

EXPLANATORY MEMORANDUM

I. INTRODUCTION

- (1) According to Council Regulation 994/98¹ “The Commission may by (...) Regulation (...) decide that, having regard to the development and functioning of the common market, certain aids do not meet all the criteria of Article 87 (1) and that they are therefore exempted from the notification procedure provided for in Article 88 (3), provided that aid granted to the same undertaking over a given period of time does not exceed a certain fixed amount.”

II. EXISTING LEGAL FRAMEWORK

- (2) Commission Regulation 69/2001² declares as “*de minimis*” the following aid: “The total *de minimis* aid granted to any one enterprise shall not exceed €100,000 over any period of three years. This ceiling shall apply irrespectively of the form of the aid or the objective pursued.” This Regulation does not apply in particular to the production, processing and marketing of products listed in Annex I to the Treaty, and therefore does not apply to the agriculture and fisheries sectors.
- (3) On 6 October 2004 the Commission has adopted Commission Regulation 1860/2004³, which establishes a specific *de minimis* ceiling of €3000 applicable to the agriculture and fisheries sectors. Until the adoption of this regulation, the Commission had held that a *de minimis* approach should not apply to the agricultural and fisheries sector. However, in the light of the experience acquired by the Commission, it could be established that small amounts of aid granted in the agriculture and fisheries sectors do not fulfil the criteria of Article 87 (1) of the Treaty, provided certain conditions are met and it was thus proposed to adopt a specific ceiling for *de minimis* applicable to the agriculture and fisheries sector.
- (4) In the light of the changes and the restructuring of the transport market, in 2004 the Commission already proposed that the transport sector, with the exception of the acquisition of vehicles by road transport companies, would no longer be excluded from Regulation 69/2001 and that thus that the *de minimis* ceiling of €100,000 would also be applied to this sector (OJ C144 of 14/06/2005, p.2). In this proposal the Commission excluded the coal industry from the application of the *de minimis* Regulation in the light of the specificity of the legislation applying to this sector.
- (5) Moreover the Commission has recently adopted a draft amendment of Regulation 69/2001 proposing to raise the general *de minimis* ceiling to €200,000 and to include into the scope of this Regulation the aid for the processing and marketing of agriculture products.
- (6) The procedures for consultation and final adoption of both draft regulation as set out in Regulation 994/98 are still ongoing.

¹ Council Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, OJ L 142, 14.5.1998, p. 1.

² Commission Regulation (EC) No 69/2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid, OJ L 10, 13.1.2001, p. 30.

³ 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 sector, OJ L 325, 28.10.2004, p. 4.

III. REGULATION 1860/2004

- (7) Regulation 1860/2004 established a specific *de minimis* ceiling applicable to agriculture and fisheries. As the Commission did not have any previous experience in the application of *de minimis* to the agriculture and fisheries sectors, to make sure that the aid was really “*de minimis*”, and in order to avoid disturbance of the common organisations of the market, the ceiling laid down in Regulation 1860/2004 was based on the safeguards of a very small amount of aid per beneficiary; a very small overall amount of support granted to the agriculture and fisheries sectors in a given Member State, and a prohibition of certain types of aid that go directly against prohibitions of common market organisations and/or pose particular threats to competition and trade.
- (8) Furthermore it was proposed to calculate the ceiling over three years, because this approach combines flexibility for Member States (to pay more in one year and less in another) with the safeguard that the overall volume of aid does not get too high. The three-year approach also is in line with Regulation 69/2001, the guidelines for state aid in the agriculture and fisheries sectors, and the draft block exemption Regulations for SME in the agriculture and fisheries sectors.
- (9) In the light of this approach, the maximum ceiling per enterprise was set at € 3000 over three years. Compared to the general ceiling laid down in Regulation 69/2001 and with regard to the output of the agriculture and fisheries sectors, the amount was set at a very low level and was intended as a first step in the application of *de minimis* to these sectors. After application of the regulation, and with regard to the experiences of the Commission, this ceiling could be changed in time, and for that reason the period of application of the regulation was limited to 4 years.
- (10) Based on the experiences gained, the Commission has already decided that for the sector of processing and marketing of agriculture products the level of €3000 should be considered much too low, in particular as this sector is in direct competition with the other sectors in the food industry. It has therefore proposed to include this sector in the scope of Regulation 69/2001 and to apply a *de minimis* level of € 200.000 to that sector.

IV. SPECIFIC APPROACH FOR FISHERIES

- (11) Regulation 1860/2004 is applicable to both the fisheries and the agriculture sector. Both sectors were considered together, as this was the first time that the *de minimis* reasoning was to be applied in both areas which are subject to specific competition rules.
- (12) The approach chosen in 2004 is now regarded as being no longer appropriate. This has already been acknowledged by the Commission by adopting the proposal for a *de minimis* ceiling of €200.000 for the sector of processing and marketing of agriculture products.
- (13) This approach has not been followed for the sector of processing and marketing of fisheries and aquaculture products.

- (14) In fact, the application of the *de minimis* threshold, the Guidelines for the examination of State aid to fisheries and aquaculture⁴ and the Block exemption Regulation for fisheries⁵ are based on a different approach than is the case for the agriculture sector. All state aid to the fisheries sector is linked to the conditions for aid established under the Financial Instrument for Fisheries Guidance (FIFG). Unlike is the case in the agriculture sector no granting of aid is allowed unless compatible with Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector.
- (15) For this reason it is considered that as far as it concerns fisheries and aquaculture a distinction between the primary sector and the sector of processing and marketing is not appropriate and that an individual approach is necessary, which asks for a *de minimis* ceiling applicable to the fisheries and aquaculture sector as a whole.

V. MOTIVATION

Necessity to increase the ceiling

- (16) With regard to primary production in the fisheries sector, the catching sector is still the dominant sector and is likely to be the sector to receive most of the '*de minimis* aid' and that is most susceptible to give rise to concerns over trade distortions.
- (17) As regards this sector, experience shows that the *de minimis* ceiling of €3000 is too low, in particular due to the higher turnover of the average EU fishing firms compared to agriculture firms, as well as the fact that, unlike certain sectors under the common agricultural policy, the fisheries sector does not benefit from direct income support.
- (18) As concerns the possibility of distortion of competition within the catching sector itself, the *de minimis* aid will by definition have its largest impact on smaller vessels *vis-à-vis* larger vessels in relative terms. However, smaller vessels are unlikely to cause any trade distortion, since the species compositions of their catch are predominantly landed and sold at the local market. Hence, no significant intra-Community and even less international trade are anticipated for this sector. For the larger companies, *de minimis* aid is unlikely to play a pivotal role, as it can only marginally affect their operation.
- (19) In view of the above, the *de minimis* threshold for fisheries is considered too low. In fact the ceiling has proven to be so low that it becomes uninteresting for Member States to make use of. This is contradictory to the objective of the *de minimis* ceiling and empties it of its meaning.
- (20) Indeed, in particular with regard to the proposed threshold for processing and marketing of agriculture products, as well as the similarities with maritime expedition, the high prices of fishing vessels and to the fact that the investment per employee is on

⁴ OJ C 229, 14.9.2004, p. 5.

⁵ Commission Regulation (EC) No. 1595/2004 of 8 September 2004 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products, OJ L 291, 14.9.2004, p. 3.

average much higher in the fish catching sector than in the overall economy⁶, an increase of the *de minimis* up to € 30,000 for the fisheries sector as a whole is considered necessary to create an equilibrium between the thresholds for the different sectors.

Less and better targeted State aid

- (21) A change of the current ceiling of *de minimis* aid applicable to the fisheries sector is in line with the general State aid policy of the Commission as reflected in the recently proposed State aid Action Plan⁷. In this document, submitted for public consultation on 7 June 2005, emphasis is placed on the “principle that state aid policy should focus on the most distortive types of aid and that it should set clear positive and negative priorities” (point 35). In that context, the Action Plan also foresees in point 38 that “the threshold under which Member States may grant *de minimis* aid without further specific requirements will be increased to take account of the evolution of the economy”.
- (22) It should be noted that the small amounts of aid notified to the Commission in recent years, as well as the non-notified cases, have for a significant part been deemed compatible with the provisions of the Treaty without major difficulty. Their objectives were in accordance with the Common Fisheries Policy: aid for environmental measures such as aid for pilot projects and research, aid for investments in training, aid for collective activities undertaken by producers organisations, aid for damages caused by storm and aid under decommissioning and scrapping schemes etc.⁸
- (23) Moreover, due to the preference of Member States to apply the possibilities offered under the Structural fund for fisheries and the limited availability of financial resources to offer additional national State aid schemes to the fisheries sector, State aids have mainly benefited small scale fisheries, targeting for species intended for local markets and unlikely to offer any competition with regard to international fisheries and international trade in fisheries products.
- (24) The possibilities for Member States to grant State aid to the fisheries sector have recently already been limited in order to allow only such aids that comply with the conditions laid down for the Structural funds for fisheries⁹, as it is considered that these aids serve the objectives of the CFP and are unlikely to distort competition. This trend will be continued by adapting both the Guidelines as well as the Block exemption Regulation to the further limitations to aid under the new European Fisheries Fund, which will be applicable as from 1 January 2007.

⁶ Depending on the type of vessel, the capital invested per employee is on average 10 to 20 times higher in fisheries than in the overall economy. Even if as a consequence of this, the added value per employee is also much higher, the profitability remains rather weak because of the financial costs related to high-capital-intensive equipment. Source: Green Paper “The future of the common fishery policy” Volume II, pages 38-41 (COM(2001) 135 final).

⁷ State aid Action Plan, Less and better targeted state aid: a roadmap for state aid reform 2005-2009, submitted for public consultation on 7 June 2005.

⁸ See for example State aid cases N 285/2005, N 286/2005, N 462/2005, N 177/2005, N 7/2004, N 182/2005, N 183/2005, N 6/2005, N 539/2003, NN 38/2005, NN 39/2005.

⁹ Council Regulation (EC) No. 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector OJ L 337, 30.12.1999, p.10, as last amended by Regulation (EC) No. 485/2005, OJ L 81, 30.3.2005, p. 1.

- (25) In line with the objectives of the State aid action plan, and in order to ensure better governance as well as to take into account the evolution of the economic situation of the fisheries sector, it is necessary that the policy for State aid to fisheries is further enhanced, whilst continuing to limit the possibilities for Member States to grant State aid where this would not serve the objectives of the CFP. In this respect it should be noted that the proposed Regulation will not apply to any aid serving to increase capacity or aid for purchase and construction of fishing vessels.
- (26) Therefore, in the light of the specific situation applicable to the fisheries sector and in the light of the Commission's experience in recent State aid cases in the fisheries sector, it can be considered that aid to fisheries enterprises not exceeding € 30,000 over three years per beneficiary does not affect trade between Member States and does not distort or threaten to distort competition where the overall amount per three years of total *de minimis* aid per Member State does not exceed the overall amount of 2,5 % of the annual fisheries output

VI. TYPES OF MEASURES COVERED

- (27) The measures covered under this new ceiling should be identical to the measures currently covered by the existing *de minimis* Regulation 1860/2004. Just like the existing *de minimis* Regulations 1860/2004 and 69/2001, and in conformity with WTO conditions, export aid and aid conditional upon the use of domestic over foreign products is not covered by the Regulation, as well as aid the amount of which is fixed on the basis of price or quantity of product put on the market.
- (28) With regard to the specifics of the fisheries sector and seen the objectives of the Common Fisheries Policy concerning the conservation of fish stocks, the regulation contains two additional exemptions specific to fisheries. No aid shall be granted that serves to increase capacity or for the purchase and construction of fishing vessels.

VII. USE OF COMMISSION RESOURCES

- (29) Finally, taking into account the limited human resources available to the Commission for its state aid activities, it is necessary to focus Community action on aid the amount and scope of which are most likely to result in serious distortion of competition. This is all the more important given the increase of notifications in state aid cases and the enlargement of the European Union to 25, soon to be 27, Member States.

VIII. CONCLUSION

- (30) With regard to the forgoing it is therefore considered that it is necessary to increase the current *de minimis* ceiling of €3000 up to the amount of €30.000. Such an increase would create the necessary balance between the different *de minimis* ceiling applicable to other sectors. Given the fact that the fishing sector is highly capitalised and with regard to the aid schemes generally applied and approved by the Commission in recent years such an amount would be in line with the purpose of applying *de minimis* rules and would not result in any significant distortion of competition. Finally, it would allow the Commission to focus on cases that are most likely to result in serious distortion of competition.

IX. AMENDMENT OF REGULATION 1860/2004

- (31) Although the ceiling applicable to the fisheries sector could be established by a regulation amending the existing Regulation 1860/2004, for reason of clarity it is proposed to adopt a specific regulation, applicable only to the fisheries sector and to amend Regulation 1860/2004 in order to exclude fisheries. This approach would avoid any confusion between the different ceilings applicable to agriculture and fisheries and would facilitate any future changes in the State aid policy applicable to those respective sectors.