Commission Regulation 2023/2831/EU (De Minimis Regulation), (OJ 2023, L 2023/2831), 13 December 2023

De Minimus Regulation of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid

Article 1
Scope
1. This Regulation applies to aid granted to undertakings in all sectors, with the exception of:
   (a) aid granted to undertakings active in the primary production of fishery and aquaculture products;
   (b) aid granted to undertakings active in the processing and marketing of fishery and aquaculture products, where the amount of the aid is fixed on the basis of price or quantity of products purchased or put on the market;
   (c) aid granted to undertakings active in the primary production of agricultural products;
   (d) aid granted to undertakings active in the processing and marketing of agricultural products, in one of the following cases:
      (i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;
      (ii) where the aid is conditional on being partly or entirely passed on to primary producers;
   (e) aid granted to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, the establishment and operation of a distribution network or other current expenditure linked to the export activity;
   (f) aid contingent upon the use of domestic goods and services over imported goods and services.
2. Where an undertaking is active in one of the sectors referred to in paragraph 1, points (a), (b), (c) or (d) and is also active in one or more of the other sectors falling within the scope of this Regulation or has other activities falling within the scope of this Regulation, this Regulation shall apply to aid granted in respect of the latter sectors or activities, provided that the Member State concerned ensures, by relying on appropriate means such as separation of activities or separation of accounts, that the activities in the sectors excluded from the scope of this Regulation do not benefit from the *de minimis* aid granted in accordance with this Regulation.

Article 2
Definitions
1. For the purposes of this Regulation, the following definitions shall apply:
   (a) 'agricultural products' means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products falling within the scope of Regulation (EU) No 1379/2013 of the European Parliament of the Council[1];
   (b) 'primary agricultural production' means the production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing the nature of such products;

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).

(c) ‘processing of agricultural products’ means any operation on an agricultural product resulting in a product that is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
(d) ‘marketing of agricultural products’ means holding or displaying an agricultural product with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing of agricultural products if it takes place in separate premises reserved for that purpose;
(e) ‘fishery and aquaculture products’ means the products defined in Article 5, points (a) and (b), of Regulation (EU) No 1379/2013;
(f) ‘primary production of fishery and aquaculture products’ means all operations relating to the fishing, rearing or cultivation of aquatic organisms, as well as on-farm or on-board activities necessary for preparing an animal or plant for the first sale, including cutting, filleting or freezing, and the first sale to resellers or processors;
(g) ‘processing and marketing of fishery and aquaculture products’ means all operations, including handling, treatment and transformation, performed following the time of landing – or harvesting in the case of aquaculture – that result in a processed product, as well as the distribution thereof;
(h) ‘financial intermediary’ means any financial institution regardless of its form and ownership, which operates on a for profit basis; public promotional banks or institutions are not considered to fall within that definition where they act as granting authorities and there is no cross-subsidisation of the activities undertaken at their own risk and account.

2. ‘Single undertaking’ means, for the purposes of this Regulation, all enterprises having at least one of the following relationships with each other:
(a) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;
(b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
(c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or pursuant 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) through one or more other enterprises shall also be considered to be a single undertaking.

Article 3
De minimis aid
1. Aid measures shall be deemed not to meet all the criteria set out in Article 107(1) of the Treaty and shall therefore not be subject to 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 300 000over any period of 3 years.
3. *De minimis* aid shall be deemed granted at the moment that 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.

4. The ceiling laid down in paragraph 2 shall apply irrespective of the form of the *de minimis* aid or the objective pursued by it and irrespective of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin.
5. For the purposes of the ceiling laid down in paragraph 2, aid shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction of tax or other charge. When aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
6. 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 ceiling laid down in paragraph 2 would be exceeded by the grant of new *de minimis* aid, that new aid shall not 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 when determining whether any new *de minim*is aid to the new or the acquiring undertaking exceeds the ceiling laid down in paragraph 2. *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 before the split shall be allocated to the undertaking that benefited from it, which is in principle the undertaking taking over the activities for which the *de minimis* aid was used. If such an allocation is not possible, the *de minimis* aid shall be allocated proportionately on the basis of the book value of the equity capital of the new undertakings at the effective date of the split.

Article 4
Calculation of gross grant equivalent
1. This Regulation shall apply only to aid in respect of which it is possible to precisely calculate the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment ('transparent *de minimis* aid').
2. Aid comprised of grants or interest rate subsidies shall be considered as transparent *de minimis* aid.
3. Aid comprised of loans shall be considered as transparent *de minimis* aid if:
(a) the beneficiary is neither 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. For large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least 'B-'; and either
(b) the loan is secured by collateral covering at least 50% of the loan and the loan amounts to either EUR 1 500 000over 5 years or EUR 750 000over 10 years; if a loan is for less than those amounts or 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 relevant ceiling laid down in Article 3(2) of this Regulation; or
(c) the gross grant equivalent has been calculated on the basis of the reference rate applicable at the time of the grant.
4. Aid comprised of capital injections shall only be considered as transparent *de minimis* aid if the total amount of the public injection does not exceed the ceiling laid down in Article 3(2).
5. Aid comprised of 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 ceiling laid down in Article 3(2).
6. Aid comprised of guarantees shall be considered as transparent *de minimis* aid if:
(a) the beneficiary is neither 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. For large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least 'B-'; and either

(b) the guarantee does not exceed 80% of the underlying loan at each moment in time, losses are sustained proportionally and in the same way by the lender and the guarantor, net recoveries generated from the recuperation of the loan from the securities given by the borrower proportionally reduce the losses borne by the lender and the guarantor, and either the amount guaranteed is EUR 2 250 000and the duration of the guarantee is 5 years or the amount guaranteed is EUR 1 125 000and the duration of the guarantee is 10 years; if the amount guaranteed is less than these amounts or 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 relevant ceiling laid down in Article 3(2); or
(c) the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice; or
(d) before implementation,
   (i) the methodology used to calculate the gross grant equivalent of the guarantee has been notified to the Commission under another Commission Regulation in the State aid area applicable at that time and accepted by the Commission as being in line with the Guarantee Notice or any succeeding 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. Any aid received by a financial intermediary implementing one or more *de minimis* aid schemes, which shall be available on equal terms to financial intermediaries operating in the Member State concerned, shall be considered as transparent *de minimis* aid if:
(a) the financial intermediary passes on the advantage received through the State guarantees to the beneficiaries by providing new senior loans to these beneficiaries with lower interest rates or lower collateral requirements and each guarantee does not exceed 80% of the underlying loan; and
(b) the guaranteed *de minimis* loans are provided to beneficiaries who are in a situation comparable to a credit rating of at least 'B-' and the total amount of such loans is:
   (i) less than EUR 10 million; or,
   (ii) less than EUR 40 million and each individual guaranteed *de minimis* loan does not exceed EUR 100 000.

If a financial intermediary has a less than EUR 10 million of *de minimis* loans, as set out in point (b)(i), or EUR 40 million, as set out in point (b)(ii), the gross grant equivalent attributable to each amount shall be calculated as a corresponding proportion of the relevant ceiling laid down in Article 3(2) of this Regulation.

8. Aid comprised of other instruments shall be considered as transparent *de minimis* aid if the instrument provides for a cap that ensures the ceiling laid down in Article 3(2) of this Regulation is not exceeded.

Article 5

Cumulation

1. *De minimis* aid granted in accordance with this Regulation may be cumulated with *de minimis* aid granted in accordance with Commission Regulation (EU) 2023/2832.[2]

2 Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest – (OJ L, 2023/2832, 15.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2832/oj).

2. *De minimis* aid granted in accordance with this Regulation may be cumulated with de minimis aid granted in accordance with Commission Regulations (EU) No 1408/2013[3] and (EU) No 717/2014[4] up to the relevant ceiling laid down in Article 3(2) of this Regulation.
3. *De minimis* aid granted in accordance with this Regulation 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 that 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 and reporting

1. Member States shall ensure that, from 1 January 2026, information on *de minimis* aid granted is registered in a central register at national or Union level. Information in the central register shall contain the identification of the beneficiary, the aid amount, the granting date, the granting authority, the aid instrument and the sector involved on the basis of the statistical classification of economic activities in the Union ('NACE classification'). The central register shall be set up in such a way as to enable easy public access to the information whilst ensuring compliance with the Union rules on data protection, including through the pseudonymisation of specific entries where necessary.
2. Member States shall register the information listed in paragraph 1 in the central register on *de minimis* aid granted by any authority within the Member State concerned within 20 working days following the grant of the aid. Such information on *de minimis* aid received by financial intermediaries implementing *de minimis* aid schemes shall be registered within 20 working days from reception of the report pursuant to paragraph 5. Member States shall take appropriate measures to ensure the accuracy of the data contained in the central register.
3. Member States shall keep records of the registered information on *de minimis* aid for 10 years from the date on which the aid was granted.
4. A Member State shall grant new *de minimis* aid in accordance with this Regulation only after it has verified that the new *de minimis* aid will not raise the total amount of *de minimis* aid granted to the undertaking concerned to a level above the ceiling laid down in Article 3(2) of this Regulation and that all the conditions laid down in this Regulation are complied with.
5. For the application of paragraph 1, financial intermediaries implementing *de minimis* aid schemes shall report the total amount of *de minimis* aid received by them, on a quarterly basis to the Member State within 10 days from the end of a given quarter. The date of granting shall be the last day of a quarter.
6. Member States using a central register at national level shall submit to the Commission by 30 June every year aggregated data on *de minimis* aid granted for the previous year. The aggregated data shall contain the number of beneficiaries, the overall amount of *de minimis* aid granted and the overall amount of *de minimis* aid granted per sector (using the 'NACE classification'). The first data submission shall be for *de minimis* aid granted from 1 Januaryto 31 December 2026. Member States may report to the Commission on earlier periods where the aggregated data are available.

3 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 (OJ L 352, 24.12.2013, p. 9).

4 Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).