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*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COMMISSION

**Invitation to submit comments on the draft Commission Regulation on the application of Articles
107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid**

(2013/C 229/01)

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

European Commission
Directorate-General for Competition
State aid Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

E-mail: stateaidgreffe@ec.europa.eu

Ref.: HT.3572 — SAM — *de minimis* review

The text is also available on the following website:

http://ec.europa.eu/competition/consultations/2013_second_de_minimis/index_en.html

DRAFT COMMISSION REGULATION (EU) No .../...**of 17 July 2013****on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union
to *de minimis* aid****(Text with EEA relevance)**

(2013/C 229/02)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

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⁾,

Having published a draft of this Regulation ⁽²⁾,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) State funding meeting the criteria in Article 107(1) of the Treaty on the Functioning of the European Union (the Treaty) constitutes State aid and requires notification to the Commission by virtue of Article 108(3) of the Treaty. However, according to Article 109 of the Treaty, the Council may determine categories of aid that are

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 229, 8.8.2013, p. 1.

exempted from this notification requirement. In accordance with Article 108(4) of the Treaty the Commission may adopt regulations relating to these categories of State aid. By virtue of Regulation (EC) No 994/98 the Council decided, in accordance with Article 109 of the Treaty, that *de minimis* aid could constitute one such category. On that basis, *de minimis* aid, being aid granted to the same undertaking over a given period of time that does not exceed a certain fixed amount, is deemed not to meet all the criteria laid down in Article 107(1) of the Treaty and is therefore not subject to the notification procedure.

(2) The Commission has, in numerous decisions, clarified the notion of aid within the meaning of Article 107(1) of the Treaty. The Commission has also stated its policy with regard to a *de minimis* ceiling, below which Article 107(1) of the Treaty can be considered not to apply, initially in its notice on the *de minimis* rule for State aid⁽¹⁾ and subsequently in Commission Regulation (EC) No 69/2001⁽²⁾ and Commission Regulation (EC) No 1998/2006⁽³⁾. In the light of the experience gained in applying Regulation (EC) No 1998/2006, it appears appropriate to revise some of the conditions laid down in that Regulation and to replace it.

(3) It is appropriate to maintain the ceiling of EUR 200 000 for the amount of *de minimis* aid that a single undertaking may receive per Member State over any period of 3 years. That ceiling remains necessary to ensure that any measure falling under this Regulation does not have any effect on trade between Member States and/or does not distort or threaten to distort competition.

(4) For the purposes of the rules on competition laid down in the Treaty an undertaking is any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed⁽⁴⁾. The Court of Justice has ruled that all entities which are controlled (on a legal or on a *de facto* basis) by the same entity should be considered as a single undertaking⁽⁵⁾. For the sake of legal certainty and to reduce the administrative burden, this Regulation should provide an exhaustive list of clear criteria for determining when two or more entities shall be considered as a single undertaking. The Commission

has selected from the well-established criteria for defining 'linked enterprises' in the definition of SME in Annex I to Regulation (EC) No 800/2008⁽⁶⁾ those criteria that are appropriate for the purpose of this Regulation. Those criteria are already familiar to public authorities and should be applicable, given the scope of this Regulation, to SMEs as well as large undertakings.

(5) In order to take account of the small average size of undertakings active in the road freight transport sector, it is appropriate to set the ceiling at EUR 100 000 for undertakings performing road freight transport for hire or reward. The provision of an integrated service where the actual transportation is only one element, such as moving services, postal or courier services or waste collection and processing services, should not be considered a transport service. In view of the overcapacity in the road freight transport sector and the objectives of transport policy as regards road congestion and freight transport aid for the acquisition of road freight transport vehicles by undertakings performing road freight transport for hire or reward should be excluded from the scope of application of this Regulation. In view of the development of the road passenger transport sector, it is no longer appropriate to apply a lower ceiling to this sector.

(6) In view of the special rules which apply in the sectors of primary production of agricultural products, fisheries and aquaculture and of the risk that amounts of aid below the ceiling laid down in this Regulation could nonetheless fulfil the criteria of Article 107(1) of the Treaty in those sectors, this Regulation should not apply to those sectors.

(7) Considering the similarities between the processing and marketing of agricultural products and of non-agricultural products, this Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met. Neither on-farm activities necessary for preparing a product for the first sale, such as harvesting, cutting and threshing of cereals, or packing of eggs, nor the first sale to resellers or processors should be considered as processing or marketing in this respect. The Court of Justice has established⁽⁷⁾ that, once the Union has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions

⁽¹⁾ OJ C 68, 6.3.1996, p. 9.

⁽²⁾ Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30).

⁽³⁾ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5).

⁽⁴⁾ Case C-222/04 *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze SpA et al.* [2006] ECR I-289.

⁽⁵⁾ Case C-382/99 *Netherlands v Commission* [2002] ECR I-5163.

⁽⁶⁾ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (OJ L 214, 9.8.2008, p. 3).

⁽⁷⁾ Case C-456/00 *France v Commission* [2002] ECR I-11949.

to it. For this reason, this Regulation should not apply to aid the amount of which is set on the basis of the price or quantity of products purchased or put on the market. Nor should it apply to support which is linked to an obligation to share the aid with primary producers.

(8) This Regulation should not apply to export aid 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 Member States or third 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.

(9) This Regulation should not apply to undertakings in difficulty since it is not appropriate to grant financial support to undertakings in difficulty outside of a restructuring plan. Furthermore, there are difficulties linked to determining the gross grant equivalent of aid granted to undertakings of this type. In order to provide legal certainty, it is appropriate to establish clear criteria that do not require an assessment of all the particular characteristics of the situation of an undertaking to determine whether an undertaking is considered to be in difficulty for the purposes of this Regulation.

(10) The period of 3 years to be taken into account for the purposes of this Regulation should be assessed on a rolling basis so that, for each new grant of *de minimis* aid, the total amount of *de minimis* aid granted in the fiscal year concerned as well as during the previous two fiscal years needs to be taken into account.

(11) Where undertakings are active in sectors excluded from the scope of this Regulation as well as in other sectors or activities, this Regulation should apply to those other sectors or activities provided that Member States ensure, by appropriate means such as separation of activities or distinction of costs, that the activities in the excluded sectors do not benefit from the *de minimis* aid. The same principle should apply where undertakings are active in sectors to which lower *de minimis* ceilings apply. If it cannot be ensured that the activities in sectors to which lower *de minimis* ceilings apply benefit from *de minimis* aid only up to those lower ceilings, the lowest ceiling should apply to all activities of the undertaking.

(12) This Regulation should lay down rules to ensure that it is not possible to circumvent maximum aid intensities laid

down in specific regulations or Commission decisions. It should also provide for clear rules on cumulation that are easy to apply.

(13) This Regulation does not exclude the possibility that a measure might be considered not to be State aid within the meaning of Article 107(1) of the Treaty on the basis of other grounds than those set out in this Regulation, for instance because the measure complies with the market economy operator principle or because the measure does not involve a transfer of State resources.

(14) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to *de minimis* aid for which it is possible to calculate precisely the gross grant equivalent *ex ante* without any need to undertake a risk assessment (transparent aid). Such a precise calculation can, for instance, be made for grants, interest rate subsidies, capped tax exemptions or other instruments that provide for a cap ensuring that the applicable ceiling is not exceeded. Providing for a cap means that as long as the precise amount of aid is not or not yet known, the Member State has to assume that the amount equals the cap in order to ensure that several aid measures together do not exceed the ceiling set out in this Regulation and to apply the rules on cumulation.

(15) For the purposes of transparency, equal treatment and the correct application of the *de minimis* ceiling, all Member States should apply the same method of calculation. In order to facilitate such calculation, aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. Calculation of the gross grant equivalent of transparent types of aid other than grants and of aid payable in several instalments requires the use of market rates prevailing at the time such aid is granted. With a view to uniform, transparent and simple application of the State aid rules, the market rates applicable for the purposes of this Regulation should be the reference rates, as set out in the Communication from the Commission on the revision of the method for setting the reference and discount rates⁽¹⁾.

(16) Aid comprised in loans should be considered transparent *de minimis* aid if the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time the aid is granted. In order to simplify the treatment of small loans of short duration, this Regulation should provide for a clear rule that is easy to apply and takes into account both the amount of the loan and its duration. Based on the Commission's experience, loans that are secured by collateral covering at least 50 % of the loan and that do not exceed either

⁽¹⁾ OJ C 14, 19.1.2008, p. 6.

EUR 1 000 000 and a duration of 5 years or EUR 500 000 and a duration of 10 years can be considered as having a gross grant equivalent equal to the *de minimis* ceiling.

- (17) Aid comprised in capital injections should not be considered as transparent *de minimis* aid, unless the total amount of the public injection does not exceed the *de minimis* ceiling. Aid comprised in risk finance measures taking the form of equity or quasi-equity investments, as referred to in (*the new guidelines on risk finance*), should not be considered as transparent *de minimis* aid unless the measure concerned provides capital not exceeding the *de minimis* ceiling to each target undertaking.
- (18) Aid comprised in guarantees should be considered as transparent if the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice for the type of undertaking concerned. For instance, for small and medium-sized enterprises, the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ⁽¹⁾ indicates levels of annual premium above which a State guarantee would be deemed not to constitute aid. In order to simplify the treatment of guarantees of short duration securing up to 80 % of a relatively small loan, this Regulation should provide for a clear rule that is easy to apply and takes into account both the amount of the underlying loan and the duration of the guarantee. This rule should not apply to guarantees on underlying transactions not constituting a loan, such as guarantees on equity transactions. Where the guarantee does not exceed 80 % of the underlying loan, the amount guaranteed does not exceed EUR 1 500 000 and the duration of the guarantee does not exceed 5 years the guarantee can be considered as having a gross grant equivalent equal to the *de minimis* ceiling. The same applies where the guarantee does not exceed 80 % of the underlying loan, the amount guaranteed does not exceed EUR 750 000 and the duration of the guarantee does not exceed 10 years.
- (19) Where the loan or guarantee is for a smaller amount or a shorter duration than those specified in recitals 16 and 18, the gross grant equivalent should be calculated by multiplying the ratio between the actual amount and the maximum amount indicated in recitals 16 and 18 by the ratio between the actual duration and 5 years by EUR 200 000. Thus, for instance, a loan of EUR 500 000 for 2,5 years would be deemed to have a gross grant equivalent of EUR 50 000.
- (20) Upon notification by a Member State, the Commission may examine whether a measure which does not consist

of a grant, loan, guarantee, capital injection or risk finance measure taking the form of an equity or quasi-equity investment leads to a gross grant equivalent that does not exceed the *de minimis* ceiling and could therefore fall within the scope of this Regulation.

- (21) The Commission has a duty to ensure that State aid rules are complied with and in accordance with the cooperation principle laid down in Article 4(3) of the Treaty on European Union, Member States should facilitate the fulfilment of this task by establishing the necessary tools in order to ensure that the total amount of *de minimis* aid granted to a single undertaking under the *de minimis* rule does not exceed the overall permissible ceiling.
- (22) Before granting any *de minimis* aid Member States should verify for their Member State that the *de minimis* ceiling will not be exceeded by the new *de minimis* aid and that the other conditions of this Regulation are complied with.
- (23) In order to ensure that Member States have accurate, reliable and complete data to ensure that by granting new *de minimis* aid the ceiling which applies in respect of the undertaking concerned is not exceeded, Member States should be required to set up a central register of *de minimis* aid containing information on all *de minimis* aid granted in accordance with this Regulation by any authority within that Member State. Member States should be free to design their register and decide on the appropriate mechanism to establish it in accordance with their constitutional and administrative structure provided they ensure that the register allows all public authorities in the Member State to check the amount of *de minimis* aid received by each undertaking. Member States should be given sufficient time to establish such a register.
- (24) Until a Member State has set up a central register and the register covers a period of 3 years, the Member State should inform the undertaking concerned of the amount of *de minimis* aid granted and of its *de minimis* character and should make express reference to this Regulation. In addition, before granting such aid the Member State concerned should obtain from the undertaking a declaration about other *de minimis* aid covered

⁽¹⁾ OJ C 155, 20.6.2008, p. 10.

by this Regulation or by other *de minimis* regulations received during the fiscal year concerned and the previous two fiscal years.

- (25) In order to allow the Commission to monitor the application of this Regulation and to identify potential distortions of competition, Member States should be required to provide basic information on the amounts granted in accordance with this Regulation on a yearly basis. If the Member State has informed the Commission where all data required in the reports are made publicly available, the Member State should not be required to provide a report to the Commission.
- (26) Having regard to the Commission's experience and in particular the frequency with which it is generally necessary to revise State aid policy, the period of application of this Regulation should be limited. If this Regulation were to expire without being extended, Member States should have an adjustment period of 6 months with regard to *de minimis* aid covered by this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation applies to aid granted to undertakings in all sectors, with the exception of:
- (a) aid granted to undertakings active in the fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000⁽¹⁾;
- (b) aid granted to undertakings active in the primary production of agricultural products;
- (c) aid granted to undertakings active in the processing and marketing of agricultural products, in the following cases:
- (i) when the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;
- (ii) when the aid is conditional on being partly or entirely passed on to primary producers;
- (d) 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;
- (e) aid contingent upon the use of domestic over imported goods;
- (f) aid granted to undertakings in difficulty as defined in Article 2(e).

⁽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).

2. Where an undertaking is active in the sectors referred to in points (a), (b) or (c) of paragraph 1 and in sectors which fall within the scope of this Regulation, this Regulation applies to aid granted in respect of the latter sectors or activities, provided that Member States ensure by appropriate means such as separation of activities or distinction of costs that the activities in the excluded sectors do not benefit from the *de minimis* aid granted in accordance with this Regulation.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'agricultural products' means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products listed in Annex I to Regulation (EU) No (not yet adopted; see Commission proposal COM(2011) 416) on the common organisation of the markets in fishery and aquaculture products;
- (b) 'processing of agricultural products' means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
- (c) 'marketing of agricultural products' means holding or displaying with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose;
- (d) 'a single undertaking' for the purpose of this Regulation means all entities which have at least one of the following relationships with each other:
- (i) one entity has a majority of the shareholders' or members' voting rights in another entity;
- (ii) one entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another entity;
- (iii) one entity has the right to exercise a dominant influence over another entity pursuant to a contract entered into with that entity or to a provision in its memorandum or articles of association;
- (iv) one entity, which is a shareholder in or member of another entity, controls alone, pursuant to an agreement with other shareholders in or members of that entity, a majority of shareholders' or members' voting rights in that entity;

(Entities having any of the relationships described above through one or more other entities are also considered to be a single undertaking).

(e) 'undertaking in difficulty' means an undertaking that fulfils at least one of the following conditions:

- (i) in the case of a limited liability company, more than half of its subscribed share capital has disappeared due to accumulated losses; this is the case when deducting accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative result that exceeds half of the subscribed share capital;
- (ii) in the case of a company in which at least some members have unlimited liability for the debt of the company, more than half of its capital as shown in the company accounts has disappeared due to accumulated losses;
- (iii) the undertaking is in collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors;
- (iv) the undertaking's book debt to equity ratio is greater than 7,5;
- (v) the undertaking's earnings before interest and taxes (EBIT) to interest coverage ratio has been below 1,0 for the past two years;
- (vi) the undertaking is rated the equivalent of CCC+ (payment capacity is dependent upon sustained favourable conditions) or below by at least one credit rating agency registered in accordance with Regulation (EC) No 1060/2009 ⁽¹⁾.

For the purposes of point (e) of the first subparagraph, a SME which has been in existence for less than 3 years shall not be considered to be in difficulty unless it meets the condition set out in point (iii) of that point.

Article 3

De minimis aid

1. Aid measures shall be deemed not to meet all the criteria of Article 107(1) of the Treaty, and shall therefore be exempt from the notification requirement of Article 108(3) of the Treaty, if they fulfil the conditions laid down in paragraphs 2 to 8 of this Article and in Articles 4 and 5.

2. The total amount of *de minimis* aid granted per Member State to a single undertaking as defined in Article 2(d) shall not exceed EUR 200 000 over any period of 3 fiscal years.

The total amount of *de minimis* aid granted per Member State to a single undertaking as defined in Article 2(d) performing road freight transport for hire or reward shall not exceed EUR 100 000 over any period of 3 fiscal years. *De minimis* aid shall not be used for the acquisition of road freight transport vehicles.

3. If an undertaking performs road freight transport for hire or reward as well as other activities to which the ceiling of EUR 200 000 applies, the ceiling of EUR 200 000 shall apply to the undertaking, provided that Member States ensure by appropriate means such as separation of activities or distinction of costs that the benefit to the road freight transport activity does not exceed EUR 100 000 and that no *de minimis* aid is used for the acquisition of road freight transport vehicles.

4. *De minimis* aid is granted at the moment the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime.

5. The ceilings laid down in paragraph 2 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. The ceilings laid down in paragraph 2 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 awarded 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* ceiling laid down in paragraph 2 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 ceiling, without calling into question *de minimis* aid lawfully granted before the merger or acquisition.

⁽¹⁾ Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

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.

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). In particular the aid measures referred to in paragraphs 2 to 6 shall be considered as transparent aid.

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

(a) the loan is secured by collateral covering at least 50 % of the loan and the loan does not exceed either EUR 1 000 000 (or EUR 500 000 for undertakings performing road freight transport) and a duration of 5 years or EUR 500 000 (or EUR 250 000 for undertakings performing road freight transport) and a duration of 10 years. If a loan is for less than those amounts and/or is granted for a period of less than 5 or 10 years respectively, the gross grant equivalent of that loan shall be calculated as a corresponding proportion of the applicable ceiling laid down in Article 3(2); or

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

3. 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 *de minimis* ceiling.

4. Aid comprised in risk finance measures taking the form of equity or quasi-equity investments shall as regards the target undertaking only be considered as transparent *de minimis* aid if the measure concerned provides capital not exceeding the *de minimis* ceiling to each target undertaking.

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

(a) the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed does not exceed EUR 1 500 000 (or EUR 750 000 for undertakings performing road freight transport) and the duration of the

guarantee does not exceed 5 years or the amount guaranteed does not exceed EUR 750 000 (or EUR 375 000 for undertakings performing road freight transport) and the duration of the guarantee does not exceed 10 years. If the amount guaranteed is lower than these amounts and/or the guarantee is for a period of less than 5 or 10 years respectively, the gross grant equivalent of that guarantee shall be calculated as a corresponding proportion of the applicable ceiling laid down in Article 3(2); or

(b) the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice ⁽¹⁾; or

(c) before being implemented, the methodology to calculate the gross grant equivalent of the guarantee has been accepted following notification of this methodology to the Commission under any regulation adopted by the Commission in the State aid area applicable at the time, and the approved methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation.

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

Article 5

Cumulation

1. *De minimis* aid granted in accordance with this Regulation may be cumulated with *de minimis* aid granted in accordance with Commission Regulation (EU) No 360/2012 ⁽²⁾ up to the ceilings laid down in that Regulation. It may be cumulated with *de minimis* aid granted in accordance with other *de minimis* regulations up to the ceiling laid down in Article 3(2).

2. *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 aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or decision adopted by the Commission.

Article 6

Monitoring and reporting

1. Member States shall set up a central register of *de minimis* aid by 31 December 2015. The central register shall contain information on each beneficiary (including whether it is a small, medium-sized or large enterprise and the economic sector

⁽¹⁾ Currently, Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).

⁽²⁾ Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

(NACE code at Division level ⁽¹⁾) of its main activity), the date of granting and the gross grant equivalent of each *de minimis* aid measure granted in accordance with this Regulation by any authority within that Member State. The register shall include all *de minimis* measures granted in accordance with this Regulation from 1 January 2016 onwards.

2. Paragraph 3 shall apply until a Member State has set up a central register and the register covers a period of 3 years.

3. 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 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 met. 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 two fiscal years and the current fiscal year.

4. 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 ceilings laid down in Article 3(2) and that all the conditions of Articles 1 to 5 are complied with.

5. 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 years from the date on which the last individual aid was granted under such a scheme. 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 in accordance with this Regulation and with other *de minimis* regulations received by any undertaking.

6. Member States shall report to the Commission on the application of this Regulation on a yearly basis. The reports shall include:

- (a) the total amount of *de minimis* aid granted in the Member State concerned in accordance with this Regulation during the previous calendar year, broken down by economic sector and by size (small, medium-sized or large enterprise) of the beneficiaries;
- (b) the total number of beneficiaries of *de minimis* aid granted in the Member State concerned in accordance with this Regulation during the previous calendar year, broken down by economic sector and by size (small, medium-sized or large enterprise) of the beneficiaries;
- (c) any other information concerning the application of this Regulation required by the Commission and specified in due time before the report is submitted.

The first report shall be submitted by 30 June 2017 and shall cover the calendar year 2016. If all data required in the reports are made publicly available by the Member State, the Member State shall not be required to provide a report to the Commission. Each year, the Commission shall publish a synthesis of the information contained in the annual reports, including the total amount of *de minimis* aid granted by each Member State in accordance with this Regulation.

Article 7

Transitional provisions

1. Any individual *de minimis* aid which was granted between 2 February 2001 and 30 June 2007 and fulfils the conditions of Regulation (EC) No 69/2001 shall be deemed not to meet all the criteria of Article 107(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 108(3) of the Treaty.

2. Any individual *de minimis* aid which is granted between 1 January 2007 and 30 June 2014 and fulfils the conditions of Regulation (EC) No 1998/2006 shall be deemed not to meet all the criteria of Article 107(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 108(3) of the Treaty.

3. At the end of the period of validity of this Regulation, any *de minimis* aid which fulfils the conditions of this Regulation may be validly implemented for a further period of 6 months.

⁽¹⁾ In accordance with Article 2(1)(b) and Annex I of Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains Text with EEA relevance (OJ L 393, 30.12.2006, p. 1),

*Article 8***Entry into force and period of validity**

This Regulation shall enter into force on 1 January 2014 and shall apply from 1 January 2014 until 31 December 2020.

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

Done at Brussels, 17 July 2013.

For the Commission

The President

[...] [...]
