

Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union

## CHAPTER I

### COMMON PROVISIONS

#### *Article 1*

#### **Scope**

- 1 This Regulation shall apply to aid granted to small and medium-sized enterprises (SMEs) active in the production, processing or marketing of fishery and aquaculture products.
- 2 This Regulation shall also apply to aid granted to undertakings active in the production, processing or marketing of fishery and aquaculture products to make good the damage caused by natural disasters in accordance with Article 44 independently of the size of the beneficiary of the aid.
- 3 This Regulation shall not apply to:
  - 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 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 costs linked to the export activity;
  - c aid contingent upon the use of domestic over imported goods;
  - d aid granted to undertakings in difficulty, with the exception of aid to make good the damage caused by natural disasters;
  - e aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by natural disasters;
  - f ad hoc aid in favour of an undertaking as referred to in point (e);
  - g aid granted to operations which would have been ineligible for support under Article 11 of Regulation (EU) No 508/2014;
  - h aid granted to undertakings that cannot apply for support from the European Maritime and Fisheries Fund on the grounds set out in Article 10(1)-(3) of Regulation (EU) No 508/2014.
- 4 This Regulation shall not apply to State aid measures, which entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law, in particular:
  - a aid where the grant of aid is subject to the obligation for the beneficiary to have its headquarters in the relevant Member State or to be predominantly established in that Member State. However, the requirement to have an establishment or branch in the aid granting Member State at the moment of payment of the aid is allowed;

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- b aid where the grant of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services;
- c aid restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.

## Article 2

### Notification threshold

1 This Regulation shall not apply to aid for any project with eligible costs in excess of EUR 2 million, or where the amount of aid exceeds EUR 1 million per beneficiary per year.

2 The thresholds set out in paragraph 1 shall not be circumvented by artificially splitting up the aid schemes or aid projects.

## Article 3

### Definitions

For the purpose of this Regulation the following definitions shall apply:

- (1) ‘aid’ means any measure fulfilling all the criteria laid down in Article 107(1) of the Treaty;
- (2) ‘small and medium-sized undertakings’ or ‘SMEs’ means undertakings fulfilling the criteria laid down in Annex I;
- (3) ‘fishery and aquaculture products’ means the products defined in Annex I of Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013<sup>(1)</sup>;
- (4) ‘natural disasters’ means earthquakes, avalanches, landslides and floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin;
- (5) ‘undertaking in difficulty’ means an undertaking in respect of which at least one of the following circumstances occurs:
  - (a) in the case of a limited liability company (other than an SME that has been in existence for less than three years), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, ‘limited liability company’ refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU of the European Parliament and of the Council<sup>(2)</sup> and ‘share capital’ includes, where relevant, any share premium;
  - (b) in the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, ‘a company where at least some members have unlimited liability for the debt of the company’ refers in

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- particular to the types of company mentioned in Annex II to Directive 2013/34/EU;
- (c) where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors;
- (d) where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan;
- (6) ‘ad hoc aid’ means aid not granted on the basis of an aid scheme;
- (7) ‘aid scheme’ means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
- (8) ‘individual aid’ means:
- (a) ad hoc aid; and
- (b) awards of aid to individual beneficiaries on the basis of an aid scheme;
- (9) ‘gross grant equivalent’ means the amount of the aid if it had been provided in the form of a grant to the beneficiary, before any deduction of tax or other charges;
- (10) ‘repayable advance’ means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project;
- (11) ‘start of works’ means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works. For take-overs, ‘start of works’ means the moment of acquiring assets directly linked to the acquired establishment;
- (12) ‘fiscal successor scheme’ means a scheme in the form of tax advantages which constitutes an amended version of a previously existing scheme in the form of tax advantages and which replaces it;
- (13) ‘aid intensity’ means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;
- (14) ‘date of granting the aid’ means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.

#### *Article 4*

### **Conditions for exemption**

1 Aid schemes, individual aid granted under aid schemes and ad hoc aid shall be compatible with the internal market within the meaning of Article 107(2) or (3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided

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that such aid fulfils the conditions laid down in Chapter I of this Regulation, as well as the specific conditions for the relevant category of aid laid down in Chapter III of this Regulation.

2 Aid measures shall only be exempted under this Regulation as far as they explicitly provide that, during the grant period, the beneficiaries of the aid shall comply with the rules of the Common Fisheries Policy and that, if during that period it is found that the beneficiary does not comply with rules of the Common Fisheries Policy, the aid shall be reimbursed in proportion to the gravity of the infringement.

### Article 5

#### Transparency of aid

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 The following categories of aid shall be considered to be transparent:

- a aid comprised in grants and interest rate subsidies;
- b aid comprised in loans where the gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant;
- c aid comprised in guarantees:
  - (i) where the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice; or
  - (ii) where before the implementation of the measure, the methodology to calculate the gross grant equivalent of the guarantee has been accepted on the basis of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees<sup>(9)</sup>, or any successor notice, following notification of that methodology to the Commission under any regulation adopted by the Commission in the State aid area applicable at the time, and the approved methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation;
- d aid in the form of tax advantages, where the measure provides for a cap ensuring that the applicable threshold is not exceeded;
- e aid in the form of repayable advances, if the total nominal amount of the repayable advance does not exceed the thresholds applicable under this Regulation or if, before implementation of the measure, the methodology to calculate the gross grant equivalent of the repayable advance has been accepted following its notification to the Commission.

3 For the purposes of this Regulation, the following categories of aid shall not be considered to be transparent aid:

- a aid comprised in capital injections;
- b aid comprised in risk finance measures.

## Article 6

### Incentive effect

- 1 This Regulation shall apply only to aid which has an incentive effect.
- 2 Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity starts. The application for the aid shall contain at least the following information:
  - a undertaking's name and size;
  - b description of the project or activity, including its start and end dates;
  - c location of the project or activity;
  - d list of eligible costs;
  - e type of aid (grant, loan, guarantee, repayable advance or other) and amount of public funding needed for the project or activity.
- 3 By way of derogation from paragraph 2, measures in the form of tax advantages shall be deemed to have an incentive effect if the following conditions are fulfilled:
  - a the measure establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; and
  - b the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of fiscal successor schemes where the activity was already covered by the previous schemes in the form of tax advantages.
- 4 By way of derogation from paragraphs 1 and 2, the following categories of aid are not required to have or shall be deemed to have an incentive effect:
  - a aid to make good the damage caused by natural disasters, if the conditions laid down in Article 44 are fulfilled;
  - b aid in the form of tax exemptions or reductions adopted by the Member States pursuant to Article 15(1)(f) and Article 15(3) of Directive 2003/96/EC, if the conditions laid down in Article 45 of this Regulation are fulfilled.

## Article 7

### Aid intensity and eligible costs

- 1 For the purpose of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary.
- 2 Where aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
- 3 Aid payable in several instalments shall be discounted to its value on the date of granting the aid. The eligible costs shall be discounted to their value on the date of granting the aid. The interest rate to be used for discounting purposes shall be the discount rate applicable on the date of granting the aid.
- 4 Where aid is granted by means of tax advantages discounting of aid tranches shall take place on the basis of the discount rates applicable on the various dates when the tax advantage takes effect.

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5 Where aid is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of a reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable on the date of granting the aid, the maximum aid intensities laid down in Chapter III may be increased by 10 percentage points.

6 The eligible costs shall comply with the requirements of Articles 67 to 69 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council<sup>(4)</sup>.

### Article 8

#### Cumulation

1 In determining whether the notification thresholds in Article 2 and the maximum aid intensities in Chapter III are respected, the total amount of public support measures for the aided activity or project or undertaking shall be taken into account, regardless of whether that support is financed from local, regional, national or Union sources.

2 Aid exempted by this Regulation may be cumulated with:

- a any other State aid, as long as those measures concern different identifiable eligible costs;
- b any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.

3 State aid exempted under this Regulation shall not be cumulated with any *de minimis* aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those referred to in Chapter III.

### Article 9

#### Publication and information

1 The Member State concerned shall ensure the publication on a comprehensive State aid website, at national or regional level of:

- a the summary information referred to in Article 11 in the standardised format laid down in Annex II or a link providing access to it;
- b the full text of each aid measure as referred to in Article 11 or a link providing access to the full text;
- c the information referred to in Annex III on each individual aid award exceeding EUR 30 000.

2 For schemes in the form of tax advantages, the conditions set out in paragraph 1(c) shall be considered fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million):

- a 0,03-0,2
- b 0,2-0,4
- c 0,4-0,6
- d 0,6-0,8
- e 0,8-1

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3 The information referred to in paragraph 1(c) shall be organised and accessible in a standardised manner, as described in Annex III, and shall allow for effective search and download functions. The information referred to in paragraph 1 shall be published within six months from the date the aid was granted, or for aid in the form of tax advantage, within one year from the date the tax declaration is due, and shall be available for at least 10 years from the date on which the aid was granted.

4 Each aid scheme and individual aid shall contain an explicit reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*, and to the specific provisions of Chapter III concerned by that act, or where applicable, to the national law which ensures that the relevant provisions of this Regulation are complied with. It shall be accompanied by its implementing provisions and its amendments.

5 The Commission shall publish on its website:

- a the links to the State aid websites, referred to in paragraph 1 of this Article;
- b the summary information referred to in Article 11.

6 Member States shall comply with the provisions of this Article at the latest within two years after the entry into force of this Regulation.

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- (1) Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 ([OJ L 354](#), 28.12.2013, p. 1).
- (2) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC ([OJ L 182](#), 29.6.2013, p. 19).
- (3) [OJ C 155](#), 20.6.2008, p. 10.
- (4) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ([OJ L 347](#), 20.12.2013, p. 320).



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