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ANNEX

ANNEX

to the

COMMUNICATION FROM THE COMMISSION

Approval of the content of a draft Commission Regulation amending Commission 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

ANNEX

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

DRAFT

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,

After consulting the Advisory Committee on State Aid,

Whereas:

- (1) In light of the experience gained in applying Regulation (EU) No 1408/2013², it is appropriate to increase the ceiling of *de minimis* aid that a single undertaking may receive per Member State over any period of 3 years to EUR 37 000. That ceiling reflects the inflation that took place since the amendment of Regulation (EU) No 1408/2013 in 2019³ and the estimated developments during the period of validity of Regulation (EU) No 1408/2013. That ceiling is necessary to ensure that any measure falling under Regulation (EU) No 1408/2013 may be deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition.
- (2) Taking into account the obligation to register in a central register at national or Union level information on *de minimis* granted, it is appropriate to calculate the national cap as 1,5 % of the average of the three highest values of annual output per Member State, in line with the calculation method used in the past for Member States with a voluntary central register. It is also appropriate to adapt the calculation of the national cap to take more recent years into account, in line with the period of validity of Regulation (EU) No 1408/2013. In light of this, the period used to calculate the average of highest values of annual agricultural output should be extended to 2012-2023.

¹ OJ L 248, 24.9.2015, p. 1.

² 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).

³ By Commission Regulation (EU) 2019/316 of 21 February 2019 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 (OJ L 51I, 22.2.2019, p. 1).

- (3) The experience gained since the 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 and trade. Therefore, a sector cap preventing Member States from granting more than 50 % of the total cumulative amount of *de minimis* aid over any period of 3 years for measures that benefit only one specific product sector should continue to apply. The sector cap should ensure 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 according to the increased *de minimis* ceilings.
- (5) In order to align with Commission Regulation (EU) 2023/2831⁴ the period to be taken into account for the purposes of assessing compliance with the ceilings laid down in Regulation (EU) No 1408/2013 should be changed from 3 fiscal years to 3 years. This period 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 previous 3 years needs to be taken into account.
- (6) The Commission has a duty to ensure that State aid rules are complied with and are 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 having in place the necessary tools to ensure that the total amount of *de minimis* aid granted to a single undertaking under the *de minimis* rule as well as the cumulative amount of *de minimis* aid granted per Member State ('national cap') do not exceed the overall permissible ceilings. Member States should monitor the aid granted to ensure that these ceilings are not exceeded and the cumulation rules are complied with. To comply with that obligation and to align with Commission Regulation (EU) 2023/2831, Member States should provide complete information on *de minimis* aid granted in a central register at national or Union level, at the latest from 1 January 2026, and check that any new grant of aid and the national cap do not exceed the ceiling laid down in Regulation (EU) No 1408/2013. The central register will help reducing the administrative burden for undertakings. Undertakings will no longer be required to keep track of and declare any other *de minimis* aid received, once the central register contains data for a period of 3 years. For the purposes of Regulation (EU) No 1408/2013, control of compliance with the ceilings laid down in it shall in principle be based on the information included in the central register.
- (7) Each Member State may set up a national central register. Existing national central registers satisfying the requirements laid down in Regulation (EU) No 1408/2013 can continue to be used. The Commission will set up a central register at the Union level that can be used by Member States as from 1 January 2026.
- (8) Considering that administrative burden and regulatory obstacles constitute a problem for the majority of SMEs and that the Commission targets to reduce by 25 % the burden stemming from reporting requirements⁵, any central register should be set up in

⁴ Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L, 2023/2831, 15.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2831/oj>).

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – SME Relief Package (COM(2023) 535 final)

such a way as to reduce administrative burden. Good administrative practices, such as those laid down in the Single Digital Gateway Regulation⁶, may be used as reference for the setting up and operation of the central register at Union level and of the national central registers.

- (9) Transparency rules aim to ensure better compliance, greater accountability, peer review and ultimately more effective public spending. The publication, in a central register, of the name of the aid beneficiary serves the legitimate interest in transparency by providing information to the public on the use of Member State funds. It does not unduly interfere with beneficiaries' right to protection of their personal data as long as the publication in the central register of personal data complies with the Union rules on data protection⁷. Member States should have the option to pseudonymise specific entries where necessary to comply with the Union data protection rules.
- (10) In the light of the increased need for use of *de minimis* aid and given that the current ceilings are unduly constraining, it is necessary to amend Regulation (EU) No 1408/2013 before the end of its period of validity, that is to say 31 December 2027. The period of validity of Regulation (EU) No 1408/2013 should be extended until 31 December 2032.
- (11) 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 1, paragraph 1, point (b), the footnote is replaced by the following:

‘(*) As in accordance with 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 (Withdrawal Agreement), and in particular Article 10 of the Windsor Framework and its Annex 5 (see Joint Declaration No 1/2023 of the Union and the United Kingdom in the Joint Committee established by the Withdrawal Agreement of 24 March 2023, OJ L 102, 17.4.2023, p.87), certain provisions of Union law relating to State aid in respect of measures affecting the trade between Northern Ireland and the Union continue to apply to the United Kingdom, for the purposes of this Regulation, any reference to a Member States shall be understood as including the United Kingdom in respect of Northern Ireland.’;

- (2) in Article 2, paragraph 4 is replaced by the following:

‘4. For the purposes of this Regulation, ‘sector cap’ means a maximum cumulative aid amount applying to aid measures which benefit only one single product sector, which corresponds to 50 % of the maximum amount of *de minimis* aid granted per Member State as set out in the Annex to this Regulation.’;

⁶ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 ([OJ L 295, 21.11.2018, p. 1](#)).

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1); Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(3) Article 3 is replaced by the following:

Article 3
De minimis aid

1. Aid measures 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, 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 37 000 over any period of 3 years.
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 years shall not exceed the national cap set out in the Annex.
4. For aid measures which benefit only one single product sector, the total cumulative amount granted over any period of 3 years shall not exceed the sector cap defined in Article 2(4).
5. *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.
6. The *de minimis* ceiling, the national and the sector cap referred to in paragraphs 2, 3 and 4 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.
7. For the purposes of the *de minimis* ceilings and the national and sector caps referred to in paragraphs 2, 3 and 4, 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.
8. 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.
9. Where the *de minimis* ceiling, the national cap or the sector cap referred to in paragraphs 2, 3 and 4 would be exceeded by the grant of new *de minimis* aid, none of that new aid may benefit from this Regulation.
10. 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, the relevant national cap or the sector cap. *De minimis* aid lawfully granted before the merger or acquisition shall remain lawful.
11. 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.’;

(4) 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 185 000 over 5 years or EUR 92 500 over 10 years; if a loan is for less than those amounts and/or if it 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* 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 277 500 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 138 750 and the duration of the guarantee is 10 years; if the amount guaranteed is lower than these amounts and/or if 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’;

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

- ‘1. Where an undertaking is active in the primary production of agricultural products and is also active in one or more of the sectors or has other activities falling within the scope of Commission Regulation (EU) 2023/2831*, *de minimis* aid granted for activities in the sector of agricultural production in accordance with this Regulation may be cumulated with *de minimis* aid granted in respect of the latter sector(s) or activities up to the relevant ceiling laid down in Article 3(2) of Regulation (EU) 2023/2831, provided that the Member State concerned ensures, by appropriate means, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with Regulation (EU) 2023/2831.
2. Where an undertaking is active in the primary production of agricultural products as well as in the fishery and aquaculture sector, *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 in accordance with Regulation (EU) No 717/2014 up to the ceiling laid down in that Regulation, provided that the Member State concerned ensures, by appropriate means, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with Regulation (EU) No 717/2014.’;

* Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L, 2023/2831, 15.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2831/oj>).’;

(6) in Article 5, the following paragraph 2(a) is added:

‘2a *De minimis* aid granted in accordance with this Regulation may be cumulated with *de minimis* aid granted in accordance with Commission Regulation

(EU) 2023/2832* up to the ceiling laid down in that Regulation, provided that the Member State concerned ensures, by appropriate means, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with Regulation (EU) 2023/2832.

* Commission Regulation (EU) 2023/2832 of 13 December 2023 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, 2023/2832, 15.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2832/oj](https://eur-lex.europa.eu/eli/reg/2023/2832/oj)).’;

(7) Article 6 is replaced by the following:

‘Article 6

Monitoring and reporting

1. Member States shall ensure that, from 1 January 2026, information on *de minimis* aid granted is registered in a central register at national or Union level. Information in the central register shall contain the identification of the beneficiary, the aid amount, the granting date, the granting authority, the aid instrument and the sector involved on the basis of the statistical classification of economic activities in the Union (‘NACE classification’). The central register shall be set up in such a way as to enable easy public access to the information whilst ensuring compliance with the Union rules on data protection, including through the pseudonymisation of specific entries where necessary.
2. Member States shall register the information listed in paragraph 1 in the central register on *de minimis* aid granted by any authority within the Member State concerned within 20 working days following the grant of the aid. Member States shall take appropriate measures to ensure the accuracy of the data contained in the central register.
3. Member States shall keep records of the registered information on *de minimis* aid for 10 years from the date on which the aid was granted.
4. A Member State shall grant new *de minimis* aid in accordance with this Regulation only after it has verified that the new *de minimis* aid will not raise the total amount of *de minimis* aid granted to the undertaking concerned to a level above the ceilings laid down in Article 3(2), (3) and (4) and that all the conditions laid down in this Regulation are complied with.
5. Member States using a central register at national level shall submit to the Commission by 30 June every year aggregated data on *de minimis* aid granted for the previous year. The aggregated data shall contain the number of beneficiaries, the overall amount of *de minimis* aid granted and the overall amount of *de minimis* aid granted per sector (using the ‘NACE classification’). The first data submission shall be for *de minimis* aid granted from 1 January to 31 December 2026. Member States may report to the Commission on earlier periods where the aggregated data are available.
6. On written request by the Commission, the Member State concerned shall provide the Commission, within 20 working days or a longer period set out in the request, with all the information that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied

with, and in particular the total amount of *de minimis* aid within the meaning of this Regulation and of other *de minimis* regulations received by any undertaking.’;

(8) Article 7 is amended as follows:

(a) the following paragraph 3a is added:

‘3a Any individual *de minimis* aid granted between 1 January 2014 and [date of entry into force of this amendment] in accordance with the provisions of this Regulation as applicable at the time of granting the aid 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.’;

(b) the following paragraph 5 is added:

‘5. Until the central register is set up and covers a period of 3 years, where a Member State intends to grant *de minimis* aid to an undertaking in accordance with this Regulation, that Member State shall inform the undertaking in written or electronic form of the amount of the aid expressed as a gross grant equivalent and its *de minimis* character, referring directly to this Regulation. Where *de minimis* aid is granted to different undertakings in accordance with this 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 its obligation by informing the undertakings of an amount 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 ceiling laid down in Article 3(2) is complied with. 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 over any period of 3 years.

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

‘It shall expire on 31 December 2032.’;

(10) Annex I and Annex II are replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third 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.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Maximum cumulative amounts of *de minimis* aid granted per Member State to undertakings active in the primary production of agricultural products referred to in Article 3(3)

(in million EUR)

Member State	Maximum amounts of <i>de minimis</i> aid ⁸
Belgium	169.67
Bulgaria	85.38
Czechia	105.96
Denmark	195.49
Germany	1 061.56
Estonia	20.22
Ireland	170.89
Greece	198.66
Spain	915.04
France	1 365.06
Croatia	44.44
Italy	1 031.75
Cyprus	12.33
Latvia	28.84
Lithuania	61.28
Luxembourg	8.46
Hungary	149.71
Malta	2.03
Netherlands	510.71
Austria	146.67

⁸ The maximum amounts shall be calculated as 1.5% of the average of the three highest values of annual agricultural production of each Member State in the period 2012-2023. Due to the unavailability of data, for the United Kingdom in respect of Northern Ireland the period 2012-2022 is taken into account.

Poland	512.14
Portugal	160.70
Romania	335.39
Slovenia	22.58
Slovakia	42.66
Finland	74.59
Sweden	111.30
United Kingdom in respect of Northern Ireland	44.97