

COMMISSION REGULATION (EC) No 736/2008

of 22 July 2008

on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products

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 aid⁽¹⁾, and in particular Article 1(1)(a)(i) thereof,

Having published a draft of this Regulation⁽²⁾,

Having consulted the Advisory Committee on State aid,

Whereas:

- (1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty, that, under certain conditions, aid to small and medium-sized enterprises (SMEs) is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.
- (2) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises⁽³⁾ does not apply to activities linked to the production, processing or marketing of fishery and aquaculture products covered by Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products⁽⁴⁾.
- (3) The Commission has applied Articles 87 and 88 of the Treaty in numerous decisions to SMEs active in the production, processing and marketing of fisheries

products and has also stated its policy, most recently in the Guidelines for the examination of State aid to fisheries and aquaculture⁽⁵⁾ (hereafter referred to as the 'fisheries guidelines'). In the light of the Commission's considerable experience in applying those Articles to SMEs active in the production, processing and marketing of fisheries products, it is appropriate, with a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, that the Commission should make use of the powers conferred by Regulation (EC) No 994/98 also for SMEs active in the production, processing and marketing of fisheries products, in so far as Article 89 of the Treaty has been declared applicable to such products.

- (4) The compatibility of State aid in the fisheries sector is assessed by the Commission on the basis of the objectives of both the Competition Policy and the Common Fisheries Policy (CFP).
- (5) This Regulation should cover types of aid granted in the fisheries sector which have been systematically approved by the Commission for many years. This aid does not require a case-by-case assessment of its compatibility with the common market from the Commission, provided that it complies with the conditions laid down in Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund⁽⁶⁾ and Commission Regulation (EC) No 498/2007 of 26 March 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund⁽⁷⁾ and with certain other conditions. Although Regulation (EC) No 1198/2006 has only been in force from 4 September 2006, the Commission has gained on the basis of existing fisheries guidelines sufficient experience in applying similar conditions for the type of measures concerned in order to establish that the conditions of that Regulation are sufficiently accurate to justify not requiring case-by-case assessment.
- (6) This Regulation should be without prejudice to the possibility for Member States of notifying aid to SMEs active in the production, processing and marketing of fisheries products. Such notifications should be assessed by the Commission in the light of this Regulation and on the basis of the fisheries guidelines.

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 248, 23.10.2007, p. 13.

⁽³⁾ OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1976/2006 (OJ L 368, 23.12.2006, p. 85).

⁽⁴⁾ OJ L 17, 21.1.2000, p. 22. Regulation as last amended by Regulation (EC) No 1759/2006 (OJ L 335, 1.12.2006, p. 3).

⁽⁵⁾ OJ C 229, 14.9.2004, p. 5.

⁽⁶⁾ OJ L 223, 15.8.2006, p. 1.

⁽⁷⁾ OJ L 120, 10.5.2007, p. 1.

- (7) Aid that Member States intend to grant in the fisheries sector but which does not fall within the scope of this Regulation, or of other Regulations adopted pursuant to Article 1 of Regulation (EC) No 994/98, should remain subject to the notification requirement of Article 88(3) of the Treaty. Such aid will be assessed in the light of this Regulation and the fisheries guidelines.
- (8) This Regulation should exempt any aid that meets all the requirements it lays down, and any aid scheme, provided that any aid that could be granted under such scheme meets all the relevant requirements of this Regulation. Individual aid granted under an aid scheme and ad-hoc aid should contain an express reference to this Regulation.
- (9) In the interests of coherence with Community-financed support measures, the ceilings of aid covered by this Regulation should be equal to those fixed for the same kind of aid in Annex II to Regulation (EC) No 1198/2006.
- (10) It is essential that no aid is granted in circumstances where Community law, and in particular rules of the Common Fisheries Policy, are not complied with. An aid can therefore only be granted by a Member State in the fisheries sector if the measures financed and their effects comply with Community law. Before granting any aid, Member States should ensure that beneficiaries of State aid comply with the rules of the Common Fisheries Policy.
- (11) With a view to ensuring that aid is proportionate and limited to the amount necessary, thresholds should, whenever possible, be expressed in terms of aid intensities in relation to a set of eligible costs. For the purpose of calculating aid intensities, aid payable in several instalments should be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in aid not taking the form of a grant, should be the reference rate applicable at the time of grant as laid down in the Communication from the Commission on the revision of the method for setting the reference and discount rates ⁽¹⁾.
- (12) In view of the need to strike the appropriate balance between minimising distortions of competition in the aided sector and the objectives of this Regulation, it should not exempt individual grants which exceed a fixed maximum amount, whether or not made under an aid scheme exempted by this Regulation.
- (13) This Regulation should not apply to export-related activities or aid favouring domestic over imported products. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost 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 should not normally constitute export aid.
- (14) Aid granted to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽²⁾ should be assessed under those guidelines in order to avoid their circumvention. Aid to such undertakings should therefore be excluded from the scope of this Regulation. In order to reduce the administrative burden for Member States, when granting aid covered by this Regulation, the definition of what is to be considered as an undertaking in difficulty should be simplified as compared to the definition used in those guidelines. Moreover, SMEs are incorporated since less than three years should not be considered as being in difficulty for this period for the purposes of this Regulation, unless it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings. These simplifications should be without prejudice to the qualification of these SMEs under those guidelines as regards aid not covered by this Regulation, which remains subject to the full definition provided for in those guidelines.
- (15) The Commission has to ensure that authorised aid does not alter trading conditions in a way contrary to the general interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the common market, should be excluded from the scope of this Regulation. As a consequence, any ad-hoc aid paid out to such a beneficiary and any aid scheme not containing a provision explicitly excluding such beneficiaries remains subject to the notification requirements of Article 88(3) of the Treaty. This provision should not affect the legitimate expectations of beneficiaries of aid schemes which are not subject to outstanding recovery orders.
- (16) In order to eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Community and national initiatives concerning SMEs, the definition of 'small and medium-sized enterprises' used in this Regulation should be that defined in Annex I to Regulation (EC) No 70/2001.

⁽¹⁾ OJ C 14, 19.1.2008, p. 6.

⁽²⁾ OJ C 244, 1.10.2004, p. 2.

- (17) For the purpose of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid which is transparent. Transparent aid is aid for which it is possible to calculate precisely the gross grant equivalent ex ante without a need to undertake a risk assessment. Aid comprised in loans, in particular, should be considered as transparent where the gross grant equivalent has been calculated on the basis of the reference rate as laid down in the Communication from the Commission on the revision of the method for setting the reference and discount rates⁽¹⁾. Aid comprised in fiscal measures should be considered as transparent where the measure provides for a cap ensuring that the applicable threshold is not exceeded.
- (18) Aid comprised in guarantee schemes should be considered as transparent when the methodology to calculate the gross grant equivalent has been approved following notification of this methodology to the Commission. The Commission will examine such notifications 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⁽²⁾. Aid comprised in guarantee schemes should also be considered as transparent where the beneficiary is an SME and the gross grant equivalent has been calculated on the basis of the safe-harbour premiums laid down in Sections 3.3 and 3.5 of that Notice.
- (19) In view of the difficulty in calculating the grant equivalent of aid in the form of repayable advances, such aid should be covered by this Regulation only if the total amount of the repayable advance is inferior to the applicable individual notification threshold and the maximum aid intensities provided under this Regulation.
- (20) Having regard to Article 87(3)(c) of the Treaty, aid should not normally have the sole effect of continuously or periodically reducing the operating costs which the beneficiary would normally have to bear, and should be proportionate to the handicaps that have to be overcome in order to secure the socioeconomic benefits deemed to be in the Community interest. State aid measures which simply seek to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aid which is granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to constitute operating aid which are incompatible with the common market. Furthermore, such aid is also likely to interfere with the mechanisms of the common organisations of the markets. It is therefore appropriate to limit the scope of this Regulation to aid for investments, as well as to aid for certain socioeconomic measures.
- (21) In order to ensure that the aid is necessary and acts as an incentive to develop certain activities, this Regulation should not apply to aid for activities in which the beneficiary would already engage under market conditions alone. Such incentive should be considered to be present when, before the activities relating to the implementation of the aided project or activities are initiated, the beneficiary has submitted an application to the Member State.
- (22) In order to determine whether the individual notification thresholds and the maximal aid intensities laid down in this Regulation are respected, the total amount of public support for the aided activity or project should be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.
- (23) This Regulation should cover the following aid: aid for permanent and temporary cessation of fishing activities, aid for the financing of socioeconomic measures, aid for productive investments in aquaculture, aid for aqua-environmental measures, aid for public health and animal health measures, aid for inland fishing, aid for processing and marketing of fisheries and aquaculture products, aid for measures of common interest which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisation recognised by the Member States, aid for measures of common interest intended to protect and develop aquatic fauna and flora while enhancing the aquatic environment, aid for investments in public or private fishing ports, landing sites and fishing shelters, aid for measures of common interest intended to implement a policy of quality and value enhancement, development of new markets or promotional campaigns for fisheries and aquaculture products, aid for pilot projects, aid for modification for reassignment of fishing vessels, and aid for technical assistance.
- (24) When tax exemptions provided for in Article 14 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity⁽³⁾ are applied equally to the whole fisheries sector, the Commission considers that they may contribute to the development of the sector and serve the common interest. These exemptions have been applied equally by Member States and experience in the application of these measures under Regulation (EC) No 1595/2004 has shown that these have not adversely affected trading

⁽¹⁾ OJ C 14, 19.1.2008, p. 6.

⁽²⁾ OJ C 155, 20.6.2008, p. 10.

⁽³⁾ OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

conditions and are helping in attaining the objectives of the Common Fisheries Policy by assuring sustainable economic and social conditions. Considering the transparency of the measure, with the aid being calculated on the actual amount of fuel used by the vessel, and in the light of the fact that this regulation only applies to SMEs and that the vast majority of fishing undertakings in the European Union are SMEs (the majority of undertakings benefiting from these tax exemptions are smaller enterprises owning just one vessel), the Commission considers that such measures will not unduly distort competition and affect trading conditions to an extent contrary to the common interest. Consequently, such tax exemptions should, as far as they constitute State aid, be declared compatible with the common market and exempt from the notification requirement of Article 88(3) of the EC Treaty provided that they comply with those Directives and that they are applicable to the whole fisheries sector. Moreover, this Regulation should also, under certain conditions, declare compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty, tax exemptions or reductions applicable to inland fishing and piscicultural works which Member States may introduce pursuant to Article 15 of Council Directive 2003/96/EC.

- (25) In order to ensure transparency and effective monitoring, in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard format in which Member States should provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme or individual aid is implemented. The Commission will attribute an identification number to each aid measure which is communicated to it. The fact that such number is attributed to an aid measure does not imply that the Commission has examined whether the aid fulfils the conditions of this Regulation. It creates therefore no legitimate expectations for the Member State or beneficiary as regards the compatibility of the aid measures with this Regulation.
- (26) For the same reasons, the Commission should establish specific requirements as regards the form and the content of the annual reports to be submitted to the Commission by Member States. Moreover, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid schemes and individual aid exempted by this Regulation, in line with the requirements laid down in Article 15 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾.
- (27) In order to monitor the implementation of this Regulation, the Commission should also be in a position to obtain all necessary information from Member States

concerning the measures implemented under the benefit of this Regulation. A failure of the Member States to provide information within a reasonable deadline on these aid measures may therefore be considered as an indication that the conditions of this Regulation are not being respected. A failure by a Member State to provide information allowing for monitoring of an aid measures may therefore lead the Commission to decide that the Regulation, or the relevant part of the Regulation, should be withdrawn as regards the Member State concerned and that all subsequent aid measures, including new individual aid measures granted on the basis of aid schemes previously covered by this Regulation, need to be notified to the Commission in accordance with Article 88 of the Treaty. As soon as the Member State has provided correct and complete information, the Commission should allow the Regulation to be fully applicable again.

- (28) Having regard to the expiry date of Regulation (EC) No 1198/2006 and the fact that the conditions for granting aid under this Regulation have been aligned with the conditions established for the application of the European Fisheries Fund, it is appropriate to limit the period of application of this Regulation to the date on which Regulation (EC) No 1198/2006 expires. Should this Regulation expire without being extended, aid schemes already exempted by this Regulation should continue to be exempted for six months.
- (29) It is appropriate to lay down transitional provisions for notifications pending on the date of entry into force of this Regulation and for aid which was granted before the entry into force of this Regulation and was not notified in breach of the obligation in Article 88(3) of the Treaty, as well as for aid fulfilling the conditions of 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 ⁽²⁾,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

COMMON PROVISIONS

Article 1

Scope

1. This Regulation shall apply to transparent aid granted to small and medium-sized enterprises (SMEs) active in the production, processing or marketing of fisheries products.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ L 291, 14.9.2004, p. 3.

2. 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, 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;
 - (d) aid granted to undertakings in difficulty;
 - (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 common market;
 - (f) ad-hoc 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 common market.
3. This Regulation shall not apply to aid for individual projects with eligible expenses in excess of EUR 2 million, or where the amount of aid exceeds EUR 1 million per beneficiary per year.

Article 2

Definitions

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

- (a) 'aid' means any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
 - (b) '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 awarded to one or several undertakings
- for an indefinite period of time and/or for an indefinite amount;
 - (c) 'individual aid' means ad-hoc aid and notifiable awards of aid on the basis of an aid scheme;
 - (d) 'ad-hoc aid' means individual aid not awarded on the basis of an aid scheme;
 - (e) 'aid intensity' means the aid amount expressed as a percentage of the eligible costs;
 - (f) 'fisheries product' means both products caught at sea or in inland waters and the products of aquaculture listed in Article 1 of Regulation (EC) No 104/2000;
 - (g) 'small and medium-sized enterprises' ('SMEs') means small and medium-sized enterprises as defined in Article 2 (7) of Commission Regulation (EC) No .../2008 of 2 July 2008 on the application of Articles 87 and 88 of the Treaty declaring certain categories of aid compatible with the common market ⁽¹⁾;
 - (h) 'transparent aid' means aid in respect of which it is possible to calculate precisely the gross grant equivalent ex ante without need to undertake a risk assessment;
 - (i) 'undertaking in difficulty' means an undertaking fulfilling the following conditions:
 - in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one-quarter of that capital has been lost over the preceding 12 months, or
 - in the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months, or
 - whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

⁽¹⁾ OJ L ..., ... 2008, p. ...

Article 3

Conditions for exemption

1. Ad-hoc aid, fulfilling all the conditions of this Regulation, shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the summary information provided for in Article 25(1) has been submitted and that the aid contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*.

2. Aid schemes fulfilling all the conditions set out in this Regulation shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the summary information provided for in Article 25(1) has been submitted, that any individual aid that could be awarded under such scheme fulfils all the conditions of this Regulation, and that the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*.

3. Individual aid granted under a scheme referred to in paragraph 2 shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the aid granted directly fulfils all the conditions of this Regulation that the summary information provided for in Article 25(1) has been submitted and that the individual aid measure contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*.

4. Before granting any aid under this Regulation, Member States shall verify that the measures financed and their effects comply with Community law.

5. 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 this period it is found that the beneficiary does not comply with rules of the Common Fisheries Policy, the grant must be reimbursed in proportion to the gravity of the infringement.

Article 4

Aid intensity and eligible costs

1. For the purpose of calculating aid intensity, all figures used shall be taken 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 grant equivalent of the aid. Aid payable in several instalments shall be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes shall be the reference rate applicable at

the time of grant. In cases where aid is awarded by means of tax exemptions or reductions in future taxes due, subject to respect of a certain aid intensity defined in gross grant equivalent, discounting of aid tranches takes place on the basis of the reference rates applicable at the various times the tax advantages become effective.

2. The eligible costs shall comply with the requirements of Article 55, paragraphs (2) and (5), of Regulation (EC) No 1198/2006 and Article 26 of Regulation (EC) No 498/2007 and be supported by documentary evidence which shall be clear and itemised.

Article 5

Transparency of aid

1. This Regulation shall apply only to transparent aid. In particular, the following types of aid shall be considered to be transparent:

- (a) direct grants and interest rate subsidies;
- (b) aid comprised in loans where the gross grant equivalent has been calculated on the basis of the reference rates prevailing at the time of the grant and taking into account the existence of normal security and/or abnormal risk associated with the loan;
- (c) aid comprised in guarantee schemes:
 - where the methodology to calculate the gross grant equivalent has been accepted following notification of this methodology to the Commission and the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake in the context of the application of this Regulation, or
 - where the gross grant equivalent has been calculated on the basis of the safe-harbour premiums laid down in the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees;

(d) aid comprised in fiscal measures shall be considered as transparent when the measures provides for a cap ensuring that the applicable ceiling is not exceeded.

2. The following types of aid shall not be considered to be transparent:

- (a) aid comprised in capital injections;

(b) aid comprised in risk capital measures.

3. Aid in the form of repayable advances shall only be considered to be transparent aid if the total amount of repayable advance does not exceed the applicable threshold under this Regulation. If the threshold is expressed in terms of aid intensity, the total amount of the repayable advance, expressed as a percentage of the eligible costs, shall not exceed the applicable aid intensity.

Article 6

Cumulation

1. In determining whether the individual notification thresholds laid down in Article 1(3) and the maximum aid intensities laid down in Chapter 2 are respected, the total amount of public support measures for the aided activity or project shall be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.

2. Aid exempted under this Regulation may be cumulated with any other aid exempted under this Regulation as long as those aid measures concern different identifiable eligible costs.

3. Aid exempted under this Regulation shall not be cumulated with any other aid exempted under this Regulation or *de minimis* aid fulfilling the conditions laid down in Commission Regulation (EC) No 875/2007⁽¹⁾ or with other Community funding in relation to the same — partly or fully overlapping — eligible costs if such cumulation would result in exceeding the highest aid intensity or aid amount applicable to that aid under this Regulation.

Article 7

Incentive effect

1. This Regulation shall only exempt aid which has an incentive effect.

2. Aid shall be considered to have an incentive effect if it enables the beneficiary to carry out activities or projects which it would not have carried out as such in the absence of the aid.

This condition shall be considered to have been fulfilled if, before work on the project or activity has started, the beneficiary has submitted an application for the aid to the Member State concerned.

3. The condition laid down in paragraph 2 shall not apply as regards fiscal measures establishing a legal right to aid in accordance with objective criteria and without further exercise of discretion by the Member State if those fiscal measures have

been adopted before work on the aided project or activity has started.

4. If the conditions of paragraphs 1 to 3 are not fulfilled, the entire aid measure will not be exempted under this Regulation.

CHAPTER 2

CATEGORIES OF AID

Article 8

Aid for permanent cessation of fishing activities

Aid for the permanent cessation of fishing activities of fishing vessels shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 23 of Regulation (EC) No 1198/2006 and Article 4 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 9

Aid for temporary cessation of fishing activities

Aid for temporary cessation of fishing activities for fishers and owners of fishing vessels shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 24 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 10

Aid for socioeconomic compensation for the management of the fleet

Aid for the financing of socioeconomic measures shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

⁽¹⁾ OJ L 193, 25.7.2007, p. 6.

- (a) the aid fulfils the conditions of Articles 26(3) and 27 of Regulation (EC) No 1198/2006 and Article 8 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 11

Aid for productive investments in aquaculture

Aid for productive investments in aquaculture shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 28 and 29 of Regulation (EC) No 1198/2006 and Articles 9 and 10 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 12

Aid for aqua-environmental measures

Aid for compensation for the use of aquaculture production methods helping to protect and improve the environment and conserve nature shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 28 and 30 of Regulation (EC) No 1198/2006 and Article 11 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 13

Aid for public health measures

Aid for compensation to mollusc farmers for the temporary suspension of harvesting of farmed mollusc shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the

notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 28 and 31 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 14

Aid for animal health measures

Aid for animal health measures shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 28 and 32 of Regulation (EC) No 1198/2006 and Article 12 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 15

Aid for inland fishing

Aid for inland fishing shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 33 of Regulation (EC) No 1198/2006 and Article 13 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 16

Aid for processing and marketing

Aid for processing and marketing of fisheries products shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 34 and 35 of Regulation (EC) No 1198/2006 and Article 14 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 17

Aid for collective actions

Aid for measures of common interest which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisation recognised by the Member States shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 37 of Regulation (EC) No 1198/2006 and Article 15 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 18

Aid for measures intended to protect and develop aquatic fauna and flora

Aid for measures of common interest intended to protect and develop aquatic fauna and flora while enhancing the aquatic environment shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 38 of Regulation (EC) No 1198/2006 and Article 16 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 19

Aid for investments in fishing ports, landing sites and shelters

Aid for investments in public or private fishing ports, landing sites and fishing shelters shall be compatible with the common

market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 39 of Regulation (EC) No 1198/2006 and Article 17 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 20

Aid for development of new markets and promotional campaigns

Aid for measures of common interest intended to implement a policy of quality and value enhancement, development of new markets or promotional campaigns for fisheries and aquaculture products shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 40 of Regulation (EC) No 1198/2006 and Article 18 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 21

Aid for pilot projects

Aid for pilot projects shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 41 of Regulation (EC) No 1198/2006 and Article 19 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 22

Aid for modification for reassignment of fishing vessels

Aid for modification for reassignment of fishing vessels, under the flag of a Member State and registered in the Community for training or research purposes inside the fisheries sector or for other activities outside fishing shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Articles 36 and 42 of Regulation (EC) No 1198/2006 and Article 20 of Regulation (EC) No 498/2007; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 23

Aid for technical assistance

Aid for technical assistance shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) the aid fulfils the conditions of Article 46(2) and (3) of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in grant equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

Article 24

Tax exemptions in accordance with Directive 2003/96/EC

1. Tax exemptions applicable to the whole fishing sector which Member States introduce pursuant to and in accordance with Article 14 of Directive 2003/96/EC shall, to the extent that they constitute State aid, be compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty.

2. Environmental aid in the form of tax exemptions or reductions applicable to inland fishing and piscicultural works which Member States introduce pursuant to Article 15 of Directive 2003/96/EC shall be compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty, provided that it shall not be granted for periods longer than 10 years. After this 10-year period, Member States shall re-evaluate the appropriateness of the aid measures concerned.

The beneficiary of the tax reduction shall pay at least the Community minimum tax level set by that Directive.

CHAPTER 3

COMMON AND FINAL PROVISIONS

Article 25

Transparency and monitoring

1. On the entry into force of an aid scheme or the awarding of an ad-hoc aid, which has been exempted pursuant to this Regulation, the Member State shall forward to the Commission a summary of the information regarding such aid measure. This information shall be provided in electronic form via the established Commission IT application, in the form laid down in Annex I.

The Commission shall acknowledge the receipt of the above summary without delay.

The summaries provided by the Member States pursuant to paragraph 1 shall be published in the *Official Journal of the European Union* and on the Commission's website.

2. Upon the entry into force of an aid scheme or the awarding of an ad-hoc aid, which has been exempted pursuant to this Regulation, the Member State concerned shall publish on the Internet the full text of such aid measure, indicating the criteria and conditions under which such aid is granted and the identity of the granting authority. The Member State concerned shall ensure that the full text of the aid measure is accessible on the Internet as long as the aid measure concerned is in force. The summary information provided by the Member State concerned pursuant to paragraph 1 shall specify an Internet address leading directly to the full text of the aid measure. This Internet address shall also be contained in the annual report submitted pursuant to paragraph 4.

3. When granting individual aid exempted pursuant to this Regulation, with the exception of aid taking the form of fiscal measures, the aid granting act shall contain an explicit reference to the specific provisions of this Regulation concerned by this act, to the national law which ensures respect of the relevant provisions of this Regulation and to the Internet address referred to in paragraph 2.

4. In accordance with Chapter III of Commission Regulation (EC) No 794/2004⁽¹⁾, Member States shall compile a report in electronic form on the application of this Regulation in respect of each whole year or each part of the year during which this Regulation applies.

⁽¹⁾ OJ L 140, 30.4.2004, p. 1.

5. Member States shall maintain detailed records regarding any ad-hoc aid or individual aid granted under an aid scheme exempted under this Regulation. Such records shall contain all information necessary to establish that the conditions laid down in this Regulation, are fulfilled, including information on the status of any undertaking whose entitlement to aid or a bonus depends on its status as an SME, information on the incentive effect of aid and information making it possible to establish the precise amount of eligible costs for the purpose of applying this Regulation.

6. Records regarding individual aid shall be maintained for 10 years from the date on which the aid was granted. Records regarding an aid scheme shall be maintained for 10 years from the date on which the last aid was granted under such scheme.

7. The Commission shall regularly monitor aid measures of which it has been informed pursuant to paragraph 1.

8. On written request, the Member State concerned shall provide the Commission within the period fixed in the request, with all the information which the Commission considers necessary to monitor the application of this Regulation.

If such information is not provided within that period or a commonly agreed period, the Commission shall send a reminder setting a new deadline for the submission of the information. If, despite such reminder, the Member State concerned does not provide the information requested, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all future individual aid measures adopted on the basis of the scheme are to be notified to the Commission.

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

Done at Brussels, 22 July 2008.

For the Commission
Joe BORG
Member of the Commission

Article 26

Transitional provisions

1. Notifications pending at the time of entry into force of this Regulation shall be assessed in accordance with its provisions. Where the conditions of this Regulation are not fulfilled, the Commission shall examine such pending notifications under the Community guidelines for State aid in the fisheries sector.

Aid notified before the entry into force of this Regulation or granted before that date in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt if it fulfils the conditions laid down in Article 3 of this Regulation, except the requirement of citing the Regulation and the Commission identification number. 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. Aid schemes exempted under this Regulation shall remain exempt during an adjustment period of six months following the date provided for in the second paragraph of Article 27.

Article 27

Entry into force and applicability

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2013.

ANNEX I

Form of summary information to be provided whenever an aid scheme exempted by this Regulation is implemented and whenever an ad-hoc aid exempted by this Regulation is granted outside any aid scheme

1. Member State:
 2. Region/Authority granting the aid:
 3. Title of aid scheme/name of company receiving an ad-hoc aid:
 4. Legal basis:
 5. Annual expenditure planned under the scheme or amount of ad-hoc aid granted:
 6. Maximum aid intensity:
 7. Date of entry into force:
 8. Duration of the scheme or individual aid award (not later than 30. June 2014); indicate:
 - under the scheme: the date until which aid may be granted:
 - in the case of an ad-hoc aid: the expected date of the last instalment to be paid:
 9. Objective of aid:
 10. Indicate which of Articles 8 to 24 is used:
 11. Activity concerned:
 12. Name and address of the granting authority:
 13. Web address where the full text of the scheme or the criteria and conditions under which ad-hoc aid is granted outside of an aid scheme can be found:
 14. Motivation: indicate why a State aid scheme has been established instead of assistance under the European Fisheries Fund:
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ANNEX II

Periodic report form to be completed and notified to the Commission

For their reporting obligations to the Commission under group exemption regulations adopted on the basis of Council Regulation (EC) No 994/98, Member States shall provide the information mentioned below concerning all aid measures covered by this Regulation, in computerised form, in the format communicated by the Commission to the Member States.

1. Member State:
 2. Title:
 3. Aid number:
 4. Year of expiry:
 5. Objective of the aid:
 6. Number of beneficiaries:
 7. Category of aid (e.g. direct grant, loan with reduced interest rate, etc.):
 8. Total annual expenditure:
 9. Remarks:
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