(1)</sup>, and in particular Article 2(1) thereof,

Having published a draft of this Regulation <sup>(2)</sup>,

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 ceiling 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 in particular clarified, in numerous decisions, the notion of aid within the meaning of Article 87(1) of the Treaty. It has also stated its policy with regard to a *de minimis* ceiling under which Article 87(1) of the Treaty can be considered not to apply, firstly in its communication on *de minimis* aid <sup>(3)</sup> and then in Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid <sup>(4)</sup>, replaced on 1 January 2007 by 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 <sup>(5)</sup>. In view of the special rules which apply in the agriculture sector and of the risks that even low levels of aid could fulfil the criteria of Article 87(1) of the Treaty in that sector, Regulation (EC) No 69/2001 excludes the agriculture sector from its scope. Regulation (EC) No 1998/2006 also excludes the sector of agricultural production from its scope.

(3) However, since the experience gained over the years has shown that the very small amounts of aid granted in the agriculture sector may also not meet the criteria of Article 87(1) of the Treaty where certain conditions are met, the Commission laid down rules allowing the grant of *de minimis* aid in that sector in 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 sector <sup>(6)</sup>. That Regulation, by virtue of which the total amount of *de minimis* aid granted to one and the same undertaking is regarded as not meeting all the criteria of Article 87(1) of the Treaty where it does not exceed EUR 3 000 per beneficiary over any period of three years or a cumulative amount laid down for each Member State representing 0,3 % of annual output in the agriculture sector, covers both primary production and the processing and marketing of agricultural products.

(4) Given the similarities between activities in the processing and marketing of agricultural products on the one hand and industrial activities on the other, activities in the processing and marketing of agricultural products were included in the scope of Regulation (EC) No 1998/2006, which governs *de minimis* aid for industrial activities. As a result, those activities were excluded from the scope of Regulation (EC) No 1860/2004. For the sake of clarity, Regulation (EC) No 1860/2004 should be repealed and replaced by a new Regulation applicable only to the agricultural production sector.

(5) In the light of the Commission's experience, the maximum amount of aid of EUR 3 000 per beneficiary over a period of three years may be increased to EUR 7 500 and the ceiling of 0,3 % of annual output in the agriculture sector may be increased to 0,75 % without trade between Member States being affected, without there being any distortion or threat of distortion of competition, and without aid being granted within those limits falling under Article 87(1) of the Treaty, provided that certain conditions are met. This increase will also help to reduce the administrative burden. The years to take into account are the fiscal years as used by the undertaking in the Member State concerned. The reference period of three years should be assessed on a rolling basis so that, for each new grant of *de minimis* aid, the total amount of *de minimis* aid granted in the fiscal year concerned, as well as during the previous two fiscal years, needs to be determined. It should not be possible

<sup>(1)</sup> OJ L 142, 14.5.1998, p. 1.

<sup>(2)</sup> OJ C 151, 5.7.2007, p. 16.

<sup>(3)</sup> OJ C 68, 6.3.1996, p. 9.

<sup>(4)</sup> OJ L 10, 13.1.2001, p. 30.

<sup>(5)</sup> OJ L 379, 28.12.2006, p. 5.

<sup>(6)</sup> OJ L 325, 28.10.2004, p. 4. Regulation as last amended by Regulation (EC) No 875/2007 (OJ L 193, 25.7.2007, p. 6).

for aid measures exceeding the ceiling of EUR 7 500 to be broken down into a number of smaller parts in order to bring such parts within the scope of this Regulation.

- (6) This Regulation should not apply to export aid or aid favouring domestic over imported products. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new product or an existing product on a new market does not normally constitute export aid.
- (7) The Court of Justice of the European Communities has established 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<sup>(1)</sup>. For this reason, this Regulation should not apply to aid whose amount is laid down on the basis of price or quantity of products purchased or put on the market.
- (8) For the sake of transparency, equal treatment and the correct application of the *de minimis* ceiling, all Member States should apply the same method of calculation. In order to facilitate this calculation, aid amounts not taking the form of a grant should be converted into their gross grant equivalent. Calculation of the grant equivalent of forms of transparent aid other than grants or aid payable in several instalments requires the use of market interest rates prevailing at the time of granting such aid. With a view to a uniform, transparent and simple application of the State aid rules, the market rates for the purposes of this Regulation should be deemed to be the reference rates periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Union* or on the Internet. It may, however, be necessary to add additional basis points on top of the floor rate in view of the securities provided or the risk associated with the beneficiary.
- (9) Again for the purposes of transparency, equal treatment and the correct application of the *de minimis* ceiling, this Regulation should apply only to *de minimis* aid which is transparent. 'Transparent aid' should be taken to mean aid for which it is possible to calculate precisely in advance the gross grant equivalent without the need to undertake a risk assessment. Such precise calculation can, for instance, be made as regards grants, interest rate subsidies and capped tax exemptions. Aid in the form of soft loans should be considered to be transparent *de minimis* aid when the gross grant equivalent has been

calculated on the basis of market interest rates prevailing at the time of grant. Aid in the form of capital injections should not be considered to be transparent *de minimis* aid unless the total amount of the public capital injection is lower than the *de minimis* ceiling per beneficiary. Aid in the form of risk capital measures as referred to in the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises<sup>(2)</sup> should not be considered to be transparent *de minimis* aid unless the risk capital scheme concerned provides capital only up to the *de minimis* ceiling per beneficiary.

- (10) It is necessary to provide legal certainty for guarantee schemes which do not have the potential to affect trade and distort competition and in respect of which sufficient data is available to assess any potential effects reliably. This Regulation should therefore set a guarantee-specific ceiling based on the guaranteed amount of the underlying loan. This specific ceiling should be set on the basis of an assessment of the amount of State aid included in guarantee schemes covering loans in favour of viable undertakings. It should therefore not apply to ad hoc individual aid granted outside of the scope of a guarantee scheme or to guarantees on underlying transactions not constituting a loan, such as guarantees on equity transactions. The specific ceiling should be determined on the basis of the fact that taking account of a cap rate (net default rate) of 13 %, representing a worst case scenario for guarantee schemes in the Community, a guarantee amounting to EUR 56 250 can be considered as having a gross grant equivalent identical to the *de minimis* ceiling of EUR 7 500. Only guarantees covering up to 80 % of the underlying loan should be covered by this specific ceiling. A methodology approved by the Commission following notification on the basis of a Commission Regulation on State aid may also be used by the Member States to calculate the gross grant equivalent of the guarantee, if the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions concerned in the context of applying this Regulation.
- (11) This Regulation should not apply to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty<sup>(3)</sup> given the difficulties linked to determining the gross grant equivalent of aid granted to this type of undertaking.
- (12) In accordance with the principles governing aid falling within Article 87(1) of the Treaty, *de minimis* aid should be considered to be granted at the moment the right to receive the aid is conferred on the undertaking under the applicable national legal regime.

<sup>(1)</sup> Judgment of 19 September 2002 in Case C-113/00 Spain v Commission [2002] ECR I-7601, paragraph 73.

<sup>(2)</sup> OJ C 194, 18.8.2006, p. 2.

<sup>(3)</sup> OJ C 244, 1.10.2004, p. 2.

(13) In order to avoid circumvention of maximum aid intensities laid down in different Community instruments, it should not be possible for *de minimis* aid to be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that laid down by Community rules in the specific circumstances of each case.

(14) This Regulation does not exclude the possibility that a measure adopted by a Member State might not be considered to be State aid within the meaning of Article 87(1) of the Treaty on a basis other than this Regulation, for instance in the case of capital injections or guarantees, because such measure has been decided in conformity with the principle of private investors operating in normal market-economy conditions.

(15) The Commission must ensure that State aid rules are complied with, and in particular that aid granted under the *de minimis* rules meets 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 7 500 per beneficiary or the overall ceilings established by the Commission on the basis of the value of agricultural output. To that end, when granting *de minimis* aid, the Member States should inform the undertaking concerned of the amount of aid granted and of its *de minimis* character, by referring to this Regulation. Moreover, prior to granting such aid the Member State should obtain from the undertaking a declaration about other *de minimis* aid received during the current fiscal year and the two previous fiscal years and carefully check that the new aid does not make the total amount of *de minimis* aid received exceed the applicable ceilings. Alternatively, compliance with the ceilings may also be ensured by means of a central register. In the case of guarantee schemes set up by the European Investment Fund, the latter may establish a list of beneficiaries and require Member States to inform the beneficiaries of the *de minimis* aid received.

(16) Regulation (EC) No 1860/2004 was initially due to expire on 31 December 2008. Since this Regulation has to enter into force before that date, the consequences of that as regards its applicability to aid granted to undertakings in the agricultural production sector under Regulation (EC) No 1860/2004 should be clarified.

(17) In the light of the Commission's experience and in particular the frequency with which it is generally necessary to revise State aid policy, the period of validity of this Regulation should be limited. Should this Regulation expire without having been extended, Member States should have an adjustment period of six months with regard to *de minimis* aid covered by it,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Scope

This Regulation applies to aid granted to undertakings in the agricultural production sector, 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 the export activity;
- (c) aid contingent on the use of domestic over imported goods;
- (d) aid granted to undertakings in difficulty.

#### Article 2

##### Definitions

For the purpose of this Regulation:

1. 'undertakings in the sector of agricultural production' means undertakings active in the primary production of agricultural products;
2. 'agricultural products' means the products listed in Annex I to the Treaty, except fisheries and aquaculture products covered by Council Regulation (EC) No 104/2000<sup>(1)</sup>.

#### 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 not fall under the notification requirement of Article 88(3) of the Treaty where they fulfil the conditions laid down in paragraphs 2 to 7 of this Article.

2. The total *de minimis* aid granted to any one undertaking shall not exceed EUR 7 500 over any period of three fiscal years. This ceiling shall apply irrespective of the form of the aid or the objective pursued. The period shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

<sup>(1)</sup> OJ L 17, 21.1.2000, p. 22.

Where the total amount of aid granted for an aid measure exceeds the ceiling referred to in the first subparagraph, none of that amount — not even the fraction not exceeding the ceiling — may benefit from this Regulation. In such cases no aid may be claimed for the measure under this Regulation, either at the time aid is granted or subsequently.

3. The cumulative amount of *de minimis* aid granted per Member State to undertakings in the agricultural production sector over any period of three fiscal years shall not exceed the value set out in the Annex hereto.

4. The ceilings referred to in paragraphs 2 and 3 shall be expressed as a grant. All figures used shall be gross, that is, before any deduction of tax or other charges. Where aid is awarded in a form other than a grant, the aid amount to be taken into account shall be the gross grant equivalent of the aid.

5. 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 gross grant equivalent shall be the reference rate applicable at the time of grant.

6. This Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without need to undertake a risk assessment (transparent aid). In particular:

- (a) aid in the form of loans shall be considered transparent aid where the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time of the grant.
- (b) aid in the form of capital injections shall not be considered transparent aid unless the total amount of the public capital injection does not exceed the *de minimis* ceiling.
- (c) aid in the form of risk capital measures shall not be considered transparent aid unless the risk capital scheme concerned only provides capital to each undertaking up to the *de minimis* ceiling.
- (d) individual aid provided under a guarantee scheme to undertakings which are not undertakings in difficulty shall be treated as transparent *de minimis* aid when the guaranteed part of the underlying loan provided under such scheme does not exceed EUR 56 250 per undertaking. If the guaranteed part of the underlying loan only accounts for a given proportion of this ceiling, the gross grant equivalent of that

guarantee shall be deemed to correspond to the same proportion of the ceiling laid down in paragraph 2. The guarantee shall not exceed 80 % of the underlying loan.

Guarantee schemes are also considered as transparent aid schemes if the following conditions are met:

- (i) before they are implemented, the method used to calculate the gross grant equivalent contained in the guarantee for the purpose of applying this Regulation was approved by the Commission in the form of an adopted Commission Regulation on State aid;
- (ii) the approved method explicitly addresses the type of guarantees and the type of underlying transactions at stake in the context of applying this Regulation.

7. *De minimis* aid shall not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that laid down by Community rules in the specific circumstances of each case.

#### Article 4

##### Monitoring

1. Where a Member State intends to grant *de minimis* aid to an undertaking, it shall inform that undertaking in writing of the prospective amount of the aid (expressed as gross grant equivalent) and of its *de minimis* character, making express reference to this Regulation and citing its title and publication reference in the *Official Journal of the European Union*. Where *de minimis* aid is granted to several undertakings on the basis of a scheme and different amounts of aid are granted to those undertakings, the Member State concerned may choose to fulfil this obligation by informing the undertakings of a fixed sum corresponding to the maximum aid amount to be granted under the scheme. In such case, the fixed sum shall be used for determining whether the ceiling laid down in Article 3(2) is met. Prior to granting the aid, the Member State shall also obtain a declaration from the undertaking concerned, in written or electronic form, about any other *de minimis* aid received during the previous two fiscal years and the current fiscal year.

The Member State shall obtain a declaration from each beneficiary demonstrating that the amount of aid received by it does not exceed the ceiling laid down in Article 3(2). Where that ceiling is exceeded, the Member State concerned shall ensure that the aid measure leading to the ceiling being exceeded is notified to the Commission or recovered from the beneficiary.

2. The Member State shall only grant *de minimis* aid after having checked that it will not raise the total amount of *de minimis* aid received during the period covering the fiscal year concerned and the two previous years to a level above the ceiling laid down in Article 3(2) and (3).

3. Where a Member State has set up a central register of *de minimis* aid containing complete information on all *de minimis* aid falling within the scope of this Regulation granted by any authority within that Member State, the second subparagraph of paragraph 1 shall not apply once the register covers a period of at least three years.

4. Where an aid is granted by a Member State on the basis of a guarantee scheme providing a guarantee which is financed from the EU budget under mandate through the European Investment Fund, the first subparagraph of paragraph 1 of this Article may cease to apply.

In such cases, the following monitoring system shall apply:

- (a) the European Investment Fund shall establish, on a yearly basis, on the basis of information that financial intermediaries must provide to the EIF, a list of beneficiaries of aid and of the gross grant equivalent received by each of them. The European Investment Fund shall send this information to the Member State concerned and to the Commission;
- (b) the Member State concerned shall send that information to the final beneficiaries of the aid within three months of receipt of such information;
- (c) the Member State concerned shall obtain a declaration from each beneficiary that the overall *de minimis* aid it has received does not exceed the *de minimis* ceiling. Where that ceiling is exceeded, the Member State concerned shall ensure that the aid measure leading to the ceiling being exceeded is notified to the Commission or recovered from the beneficiary.

5. 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 complied with.

The information referred to in the first subparagraph shall be kept:

- (a) in the case of individual *de minimis* aid, for 10 years from the date on which the aid is granted;

- (b) in the case of *de minimis* aid schemes, for 10 years from the date on which the last individual aid was granted under the scheme in question.

6. On a written request, the Member States 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 met, in particular the total amount of *de minimis* aid granted to a given undertaking and to the agricultural sector of the Member State concerned.

#### Article 5

##### Repeal

Regulation (EC) No 1860/2004 is repealed with effect from 1 January 2008.

#### Article 6

##### Transitional provisions

1. This Regulation shall apply to aid granted before 1 January 2008 to undertakings in the sector of agricultural production, provided that such aid fulfils all the conditions laid down in Articles 1 to 4, except for the reference requirement clearly set out in this Regulation in the first subparagraph of Article 4(1). 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. Any *de minimis* aid granted between 1 January 2005 and six months after entry into force of this Regulation, which fulfils the conditions of Regulation (EC) No 1860/2004 applicable to the sector of agricultural production until the date of entry into force of this Regulation, 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.

3. At the end of the period of validity of this Regulation, *de minimis* aid which fulfils the conditions of this Regulation may continue to be applied under the conditions laid down in this Regulation for a further period of six months.

#### Article 7

##### Entry into force and period of validity

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2008 to 31 December 2013.

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

Done at Brussels, 20 December 2007.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

---

## ANNEX

Maximum cumulative amounts of *de minimis* aid granted per Member State to undertakings in the agricultural production sector as referred to in Article 3(3):

	(EUR)
BE	51 532 500
BG	23 115 000
CZ	26 257 500
DK	59 445 000
DE	297 840 000
EE	3 502 500
IE	40 282 500
EL	75 382 500
ES	274 672 500
FR	438 337 500
IT	320 505 000
CY	4 327 500
LV	5 550 000
LT	11 572 500
LU	1 777 500
HU	44 497 500
MT	870 000
NL	165 322 500
AT	40 350 000
PL	119 542 500
PT	47 782 500
RO	98 685 000
SL	8 167 500
SK	11 962 500
FI	26 752 500
SE	30 217 500
UK	152 842 500