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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**

(Text with EEA relevance)

(OJ L 352, 24.12.2013, p. 1)

Amended by:

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**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****(Text with EEA relevance)***Article 1***Scope**

1. This Regulation applies to aid granted to undertakings in all sectors, with the exception of:

- (a) aid granted to undertakings active in the fishery and aquaculture sector, as covered by Council Regulation (EC) No 104/2000 ⁽¹⁾;
- (b) aid granted to undertakings active in the primary production of agricultural products;
- (c) aid granted to undertakings active in the sector of processing and marketing of agricultural products, in the following cases:
 - (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;
- (d) aid to export-related activities towards third countries or Member States, 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;
- (e) aid contingent upon the use of domestic over imported goods.

2. Where an undertaking is active in the sectors referred to in points (a), (b) or (c) of paragraph 1 and is also active in one or more of the sectors 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 appropriate means such as separation of activities or distinction of costs, 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.

⁽¹⁾ Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products (OJ L 17, 21.1.2000, p. 22).



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 covered by Regulation (EC) No 104/2000;
- (b) ‘processing of agricultural products’ means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
- (c) ‘marketing of agricultural products’ means holding or display 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 if it takes place in separate premises reserved for that purpose.

2. ‘Single undertaking’ includes, 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 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) of the first subparagraph through one or more other enterprises shall also be considered to be a single undertaking.

Article 3

De minimis aid

1. Aid measures 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, 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 shall not exceed EUR 200 000 over any period of three fiscal years.

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The total amount of *de minimis* aid granted per Member State to a single undertaking performing road freight transport for hire or reward shall not exceed EUR 100 000 over any period of three fiscal years. This *de minimis* aid shall not be used for the acquisition of road freight transport vehicles.

3. If an undertaking performs road freight transport for hire or reward and also carries out other activities to which the ceiling of EUR 200 000 applies, the ceiling of EUR 200 000 shall apply to the undertaking, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the benefit to the road freight transport activity does not exceed EUR 100 000 and that no *de minimis* aid is used for the acquisition of road freight transport vehicles.

4. *De minimis* aid shall be deemed granted at the moment 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.

5. The ceilings laid down in paragraph 2 shall apply irrespective of the form of the *de minimis* aid or the objective pursued and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin. The period of three fiscal years shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

6. For the purposes of the ceilings 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. Where aid is granted 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 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 relevant ceiling laid down in paragraph 2 would be exceeded by the grant of new *de minimis* aid, none of that new aid may 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 in determining whether any new *de minimis* aid to the new or the acquiring undertaking exceeds the relevant ceiling. *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 prior to 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 calculate precisely the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment ('transparent aid').
2. Aid comprised in grants or interest rate subsidies shall be considered as transparent *de minimis* aid.
3. Aid comprised in loans shall be considered as transparent *de minimis* aid if:
 - (a) the beneficiary is not 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. In case of large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least B-; and
 - (b) the loan is secured by collateral covering at least 50 % of the loan and the loan amounts to either EUR 1 000 000 (or EUR 500 000 for undertakings performing road freight transport) over five years or EUR 500 000 (or EUR 250 000 for undertakings performing road freight transport) over 10 years; if a loan is for less than those amounts and/or is granted for a period of less than five or 10 years respectively, the gross grant equivalent of that loan 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 the reference rate applicable at the time of the grant.
4. Aid comprised in capital injections shall only be considered as transparent *de minimis* aid if the total amount of the public injection does not exceed the *de minimis* ceiling.
5. Aid comprised in 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 *de minimis* ceiling.
6. Aid comprised in guarantees shall be treated as transparent *de minimis* aid if:
 - (a) the beneficiary is not 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. In case of large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least B-; and
 - (b) the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed is EUR 1 500 000 (or EUR 750 000 for undertakings performing road freight transport) and the duration of the guarantee is five years or the amount guaranteed is EUR 750 000 (or EUR 375 000 for undertakings performing road freight transport) and the duration of the guarantee is 10 years; if

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the amount guaranteed is lower than these amounts and/or the guarantee is for a period of less than five 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 successor 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 in other instruments shall be considered as transparent *de minimis* aid if the instrument provides for a cap ensuring that the relevant ceiling 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 Commission Regulation (EU) No 360/2012 ⁽¹⁾ up to the ceiling laid down in that Regulation. It may be cumulated with *de minimis* aid granted in accordance with other *de minimis* regulations up to the relevant ceiling laid down in Article 3(2) of this Regulation.

2. *De minimis* aid 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 a decision adopted by the Commission. *De minimis* aid which 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.

⁽¹⁾ 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).



Article 6

Monitoring

1. Where a Member State intends to grant *de minimis* aid in accordance with this Regulation to an undertaking, it shall inform that undertaking in writing of the prospective amount of the aid expressed as a 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 in accordance with this Regulation to different undertakings 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 that obligation by informing the undertakings of a fixed sum corresponding to the maximum aid amount to be granted under that scheme. In such case, the fixed sum shall be used for determining whether the relevant ceiling laid down in Article 3(2) is reached. 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 during the previous two fiscal years and the current fiscal year.

2. Where a Member State has set up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within that Member State, paragraph 1 shall cease to apply from the moment the register covers a period of three fiscal years.

3. A Member State shall grant new *de minimis* aid in accordance with this Regulation only after having checked that this will not raise the total amount of *de minimis* aid granted to the undertaking concerned to a level above the relevant ceiling laid down in Article 3(2) and that all the conditions laid down in this Regulation are complied with.

4. 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. Records regarding individual *de minimis* aid shall be maintained for 10 fiscal years from the date on which the aid was granted. Records regarding a *de minimis* aid scheme shall be maintained for 10 fiscal years from the date on which the last individual aid was granted under such a scheme.

5. 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, 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.

▼B*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. Any aid which does not fulfil those conditions will be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.
2. Any individual *de minimis* aid which was granted between 2 February 2001 and 30 June 2007 and fulfils the conditions of Regulation (EC) No 69/2001 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. Any individual *de minimis* aid granted between 1 January 2007 and 30 June 2014 and which fulfils the conditions of Regulation (EC) No 1998/2006 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.
4. At the end of the period of validity of this Regulation, any *de minimis* aid scheme which fulfils the conditions of this Regulation shall remain covered by this Regulation for a further period of six months.

*Article 8***Entry into force and period of application**

This Regulation shall enter into force on 1 January 2014.

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It shall apply until 31 December 2023.

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