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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

(Text with EEA relevance)

(OJ L 114, 26.4.2012, p. 8)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Commission Regulation (EU) 2018/1923 of 7 December 2018	L 313	2	10.12.2018
► <u>M2</u>	Commission Regulation (EU) 2020/1474 of 13 October 2020	L 337	1	14.10.2020
► <u>M3</u>	Commission Regulation (EU) 2023/2391 of 4 October 2023	L 2391	1	5.10.2023

▼B**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****(Text with EEA relevance)***Article 1***Scope and definitions**

1. This Regulation applies to aid granted to undertakings providing a service of general economic interest within the meaning of Article 106(2) of the Treaty.

2. This Regulation does not apply to:

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(a) aid granted to undertakings active in the primary production of fishery and aquaculture products;

(aa) aid granted to undertakings active in the processing and marketing of fishery and aquaculture products, where the amount of the aid is fixed on the basis of price or quantity of products purchased or put on the market;

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(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 active in the coal sector, as defined in Council Decision 2010/787/EU ⁽¹⁾;

(g) aid granted to undertakings performing road freight transport for hire or reward;

(h) aid granted to undertakings in difficulty.

⁽¹⁾ OJ L 336, 21.12.2010, p. 24.

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If undertakings are active in the sectors referred to in points (a), (aa), (b), (c) or (g) of the first subparagraph as well as in sectors not excluded from the scope of application of this Regulation, this Regulation applies only to aid granted in respect of 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 under this Regulation.

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2a. By derogation from point (h) of paragraph 2, this Regulation shall apply to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021.

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3. For the purposes of this Regulation:

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(a) ‘agricultural products’ means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products;

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(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 display 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;

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(d) ‘fishery and aquaculture products’ means the products defined in Article 5, points (a) and (b), of Regulation (EU) No 1379/2013 of the European Parliament of the Council ⁽¹⁾;

⁽¹⁾ Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

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- (e) ‘primary production of fishery and aquaculture products’ means all operations relating to the fishing, rearing or cultivation of aquatic organisms, as well as on-farm or on-board activities necessary for preparing an animal or plant for the first sale, including cutting, filleting or freezing, and the first sale to resellers or processors;
- (f) ‘processing and marketing of fishery and aquaculture products’ means all operations, including handling, treatment and transformation, performed following the time of landing – or harvesting in case of aquaculture – that result in a processed product, as well as distribution thereof.

▼B*Article 2****De minimis aid***

1. Aid granted to undertakings for the provision of a service of general economic interest 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 it fulfils the conditions laid down in paragraphs 2 to 8 of this Article.

2. The total amount of *de minimis* aid granted to any one undertaking providing services of general economic interest shall not exceed EUR 500 000 over any period of three fiscal years.

This ceiling shall apply irrespective of the form of the *de minimis* aid and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin. The period shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

3. The ceiling 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 charges. 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 of it being granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time of grant.

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4. 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 need to undertake a risk assessment ('transparent aid'). In particular:

- (a) aid comprised in loans shall be considered as transparent *de minimis* aid when the gross grant equivalent has been calculated on the basis of the reference rate applicable at the time of the grant;
- (b) aid comprised in capital injections shall not be considered as transparent *de minimis* aid, unless the total amount of the public injection does not exceed the *de minimis* ceiling;
- (c) aid comprised in risk capital measures shall not be considered as transparent *de minimis* aid, unless the risk capital scheme concerned provides capital only up to the *de minimis* ceiling to each target undertaking;
- (d) individual aid provided under a guarantee scheme to undertakings which are not undertakings in difficulty shall be treated as transparent *de minimis* aid when the guaranteed part of the underlying loan provided under such scheme does not exceed EUR 3 750 000 per undertaking. If the guaranteed part of the underlying loan only accounts for a given proportion of this ceiling, the gross grant equivalent of that guarantee shall be deemed to correspond to the same proportion of the ceiling laid down in paragraph 2. The guarantee shall not exceed 80 % of the underlying loan. Guarantee schemes shall also be considered as transparent if:
 - (i) before the implementation of the scheme, the methodology to calculate the gross grant equivalent of the guarantees has been accepted following notification of this methodology to the Commission under a regulation adopted by the Commission in the State aid area, and
 - (ii) 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.

5. Where the overall amount of *de minimis* aid under this Regulation granted to an undertaking for the provision of services of general economic interest exceeds the ceiling laid down in paragraph 2, that amount may not benefit from this Regulation, even for a fraction not exceeding that ceiling. In such a case, the benefit of this Regulation may not be claimed for this aid measure.

6. *De minimis* aid under this Regulation shall not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that stipulated in the specific circumstances of each case by a block exemption regulation or decision adopted by the Commission.

7. *De minimis* aid under this Regulation may be cumulated with *de minimis* aid under other *de minimis* regulations up to the ceiling laid down in paragraph 2.

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8. *De minimis* aid under this Regulation shall not be cumulated with any compensation in respect of the same service of general economic interest, regardless of whether or not it constitutes State aid.

*Article 3***Monitoring**

1. Where a Member State intends to grant *de minimis* aid under this Regulation to an undertaking, it shall inform that undertaking in writing of the prospective amount of the aid expressed as gross grant equivalent, of the service of general economic interest in respect of which it is granted and of the *de minimis* character of the aid, 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 under this Regulation is granted 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 2(2) is met. Prior to granting the aid, the Member State shall also obtain a declaration from the undertaking providing the service of general economic interest, in written or electronic form, about any other *de minimis* aid received under this Regulation or under other *de minimis* regulations during the previous two fiscal years and the current fiscal year.

The Member State shall grant the new *de minimis* aid under 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 ceiling laid down in Article 2(2) and that the cumulation rules in Article 2(6), (7) and (8) are complied with.

2. Where a Member State has set up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted to undertakings providing services of general economic interest by any authority within that Member State, the first subparagraph of paragraph 1 shall cease to apply from the moment the register covers a period of three years.

3. 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

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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 under this Regulation and under other *de minimis* regulations received by any undertaking.

*Article 4***Transitional provisions**

This Regulation shall apply to *de minimis* aid granted for the provision of services of general economic interest before its entry into force, provided that such aid fulfils the conditions laid down in Articles 1 and 2. Any aid for the provision of services of general economic interest which does not fulfil those conditions shall be assessed in accordance with the relevant decisions, frameworks, guidelines, communications and notices.

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 six months.

*Article 5***Entry into force and period of validity**

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

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It shall apply until 31 December 2023.

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