

## PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

### COMMISSION

#### **Invitation to submit comments on the draft Commission Regulation 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**

(2007/C 248/10)

Interested parties may submit their comments within one month of the date of publication of this draft Regulation to:

European Commission  
Directorate-General for Fisheries and Maritime Affairs  
DG FISH-D3 (Legal issues)  
Rue Joseph II, 99  
B-1049 Brussels  
Fax (32-2) 295 19 42  
E-mail: fish-aidesdetat@ec.europa.eu

The text will also be available on the following website:

[http://ec.europa.eu/fisheries/legislation/state\\_aid\\_en.htm](http://ec.europa.eu/fisheries/legislation/state_aid_en.htm)

#### **DRAFT COMMISSION REGULATION (EC) No .../...**

**of ...**

#### **on 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**

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 <sup>(1)</sup>, and in particular Article 1(1)(a)(i) thereof,

Having published a draft of this Regulation <sup>(2)</sup>,

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 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 <sup>(3)</sup> 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 on the common organisation of the markets in fishery and aquaculture products <sup>(4)</sup>.

<sup>(1)</sup> OJ L 142, 14.5.1998, p. 1.

<sup>(2)</sup> OJ C 248, 23.10.2007, p. 13.

<sup>(3)</sup> OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1857/2006 (OJ L 358, 16.12.2006, p. 3).

<sup>(4)</sup> 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).

- (3) The Commission has applied Articles 87 and 88 of the Treaty in numerous decisions to small and medium-sized enterprises 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 <sup>(1)</sup> (hereafter referred to as the 'Fisheries Guidelines'). In the light of the Commission's considerable experience in applying those Articles to small and medium-sized enterprises 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 small and medium-sized enterprises active in the production, processing and marketing of fisheries products, insofar 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 routinely 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 <sup>(2)</sup> 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 small and medium-sized enterprises 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.
- (7) Aid that Member States intend to grant in the fisheries sector but which do 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. Aid schemes and individual grants outside any aid scheme 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. Because it is based on a form of aid for which eligible costs are difficult to identify, the threshold with regard to aid in the form of risk capital should be formulated in terms of maximum aid amounts.
- (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 does not normally constitute export aid.

<sup>(1)</sup> OJ C 229, 14.9.2004, p. 5.

<sup>(2)</sup> OJ L 223, 15.8.2006, p. 1.

- (14) Aid granted to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup> should be assessed under those Guidelines in order to avoid circumvention of these 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.
- (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 small and medium-sized enterprises, the definition of 'small and medium-sized enterprises' used in this Regulation should be that laid down in Annex I to Regulation (EC) No 70/2001.
- (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.
- (18) 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 socio-economic 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 socio-economic measures.
- (19) 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.
- (20) 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.
- (21) This Regulation should cover the following aid: aid for permanent and temporary cessation of fishing activities, aid for the financing of socio-economic 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.
- (22) For the purpose of legal certainty, tax exemptions applicable to the whole fisheries sector which Member States may introduce pursuant to Article 15 of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment <sup>(2)</sup>, or to Article 14 or Article 15 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity <sup>(3)</sup> should, to the extent they constitute State aid, be declared compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty. Tax exemption which Member States are obliged to introduce according to those provisions do not constitute State aid.
- (23) 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.

<sup>(1)</sup> OJ C 244, 1.10.2004, p. 2.

<sup>(2)</sup> OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51, 22.2.2006, p. 12).

<sup>(3)</sup> OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 159, 2.6.2004, p. 31).

- (24) 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.
- (25) 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.
- (26) 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 <sup>(1)</sup>,
- (d) aid granted to undertakings in difficulty;
- (e) aid schemes which do not explicitly exclude the payment of individual 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, as well as individual aid in favour of the same beneficiary;
- (f) *ad hoc* 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.
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.
4. This Regulation shall only apply to aid which has an incentive effect. This shall be the case for activities or projects which the beneficiary would not have carried out as such in the absence of that aid.

#### Article 2

### Definitions

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

### GENERAL PROVISIONS

#### Article 1

#### Scope

1. This Regulation shall apply to transparent aid granted to small and medium-sized enterprises active in the production, processing or marketing of fisheries products.
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 aid to the establishment and operation of a distribution network or to other current expenditure linked to the export activity of Member States;
- (c) aid contingent upon the use of domestic over imported goods;

<sup>(1)</sup> OJ L 291, 14.9.2004, p. 3.

For the purpose of this Regulation:

- (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) 'aid intensity' means the aid amount expressed as a percentage of the eligible costs;
- (d) '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;
- (e) 'processing and marketing' means all operations, including handling, treatment, production and distribution, between the time of landing or harvesting and the end-product stage;
- (f) 'small and medium-sized enterprises' ('SMEs') means enterprises as defined in Annex I to Regulation (EC) No 70/2001;
- (g) '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.

## Article 3

**Conditions for exemption**

1. Individual aid outside any scheme, 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 24(1) has been submitted and that it 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:

- (a) any aid that could be awarded under such scheme fulfils all the conditions set out in this Regulation;
- (b) the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*;
- (c) the summary information provided for in Article 24(1) has been submitted.

3. Aid granted under the schemes 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.

4. Before granting any aid under this Regulation, Member States shall verify that the measures financed and their effects comply with Community law. During the grant period, Member States shall verify that the beneficiaries of the aid comply with the rules of the Common Fisheries Policy. If during that 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

**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) aid comprised in loans where the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time of the grant and taking into account

the existence of normal securities and/or abnormal risk associated with the loan;

- (b) 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;

- (c) 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 5

**Cumulation**

1. In determining whether the individual notification thresholds laid down in Article 1 and the maximum aid intensities laid down in Chapter II are respected, the total amount of public support 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.

Where the identifiable eligible costs of different aid measures exempted under this Regulation partly or fully overlap, the common portion will be subject to the highest aid intensity or aid amount applicable under this Regulation.

3. Aid exempted under this Regulation shall not be cumulated with any other State aid within the meaning of Article 87(1) of the Treaty, other support measures including aid fulfilling the conditions laid down in Commission Regulation (EC) No 1860/2004<sup>(1)</sup> or with other Community funding in relation to the same eligible costs if such cumulation would result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.

<sup>(1)</sup> OJ L 325, 28.10.2004, p. 4.

## CHAPTER II

## CATEGORIES OF AID

*Article 6***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 7***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 subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 8***Aid for socio-economic compensation for the management of the fleet**

Aid for the financing of socio-economic 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 26(3) and 27 of Regulation (EC) No 1198/2006; and
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 9***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 10***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 11***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 subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 12***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 13***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 14***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 15***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 16***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 17***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 18***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

*Article 19***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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

## Article 20

**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
- (b) the amount of the aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

## Article 21

**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 subsidy equivalent, the total rate of public contributions fixed by Annex II to Regulation (EC) No 1198/2006.

## Article 22

**Tax exemptions in accordance with Directive 77/388/EEC and 2003/96/EC**

Tax exemptions applicable to the whole fisheries sector which Member States introduce pursuant to Article 15 of Directive 77/388/EEC or pursuant to Article 14 or Article 15 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.

## CHAPTER III

**COMMON AND FINAL PROVISIONS**

## Article 23

**Steps preceding grant of aid**

In order to qualify for exemption under this Regulation, aid shall only be granted in respect of activities undertaken or services received after the aid scheme has been set up and published in accordance with this Regulation.

If the aid scheme creates an automatic right to receive the aid, requiring no further action at administrative level, the aid itself may only be granted after the aid scheme has been set up and published in accordance with this Regulation.

## Article 24

**Transparency and monitoring**

1. At the latest 10 working days before the entry into force of an aid scheme or the granting of individual aid outside any aid scheme, Member States shall forward to the Commission a summary of the information regarding such aid in electronic form, in the form laid down in Annex I, with a view to its publication in the *Official Journal of the European Union* and on the Commission's website. Within 10 working days of receipt of that summary, the Commission shall send an acknowledgment of receipt to the Member State with the identification number of the aid measure concerned.

2. As soon as an aid scheme enters into force, or an individual aid is granted on the basis of this Regulation, Member States shall publish on the internet the full text of such aid measure with the identification number provided by the Commission pursuant to paragraph 1, indicating the criteria and conditions under which such aid is granted and the identity of the granting authority. The address of the website shall be communicated to the Commission together with the summary of the information regarding the aid required pursuant to paragraph 1. It shall also be contained in the annual report submitted pursuant to paragraph 4.

3. Member States shall refer to the identification number provided by the Commission pursuant to paragraph 1 in each aid granting decision addressed to a final beneficiary.

4. In accordance with Chapter III of Commission Regulation (EC) No 794/2004 <sup>(1)</sup>, 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.

5. Member States shall maintain detailed records regarding any individual aid or aid scheme exempted under this Regulation. Such records shall consist of transparent and itemised documentary evidence and 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.

<sup>(1)</sup> OJ L 140, 30.4.2004, p. 1.



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 a period of 20 days or such longer period as may be 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.

#### *Article 25*

##### **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 requirements in paragraphs 1 and 2(b) of that Article that express reference be made to this Regulation. 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 aid granted before the entry into force of this Regulation which does not fulfil the conditions laid down in this Regulation but fulfils the conditions laid down in Regulation (EC) No 1595/2004, shall be deemed compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall therefore be exempt from the notification requirement of Article 88(3) of the Treaty.

3. 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 26.

#### *Article 26*

##### **Entry into force and applicability**

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

It shall apply until 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 I

**Form of summary information to be provided whenever an aid scheme exempted by this Regulation is implemented and whenever an individual 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 individual aid:
4. Legal basis (indicate the precise national legal reference):
5. Annual expenditure planned under the scheme or amount of individual aid granted:
6. Maximum aid intensity:
7. Date of entry into force:
8. Duration of the scheme or individual aid award (not later than 31 December 2013); indicate:
  - under the scheme: the date until which aid may be granted:
  - in the case of an individual aid: the expected date of the last instalment to be paid:
9. Objective of aid:
10. Indicate which of Article(s) 4 to 20 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 individual 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:

---

## ANNEX II

**Form of the periodic report to be provided 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:

---