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[...](2018) **XXX** draft

COMMISSION REGULATION (EU) .../...

of **XXX**

amending Regulation (EU) No 1408/2013 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

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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,

Having published a draft of this Regulation²,

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 ('TFEU') constitutes State aid and requires notification to the Commission pursuant to Article 108(3) TFEU. However, in accordance with Article 109 TFEU, the Council may determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) TFEU, the Commission may adopt regulations relating to those categories of State aid. Pursuant to Regulation (EU) 2015/1588 and in accordance with Article 109 TFEU, the Council decided that *de minimis* aid could constitute one such category. On that basis, *de minimis* aid, being aid granted to a single 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) TFEU and is therefore not subject to the notification procedure.
- (2) The Commission has adopted a number of regulations establishing rules on *de minimis* aid granted in the agriculture sector, the latest of which was Commission Regulation (EU) No 1408/2013³.
- (3) In the light of the experience gained in applying Regulation (EU) No 1408/2013, it is appropriate to adjust some of the conditions laid down therein. The maximum amount of aid to be granted to a single undertaking over a period of 3 years should be increased to EUR [15 000-25 000] and the national cap increased to [1-1,5] % of the annual output. The experience gained over the first 2 years of application of Regulation (EU) No 1408/2013 has shown that the concentration of *de minimis* aid in a certain product sector could lead to a potential distortion of competition. Therefore,

¹ OJ L 248, 24.9.2015, p. 1.

² OJ [...], [...], p. [...].

³ 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).

Member States should not be able to concentrate more than 50 % of the cumulative amount of *de minimis* aid that could be granted to undertakings active in the primary production of agricultural products over any period of 3 fiscal years in any given product sector. The new ceiling combined with the national and sectoral caps ensures that any measure falling under Regulation (EU) No 1408/2013 can be deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition.

- (4) The criteria for calculating the gross grant equivalent for loans and guarantees should be adjusted accordingly.
- (5) Experience in applying Regulation (EU) No 1408/2013 also shows that only some Member States have set up central registers to keep a record of the *de minimis* aid granted by their public authorities at various levels. In those Member States where no such central registers exist, the granting authority has to obtain a declaration from the undertaking concerned about any *de minimis* aid received in the two previous fiscal years and the current fiscal year, before granting any further aid. That approach is a less efficient monitoring tool than a central register, in particular in those Member States where aid is granted at several administrative levels (for instance at State, regional, municipality level). Monitoring based on declarations is also administratively burdensome for both the recipients of the aid and the granting authorities in charge of processing the applications and verifying that the individual ceiling of the applicant is not exceeded. Moreover, the need for a central register becomes even more relevant when there is an increased scope for granting *de minimis* aid and a sectoral cap is introduced, since those elements call for an even closer monitoring of the aid granted. It should be mandatory, therefore, for Member States to set up and maintain a central register to keep a record of all *de minimis* aid granted for the purposes of monitoring *de minimis* aid more closely and reducing administrative burdens.
- (6) It is necessary to allow Member States sufficient time to transition to monitoring *de minimis* aid through central registers.
- (7) Regulation (EU) No 1408/2013 expires on 31 December 2020. The time span would therefore be very short between the entry into force of the present regulation and the end of the period of application of Regulation (EU) No 1408/2013. For reasons of procedural economy and legal certainty, the period of application of Regulation (EU) No 1408/2013 should therefore be extended until 31 December 2027.
- (8) Regulation (EU) No 1408/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) in Article 2, the following paragraph is added:
‘3. For the purposes of this Regulation, ‘product sector’ means a sector listed in Article 1(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council*.’
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* Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).’;

(2) 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 [15 000-25 000] over any period of 3 fiscal years.’;

(b) 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 agricultural products over any period of 3 fiscal years shall neither exceed the national cap of [1-1.50] % as set out in the Annex, nor be used for more than 50 % on any given product sector.’;

(c) in paragraph 5, the first sentence is replaced by the following:

‘The ceiling laid down in paragraph 2 and the national and sectoral caps referred to in paragraph 3 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.’;

(d) in the first subparagraph of paragraph 6, the first sentence is replaced by the following:

‘For the purposes of the ceiling laid down in paragraph 2 and the national and sectoral caps referred to in paragraph 3, aid shall be expressed as a cash grant.’;

(e) paragraph 7 is replaced by the following:

‘7. Where the ceiling laid down in paragraph 2 or the national or sectoral caps referred to in paragraph 3 would be exceeded by the grant of new *de minimis* aid, none of that new aid may benefit from this Regulation.’;

(3) Article 4 is amended as follows:

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

‘(b) the loan is secured by collateral covering at least 50 % of the loan and the loan amounts to either EUR [...] over 5 years or EUR [...] over 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 ceiling laid down in Article 3(2); or’;

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

‘(b) the guarantee does not exceed 80 % of the underlying loan and either the amount guaranteed is EUR [...] and the duration of the guarantee is 5 years or the amount guaranteed is EUR [...] and the duration of the guarantee is 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 ceiling laid down in Article 3(2); or’;

(4) Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. By 1 July 2020, each Member State shall set up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within that Member State, in order to be able to demonstrate that the conditions of this Regulation have been complied with. The provisions of paragraph 2 shall apply until the moment the register covers a period of 3 fiscal years or until 1 July 2023, whichever is the earlier.’;

(b) paragraph 2 is replaced by the following:

‘2. Where a Member State intends to grant *de minimis* aid in accordance with this Regulation to an undertaking, it shall inform that undertaking in writing of the prospective amount of the aid expressed as a gross grant equivalent and of its *de minimis* character, making express reference to this Regulation and citing its title and publication reference in the *Official Journal of the European Union*. Where *de minimis* aid is granted in accordance with this Regulation to different undertakings on the basis of a scheme and different amounts of individual aid are granted to those undertakings under that scheme, the Member State concerned may choose to fulfil that obligation by informing the undertakings of a fixed sum corresponding to the maximum aid amount to be granted under that scheme. In such case, the fixed sum shall be used for determining whether the ceiling laid down in Article 3(2) is reached and the national and sectoral caps referred to in Article 3(3) 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. 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.’;

(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 ceiling laid down in Article 3(2) and the national and sectoral caps referred to in Article 3(3) and that all the conditions laid down in this Regulation are complied with.’;

(d) in paragraph 4, the first two sentences are deleted;

(5) Article 7 is amended as follows,;

(a) paragraph 1 is replaced by the following:

‘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, with the exception of the sectoral spending cap of 50% referred to in Article 3(3). Any aid which does not fulfil those conditions will be assessed by the Commission in

accordance with the relevant frameworks, guidelines, communications and notices.’;

(b) the following paragraph 1a is inserted:

‘1a. The sectoral spending cap of 50% referred to in Article 3(3) shall apply only to aid granted as from the fiscal year 2018.’;

(c) the following paragraph 3a is inserted:

‘3a. Article 6(2) shall cease to apply the moment the register referred to in Article 6(1) covers a period of 3 fiscal years.’;

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

‘It shall apply until 31 December 2027.’;

(7) the Annex is replaced by the text set out in the Annex to this Regulation.

Article 2

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,

For the Commission
The President
Jean-Claude Juncker