

Commission Regulation (EU) No 1408/2013 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

COMMISSION REGULATION (EU) No 1408/2013

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

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 (EC) No 994/98 of 7 May 1998 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid<sup>(1)</sup>,

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

After consulting the Advisory Committee on State Aid,

Whereas:

- (1) State funding meeting the criteria in Article 107(1) of the Treaty constitutes State aid and requires notification to the Commission by virtue of Article 108(3) of the Treaty. However, under Article 109 of the Treaty, the Council may determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) of the Treaty, the Commission may adopt regulations relating to those categories of State aid. By virtue of Regulation (EC) No 994/98 the Council decided, in accordance with Article 109 of the Treaty, that *de minimis* aid could constitute one such category. On that basis, *de minimis* aid, being aid granted to a single undertaking over a given period of time that does not exceed a certain fixed amount, 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 with regard to a *de minimis* ceiling below which Article 107(1) of the Treaty can be considered not to apply, initially in its notice on the *de minimis* rule for State aid<sup>(3)</sup> and subsequently in Commission Regulations (EC) No 69/2001<sup>(4)</sup> and (EC) No 1998/2006<sup>(5)</sup>. In view of the special rules which apply in the agriculture sector and of the risk that even low levels of aid could fulfil the criteria laid down in Article 107(1) of the Treaty, the agriculture sector or parts of it were excluded from the scope of those Regulations. The Commission has already adopted a number of Regulations providing rules on *de minimis* aid granted in the agriculture sector, the latest of which was Regulation (EC) No 1535/2007<sup>(6)</sup>. In the light of the experience gained in applying Regulation (EC)

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No 1535/2007, it is appropriate to revise some of the conditions laid down in that Regulation and to replace it.

- (3) In the light of the Commission's experience in applying Regulation (EC) No 1535/2007, the maximum amount of aid to a single undertaking over a period of 3 years should be increased to EUR 15 000 and the national cap increased to 1 % of annual output. Those new ceilings still ensure that any measure falling under this Regulation can be deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition.
- (4) For the purposes of the rules on competition laid down in the Treaty an undertaking is any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed<sup>(7)</sup>. The Court of Justice of the European Union has ruled that all entities which are controlled (on a legal or on a *de facto* basis) by the same entity should be considered as a single undertaking<sup>(8)</sup>. For the sake of legal certainty and to reduce the administrative burden, this Regulation should provide an exhaustive list of clear criteria for determining when two or more enterprises within the same Member State are to be considered as a single undertaking. The Commission has selected from the well-established criteria for defining 'linked enterprises' in the definition of small or medium-sized enterprises (SMEs) in Commission Recommendation 2003/361/EC<sup>(9)</sup> and in Annex I to Commission Regulation (EC) No 800/2008<sup>(10)</sup> those criteria that are appropriate for the purposes of this Regulation. The criteria are already familiar to public authorities and should be applicable, given the scope of this Regulation, to both SMEs and large undertakings. Those criteria should ensure that a group of linked enterprises is considered as one single undertaking for the application of the *de minimis* rule, but that enterprises which 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 are not treated as being linked to each other. The specific situation of enterprises controlled by the same public body or bodies, which may have an independent power of decision, is therefore taken into account. Similarly, those criteria should ensure that individual members of a legal person or group of natural or legal persons are not, for that reason alone, treated as being linked where national law provides for such individual members to assume rights and obligations comparable to those of individual farmers who have the status of head of holding, in particular as regards their economic, social and tax status and where those individual members have contributed to strengthening the agricultural structures of the legal persons or groups concerned.
- (5) Considering the similarities between the processing and marketing of agricultural products and of non-agricultural products, processing and marketing of agricultural products are included in the scope of Commission Regulation (EU) No 1407/2013<sup>(11)</sup>.
- (6) The Court of Justice of the European Union has established 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 under an obligation to refrain from taking any measure which might undermine or create exceptions to it<sup>(12)</sup>. For that reason, this Regulation should not apply to aid the amount of which is fixed on the basis of the price

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or quantity of products purchased or put on the market. Nor should it apply to support which is linked to an obligation to share the aid with primary producers.

- (7) This Regulation should not apply to export aid or aid contingent upon the use of domestic over imported products. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other Member States or in third countries. Aid towards the costs of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market in another Member State or a third country does not normally constitute export aid.
- (8) The period of 3 years to be taken into account for the purposes of this Regulation 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 and during the previous 2 fiscal years needs to be taken into account.
- (9) Where an undertaking is active in the primary production of agricultural products and is also active in other sectors or has other activities falling within the scope of Regulation (EU) No 1407/2013, the provisions of that Regulation should apply to aid granted in respect of those other sectors or activities, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with that Regulation.
- (10) Where an undertaking is active in the primary production of agricultural products as well as in the fishery and aquaculture sector, Commission Regulation (EC) No 875/2007<sup>(13)</sup> should apply to aid granted in respect of the latter sector, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with that Regulation.
- (11) This Regulation should lay down rules to ensure that it is not possible to circumvent maximum aid intensities laid down in specific regulations or Commission decisions. It should also provide for clear rules on cumulation that are easy to apply.
- (12) This Regulation does not exclude the possibility that a measure might be considered not 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 because the measure complies with the market economy operator principle or because the measure does not involve a transfer of State resources. In particular, Union funding centrally managed by the Commission which is not directly or indirectly under the control of the Member State, does not constitute State aid and should not be taken into account in determining whether the relevant ceiling or the national cap is respected.
- (13) 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 precisely the gross grant equivalent *ex ante* without any need to undertake a risk assessment ('transparent aid'). Such a precise calculation can, for instance, be made 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

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that as long as the precise amount of aid is not, or not yet, known, the Member State has to assume that the amount equals the cap in order to ensure that several aid measures together do not exceed the ceiling set out in this Regulation and to apply the rules on cumulation.

- (14) For the purposes 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 such calculation, aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. Calculation of the gross grant equivalent of transparent types of aid other than grants and of aid payable in several instalments requires the use of market interest rates prevailing at the time such aid is granted. With a view to 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, as set out in the Communication from the Commission on the revision of the method for setting the reference and discount rates<sup>(14)</sup>.
- (15) Aid comprised in 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. In order to simplify the treatment of small loans of short duration, this Regulation should provide for a clear rule that is easy to apply and takes into account both the amount of the loan and its duration. Based on the Commission's experience, loans that are secured by collateral covering at least 50 % of the loan and that do not exceed either EUR 75 000 and a duration of 5 years or EUR 37 500 and a duration of 10 years can be considered as having a gross grant equivalent not exceeding the *de minimis* ceiling. Given the difficulties linked to determining the gross grant equivalent of aid granted to undertakings that may not be able to repay the loan, this rule should not apply to such undertakings.
- (16) Aid comprised in 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 in risk finance measures taking the form of equity or quasi-equity investments, as referred to in the risk finance guidelines<sup>(15)</sup>, should not be considered as transparent *de minimis* aid unless the measure concerned provides capital not exceeding the *de minimis* ceiling.
- (17) Aid comprised in 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 concerned<sup>(16)</sup>. In order to simplify the treatment of guarantees of short duration securing up to 80 % of a relatively small loan, this Regulation should provide for a clear rule that is easy to apply and takes into account both the amount of the underlying loan and the duration of the guarantee. This rule should not apply to guarantees on underlying transactions not constituting a loan, such as guarantees on equity transactions. Where the guarantee does not exceed 80 % of the underlying loan, the amount guaranteed does not exceed EUR 112 500 and the duration of the guarantee does not exceed 5 years the guarantee can be considered as having a gross

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grant equivalent not exceeding the *de minimis* ceiling. The same applies where the guarantee does not exceed 80 % of the underlying loan, the amount guaranteed does not exceed EUR 56 250 and the duration of the guarantee does not exceed 10 years. In addition, Member States can use a methodology to calculate the gross grant equivalent of guarantees which has been notified to the Commission under another Commission Regulation in the State aid area applicable at that time and which has been accepted by the Commission as being in line with the Guarantee Notice, or any successor notice, provided that the accepted methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation. Given the difficulties linked to determining the gross grant equivalent of aid granted to undertakings that may not be able to repay the loan, this rule should not apply to such undertakings.

- (18) Where a *de minimis* aid scheme is implemented through financial intermediaries, it should be ensured that the latter do not receive any State aid. This can be done, for example by requiring financial intermediaries that benefit from a State guarantee to pay a market-conform premium or to fully pass on any advantage to the final beneficiaries, or by respecting the *de minimis* ceiling and other conditions of this Regulation also at the level of the intermediaries.
- (19) Upon notification by a Member State, the Commission may examine whether a measure which does not consist of a grant, loan, guarantee, capital injection or risk finance measure taking the form of an equity or quasi-equity investment, leads to a gross grant equivalent that does not exceed the *de minimis* ceiling and could therefore fall within the scope of this Regulation.
- (20) The Commission has a duty to ensure that State aid rules are complied with and in accordance with the cooperation principle laid down in Article 4(3) of the Treaty on European Union, Member States should facilitate the fulfilment of this task by establishing the necessary tools in order to ensure that the total amount of *de minimis* aid granted to a single undertaking under the *de minimis* rule does not exceed the overall permissible ceiling. To that end, when granting a *de minimis* aid, Member States should inform the undertaking concerned of the amount of *de minimis* aid granted and of its *de minimis* character and should make express reference to this Regulation. Member States should be required to monitor aid granted to ensure the relevant ceilings are not exceeded and the cumulation rules are complied with. To comply with that obligation, before granting such aid, the Member State concerned should obtain from the undertaking a declaration about other *de minimis* aid covered by this Regulation or by other *de minimis* regulations received during the fiscal year concerned and the previous 2 fiscal years. Alternatively it should be possible for Member States to set up a central register with complete information on *de minimis* aid granted and check that any new grant of aid does not exceed the relevant ceiling.
- (21) Before granting any new *de minimis* aid each Member State should verify that neither the *de minimis* ceiling nor the national cap will be exceeded in that Member State by the new *de minimis* aid and that the other conditions of this Regulation are complied with.

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- (22) Having regard to the Commission's experience and in particular the frequency with which it is generally necessary to revise State aid policy, the period of application of this Regulation should be limited. If this Regulation expires without being extended, Member States should have an adjustment period of 6 months with regard to *de minimis* aid covered by this Regulation,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Scope**

1 This Regulation applies to aid granted to undertakings active in the primary production of agricultural products, with the exception of:

- a aid the amount of which is fixed on the basis of the price or quantity of products put on the market;
- b 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;
- c aid contingent upon the use of domestic over imported goods.

2 Where an undertaking is active in the primary production of agricultural products and is also active in one or more of the sectors or has other activities falling within the scope of Regulation (EU) No 1407/2013, that 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 primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with that Regulation.

3 Where an undertaking is active in the primary production of agricultural products as well as in the fishery and aquaculture sector, the provisions of Regulation (EC) No 875/2007 shall apply to aid granted in respect of the latter sector, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with that Regulation.

### *Article 2*

#### **Definitions**

1 For the purposes of this Regulation, 'agricultural products' means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products covered by Council Regulation (EC) No 104/2000<sup>(17)</sup>.

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;

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- 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.

[<sup>F13</sup> For the purposes of this Regulation, 'product sector' means a sector listed in Article 1(2)(a) to (w) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council<sup>(18)</sup>.

4 For the purposes of this Regulation, 'sector cap' means a maximum cumulative aid amount applying to aid measures which benefit only one single product sector, which corresponds to 50 % of the maximum amount of *de minimis* aid granted per Member State set out in Annex II.]

#### Textual Amendments

- F1** Inserted by [Commission Regulation \(EU\) 2019/316 of 21 February 2019 amending Regulation \(EU\) No 1408/2013 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.](#)

### [<sup>F2</sup> 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 20 000 over any period of 3 fiscal years.

3 The cumulative amount of *de minimis* aid granted per Member State to undertakings active in the primary production of agricultural products over any period of 3 fiscal years shall not exceed the national cap set out in Annex I.

3a By way of derogation from paragraphs 2 and 3, a Member State may decide that the total amount of *de minimis* aid granted to a single undertaking shall not exceed EUR 25 000 over any period of 3 fiscal years and that the total cumulative amount of *de minimis* aid granted over any period of 3 fiscal years shall not exceed the national cap set out in Annex II, subject to the following conditions:

- a for aid measures which benefit only one single product sector, the total cumulative amount granted over any period of 3 fiscal years shall not exceed the sector cap defined in Article 2(4);
- b the Member State shall have in place a national central register in accordance with Article 6(2).

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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 *de minimis* ceilings and the national and sector caps referred to in paragraphs 2, 3 and 3a 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 3 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 *de minimis* ceilings and the national and sector caps referred to in paragraphs 2, 3 and 3a, 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 *de minimis* ceilings, the national caps or the sector cap referred to in paragraphs 2, 3 and 3a 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 *de minimis* ceilings, the relevant national cap or the sector cap. *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.]

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#### **Textual Amendments**

- F2** Substituted by [Commission Regulation \(EU\) 2019/316 of 21 February 2019 amending Regulation \(EU\) No 1408/2013 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.](#)

### *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:

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- 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
  - [<sup>F2</sup>b for measures falling under Article 3(2), the loan is secured by collateral covering at least 50 % of the loan and the loan amounts to either EUR 100 000 over 5 years or EUR 50 000 over 10 years, or, for measures falling under Article 3(3a), to either EUR 125 000 over 5 years or EUR 62 500 over 10 years; if a loan is for less than those amounts and/or if it 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 *de minimis* ceilings laid down in Article 3(2) or (3a); or]
  - c the gross grant equivalent has been calculated on the basis of the reference rate applicable at the time of the grant.
- [<sup>F24</sup> 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 relevant *de minimis* ceiling.]
- [<sup>F25</sup> 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 relevant *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
  - [<sup>F2</sup>b for measures falling under Article 3(2), the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed is EUR 150 000 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 75 000 and the duration of the guarantee is 10 years, or, for measures falling under Article 3(3a), the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed is EUR 187 500 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 93 750 and the duration of the guarantee is 10 years; if the amount guaranteed is lower than these amounts and/or if 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 *de minimis* ceilings laid down in Article 3(2) or (3a); 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.

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### Textual Amendments

- F2** Substituted by [Commission Regulation \(EU\) 2019/316 of 21 February 2019 amending Regulation \(EU\) No 1408/2013 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.](#)

## Article 5

### Cumulation

1 Where an undertaking is active in the primary production of agricultural products and is also active in one or more of the sectors or has other activities falling within the scope of Regulation (EU) No 1407/2013, *de minimis* aid granted for activities in the sector of agricultural production in accordance with this Regulation may be cumulated with *de minimis* aid granted in respect of the latter sector(s) or activities up to the relevant ceiling laid down in Article 3(2) of Regulation (EU) No 1407/2013, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with Regulation (EU) No 1407/2013.

2 Where an undertaking is active in the primary production of agricultural products as well as in the fishery and aquaculture sector, *de minimis* aid granted for activities in the sector of agricultural production in accordance with this Regulation may be cumulated with *de minimis* aid for activities in the latter sector in accordance with Regulation (EC) No 875/2007 up to the ceiling laid down in that Regulation, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with Regulation (EC) No 875/2007.

3 *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.

## 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 ceiling laid down in Article 3(2) is reached and the national cap referred to in Article 3(3) is not exceeded. Before granting the aid, the Member State shall

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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 2 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 3 fiscal years.

[<sup>F1</sup>Where a Member State grants aid in accordance with Article 3(3a), it shall have in place 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 3 fiscal years.]

[<sup>F23</sup> 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 ceilings and national caps and the sector cap referred to in Article 3(2), (3) and (3a) 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.

#### Textual Amendments

- F1** Inserted by [Commission Regulation \(EU\) 2019/316 of 21 February 2019 amending Regulation \(EU\) No 1408/2013 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.](#)
- F2** Substituted by [Commission Regulation \(EU\) 2019/316 of 21 February 2019 amending Regulation \(EU\) No 1408/2013 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.](#)

### 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 1 January 2005 and 30 June 2008, and which fulfils the conditions of Regulation (EC) No 1860/2004 shall be deemed

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*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EU) No 1408/2013. (See end of Document for details)*

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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 2008 and 30 June 2014 and which fulfils the conditions of Regulation (EC) No 1535/2007, 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 6 months.

#### *Article 8*

### **Entry into force and period of application**

This Regulation shall enter into force on 1 January 2014.

[<sup>F2</sup>It shall apply until 31 December 2027.]

#### **Textual Amendments**

- F2** Substituted by [Commission Regulation \(EU\) 2019/316 of 21 February 2019 amending Regulation \(EU\) No 1408/2013 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.](#)

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

*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the  
Commission Regulation (EU) No 1408/2013. (See end of Document for details)*

## [<sup>F2</sup>ANNEX I

Maximum cumulative amounts of *de minimis* aid granted per Member State to undertakings active in the primary production of agricultural products referred to in Article 3(3)

(EUR)

<b>Member State</b>	<b>Maximum amounts of <i>de minimis</i> aid<sup>a</sup></b>
Belgium	106 269 708
Bulgaria	53 020 042
Czechia	61 865 750
Denmark	141 464 625
Germany	732 848 458
Estonia	11 375 375
Ireland	98 460 375
Greece	134 272 042
Spain	592 962 542
France	932 709 458
Croatia	28 920 958
Italy	700 419 125
Cyprus	8 934 792
Latvia	16 853 708
Lithuania	34 649 958
Luxembourg	5 474 083
Hungary	99 582 208
Malta	1 603 917
Netherlands	352 512 625
Austria	89 745 208
Poland	295 932 125
Portugal	87 570 583
Romania	215 447 583
Slovenia	15 523 667
Slovakia	29 947 167
Finland	55 693 958
Sweden	79 184 750

<sup>a</sup> The maximum amounts are calculated on the basis of averaging the three highest values of annual agricultural production of each Member State in the period 2012-2017. The calculation method ensures that all Member States are treated equally and that none of the national average values is less than the maximum amounts previously established for the period 2014-2020.

*Status: Point in time view as at 31/01/2020.**Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EU) No 1408/2013. (See end of Document for details)*

United Kingdom	394 587 292
a	The maximum amounts are calculated on the basis of averaging the three highest values of annual agricultural production of each Member State in the period 2012-2017. The calculation method ensures that all Member States are treated equally and that none of the national average values is less than the maximum amounts previously established for the period 2014-2020.

## ANNEX II

Maximum cumulative amounts of *de minimis* aid granted per Member State to undertakings active in the primary production of agricultural products referred to in Article 3(3a)

*(EUR)*

Member State	Maximum amounts of <i>de minimis</i> aid <sup>a</sup>
Belgium	127 523 650
Bulgaria	63 624 050
Czechia	74 238 900
Denmark	169 757 550
Germany	879 418 150
Estonia	13 650 450
Ireland	118 152 450
Greece	161 126 450
Spain	711 555 050
France	1 119 251 350
Croatia	34 705 150
Italy	840 502 950
Cyprus	10 721 750
Latvia	20 224 450
Lithuania	41 579 950
Luxembourg	6 568 900
Hungary	119 498 650
Malta	1 924 700
Netherlands	423 015 150
Austria	107 694 250
Poland	355 118 550

a The maximum amounts are calculated on the basis of averaging the three highest values of annual agricultural production of each Member State in the period 2012-2017. The calculation method ensures that all Member States are treated equally and that none of the national average values is less than the maximum amounts previously established for the period 2014-2020.]

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**Status:** Point in time view as at 31/01/2020.

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Portugal	105 084 700
Romania	258 537 100
Slovenia	18 628 400
Slovakia	35 936 600
Finland	66 832 750
Sweden	95 021 700
United Kingdom	473 504 750

**a** The maximum amounts are calculated on the basis of averaging the three highest values of annual agricultural production of each Member State in the period 2012-2017. The calculation method ensures that all Member States are treated equally and that none of the national average values is less than the maximum amounts previously established for the period 2014-2020.]

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**Status:** Point in time view as at 31/01/2020.

**Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) No 1408/2013. (See end of Document for details)

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- (1) [OJ L 142, 14.5.1998, p. 1.](#)
- (2) [OJ C 227, 6.8.2013, p. 3.](#)
- (3) Commission notice on the *de minimis* rule for State aid ([OJ C 68, 6.3.1996, p. 9.](#))
- (4) 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 ([OJ L 10, 13.1.2001, p. 30.](#))
- (5) Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid ([OJ L 379, 28.12.2006, p. 5.](#))
- (6) Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid in the sector of agricultural production ([OJ L 337, 21.12.2007, p. 35.](#))
- (7) Case C-222/04 *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze SpA et al.* [2006] ECR I-289.
- (8) Case C-382/99 *Netherlands v Commission* [2002] ECR I-5163.
- (9) 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.](#))
- (10) Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty ([OJ L 214, 9.8.2008, p. 3.](#))
- (11) 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 (see page 1 of this Official Journal).
- (12) Case C-456/00 *France v Commission* [2002] I-11949.
- (13) Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004 ([OJ L 193, 25.7.2007, p. 6.](#))
- (14) 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.](#))
- (15) Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises ([OJ C 194, 18.8.2006, p. 2.](#))
- (16) 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.](#))
- (17) 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.](#))
- (18) <sup>F1</sup>Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([OJ L 347, 20.12.2013, p. 671.](#))

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#### Textual Amendments

- F1** Inserted by [Commission Regulation \(EU\) 2019/316 of 21 February 2019 amending Regulation \(EU\) No 1408/2013 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.](#)

**Status:**

Point in time view as at 31/01/2020.

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Regulation (EU) No 1408/2013.