Explanatory note accompanying the proposal for the amendment of the Regulation 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

The purpose of this note is to clarify the objective and scope of the proposed amendment of Regulation 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 ('Regulation 1408/2013'). It accompanies the consultation on the proposal that will be open until 21.07.2024.

Citizens, organisations and public authorities are invited to provide their views on the proposed amendment.

Stakeholders are invited to provide their comments in electronic format and should clearly indicate if their reply is confidential. In such case, a non-confidential version of the reply, which can be published on the website of DG Competition, should also be provided.

1. Context

"*De minimis* aid" is support that is small enough to be deemed not to distort competition or to affect trade between Member States. As such, *de minimis* aid is deemed not to constitute State aid. Because of the limited amount, the *de minimis* Regulation allows exemptions from State aid control for this support.

Regulation 1408/2013 applies to *de minimis* aid granted to undertakings active in the primary production of agricultural products. In the recent years, the European farming sector has been confronted with inflationary pressure and high commodity prices.

On 18 April 2024, the European Council 'encouraged the Commission to pursue the work on the possibility to increase the ceiling on *de minimis* aid for agriculture'.

In general, the Commission regularly reviews State aid rules and adapts them to the internal market's dynamics. The current *de minimis* rules are set to expire on 31 December 2027. However, in light of the elements explained above, the Commission considers it appropriate to advance their revision.

2. Proposed amendment

The amendment addresses two main aspects: (i) the *de minimis* ceilings and (ii) the transparency requirements.

Individual de minimis ceiling

Since 2019, the individual *de minimis* ceiling is set at EUR 20 000 per undertaking over any period of 3 fiscal years. Member States can opt for a higher ceiling, set at EUR 25 000 per undertaking over the same period, provided that they set up a central register of *de miminis* aid.

In compliance with the Union Courts jurisprudence, the Commission can increase the ceilings only to the extent where there is no risk of distorting competition and trade. As such, the Commission's discretion on setting the *de minimis* ceilings is limited.

In light of this, the Commission proposes to increase the individual ceiling to EUR 37 000. This is calculated based on the actual inflation since the last revision of the Regulation in 2019, based on Eurostat HICP data,[1] as well as, forward looking, the projected inflation based on an European Commission forecast where available (years 2024 and 2025)[2] as well as the ECB inflation target for the remaining years until the proposed end of validity of the Regulation (31.12.2032).

National cap

In addition to the individual *de minimis* ceiling, Regulation 1408/2013 lays down also a cumulative cap of *de minimis* aid per Member State (so-called "national cap"). This cap is set at 1.25% of the average of the value of the 3 highest years of agricultural production in the period 2012-2017. In case a Member State had set up a central register of *de minimis* aid, the national cap is instead calculated at 1.5% of the average of the value of the 3 highest years of agricultural production in the period 2012-2017.

To adjust the national caps, the Commission proposes to extend the period taken into account for the calculation, i.e. to base the calculation on the years 2012-2023.

Given the introduction of a mandatory *de minimis* register (see below), the Commission proposes to set one single individual threshold and national cap, based on the same methodology that is currently applied for calculating the national cap in Member States that have set up a central register. As such, the proposed revised national cap is calculated as 1.5% of the average of the value of the 3 highest years of agricultural production in the period 2012-2023. For the national cap for the United Kingdom in respect of Northern Ireland, due to data availability, at this stage the period 2012-2022 is taken into account.

Period taken into account for assessing compliance with the de minimis ceiling

The Commission proposes to align the calculation with Regulation 2023/2832 and to calculate the cumulative amount over three years, instead of the current calculation over three fiscal years.

Transparency

To meet transparency requirements, Member States currently have the choice to set up a *de minimis* register or obtain a self-declaration from the beneficiaries. However, the 2019 fitness check showed that this system is unsatisfactory and could be improved. In line with the recently revised Regulation 2023/2831, the Commission therefore proposes to have in place a mandatory register. This will strengthen transparency for stakeholders and Member States and will reduce the administrative burden for companies who currently use a self-declaration system.

[1] Data published by Eurostat under https://ec.europa.eu/eurostat/databrowser/view/tec00118/default/table?lang=en&category=t_prc.t_prc_hicp (accessed on 3.6.2024).

[2] European Commission spring forecast 2024 published under https://economy-finance.ec.europa.eu/economic-forecast-and-surveys/economic-forecasts/spring-2024-economic-forecast-gradual-expansion-amid-high-geopolitical-risks_en#:~:text=Activity%20in%20the%20euro%20area,0.8%25%20in%20the%20euro%20area (accessed on 3.6.2024) concerning the forecast for inflation in the EU.

3. Impact assessment

Regulation (EU) 1408/2013 was subject to an impact assessment in 2019. The scope of the current revision is limited to technical adaptations, specifically adjusting the ceilings to inflation and aligning the Regulation to the recent amendment of Regulation 2023/2831. Against this background, no impact assessment is needed.