

Draft

COMMISSION REGULATION (EC) No .../..

of [...]

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

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 aid¹, and in particular Article 2(1) thereof,

Having published a draft of this Regulation²,

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 laid down in 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) On the basis of that Regulation, the Commission adopted Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid³, which sets a ceiling of EUR 100 000 per beneficiary over a period of three years. Originally that Regulation did not apply to the agriculture, fisheries and aquaculture and transport sectors, in view of the special rules which apply in those sectors.
- (3) As regards the agriculture and fisheries sector, Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sector⁴ established a specific ceiling of EUR 3 000 per beneficiary per three-year period to apply to those sectors, as in the light of the experiences acquired by the Commission, it could be affirmed that very low levels of aid granted in those sectors do not fulfil the criteria of Article 87(1)

¹ OJ L 142, 14.5.1998, p. 1.

² OJ C

³ OJ L 10, 13.1.2001, p. 30.

⁴ Regulation (EC) No. 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sector, OJ L 325, 28.10.2004, p. 4.

of the Treaty, provided that certain conditions are met. This is the case were both the amount of aid received by individual producers remains small, and the overall level of aid granted to these sectors does not go above a small percentage of the value of production;

- (4) Owing to changed economic circumstances and in the light of the experiences gained in applying the existing *de minimis* rules, changes to those rules have been deemed necessary. For that reason it has recently been proposed to increase the general *de minimis* ceiling laid down in Regulation (EC) No 69/2001 from EUR 100,000 to EUR 200,000; to include the transport sector in the scope of that Regulation, and to extend the application of the Regulation also the sector concerning the processing and marketing of agricultural products.
- (5) Recent experience in applying the rules on State aid to the fisheries sector, and in particular the *de minimis* ceiling set in Regulation (EC) No 1860/2004 and the Guidelines for the examination of State aid to fisheries and aquaculture⁵ has shown that the risk of distortion of competition by *de minimis* aid is lower than was projected in 2004.
- (6) This Regulation should not exempt export aid or aid favouring domestic over imported products. In addition, the Court of Justice of the European Communities, in its judgement of 19 September 2002, established that, once the Community had legislated for the establishment of a common organisation of the market in a given agricultural sector, Member States are under an obligation to refrain from taking any measure which might undermines or create exceptions to it⁶. This principle also applies in the fisheries sector. For this reason, this Regulation should not apply to aid the amount of which is fixed on the basis of price or quantity of products put on the market. Moreover this Regulation should not apply to aid financing the establishment and operation of a distribution network in other Member States of the Community. 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 does normally not constitute export aid.
- (7) In the light of the experience gained by the Commission, aid to undertakings in the fisheries sector not exceeding EUR 30 000 per beneficiary over any three-year period may be deemed not to affect trade between Member States and/or not to distort or threaten to distort competition where the total amount of such aid granted to all undertakings in the fisheries sector over three years is below a ceiling of around 2,5 % of the annual fisheries output, and it therefore does not fall under Article 87(1) of the Treaty. The years to take into account for this purpose are the fiscal years as used for fiscal purposes in the Member State concerned. The relevant 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 such aid granted in the fiscal year concerned, as well as during the previous two fiscal years needs to be determined.
- (8) Consistent with the principles governing aid falling within Article 87 (1) EC, *de minimis* aid should be considered to be granted at the moment when the legal right to receive the aid is conferred on the beneficiary under the applicable national regime. The *de minimis* rule is without prejudice to the possibility that undertakings may

⁵ OJ C 229 , 14.9.2004 p. 5

⁶ Case C-113/2000 Spain v./Commission, [2002] ECR 2002 I-7601, point 73.

receive State aid authorised by the Commission or covered by a group exemption Regulation.

- (9) Having regard to the objectives of the common fisheries policy, aid serving to increase fishing capacity and aid granted for the construction or purchase of fishing vessels should not fall within the scope of this Regulation, except for aid for modernisation over the main deck as referred to in Article 11 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy⁷.
- (10) For the purpose of transparency, equal treatment and the proper application of the *de minimis* ceiling, it is appropriate that Member States should apply the same method of calculation. In order to facilitate this calculation and in accordance with Regulation (EC) No 69/2001, it is appropriate that aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. [Moreover, to ensure effective monitoring, this Regulation should only apply to aid measures which are transparent in that the value of the aid can readily be quantified.] Calculation of the grant equivalent of transparent types of aid other than grants payable in several instalments requires the use of market interest rates prevailing at the time of granting the 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. The reference rates should be those which are periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Union* or on the Internet.
- (11) The Commission has a duty to ensure that State aid rules are complied with, and in particular that aid granted under the *de minimis* rules adheres to the conditions thereof. In accordance with 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* rules, does not exceed either the ceiling of EUR 30,000 per beneficiary or the overall ceiling established by the Commission on the basis of the value of the fishery output per Member State over a three year period. To that end, it is appropriate that Member States, when granting a *de minimis* aid, should inform the undertaking concerned of the *de minimis* character of the aid, receive full information about other *de minimis* aid received during the previous three years, and carefully check that the *de minimis* ceilings will not be exceeded by the new *de minimis* aid. Alternatively, compliance with the ceilings may also be ensured by using a central register.
- (12) For reasons of clarity and as the ceiling for *de minimis* aid for the fisheries sector thus differs from the ceiling for *de minimis* aid to the agriculture sector, a specific regulation applicable only to the fisheries sector should be adopted and Regulation (EC) No 1860/2004 should be amended accordingly.
- (13) Having regard to the Commission's experience and in particular the frequency with which it is generally necessary to revise State aid policy, and in particular having regard to the period of application of Regulation (EC) No 69/2001 and Regulation (EC) No. 1860/2004, it is appropriate that the period of application of this Regulation be limited until 31 December 2013. Should this Regulation expire without being extended, Member States should have an adjustment period of six months with regard

⁷ Regulation (EC) No 2371/2002(OJ L 358, 31.12.2002, p. 59).

to *de minimis* aid covered by it. For the sake of legal certainty, it is appropriate to clarify the effect of the Regulation on aid granted before its entry into force.

HAS ADOPTED THIS REGULATION:

Article 1 **Scope**

This Regulation applies to aid granted to undertakings in the fisheries 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 and aid contingent upon the use of domestic over imported goods;
- (c) the establishment and operation of a distribution network or to other current expenditure linked to the export activity of Member States;
- (d) aid serving to increase fishing capacity, expressed in terms of tonnage or power, as defined in Article 3(n) of Council Regulation (EC) No 2371/2002, unless it concerns aid for modernisation over the main deck as referred to in Article 11(5) of that Regulation,
- (e) aid for the purchase or construction of fishing vessels.

Article 2 **Definitions**

1. For the purposes of this Regulation:
 - (a) ‘undertakings in the fisheries sector’ means undertakings active in the production, processing and marketing of fisheries products;
 - (b) ‘fisheries products’ means the products defined in Article 1 of Council Regulation (EC) No 104/2000⁸
 - (c) ‘processing and marketing’ means all operations, including handling, treatment, production and distribution, performed between the time of landing or harvesting and the end-product stage.
2. [This Regulation shall only apply to aid awarded in the form of grants and other types of 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.

⁸ OJ L 17, 21, 1, 2000, p. 22.

Aid compromised in loans, guarantees, risk capital measures and capital injections shall not be treated as *de minimis* aid, unless the total value of the transaction in question does not exceed the ceiling, as laid down in Article 3(2).]

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 be exempt from the notification requirement of Article 88(3) of the Treaty, if they fulfil the conditions laid down in paragraphs 2 and 3.
2. The total *de minimis* aid granted to any one undertaking shall not exceed EUR 30,000 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 in the Member State concerned

When the overall amount exceeds this ceiling, that aid cannot benefit from this Regulation, even for a fraction not exceeding that ceiling, either at the time it is granted or in respect of a later period.

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

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

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

Article 4

Cumulation and monitoring

1. Where a Member State grants *de minimis* aid to an undertaking, it shall inform the undertaking in writing about the amount of the aid (expressed in gross equivalent) and about the *de minimis* character, making express reference to this Regulation and citing its title and publication reference in the *Official Journal of the European Union*. It shall also obtain from the undertaking concerned a written declaration about any other *de minimis* aid [or other State aid] received during the previous two fiscal years.

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

2. Where a Member State has set up a central register of *de minimis* aid for fisheries containing complete information on all *de minimis* aid granted by any authority within that Member State, the first subparagraph of paragraph 1 shall no longer apply once the register covers a period of three fiscal years.
3. Member States shall record and compile all the information regarding the application of this Regulation. Such records shall contain all information necessary to demonstrate

that the conditions of this Regulation have been complied with. Records regarding an individual *de minimis* aid shall be maintained for 10 fiscal years from the date on which the aid was granted, and regarding a *de minimis* aid scheme for 10 years from the date on which the last individual aid was granted under such scheme.

On a 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 received by any undertaking and by the fisheries sector of the Member State concerned.

Article 5 **Transitional provisions**

1. This Regulation shall apply to aid granted before its entry into force, if it fulfils all the conditions laid down in Articles 1, 2, 3 and 4. 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 as applicable to the fisheries sector 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, any *de minimis* aid which fulfils the conditions of this Regulation may be validly implemented for a period of 6 months.

Article 6 **Amendment**

Regulation (EC) No 1860/2004 shall be amended as follows:

- (a) In the title, the words “and fisheries sectors” are replaced by “sector”.
- (b) In Article 1, the words “the agriculture or fisheries sectors” are replaced by “the agriculture sector”.
- (c) In Article 2:
 - (i) in point (2), the words “except fisheries products as defined in point (5)” are replaced by “except fisheries products as defined in Article 1 of Council Regulation (EC) No 104/2000⁽¹⁰⁾”;
 - (ii) points 4, 5 and 6 are deleted.
- (d) In Article 3(2), the third subparagraph is deleted.
- (e) In Article 4(2), the words “and fisheries, respectively” are deleted.

(f) In the second subparagraph of Article 4(3), the words “or fisheries” are deleted.

(g) Annex II is deleted.

Article 7
Entry into force and applicability

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

Articles 1 to 5 shall expire on 31 December 2013.

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

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission

ANNEX

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

BE	€ 11 407 500
DK	€ 52 845 000
DE	€ 60 725 000
EL	€ 16 969 475
ES	€ 127 267 500
FR	€ 92 277 500
IE	€ 16 200 000
IT	€ 78 445 000
LU	€ 0
NL	€ 29 567 500
AT	€ 928 333
PT	€ 22 527 500
FI	€ 3 835 000
SE	€ 12 982 500
UK	€ 105 432 500
CZ	€ 1 410 000
EE	€ 3 395 000
CY	€ 1 025 000
LV	€ 4 252 500
LT	€ 7 550 000
HU	€ 1 201 500
MT	€ 175 000
PL	€ 13 767 500
SI	€ 182 500
SK	€ 717 500