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COMMISSION REGULATION (EU) 2023/2391

of 4 October 2023

amending Regulations (EU) No 717/2014, (EU) No 1407/2013, (EU) No 1408/2013 and (EU) No 360/2012 as regards *de minimis* aid for the processing and marketing of fishery and aquaculture products, and Regulation (EU) No 717/2014 as regards the total amount of *de minimis* aid granted to a single undertaking, its period of application and other matters

(Text with EEA relevance)

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 (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid ⁽¹⁾, and in particular Article 2(1) thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) In 2019, the Commission launched an evaluation of the performance of the sectoral instruments applicable to State aid in the fishery and aquaculture sector since their adoption in 2014-2015, including Commission Regulation (EU) No 717/2014 ⁽²⁾, with a view to amending or replacing them for the period 2021-2027. The results of that evaluation have shown that Regulation (EU) No 717/2014 remains a relevant, efficient and effective tool ⁽³⁾ for *de minimis* aid in the fishery and aquaculture sector.
- (2) In the context of that evaluation and also to ensure that the Member States could continue granting small amounts of aid pending the adoption, at the time, of Regulation (EU) 2021/1139 of the European Parliament and of the Council ⁽⁴⁾, Commission Regulation (EU) 2020/2008 ⁽⁵⁾ extended the period of application of Regulation (EU) No 717/2014 until 31 December 2022.
- (3) Following the consultation of the Advisory Committee on State aid, and in the light of the submissions received in the context of the public consultation of stakeholders regarding the revision of the instruments applicable to State aid in the fishery and aquaculture sector, Commission Regulation (EU) 2022/2514 ⁽⁶⁾ extended the period of application of Regulation (EU) No 717/2014 until 31 December 2023 to allow the Commission to finalise its position on the matter and to ensure that the Member States could continue granting small amounts of aid in accordance with Regulation (EU) No 717/2014.

⁽¹⁾ OJ L 248, 24.9.2015, p. 1.

⁽²⁾ Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

⁽³⁾ Commission Staff Working Document of 14 December 2022, Impact Assessment Report accompanying Communication from the Commission – Guidelines for the examination of State aid to the fishery and aquaculture sector, Commission Regulation (EU) .../... of XXX declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union and Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (SWD(2022) 408 final).

⁽⁴⁾ Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (OJ L 247, 13.7.2021, p. 1).

⁽⁵⁾ Commission Regulation (EU) 2020/2008 of 8 December 2020 amending Regulations (EU) No 702/2014, (EU) No 717/2014 and (EU) No 1388/2014, as regards their period of application and other relevant adjustments (OJ L 414, 9.12.2020, p. 15).

⁽⁶⁾ Commission Regulation (EU) 2022/2514 of 14 December 2022 amending Regulation (EU) No 717/2014 as regards its period of application (OJ L 326, 21.12.2022, p. 8).

- (4) Regulation (EU) No 717/2014 currently applies to aid granted to undertakings in the fishery and aquaculture sector, including undertakings active in the processing and marketing of fishery and aquaculture products, whereas Commission Regulation (EU) No 1408/2013 ⁽⁷⁾ applies only to undertakings active in the primary production of agricultural products. Consequently, undertakings active in the processing and marketing of fishery and aquaculture products are subject to the same individual ceiling laid down by Regulation (EU) No 717/2014 for undertakings active in the primary production of fishery and aquaculture products. However, undertakings active in the processing and marketing of agricultural products are subject to the higher individual ceiling laid down by Commission Regulation (EU) No 1407/2013 ⁽⁸⁾.
- (5) The differential treatment of processing and marketing of products originating from different food chains can ultimately risk distorting dynamics in the food sector. Considering the nature of the activities in the processing and marketing of fishery and aquaculture products, and the similarities with other processing and marketing activities, Regulation (EU) No 1407/2013 should apply to undertakings active in the processing and marketing of fishery and aquaculture products, provided that certain conditions are met. For that purpose, neither on-farm or on-board activities necessary for preparing an animal or plant for the first sale, including cutting, filleting or freezing, nor the first sale to resellers or processors should be considered as processing or marketing.
- (6) Regulations (EU) No 717/2014 and (EU) No 1407/2013 should therefore be amended to allow undertakings active in the processing and marketing of fishery and aquaculture products to benefit from *de minimis* aid under Regulation (EU) No 1407/2013. In order to ensure consistency across *de minimis* regulations, Commission Regulation (EU) No 360/2012 ⁽⁹⁾ should also follow the same approach regarding the treatment of processing and marketing of fishery and aquaculture products. For the purposes of such alignment, Regulation (EU) No 1408/2013 should also be amended.
- (7) In its Annex, Regulation (EU) No 717/2014 currently sets out maximum cumulative amounts of *de minimis* aid that can be granted per Member State to all undertakings over any period of three fiscal years, pursuant to Article 3(3) of that Regulation. Those maximum cumulative amounts represent 2,5 % of an annual fisheries turnover encompassing catching, processing and aquaculture activities. In light of the amendments necessary to Regulations (EU) No 717/2014, (EU) No 1407/2013, (EU) No 1408/2013 and (EU) No 360/2012, those maximum cumulative amounts should be revised to exclude processing activities. In addition, it is necessary to update the turnover related to catching and aquaculture activities based on more recent sectoral data. In particular, the maximum cumulative amounts should be based on a three-year average of the annual turnover of catching and aquaculture activities in each Member State, obtained by excluding the highest and lowest entries across the five-year period from 2014 to 2018. To ensure continuity in the planning and distribution of *de minimis* aid to the primary production of fishery and aquaculture products and a sufficient margin for action for all Member States, the Commission considers that no Member State should lose more than 60 % of the maximum cumulative amount previously set out in the Annex to Regulation (EU) No 717/2014.
- (8) Taking into account the increased need to use *de minimis* aid, it is appropriate to increase the individual ceiling, that is to say the maximum aid amount per single undertaking, set out in Regulation (EU) No 717/2014. In the light of the circumstances of the fishery and aquaculture sector, such an increase calls for a closer monitoring of the aid granted, therefore, Member States that opt for such higher individual ceiling should be required to use a central register in order to keep a record of all *de minimis* aid granted and to verify that neither the individual ceiling, nor the national cap, are exceeded.

⁽⁷⁾ 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).

⁽⁸⁾ Commission Regulation (EU) No 1407/2013 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 (OJ L 352, 24.12.2013, p. 1).

⁽⁹⁾ 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).

- (9) The criteria for calculating the gross grant equivalent for loans and guarantees pursuant to Regulation (EU) No 717/2014 should be adjusted according to the increased *de minimis* ceiling.
- (10) Taking into account the situation of fishing fleets in the outermost regions referred to in Article 349 of the Treaty, certain operations falling outside the scope of Regulation (EU) No 717/2014 should exceptionally be included for such outermost regions only. Vessels of an overall length of less than 12 metres represent a substantial proportion of fishing fleets in outermost regions, and operations aiming at modernising such vessels are appropriate to address safety concerns due in particular to the obsolescence of fleets as well as high exposure to extreme weather events. Due to the remoteness, small size and artisanal nature of fishing activities in these regions, and considering that *de minimis* aid for such operations is subject to the *de minimis* ceilings and national caps set out in Regulation (EU) No 717/2014, such aid remains below a level capable of affecting competition and trade in the internal market.
- (11) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the 'Withdrawal Agreement'), of which the Protocol on Ireland/Northern Ireland (the 'Protocol') forms an integral part, entered into force on 1 February 2020.
- (12) Article 126 of the Withdrawal Agreement provides for a transition period ending on 31 December 2020, after which Union law is no longer applicable to the United Kingdom of Great Britain and Northern Ireland.
- (13) However, Article 10 of the Protocol provides that certain provisions of Union law, listed in Annex 5 to that Protocol and which include Regulation (EU) No 717/2014, are to apply to the United Kingdom in respect of measures affecting the trade in agricultural products between Northern Ireland and the Union.
- (14) In order to ensure compliance with the provisions of the Withdrawal Agreement and the Protocol, it is necessary to replace the maximum cumulative amount for the entire United Kingdom set out in the Annex to Regulation (EU) No 717/2014 with the corresponding amount for Northern Ireland alone.
- (15) In order to ensure a level playing field, the maximum cumulative amount for Northern Ireland should be based on the same calculation method used for the Member States.
- (16) To ensure continuity and legal certainty and to align Regulation (EU) No 717/2014 with the legal framework applicable in the fishery and aquaculture sector, notably Commission Regulation (EU) 2022/2473 ⁽¹⁰⁾, it is appropriate to extend its period of application until 31 December 2029.
- (17) Regulations (EU) No 717/2014, (EU) No 1407/2013, (EU) No 1408/2013 and (EU) No 360/2012 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 717/2014

Regulation (EU) No 717/2014 is amended as follows:

- (1) Article 1 is replaced by the following:

⁽¹⁰⁾ Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 82).

*Article 1***Scope**

1. This Regulation applies to aid granted to undertakings active in the primary production of fishery and aquaculture products, with the following exceptions:

- (a) aid the amount of which is fixed on the basis of price or quantity of products purchased or put on the market;
- (b) aid granted 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;
- (d) aid for the purchase of fishing vessels;
- (e) aid for the modernisation or replacement of main or ancillary engines of fishing vessels;
- (f) aid to operations increasing the fishing capacity of a fishing vessel or equipment increasing the ability of a fishing vessel to find fish;
- (g) aid for the construction of new fishing vessels or importation of fishing vessels;
- (h) aid to the permanent or temporary cessation of fishing activities with the exception of aid that meets the conditions laid down in Articles 20 and 21 of Regulation (EU) 2021/1139 of the European Parliament and of the Council (*);
- (i) aid to exploratory fishing;
- (j) aid to the transfer of ownership of a business;
- (k) aid to direct restocking, unless explicitly provided for as a conservation measure by a Union legal act or in the case of experimental restocking.

2. Where an undertaking is active in the primary production of fishery and aquaculture products and is also active in one or more of the sectors or has other activities falling within the scope of Commission Regulation (EU) No 1407/2013 (**) that Regulation shall apply to aid granted in respect of the latter sector or 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 fishery and aquaculture products does not benefit from the *de minimis* aid granted in accordance with that Regulation.

3. Where an undertaking is active in the primary production of fishery and aquaculture products as well as in the primary production of agricultural products falling within the scope of Commission Regulation (EU) No 1408/2013 (***), this Regulation shall apply to aid granted in respect of the former 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 this Regulation.

4. For the purposes of the application of this Regulation, points (d) to (g) of paragraph 1 shall not apply to undertakings located in the Union's outermost regions referred to in Article 349 of the Treaty in respect of vessels of an overall length of less than 12 metres.

(*) Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (OJ L 247, 13.7.2021, p. 1).

(**) Commission Regulation (EU) No 1407/2013 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 (OJ L 352, 24.12.2013, p. 1).

(***) 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 agriculture sector (OJ L 352, 24.12.2013, p. 9).;

(2) Article 2(1) is amended as follows:

(a) points (a), (b) and (c) are replaced by the following:

- ‘(a) “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 and of the Council (*);
- (b) “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;
- (c) “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.

(*) 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).’;

(b) the following point (d) is added:

‘(d) “undertakings located in the Union’s outermost regions referred to in Article 349 of the Treaty” means undertakings that have their main place of registration in an outermost region referred to in Article 349 of the Treaty and are active in that region.’;

(3) Article 3 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The total amount of *de minimis* aid granted per Member State to a single undertaking shall not exceed EUR 30 000 over any period of three fiscal years.’;

(b) the following paragraph 2a is inserted:

‘2a. By way of derogation from paragraph 2, a Member State may decide that the total amount of *de minimis* aid granted to a single undertaking shall not exceed EUR 40 000 over any period of three fiscal years, provided that the Member State has in place a national central register in accordance with Article 6(2).’;

(c) paragraph 3 is replaced by the following:

‘3. The cumulative amount of *de minimis* aid granted per Member State to undertakings active in the primary production of fishery and aquaculture products over any period of three fiscal years shall not exceed the national cap set out in the Annex.’;

(d) paragraphs 5 to 8 are replaced by the following:

‘5. The *de minimis* ceilings laid down in paragraphs 2 and 2a and the national cap set out in the Annex shall apply irrespective of the form of the *de minimis* aid or the objective pursued by it and irrespective of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin. The period of three 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 laid down in paragraphs 2 and 2a and the national cap set out in the Annex, aid shall be expressed as a cash grant. All figures used shall be gross, that is to say 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 laid down in paragraphs 2 and 2a or the national cap set out in the Annex would be exceeded by the grant of new *de minimis* aid, that new aid shall not 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* ceiling or the national cap. *De minimis* aid lawfully granted before the merger or acquisition shall remain lawful.;

(4) Article 4 is amended as follows:

(a) in paragraph 3, point (b) is replaced by the following:

‘(b) for measures in accordance with Article 3(2), the loan is secured by collateral covering at least 50 % of the loan and the loan amounts to either EUR 150 000 over 5 years or EUR 75 000 over 10 years, or, for measures in accordance with Article 3(2a), the loan is secured by collateral covering at least 50 % of the loan and the loan amounts to either EUR 200 000 over 5 years or EUR 100 000 over 10 years; if a loan is for less than those amounts 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 *de minimis* ceilings laid down in Article 3(2) or (2a); or’;

(b) paragraphs 4 and 5 are replaced by the following:

‘4. Aid comprised of 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 of 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.’;

(c) in paragraph 6, point (b) is replaced by the following:

‘(b) for measures in accordance with Article 3(2), the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed does not exceed EUR 225 000 and the duration of the guarantee is 5 years or the amount guaranteed does not exceed EUR 112 500 and the duration of the guarantee is 10 years, or, for measures in accordance with Article 3(2a), the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed does not exceed EUR 300 000 and the duration of the guarantee is 5 years or the amount guaranteed does not exceed EUR 150 000 and the duration of the guarantee is 10 years; if the amount guaranteed is lower than those amounts 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 *de minimis* ceilings laid down in Article 3(2) or (2a); or’;

(5) in Article 5, paragraphs 1 and 2 are replaced by the following:

‘1. Where an undertaking is active in the primary production of fishery and aquaculture 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 primary production of fishery and aquaculture products in accordance with this Regulation may be cumulated with *de minimis* aid granted in respect of the latter sector or sectors 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 fishery and aquaculture products does not benefit from *de minimis* aid granted in accordance with Regulation (EU) No 1407/2013.

2. Where an undertaking is active in the primary production of fishery and aquaculture products as well as in the primary production of agricultural products, *de minimis* aid granted in accordance with Regulation (EU) No 1408/2013 may be cumulated with *de minimis* aid in the primary production of fishery and aquaculture products in accordance with this Regulation up to the relevant ceiling laid down in this 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 this Regulation.’;

(6) Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘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 written or electronic form, 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. The fixed sum shall be used for determining whether the relevant *de minimis* ceiling is reached and the national cap set out in the Annex 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 two fiscal years and the current fiscal year.’;

(b) in paragraph 2, the following second subparagraph is added:

‘Where a Member State grants aid in accordance with Article 3(2a), 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 three fiscal years.’;

(c) paragraph 3 is replaced by the following:

‘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 *de minimis* ceilings laid down in Article 3(2) and (2a) and the national cap set out in the Annex and that all the conditions laid down in this Regulation are complied with.’;

(7) in Article 8, the second paragraph is replaced by the following:

‘It shall apply until 31 December 2029.’;

(8) the Annex is replaced by the text in the Annex to this Regulation.

Article 2

Amendments to Regulation (EU) No 1407/2013

Regulation (EU) No 1407/2013 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

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

(ii) the following point (aa) is inserted:

‘(aa) aid granted to undertakings active in the sector of 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’;

(b) paragraph 2 is replaced by the following:

‘2. Where an undertaking is active in the sectors referred to in paragraph 1, points (a), (aa), (b) or (c), and is also active in one or more of the sectors or has other activities falling within the scope of this Regulation, this 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 activities in the sectors excluded from the scope of this Regulation do not benefit from the *de minimis* aid granted in accordance with this Regulation.’;

(2) Article 2(1) is amended as follows:

(a) point (a) is replaced by the following:

‘(a) “agricultural products” means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products covered by Regulation (EU) No 1379/2013 of the European Parliament of the Council (*);

(*) 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).’;

(b) the following points (d), (e) and (f) are added:

‘(d) “fishery and aquaculture products” means the products defined in Article 5, points (a) and (b), of Regulation (EU) No 1379/2013;

(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.’.

Article 3

Amendments to Regulation (EU) No 1408/2013

Regulation (EU) No 1408/2013 is amended as follows:

(1) in Article 1, paragraph 3 is replaced by the following:

‘3. Where an undertaking is active in the primary production of agricultural products as well as in the primary production of fishery and aquaculture products, Commission Regulation (EU) No 717/2014 (*) 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.

(*) Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190 28.6.2014, p. 45).’;

(2) in Article 2, paragraph 1 is replaced by the following:

‘1. For the purposes of this Regulation the following definitions apply:

(a) “agricultural products” means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council (*);

(b) “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.

(*) 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).’;

(3) in Article 5, paragraph 2 is replaced by the following:

‘2. Where an undertaking is active in the primary production of agricultural products as well as in the primary production of fishery and aquaculture products, *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 granted in accordance with Regulation (EU) No 717/2014 up to the relevant 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 (EU) No 717/2014.’;

(4) in Article 6, paragraph 1 is replaced by the following:

‘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 written or electronic form, 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 relevant *de minimis* ceiling is reached and the relevant national and sector caps are 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.’.

Article 4

Amendments to Regulation (EU) No 360/2012

Regulation (EU) No 360/2012 is amended as follows:

(1) Article 1(2) is amended as follows:

(a) point (a) is replaced by the following:

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

(b) the following point (aa) is inserted:

‘(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’;

(c) the second subparagraph is replaced by the following:

‘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.’;

(2) Article 1(3) is amended as follows:

(a) point (a) is replaced by the following:

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

(b) the following points (d), (e) and (f) are added:

‘(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 (*);

- (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.

(*) 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).’

Article 5

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

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

Done at Brussels, 4 October 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

National cap referred to in Article 3(3)

(EUR)

Member State	Maximum cumulative amounts of <i>de minimis</i> aid granted per Member State to undertakings active in the primary production of fishery and aquaculture products ⁽¹⁾
Belgium	4 496 000
Bulgaria	760 118
Czechia	1 208 000
Denmark	20 688 000
Germany	22 208 000
Estonia	1 572 000
Ireland	11 969 529
Greece	25 343 906
Spain	66 336 000
France	56 551 178
Croatia	6 372 370
Italy	38 524 000
Cyprus	1 324 372
Latvia	1 780 000
Lithuania	3 328 000
Luxembourg	0
Hungary	846 353
Malta	4 234 963
Netherlands	13 633 923
Austria	613 703
Poland	16 532 000
Portugal	11 786 313
Romania	1 443 731
Slovenia	396 000
Slovakia	344 000
Finland	3 149 148
Sweden	7 544 000
United Kingdom as regards Northern Ireland	1 206 336

⁽¹⁾ The maximum cumulative amounts of *de minimis* aid are based on a three-year average of the annual turnover of catching and aquaculture activities in each Member State, obtained by excluding the highest and lowest entries across the five-year period from 2014 to 2018. To ensure continuity in the planning and distribution of *de minimis* aid to the primary production of fishery and aquaculture products and a sufficient scope of action for all Member States, the Commission considers that no Member State is to lose more than 60 % of the maximum cumulative amount previously established by this Regulation.