



Brussels, 19.4.2023  
C(2023) 2578 final

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 granted to undertakings providing services of general economic interest**

**ANNEX**  
**COMMISSION REGULATION (EU) .../...**  
**of XXX**  
**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**  
**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 aid<sup>1</sup>, and in particular Article 2(1) thereof,

After consulting the Advisory Committee on State Aid,

Whereas:

- (1) The Commission's experience in applying the State aid rules to undertakings providing services of general economic interest within the meaning of Article 106(2) TFEU has shown that the ceiling below which advantages granted to such undertakings may be deemed not to affect trade between Member States or not to distort or threaten to distort competition can, in some cases, differ from the general *de minimis* ceiling established in Regulation (EU) No XXX. Indeed, at least some of those advantages are likely to constitute compensation for additional costs linked to the provision of services of general economic interest. Moreover, many activities qualifying as the provision of services of general economic interest have a limited territorial scope.
- (2) On that basis, the Commission in 2012 adopted Regulation (EU) No 360/2012<sup>2</sup> containing specific *de minimis* rules for undertakings providing services of general economic interest. Pursuant to Article 2(2) of that Regulation, aid granted to undertakings providing a service of general economic interest should be deemed not to affect trade between Member States or not to distort or threaten to distort competition provided that the total amount of aid granted for the provision of services of general economic interest received by the beneficiary undertaking does not exceed EUR 500 000 over any period of 3 fiscal years.

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<sup>1</sup> OJ L 248, 24.9.2015, p. 1.

<sup>2</sup> 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).

- (3) This Regulation was amended by Commission Regulation (EU) 2020/1474<sup>3</sup> to prolong its period of application until 31 December 2023 and to enable undertakings which became undertakings in difficulty as a consequence of the COVID-19 to remain eligible under Regulation (EU) No 360/2012 in the period from 1 January 2020 to 30 June 2021.
- (4) In light of the experience gained in applying Regulation (EU) No 360/2012 as amended by Regulation 2020/1474, it is appropriate to revise that Regulation, in particular to align it with the general *de minimis* Regulation (EU) No XXX and due to the fact that it will expiry on 31 December 2023.
- (5) It is appropriate to increase the ceiling of *de minimis* aid for services of general economic interest, which a single undertaking may receive per Member State over any period of 3 years to EUR 650 000. That ceiling reflects the inflation that took place since the entry into force of Regulation (EU) No 360/2012 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.
- (6) The years to be considered for the purpose of determining whether that ceiling is met should be the fiscal years as used for fiscal purposes by the undertaking in the Member State concerned. The relevant period of 3 consecutive years should be assessed on a rolling basis so that, for each new grant of *de minimis* aid, the total amount of *de minimis* aid granted in the fiscal year concerned, as well as during the previous two fiscal years, needs to be determined. Aid granted by a Member State should be taken into account for this purpose even when financed entirely or partly by resources of Union origin under the control of that Member State. It should not be possible for aid measures exceeding the *de minimis* ceiling to be broken down into a number of smaller parts in order to bring such parts within the scope of this Regulation.
- (7) For the purposes of the rules on competition laid down in the TFEU, 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 financed<sup>4</sup>. 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) TFEU<sup>5</sup>. 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 undertaking<sup>6</sup>. 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

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<sup>3</sup> Commission Regulation (EU) No 2020/1474 of 13 October 2020 amending Regulation (EU) No 360/2012 as regards the prolongation of its period of application and a time-bound derogation for undertakings in difficulty to take into account the impact of the COVID-19 pandemic (OJ L 337, 14.10.2020, p. 1).

<sup>4</sup> 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, paragraph 107.

<sup>5</sup> Ibid, paragraphs 112 and 113.

<sup>6</sup> Judgment of the Court of Justice of 13 June 2002, *Netherlands v Commission*, C-382/99, ECLI:EU:C:2002:363.

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/EC<sup>7</sup> and in Annex I to Commission Regulation (EU) No 651/2014<sup>8</sup>. 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, should not be treated as being linked to each other. The specific situation of enterprises controlled by the same public body or bodies, which may have an independent power of decision, should therefore be taken into account.

- (8) This Regulation should apply only to aid granted for the provision of a service of general economic interest. The beneficiary undertaking should therefore be entrusted in writing with the service of general economic interest in respect of which the aid is granted. While the entrustment act should inform the undertaking of the service of general economic interest in respect of which the aid is granted, it should not necessarily contain all the detailed information as set out in Commission Decision 2012/21/EU<sup>9</sup>.
- (9) In view of the special rules that apply in the sectors of primary production of agricultural products, fisheries, and aquaculture, of the fact that undertakings in those sectors are rarely entrusted with services of general economic interest, and of the risk that amounts of aid below the ceiling set out in this Regulation could fulfil the criteria of Article 107(1) TFEU in those sectors, this Regulation should not apply to those sectors.
- (10) Considering the similarities between the processing and marketing of agricultural products, on the one hand, and of non-agricultural products, on the other, 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, such as 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.
- (11) The Court of Justice has determined<sup>10</sup> that, once the Union has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States must refrain from taking any measure that might undermine or create exceptions to it. 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

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<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) TFEU on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

<sup>10</sup> Judgment of the Court of Justice of 12 December 2002, *France v Commission*, C-456/00, ECLI:EU:C:2002:753, paragraph 31.

should also not apply to support linked to an obligation to share the aid with primary producers.

- (12) This Regulation should not apply to export aid or aid contingent upon the use of domestic goods or services over imported ones. In general, 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 should not constitute export aid.
- (13) Where an undertaking is active in sectors excluded from the scope of this Regulation but 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, by appropriate means, such as separation of activities or separation of accounts, that the activities in the excluded sectors do not benefit from the *de minimis* aid. 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. In accordance with the principles governing aid within the scope of Article 107(1) TFEU, *de minimis* aid should be considered to be granted at the moment the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime.
- (14) In order to avoid circumvention of maximum aid intensities laid down in various Union instruments, *de minimis* aid to undertakings providing services of general economic interest should not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that specified in the particular circumstances of each case by a block exemption regulation or a decision adopted by the Commission.
- (15) This Regulation should not affect the application of Regulation (EU) No XXX to undertakings providing services of general economic interest. Member States should remain free to rely either on this Regulation or on Regulation (EU) No XXX as regards aid granted for the provision of services of general economic interest.
- (16) The Court of Justice, in its *Altmark* judgment<sup>11</sup>, has identified a number of conditions which must be fulfilled in order for compensation for the provision of a service of general economic interest not to constitute State aid. Those conditions ensure that compensation limited to the net costs incurred by efficient undertakings for the provision of a service of general economic interest does not constitute State aid within the meaning of Article 107(1) TFEU. If those conditions are not respected, compensation constitutes State aid which may be declared compatible on the basis of the applicable Union rules. In order to avoid this Regulation being applied to circumvent the conditions identified in the *Altmark* judgment, and in order to avoid *de minimis* aid granted under this Regulation affecting trade due to its cumulation with other compensation for the same service of general economic interest, *de minimis* aid under this Regulation should not be cumulated with any other compensation in respect of the same service, regardless of whether or not it constitutes State aid under the *Altmark* judgment or compatible State aid

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<sup>11</sup> Judgment of the Court of Justice of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, and *Oberbundesanwalt beim Bundesverwaltungsgericht*, C-280/00, ECLI:EU:C:2003:415, paragraphs 88 to 93.

under Decision 2012/21/EU or under the Communication from the Commission 2012/C 8/03<sup>12</sup>. Therefore, this Regulation should not apply to compensation received for the provision of a service of general economic interest in respect of which other types of compensation are also being granted, unless that other compensation constitutes *de minimis* aid according to other *de minimis* regulations and the cumulation rules set out in this Regulation are complied with.

- (17) For the purposes of transparency, equal treatment and 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 grant equivalent of transparent types of aid other than grants and aid payable in several instalments requires the use of market rates prevailing at the time of granting such aid. With a view to a uniform, transparent and simple application of the State aid rules, the market rates for the purposes of this Regulation should be deemed to be the reference rates, as currently set out in the Commission Communication 2008/C 14/02<sup>13</sup>.
- (18) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to *de minimis* aid which is transparent. Transparent aid is aid for which it is possible to calculate the precise gross grant equivalent *ex ante* without a need to carry out a risk assessment. Such a precise calculation is possible, for instance, regarding grants, interest rate subsidies and 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 should assume that the amount is equal to the cap to ensure that several aid measures together do not exceed the ceiling set out in this Regulation and to apply the rules on cumulation.
- (19) Aid comprised in capital injections should not be considered as transparent *de minimis* aid, unless the total amount of the public capital injections 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 guidelines<sup>14</sup> should not be considered as transparent *de minimis* aid, unless the measure concerned provides capital that does not exceed the *de minimis* ceiling.
- (20) 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, it is necessary to set out 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 3 250 000 and a duration of 5 years or EUR 1 625 000 and a duration of 10 years should be considered as having a gross grant equivalent

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<sup>12</sup> Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011) (OJ C 8, 11.1.2012, p. 15).

<sup>13</sup> 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).

<sup>14</sup> Communication from the Commission – Guidelines on State aid to promote risk finance investments (OJ C 508, 16.12.2021, p. 1).

not exceeding the *de minimis* ceiling under this Regulation. This is based on the Commission's experience and takes into account the inflation which took place since the entry into force of Commission Regulation (EU) No 360/2012, as well as 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.

- (21) 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 concerned<sup>15</sup>. In order to simplify the treatment of guarantees of short duration securing up to 80% of a relatively small loan, it is necessary to set out 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. In addition, Member States may 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 Notice<sup>16</sup> 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.
- (22) 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 may be done, for example, by requiring financial intermediaries that benefit from a State guarantee to pay a market-compliant premium or to fully pass on any advantage to the final beneficiaries or by respecting the *de minimis* ceiling and other conditions of this Regulation at the level of the intermediaries.
- (23) Upon notification by a Member State, the Commission should examine whether an aid measure, if it does not consist in a grant, loan, guarantee, capital injection, risk finance measure taking the form of an equity or quasi-equity investment, capped tax exemptions or other instruments that provide for a cap, leads to a gross grant equivalent that does not exceed the *de minimis* ceiling and therefore could fall within the scope of this Regulation.
- (24) The Commission should be able to check that State aid rules are complied with and in particular that aid granted under the *de minimis* rules adheres to the conditions thereof. 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 out the necessary tools to ensure that the total amount of *de minimis* aid granted to the same undertaking for the provision of services of general economic interest does not exceed the overall permissible ceiling. Member States should be required to monitor the

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<sup>15</sup> 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).

<sup>16</sup> Ibid.



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.

- (25) Considering the legitimate interest in transparency to provide information to the public regarding the use of State funds, in weighting up the needs of transparency with the rights under the data protection rules, the Commission concludes that the publication of the name of the aid beneficiary when the aid beneficiary is a natural person or a legal persons which have names of natural persons, is justified. Transparency rules aim to a better compliance, greater accountability, peer review and ultimately more effective public spending.
- (26) This Regulation does not affect the requirements of Union law in the area of public procurement or of additional requirements set out in the TFEU or in sectoral Union legislation.
- (27) Having regard to the frequency with which it is generally necessary for the Commission to revise *de minimis* aid granted to undertakings providing services of general economic interest, the period of application of this Regulation should be limited.
- (28) After the expiration of this Regulation, Member States should have an adjustment period of six 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 providing a service of general economic interest within the meaning of Article 106(2) TFEU.
- 2. This Regulation does not apply to:
  - (a) aid granted to undertakings active in the fishery and aquaculture sectors, falling within the scope of Regulation (EU) No 1379/2013 of the European Parliament and of the Council<sup>17</sup>;
  - (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:
    - i) 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;

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<sup>17</sup> 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.



- ii) where the aid is conditional on being partly or entirely passed on to primary producers.
  - (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.
3. Where an undertaking is active in the sectors referred to in points (a), (b) or (c) of paragraph 2 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 only to those sectors or activities, and to aid granted in respect of the those 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 TFEU, 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 an agricultural product 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 of agricultural products 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 2(a) to 2(d) through one or more other enterprises shall also be considered to be a single undertaking.

### Article 3

#### *De minimis aid*

1. Aid granted to undertakings for the provision of a service of general economic interest shall be deemed not to meet all the criteria of Article 107(1) TFEU and shall therefore be exempt from the notification requirement of Article 108(3) TFEU if it fulfils all the conditions laid down in this Regulation.
2. The total amount of *de minimis* aid granted per Member State to a single undertaking providing services of general economic interest shall not exceed EUR 650 000 over any period of 3 fiscal years. The period of 3 fiscal years shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.
3. *De minimis* aid shall be deemed as granted at the moment that 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 ceiling of EUR 650 000 laid down in paragraph 2 shall apply irrespective of the form of the *de minimis* aid or the objective pursued by that aid and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin under the control of that Member State.
5. For the purposes of the ceiling 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 charges. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
6. Aid payable in several instalments shall be discounted to its value at the moment of it being 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 relevant ceiling laid down in paragraph 2 would be exceeded by the grant of new *de minimis* aid for services of general economic interest, none of that new aid shall 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 ceiling. *De minimis* aid lawfully granted before the merger or acquisition shall remain lawful.
9. 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 neither is subject to collective insolvency proceedings nor fulfils the criteria under its national 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 3 250 000 over 5 years or EUR 1 625 000 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 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 the following conditions are met:
  - (a) the beneficiary is neither subject to collective insolvency proceedings nor fulfils the criteria under its national 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 4 875 000 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 2 437 500 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,
    - i) 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
    - ii) 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 shall not be cumulated with State aid in respect of the same eligible costs or with State aid for the same risk finance measure if such cumulation would result in an aid intensity or aid amount exceeding that stipulated in the specific circumstances of each case by a block exemption regulation or decision adopted by the Commission.
2. *De minimis* aid under this Regulation may be cumulated with *de minimis* aid under other *de minimis* regulations up to the ceiling laid down in Article 3(2).
3. *De minimis* aid under this Regulation shall not be cumulated with any compensation in respect of the same service of general economic interest, regardless of whether or not it constitutes State aid.

#### *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 gross grant equivalent, of the service of general economic interest in respect of which it is granted and of the *de minimis* character of the aid, referring directly to this Regulation and citing its title and publication reference in the *Official Journal of the European Union*.
2. Where *de minimis* aid under this Regulation is granted 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 cases, the fixed sum shall be used for determining whether the ceiling laid down in Article 3(2) is met.
3. Prior to granting the aid, the Member State shall obtain a declaration from the

undertaking providing the service of general economic interest, in written or electronic form, indicating any other *de minimis* aid received under this Regulation or under other *de minimis* regulations during the previous 2 fiscal years and the current fiscal year.

4. 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 to undertakings providing services of general economic interest is made available. That 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 shall 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, if such a register becomes available. Member States shall publish the information included in paragraph 6 in the central register at national or Union level on all *de minimis* aid granted by any authority within the Member State concerned at the latest within 20 working days following the grant of the aid. Paragraphs 1 to 3 shall cease to apply to a Member State from the moment where the information of the national or, alternatively, of the Union central register covers a period of 3 fiscal years for all *de minimis* aid granted by that Member State.
5. The Member State shall grant the new *de minimis* aid under this Regulation only after having verified that the new aid 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 that all the conditions laid down in this Regulation are complied with.
6. Member States shall publish the following information in the central *de minimis* aid register at Union or national level:
  - (a) identification of the beneficiary including the name of the beneficiary and the beneficiary's identifier (identification number and the identification type;
  - (b) aid amount;
  - (c) aid granting date;
  - (d) aid granting authority;
  - (e) aid instrument;
  - (f) sector involved targeted by the compensation on the basis of the statistical classification of economic activities in the European Community established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>18</sup>.
7. 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

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<sup>18</sup> 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 (OJ L 393, 30.12.2006, p. 1).

the conditions of this Regulation have been complied with. Records regarding individual *de minimis* aid shall be maintained for 10 fiscal years from the date on which the aid was granted. Records regarding 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.

8. 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 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 under this Regulation and under other *de minimis* regulations received by any undertaking.

## *Article 7*

### ***Transitional provisions***

1. This Regulation shall apply to *de minimis* aid for the provision of services of general economic interest that was granted before the date of its entry into force where the aid fulfills all the conditions laid down in this Regulation. Any aid for the provision of services of general economic interest which does not fulfil those conditions shall be assessed in accordance with the relevant decisions, frameworks, guidelines, communications and notices.
2. Any individual *de minimis* aid that was granted between 25 April 2012 and 31 December 2023 and fulfils the conditions set out in Regulation (EU) No 360/2012 shall be deemed not to meet all the criteria in Article 107(1) TFEU and shall therefore be exempt from the notification requirement in Article 108(3) TFEU.
3. At the end of the period of validity of this Regulation or if the Regulation is amended, any *de minimis* aid scheme which fulfils the conditions of this Regulation may be validly implemented for a further period of six 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*  
*Ursula von der Leyen*