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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)

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COMMISSION REGULATION (EU) No 1408/2013

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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

Article 1

Scope

1. This Regulation applies to aid granted to undertakings active in the primary production of agricultural products, with the exception of:

- (a) aid the amount of which is fixed on the basis of the price or quantity of products put on the market;
- (b) aid to export-related activities towards third countries or Member States, 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.

2. Where an undertaking is active in the primary production of agricultural products and is also active in one or more of the sectors or has other activities falling within the scope of Regulation (EU) No 1407/2013, that Regulation shall apply to aid granted in respect of the latter sectors or activities, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with that Regulation.

3. Where an undertaking is active in the primary production of agricultural products as well as in the fishery and aquaculture sector, the provisions of Regulation (EC) No 875/2007 shall apply to aid granted in respect of the latter sector, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with that Regulation.

Article 2

Definitions

1. For the purposes of this Regulation, ‘agricultural products’ means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products covered by Council Regulation (EC) No 104/2000 ⁽¹⁾.

⁽¹⁾ Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products (OJ L 17, 21.1.2000, p. 22).

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2. ‘Single undertaking’ includes, 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 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) of the first subparagraph through one or more other enterprises shall also be considered to be a single undertaking.

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3. For the purposes of this Regulation, ‘product sector’ means a sector listed in Article 1(2)(a) to (w) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ⁽¹⁾.

4. For the purposes of this Regulation, ‘sector cap’ means a maximum cumulative aid amount applying to aid measures which benefit only one single product sector, which corresponds to 50 % of the maximum amount of *de minimis* aid granted per Member State set out in Annex II.

*Article 3***De minimis aid**

1. Aid measures shall be deemed not to meet all the criteria in Article 107(1) of the Treaty, and shall therefore be exempt from 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 20 000 over any period of 3 fiscal years.

3. The cumulative amount of *de minimis* aid granted per Member State to undertakings active in the primary production of agricultural products over any period of 3 fiscal years shall not exceed the national cap set out in Annex I.

⁽¹⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

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3a. By way of derogation from paragraphs 2 and 3, a Member State may decide that the total amount of *de minimis* aid granted to a single undertaking shall not exceed EUR 25 000 over any period of 3 fiscal years and that the total cumulative amount of *de minimis* aid granted over any period of 3 fiscal years shall not exceed the national cap set out in Annex II, subject to the following conditions:

- (a) for aid measures which benefit only one single product sector, the total cumulative amount granted over any period of 3 fiscal years shall not exceed the sector cap defined in Article 2(4);
- (b) the Member State shall have in place a national central register in accordance with Article 6(2).

4. *De minimis* aid shall be deemed granted at the moment 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.

5. The *de minimis* ceilings and the national and sector caps referred to in paragraphs 2, 3 and 3a shall apply irrespective of the form of the *de minimis* aid or the objective pursued and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin. The period of 3 fiscal years shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

6. For the purposes of the *de minimis* ceilings and the national and sector caps referred to in paragraphs 2, 3 and 3a, aid shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments shall be discounted to its value at the moment 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 *de minimis* ceilings, the national caps or the sector cap referred to in paragraphs 2, 3 and 3a would be exceeded by the grant of new *de minimis* aid, none of that new aid may 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 in determining whether any new *de minimis* aid to the new or the acquiring undertaking exceeds the relevant *de minimis* ceilings, the relevant national cap or the sector cap. *De minimis* aid lawfully granted before the merger or acquisition shall remain lawful.

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9. If one undertaking splits into two or more separate undertakings, *de minimis* aid granted prior to 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.

▼ B*Article 4***Calculation of gross grant equivalent**

1. This Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment ('transparent aid').

2. Aid comprised in grants or interest rate subsidies shall be considered as transparent *de minimis* aid.

3. Aid comprised in loans shall be considered as transparent *de minimis* aid if:

(a) the beneficiary is not 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. In case of large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least B-; and

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(b) for measures falling under Article 3(2), the loan is secured by collateral covering at least 50 % of the loan and the loan amounts to either EUR 100 000 over 5 years or EUR 50 000 over 10 years, or, for measures falling under Article 3(3a), to either EUR 125 000 over 5 years or EUR 62 500 over 10 years; if a loan is for less than those amounts and/or if it 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 *de minimis* ceilings laid down in Article 3(2) or (3a); or

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(c) the gross grant equivalent has been calculated on the basis of the reference rate applicable at the time of the grant.

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4. Aid comprised in capital injections shall only be considered as transparent *de minimis* aid if the total amount of the public injection does not exceed the relevant *de minimis* ceiling.

5. Aid comprised in 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 relevant *de minimis* ceiling.

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6. Aid comprised in guarantees shall be treated as transparent *de minimis* aid if:

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- (a) the beneficiary is not 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. In case of large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least B-; and

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- (b) for measures falling under Article 3(2), the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed is EUR 150 000 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 75 000 and the duration of the guarantee is 10 years, or, for measures falling under Article 3(3a), the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed is EUR 187 500 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 93 750 and the duration of the guarantee is 10 years; if the amount guaranteed is lower than these amounts and/or if 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 *de minimis* ceilings laid down in Article 3(2) or (3a); or

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- (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 successor 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. Aid comprised in other instruments shall be considered as transparent *de minimis* aid if the instrument provides for a cap ensuring that the relevant ceiling is not exceeded.

Article 5

Cumulation

1. Where an undertaking is active in the primary production of agricultural products and is also active in one or more of the sectors or has other activities falling within the scope of Regulation (EU) No 1407/2013, *de minimis* aid granted for activities in the sector of agricultural production in accordance with this Regulation may be cumulated with *de minimis* aid granted in respect of the latter sector(s) or activities up to the relevant ceiling laid down in Article 3(2) of Regulation (EU) No 1407/2013, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with Regulation (EU) No 1407/2013.

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2. Where an undertaking is active in the primary production of agricultural products as well as in the fishery and aquaculture sector, *de minimis* aid granted for activities in the sector of agricultural production in accordance with this Regulation may be cumulated with *de minimis* aid for activities in the latter sector in accordance with Regulation (EC) No 875/2007 up to the ceiling laid down in that Regulation, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with Regulation (EC) No 875/2007.

3. *De minimis* aid 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 which 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**

1. Where a Member State intends to grant *de minimis* aid in accordance with this Regulation to an undertaking, it shall inform that undertaking in writing of the prospective amount of the aid expressed as a gross grant equivalent and of its *de minimis* character, making express reference to this Regulation and citing its title and publication reference in the *Official Journal of the European Union*. Where *de minimis* aid is granted in accordance with this Regulation to different undertakings on the basis of a scheme and different amounts of individual aid are granted to those undertakings under that scheme, the Member State concerned may choose to fulfil that obligation by informing the undertakings of a fixed sum corresponding to the maximum aid amount to be granted under that scheme. In such case, the fixed sum shall be used for determining whether the ceiling laid down in Article 3(2) is reached and the national cap referred to in Article 3(3) is not exceeded. Before granting the aid, the Member State shall obtain a declaration from the undertaking concerned, in written or electronic form, about any other *de minimis* aid received to which this Regulation or other *de minimis* regulations apply during the previous 2 fiscal years and the current fiscal year.

2. Where a Member State has set up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within that Member State, paragraph 1 shall cease to apply from the moment the register covers a period of 3 fiscal years.

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Where a Member State grants aid in accordance with Article 3(3a), it shall have in place a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within that Member State. Paragraph 1 shall cease to apply from the moment the register covers a period of 3 fiscal years.

3. A Member State shall grant new *de minimis* aid in accordance with this Regulation only after having checked that this will not raise the total amount of *de minimis* aid granted to the undertaking concerned to a level above the relevant ceilings and national caps and the sector cap referred to in Article 3(2), (3) and (3a) and that all the conditions laid down in this Regulation are complied with.

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4. Member States shall record and compile all the information regarding the application of this Regulation. Such records shall contain all information necessary to demonstrate that the conditions of this Regulation have been complied with. Records regarding individual *de minimis* aid shall be maintained for 10 fiscal years from the date on which the aid was granted. Records regarding a *de minimis* aid scheme shall be maintained for 10 fiscal years from the date on which the last individual aid was granted under such a scheme.

5. On written request, the Member State concerned shall provide the Commission, within a period of 20 working days or such longer period as may be fixed in the request, with all the information that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied with, and in particular the total amount of *de minimis* aid within the meaning of this Regulation and of other *de minimis* regulations received by any undertaking.

*Article 7***Transitional provisions**

1. This Regulation shall apply to aid granted before its entry into force if the aid fulfils all the conditions laid down in this Regulation. Any aid which does not fulfil those conditions will be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

2. Any individual *de minimis* aid which was granted between 1 January 2005 and 30 June 2008, and which fulfils the conditions of Regulation (EC) No 1860/2004 shall be deemed not to meet all the criteria in Article 107(1) of the Treaty and shall therefore be exempt from the notification requirement in Article 108(3) of the Treaty.

3. Any individual *de minimis* aid granted between 1 January 2008 and 30 June 2014 and which fulfils the conditions of Regulation (EC) No 1535/2007, shall be deemed not to meet all the criteria in Article 107(1) of the Treaty and shall therefore be exempt from the notification requirement in Article 108(3) of the Treaty.

4. At the end of the period of validity of this Regulation, any *de minimis* aid scheme which fulfils the conditions of this Regulation shall remain covered by this Regulation for a further period of 6 months.

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Article 8

Entry into force and period of application

This Regulation shall enter into force on 1 January 2014.

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It shall apply until 31 December 2027.

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

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ANNEX I

Maximum cumulative amounts of *de minimis* aid granted per Member State to undertakings active in the primary production of agricultural products referred to in Article 3(3)

(EUR)

Member State	Maximum amounts of <i>de minimis</i> aid ⁽¹⁾
Belgium	106 269 708
Bulgaria	53 020 042
Czechia	61 865 750
Denmark	141 464 625
Germany	732 848 458
Estonia	11 375 375
Ireland	98 460 375
Greece	134 272 042
Spain	592 962 542
France	932 709 458
Croatia	28 920 958
Italy	700 419 125
Cyprus	8 934 792
Latvia	16 853 708
Lithuania	34 649 958
Luxembourg	5 474 083
Hungary	99 582 208
Malta	1 603 917
Netherlands	352 512 625
Austria	89 745 208
Poland	295 932 125
Portugal	87 570 583
Romania	215 447 583
Slovenia	15 523 667
Slovakia	29 947 167
Finland	55 693 958
Sweden	79 184 750
United Kingdom	394 587 292

⁽¹⁾ The maximum amounts are calculated on the basis of averaging the three highest values of annual agricultural production of each Member State in the period 2012-2017. The calculation method ensures that all Member States are treated equally and that none of the national average values is less than the maximum amounts previously established for the period 2014-2020.

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ANNEX II

Maximum cumulative amounts of *de minimis* aid granted per Member State to undertakings active in the primary production of agricultural products referred to in Article 3(3a)

(EUR)

Member State	Maximum amounts of <i>de minimis</i> aid ⁽¹⁾
Belgium	127 523 650
Bulgaria	63 624 050
Czechia	74 238 900
Denmark	169 757 550
Germany	879 418 150
Estonia	13 650 450
Ireland	118 152 450
Greece	161 126 450
Spain	711 555 050
France	1 119 251 350
Croatia	34 705 150
Italy	840 502 950
Cyprus	10 721 750
Latvia	20 224 450
Lithuania	41 579 950
Luxembourg	6 568 900
Hungary	119 498 650
Malta	1 924 700
Netherlands	423 015 150
Austria	107 694 250
Poland	355 118 550
Portugal	105 084 700
Romania	258 537 100
Slovenia	18 628 400
Slovakia	35 936 600
Finland	66 832 750
Sweden	95 021 700
United Kingdom	473 504 750

⁽¹⁾ The maximum amounts are calculated on the basis of averaging the three highest values of annual agricultural production of each Member State in the period 2012-2017. The calculation method ensures that all Member States are treated equally and that none of the national average values is less than the maximum amounts previously established for the period 2014-2020.