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ANNEX

ANNEX

to the

COMMUNICATION FROM THE COMMISSION

**Approval of the content of a draft for a Commission Regulation on the application of
Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de
minimis* aid**

ANNEX

COMMISSION REGULATION (EU) No .../..

of XXX

on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid

DRAFT

(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 aid¹, and in particular Article 2(1) thereof,

After consulting the Advisory Committee on State Aid,

Whereas:

- (1) State funding meeting the criteria set out in Article 107(1) of the Treaty constitutes State aid and requires notification to the Commission pursuant to Article 108(3) of the Treaty. However, pursuant to Article 109 of the Treaty, the Council may determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) of the Treaty, the Commission may adopt regulations on those categories of State aid. Under Regulation (EU) 2015/1588², the Council decided, in accordance with Article 109 of the Treaty, that *de minimis* aid (i.e. aid granted to a single undertaking over a period of time that does not exceed a certain fixed amount) could constitute one such category. On that basis, *de minimis* aid 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 on a *de minimis* ceiling below which Article 107(1) of the Treaty can be considered not to apply. It has done so initially in its notice on the *de minimis* rule for State aid³ and

¹ OJ L 248, 24.9.2015, p. 1.

² 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 (OJ L 248, 24.9.2015, p. 1).

³ Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996, p. 9).

subsequently in Commission Regulations (EC) No 69/2001⁴, (EC) No 1998/2006⁵ and (EU) No 1407/2013⁶. In the light of the experience gained in applying Regulation (EU) No 1407/2013, it is appropriate to revise some of the conditions laid down in that Regulation.

- (3) It is appropriate to increase the ceiling of *de minimis* aid, which a single undertaking may receive per Member State over any period of 3 years, to EUR 275 000. That ceiling reflects the inflation that took place since the entry into force of Regulation (EU) No 1407/2013 and the likely estimated developments during the period of validity of this Regulation. That ceiling is necessary to ensure that any measure falling under this Regulation can be deemed not to have any effect on trade between Member States and not to 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, be it a natural or a legal person, engaged in an economic activity, regardless of its legal status and the way in which it is financed⁷. The Court of Justice of the European Union has clarified that an entity ‘owning controlling shareholdings in a company’ and which ‘actually exercises that control by involving itself directly or indirectly in the management thereof’ must be considered as taking part in the economic activity of that company. Therefore, the entity itself must be regarded as an undertaking within the meaning of Article 107(1) TFEU⁸. The Court of Justice of the European Union has ruled that all entities that are controlled (on a legal or on a *de facto* basis) by the same entity should be considered as a single undertaking⁹. For the sake of legal certainty and to reduce the administrative burden, this Regulation should provide a clear and exhaustive list of criteria for determining when two or more enterprises in the same Member State are to be considered as a single undertaking. The Commission has selected criteria that are appropriate for the purposes of this Regulation from the well-established criteria for defining ‘linked enterprises’ as part of the definition of small or medium-sized enterprises (SMEs) in Commission Recommendation 2003/361/EC¹⁰ and in Annex I to Commission Regulation (EU) No 651/2014¹¹. Those criteria should be applicable, given the scope of this Regulation, to both SMEs and large undertakings and should ensure that a group of linked enterprises is considered as one single undertaking for the application of the *de minimis* rule. However, enterprises that have no relationship with each other, except for the fact that each of them has a direct link to the same public body or bodies, are not treated as being linked to each other. The specific situation of enterprises

⁴ 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).

⁵ 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).

⁶ 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).

⁷ Judgment of the Court of Justice of 10 January 2006, *Ministero dell’Economia e delle Finanze v Cassa di Risparmio di Firenze and Others*, C-222/04, ECLI:EU:C:2006:8.

⁸ *Ibid*, paragraphs 112 and 113.

⁹ Judgment of the Court of Justice of 13 June 2002, *Netherlands v Commission*, C-382/99, ECLI:EU:C:2002:363.

¹⁰ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

¹¹ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

controlled by the same public body or bodies, which may have an independent power of decision, is therefore taken into account.

- (5) In order to take account of the small average size of undertakings active in the road freight transport sector and the inflation that took place since the entry into force of Regulation (EU) No 1407/2013 and the likely estimated developments during the period of validity of this Regulation, it is appropriate to increase the ceiling to EUR 137 500 for undertakings performing road freight transport for hire or reward. Providing an integrated service where the actual transportation is only one element, such as removal services, postal or courier services or waste collection or processing services, should not be considered a transport service.
- (6) In view of the special rules that apply to the primary production sectors of agricultural products, fishery and aquaculture and the risk that amounts of aid below the ceiling laid down in this Regulation could nonetheless fulfil the criteria set out in Article 107(1) of the Treaty, 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. On-farm activities necessary for preparing a product for the first sale (e.g. harvesting, cutting and threshing of cereals, or packing of eggs) or the first sale to resellers or processors should not be considered as processing and marketing in this respect.
- (8) The Court of Justice of the European Union has determined that, once the Union has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States refrain from taking any measure that might undermine or create exceptions to it¹². For that reason, this Regulation should not apply to aid for amounts fixed on the basis of the price or quantity of products purchased or put on the market. It should also not apply to support linked to an obligation to share the aid with primary producers.
- (9) This Regulation should not apply to export aid or aid contingent upon the use of domestic goods or services over imported ones. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other Member States or third countries. The Court of Justice of the European Union has ruled that Regulation 1998/2006 “does not exclude all aid which may have an impact on exports, but only that which has as its direct purpose, by its very form, the promotion of sales in another State”¹³. Aid towards the costs 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 in another Member State or third country does in general not constitute export aid.
- (10) The period of 3 years to be taken into account for the purposes of this Regulation should be assessed on a rolling basis. For each new grant of *de minimis* aid, the total amount of *de minimis* aid granted in the fiscal year concerned and in the previous 2 fiscal years needs to be taken into account.

¹² Judgment of the Court of Justice of 12 December 2002, *France v Commission*, C-456/00, ECLI:EU:C:2002:753, paragraph 31.

¹³ Judgment of the Court of Justice 28 February 2018, *ZPT AD v Narodno sabranie na Republika Bulgaria and Others*, C-518/16, ECLI:EU:C:2018:126, paragraph 55.

- (11) Where an undertaking is active in sectors excluded from the scope of this Regulation and is also active in other sectors or has other activities, this Regulation should apply to those other sectors or activities, provided that the Member State concerned ensures that the activities in the excluded sectors do not benefit from the *de minimis* aid (by appropriate means, such as separation of activities or separation of accounts). The same principle should apply where an undertaking is 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 only benefit from *de minimis* aid 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 set out 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 not be considered to be State aid within the meaning of Article 107(1) of the Treaty on grounds other than those set out in this Regulation, as for instance, when the measure complies with the market economy operator principle or does not involve a transfer of State resources. In particular, Union funding centrally managed by the Commission that is not directly or indirectly under the control of the Member State does not constitute State aid. It should not be taken into account in determining whether the relevant ceiling is complied with.
- (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 precisely calculate the gross grant equivalent *ex ante* without any need to carry out 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 relevant ceiling is not exceeded. Providing for a cap means that, as long as the precise amount of aid is not known, the Member State has to assume that the amount is equal to the cap to ensure 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 calculation method. To facilitate the calculation, aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. Calculating the gross grant equivalent of transparent types of aid, other than grants and aid payable in several instalments, requires the use of market interest rates prevailing at the time such aid is granted. With a view to a 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 rates¹⁴.
- (16) Aid comprised in loans, including *de minimis* risk finance aid taking the form of 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

¹⁴ Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

should provide for a clear rule that is easy to apply and takes into account both the amount of the loan and its duration. Loans that are secured by collateral covering at least 50 % of the loan and that do not exceed either EUR 1 375 000 and a duration of 5 years or EUR 687 500 and a duration of 10 years can be considered as having a gross grant equivalent not exceeding the *de minimis* ceiling. This is based on the Commission's experience and given the inflation which took place since the entry into force of Commission Regulation (EU) No 1407/2013 and the likely developments during the period of validity of this Regulation. Given the difficulties in determining the gross grant equivalent of aid granted to undertakings that may not be able to repay the loan, this rule should not apply to such undertakings.

- (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 risk finance guidelines¹⁵, should not be considered as transparent *de minimis* aid unless the measure concerned provides capital that does not exceed the *de minimis* ceiling.
- (18) Aid comprised in guarantees, including *de minimis* risk finance aid taking the form of 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 concerned¹⁶. 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 that do not constitute a loan, such as guarantees on equity transactions. Where: (i) the guarantee does not exceed 80 % of the underlying loan; (ii) the amount guaranteed does not exceed EUR 2 062 500; and (iii) the duration of the guarantee does not exceed 5 years, the guarantee should be considered as having a gross grant equivalent not exceeding the *de minimis* ceiling. The same applies where: (i) the guarantee does not exceed 80 % of the underlying loan (ii) the amount guaranteed does not exceed EUR 1 031 250; and (iii) the duration of the guarantee does not exceed 10 years. In addition, Member States can use a methodology to calculate the gross grant equivalent of guarantees that has been notified to the Commission under another Commission Regulation in the State aid area applicable at that time and that has been accepted by the Commission as being in accordance with the Guarantee Notice¹⁷ or any succeeding notice, provided that the accepted methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake as part of the application of this Regulation. Given the difficulties in determining the gross grant equivalent of aid granted to undertakings that may not be able to repay the loan, this rule should not apply to such undertakings.
- (19) Where a *de minimis* aid scheme is implemented through financial intermediaries, it should be ensured that the financial intermediaries do not receive any State aid. This can be done, for example, by requiring financial intermediaries that benefit from a State guarantee to pay a market-conform premium or to fully pass on any advantage to

¹⁵ Communication from the Commission – Guidelines on State aid to promote risk finance investments (OJ C 508, 16.12.2021, p. 1).

¹⁶ For instance, 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).

¹⁷ Ibid.

the final beneficiaries or by respecting the *de minimis* ceiling and other conditions of this Regulation at the level of the intermediaries.

- (20) Upon notification by a Member State, the Commission should 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 principle of sincere cooperation laid down in Article 4(3) of the Treaty on European Union. Member States should facilitate the fulfilment of this task by setting up the necessary tools 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. Member States should be required to monitor the aid granted to ensure the relevant ceilings are not exceeded and the cumulation rules are complied with. To comply with that obligation, Member States should provide complete information on *de minimis* aid granted in a register at Union or national level and check that any new grant of aid does not exceed the relevant ceiling.
- (22) 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 should expire without being extended, Member States will 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 sector, falling within the scope of Regulation (EU) No 1379/2013¹⁸;
 - (b) aid granted to undertakings active in the primary production of agricultural products;
 - (c) aid granted to undertakings active in the sector of processing and marketing of agricultural products, in the following cases:
 - (1) where 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,
 - (2) where the aid is conditional on being partly or entirely passed on to primary producers;

¹⁸ 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).

- (d) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, the establishment and operation of a distribution network or other current expenditure linked to the export activity;
 - (e) aid contingent upon the use of domestic goods and services over imported goods and services.
2. Where an undertaking is active in the sectors referred to in points (a), (b) or (c) of paragraph 1 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 separation of accounts, 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.

Article 2

Definitions

1. For the purposes of this Regulation the following definitions shall apply:
- (a) ‘agricultural products’ means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products set out in Regulation (EU) No 1379/2013;
 - (b) ‘processing of agricultural products’ means any operation on an agricultural product resulting in a product that 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.
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) through one or more other enterprises shall also be considered to be a single undertaking.

Article 3

De minimis aid

1. Aid measures shall be deemed not to meet all the criteria set out 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 275 000 over any period of 3 fiscal years.

The total amount of *de minimis* aid granted per Member State to a single undertaking performing road freight transport for hire or reward shall not exceed EUR 137 500 over any period of 3 fiscal years. If an undertaking performs road freight transport for hire or reward and also carries out other activities to which the ceiling of EUR 275 000 applies, the ceiling of EUR 275 000 shall apply to the undertaking, provided that the Member State concerned ensures, by appropriate means such as separation of activities or separation of accounts, that the benefit to the road freight transport activity does not exceed EUR 137 500 and that no *de minimis* aid is used for the acquisition of road freight transport vehicles.

3. *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.
4. The ceilings laid down in paragraph 2 shall apply irrespective of the form of the *de minimis* aid or the objective pursued and 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.
5. For the purposes of the ceilings laid down in paragraph 2, 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.

6. Where the relevant 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.
7. 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 ceiling. *De minimis* aid lawfully granted before the merger or acquisition shall remain lawful.
8. 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.

Article 4

Calculation of gross grant equivalent

1. This Regulation shall apply only to aid in respect of which it is possible to precisely calculate 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 neither 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. For large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least B-; and
 - (b) the loan is secured by collateral covering at least 50 % of the loan and the loan amounts to either EUR 1 375 000 (or EUR 687 500 for undertakings performing road freight transport) over 5 years or EUR 687 500 (or EUR 343 750 for undertakings performing road freight transport) 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 relevant ceiling laid down in Article 3(2); or
 - (c) the gross grant equivalent has been calculated on the basis of the reference rate applicable at the time of the grant.
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 *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 *de minimis* ceiling.
6. Aid comprised in guarantees shall be treated as transparent *de minimis* aid if:
 - (a) the beneficiary is neither 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. For large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least B-; and
 - (b) the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed is EUR 2 062 500 (or EUR 1 031 250 for undertakings performing road freight transport) and the duration of the guarantee is 5 years or the amount guaranteed is EUR 1 031 250 (or EUR 515 625 for undertakings performing road freight transport) and the duration of the guarantee is 10 years; if the amount guaranteed is lower than these 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 relevant ceiling laid down in Article 3(2); or
- (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,
 - (1) 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 succeeding notice, and
 - (2) 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 that ensures the relevant 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 360/2012¹⁹ up to the ceiling laid down in that Regulation. *De minimis* aid granted in accordance with this Regulation may be cumulated with *de minimis* aid granted in accordance with other *de minimis* regulations up to the relevant ceiling laid down in Article 3(2) of this Regulation.
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 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 that 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 to an undertaking in accordance with this Regulation, it shall inform that undertaking in writing of the prospective amount of the aid expressed as a gross grant equivalent and its *de minimis* character, referring directly to this Regulation and citing its title and publication reference in the *Official Journal of the European Union*. Where *de minimis* aid is granted to different undertakings in accordance with this

¹⁹ 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).

Regulation 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 cases, the fixed sum shall be used for determining whether the relevant ceiling laid down in Article 3(2) is respected. 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.

2. Member States shall ensure that a central *de minimis* aid register containing complete information on all *de minimis* aid granted by any authority within the Member State concerned is made available. The central *de minimis* aid register shall be set up within 6 months after the entry into force of this Regulation. The central *de minimis* aid register must be set up in such a way as to enable easy access to the information. Information must be published in a non-proprietary spreadsheet data format, which allows data to be searched, extracted, downloaded and easily published on the internet, for instance in CSV or XML format. The central *de minimis* aid register must be accessible through a website without any restrictions, such as prior user registration. Alternatively, Member States can provide complete information on all *de minimis* aid granted by any authority within the Member State concerned in a register at Union level. Paragraph 1 shall cease to apply from the moment where the information of the central register covers a period of three 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 ceiling laid down in Article 3(2) and that all the conditions laid down in this Regulation are complied with.
4. Member States shall publish the following information in the central *de minimis* aid register at Union or national level: identification of the beneficiary²⁰, aid amount, granting date, granting authority, aid instrument, and sector involved on the basis of the statistical classification of economic activities in the European Community ('NACE classification')²¹.
5. Member States shall record and compile all the information on 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 on individual *de minimis* aid shall be maintained for 10 years from the date on which the aid was granted. Records on 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.
6. On written request by the Commission, the Member State concerned shall provide the Commission, within a period of 20 working days or a longer period set out in the

²⁰ The identification of the beneficiary shall include the name of the beneficiary and the beneficiary's identifier (identification number and identification type).

²¹ 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).

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 that was granted between 1 January 2014 and 31 December 2023 and fulfils the conditions set out in Regulation (EU) No 1407/2013 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. At the end of the period of validity of this Regulation, it shall continue to apply to any *de minimis* aid scheme that fulfils the conditions of this Regulation for a further period of 6 months.

Article 8

Entry into force and period of application

This Regulation shall enter into force on 1 January 2024.

It shall apply until 31 December 2030.

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

Done at Brussels,

For the Commission
The President