



Managing Authority

State Shared Service Centre, the Republic of Estonia

Estonia – Russia Cross Border Cooperation Programme 2014-2020

STATE AID /DE MINIMIS AID GUIDELINES FOR THE CALL FOR PROPOSALS

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STATE AID / *DE MINIMIS* AID GUIDELINES FOR THE CALL FOR PROPOSALS OF THE ESTONIA-RUSSIA CROSS BORDER COOPERATION PROGRAMME 2014- 2020

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1. LEGAL FRAMEWORK

1.1 According to Article 107 (ex Article 87 TEC) of the Treaty on the Functioning of the European Union (TFEU), state aid is any aid granted by a Member State or **through State resources** in any form whatsoever which **distorts or threatens to distort competition by favouring certain undertakings** or the production of certain goods in so far as it **affects trade between Member States**^{1,2}. Additional clarifications about abovementioned State Aid criteria can be found in the Notice on the notion of State Aid.

1.2 Article 12 of the Commission Implementing Regulation (EU) No 897/2014³ states that aid granted under the programme shall comply with the applicable Union rules on State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union.

2. ECONOMIC ACTIVITY

2.1 Based on Article 107(1) TFEU, the State aid rules only apply where the recipient of an aid is an “undertaking”. The Court of Justice has consistently defined **undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed**. The classification of a particular entity as an undertaking thus depends entirely on the nature of its activities. This general principle has three important consequences⁴:

First, the status of the entity under national law is not decisive. For example, an entity that is classified as an association or a sports club under national law may nevertheless have to be regarded as an undertaking within the meaning of Article 107(1) TFEU. The same applies to an entity that is formally part of the public administration. The only relevant criterion in this respect is whether it carries out an economic activity.

Second, the application of the State aid rules as such does not depend on whether the entity is set up to generate profits. Based on the case-law of the Court of Justice and the General Court, non-profit entities can offer goods and services on a market too. Where this is not the case, non-profit providers remain outside of State aid control.

Third, the classification of an entity as an undertaking is always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former.

2.2 To clarify the distinction between economic and non-economic activities, the Court of Justice has consistently held that any **activity consisting in offering goods and services on a market is an economic activity**. The decision of a public authority not to allow third parties to provide a certain service (for example, because it wishes to provide the service in-house) does not rule out the existence of an economic activity. In spite of such market closure, an economic activity can exist where other operators would be willing and able to provide the service in the market concerned. More generally, the fact that a particular service is provided in-house has no relevance for the economic nature of the activity⁵.

2.3 If an infrastructure is used for both economic and non-economic activities, public funding will fall under the State aid rules only insofar as it covers the costs linked to the economic activities. If an entity is engaged in economic and non-economic activities, Member States have to ensure that the public funding provided for the non-economic activities cannot be used to cross-subsidize the economic activities. This can notably be ensured

¹ European Commission (2016). Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU, see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719\(05\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719(05)&from=EN)

² Consolidated version of the Treaty on the Functioning of the European Union, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

³ Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1456583580038&uri=CELEX:32014R0897>

⁴ Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU (2016).

⁵ Ibid

by limiting the public funding to the net cost (including the cost of capital) of the non-economic activities, to be identified on the basis of a clear separation of accounts.⁶

If the beneficiary is engaged in an economic activity the following five elements of the State aid criteria (points 3-7) should be analyzed. All of these criteria must be fulfilled for the project to constitute State aid.

3. STATE RESOURCES

3.1 Only advantages granted **directly or indirectly through State resources** can constitute State aid within the meaning of Article 107(1) TFEU. State resources **include all resources of the public sector**, including resources of intra-State entities (decentralised, federated, regional or other) and, **under certain circumstances, resources of private bodies**. Resources of public undertakings also constitute State resources within the meaning of Article 107(1) TFEU because the State is capable of directing the use of these resources. The fact that a measure granting an advantage is not financed directly by the State, but by a public or private body established or appointed by the State to administer the aid, does not exclude that that measure is financed through State resources⁷.

3.2 The transfer of State resources may take many forms, such as direct grants, loans, guarantees, direct investment in the capital of enterprises and benefits in kind. If public authorities or public undertakings provide goods or services at a price below market rates, this implies foregoing State resources (as well as the granting of an advantage). Granting access to public domain or natural resources or granting special or exclusive rights without adequate remuneration in line with market rates can constitute foregoing State revenues (as well as the granting of an advantage).⁸

4. ADVANTAGE

An advantage, within the meaning of Article 107(1) of the Treaty, **is any economic benefit which an undertaking could not have obtained under normal market conditions**, that is to say in the absence of State intervention. Only the effect of the measure on the undertaking is relevant, and not the cause or the objective of the State intervention. Whenever the financial situation of an undertaking is improved as a result of State intervention¹⁰¹ on terms differing from normal market conditions, an advantage is present⁹.

5. SELECTIVITY

To fall within the scope of Article 107(1) TFEU, a State measure must favour “certain undertakings or the production of certain goods”. Hence, not all measures which favour economic operators fall under the notion of aid, but only those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors¹⁰. In principle, only measures that apply within the entire territory of the Member State escape the regional selectivity criterion laid down in Article 107(1) of the Treaty.

6. DISTORTION OF COMPETITION

A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. For all practical purposes, a distortion of competition within the meaning of Article 107(1) of the Treaty is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition. Public support is liable to distort competition even if does not help the recipient undertaking to expand and gain market shares. It is enough that the aid allows it to maintain a stronger competitive position than it would have had if the aid had not been provided. In this context, for aid to be

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

considered to distort competition, it is normally sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations¹¹.

7. EFFECT ON TRADE

Public support to undertakings only constitutes State aid under Article 107(1) of the Treaty insofar as it “affects trade between Member States”. In that respect, it is not necessary to establish that the aid has an actual effect on trade between Member States but only whether the aid is liable to affect such trade. In particular, the Union Courts have ruled that “where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid.”

The rationale underlying the cases in which the Commission considered that certain measures were not capable of affecting trade between Member States as set out in paragraphs 196 and 197 (in the Notice) can also be relevant for certain public funding of infrastructure, particularly local or municipal infrastructure, even if it is commercially exploited¹².

8. AID INTENSITY AND ELIGIBLE COSTS

8.1 The maximum aid intensity for the project can be up to 90% of the eligible costs. Possible lower intensities are stipulated in the relevant State aid provisions. The maximum grant amount can not exceed the amount ceilings set in the Estonia-Russia cross-border cooperation programme 2014-2020 documents.

8.2 The eligible costs are stipulated in the guidelines of the call for proposals and are based on Article 48 of the Implementing Rules. The eligible costs of the projects have to meet the eligibility cost criteria set out in State aid rules.

9. POSSIBLE STATE AID AND *DE MINIMIS* AID REGULATIONS TO APPLY

Regarding the strategic objectives stipulated in the Estonia-Russia cross-border cooperation programme 2014-2020 the following main regulations shall be considered when planning the project activities:

9.1 Regulation (EU) 651/2014

- 1) Article 14: Regional investment aid
- 2) Article 18: Aid for consultancy in favour of SMEs
- 3) Article 19: Aid to SMEs for participation in fairs
- 4) Article 20: Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects
- 5) Article 25: Aid for research and development projects
- 6) Article 26: Investment aid for research infrastructures
- 7) Article 31: Training aid
- 8) Article 36: Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards
- 9) Article 38: Investment aid for energy efficiency measures
- 10) Article 41: Investment aid for the promotion of energy from renewable sources
- 11) Article 45: Investment aid for remediation of contaminated sites
- 12) Article 47: Investment aid for waste recycling and re-utilisation
- 13) Article 53: Aid for culture and heritage conservation
- 14) Article 55: Aid for sport and multifunctional recreational infrastructures
- 15) Article 56: Investment aid for local infrastructures
- 16) Article 56c: Aid for inland ports

9.2 Regulation (EU) 702/2014

- 1) Article 14: Aid for investments in tangible assets or intangible assets on agricultural holdings linked to primary agricultural production

¹¹ Ibid

¹² Ibid

- 2) Article 17: Aid for investments in connection with the processing of agricultural products and the marketing of agricultural products
- 3) Article 21: Aid for knowledge transfer and information actions
- 4) Article 24: Aid for promotion measures in favour of agricultural products

9.3 Regulation (EU) 1388/2014:

- 1) Article 13: Aid for innovation
- 2) Article 14: Aid for advisory services
- 3) Article 15: Aid for partnership between scientists and fishermen
- 4) Article 16: Aid to promote human capital, job creation and social dialogue
- 5) Article 27: Aid to added value, product quality and use of unwanted catches
- 6) Article 28: Aid to fishing ports, landing sites, auction halls and shelters
- 7) Article 41: Aid for marketing measures
- 8) Article 42: Aid for the processing of fishery and aquaculture products

9.4 Regulation 1407/2013

9.5 Regulation 1408/2013

9.6 Regulation 717/2014

9.7 Regulation 360/2012

The listed regulations and articles (points 9.1-9.7) are described in more detail below. For additional information the corresponding regulations should be checked.

10. STATE AID REGULATIONS

10.1 COMMISSION REGULATION (EU) No 651/2014 (GENERAL BLOCK EXEMPTION REGULATION, GBER)¹³

10.1.1 General conditions

Scope, Article 1

(a) This Regulation shall not apply to:

- 1) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;
- 2) aid contingent upon the use of domestic over imported goods;
- 3) aid granted in the fishery and aquaculture sector;
- 4) aid granted in the primary agricultural production sector;
- 5) aid to undertakings in difficulty;
- 6) aid measures where the grant of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services.

State aid can not be granted to an undertakings which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the Member State illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by certain natural disasters.

The definition of the undertaking in difficulty is given in point 18 of Article 2 of the GBER regulation.

¹³ 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 Text with EEA relevance (OJ L 187, 26.6.2014, p. 1–78), amended by Commission Regulation (EU) 2017/1084 (L 156, 20.06.2017, p. 1-18), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1456583782515&uri=CELEX:32014R0651>

Incentive effect, Article 6

(a) This Regulation shall apply only to aid which has an incentive effect. Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before **work on the project or activity starts**.

(b) By way of derogation from paragraph (a), aid for culture and heritage conservation, if the conditions laid down in Article 53 of Regulation 651/2014 are fulfilled, is not required to have or shall be deemed to have an incentive effect.

‘Start of works’ means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works. For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment;

Cumulation, Article 8

(a) Aid with identifiable eligible costs given under Regulation 651/2014 may be cumulated with:

- 1) any other State aid, as long as those measures concern different identifiable eligible costs,
- 2) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under Regulation 651/2014.

(b) State aid under Regulation (EU) No 651/2014 shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in relevant Articles of Regulation (EU) No 651/2014.

10.1.2 State aid articles to apply for projects

Regional investment aid, Article 14

(a) The eligible costs shall be investment costs in **tangible and intangible assets**.

(b) Aid may be granted regardless of the size of the beneficiary.

(c) The investment shall be maintained in the recipient area **for at least five years, or at least three years in the case of SMEs**, after completion of the investment. This shall not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the relevant minimum period.

(d) The assets acquired shall be new except for SMEs and for the acquisition of an establishment.

(e) Aid may be granted for an initial investment.

(f) The beneficiary shall confirm that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two years preceding the application for aid and give a commitment that it will not do so up to a period of two years after the initial investment for which aid is requested is completed.

“Relocation” means a transfer of the same or similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer if the product or service in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the beneficiary in the EEA.

'The same or a similar activity' means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as laid down in 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.

'Tangible assets' means assets consisting of land, buildings and plant, machinery and equipment.

'Intangible assets' means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property.

'Initial investment' means:

- 1) an investment in tangible and intangible assets related to the setting-up of a new establishment, extension of the capacity of an existing establishment, diversification of the output of an establishment into products not previously produced in the establishment or a fundamental change in the overall production process of an existing establishment; or
- 2) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller and excludes sole acquisition of the shares of an undertaking.

According to Estonian Regional aid map for 2014-2020 the **entire territory of Estonia** is fulfilling the conditions of **Article 107(3)(a)** which means that the maximum intensity of aid for large enterprises is 25% but it can be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

Medium-sized enterprises and small enterprises are defined in Annex 1 of the Commission Regulation (EU) No 651/2014.

Aid for consultancy in favour of SMEs, Article 18

(a) The aid intensity shall not exceed 50 % of the eligible costs.

(b) The eligible costs shall be the costs of consultancy services provided by external consultants.

(c) The services concerned shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

Aid for SMEs for participation in fairs, Article 19

(a) The eligible costs shall be the costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition.

(b) The aid intensity shall not exceed 50 % of the eligible costs.

Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects, Article 20

(a) The eligible costs shall be the following:

- 1) costs for organisational cooperation including the cost of staff and offices to the extent that it is linked to the cooperation project;
- 2) costs of advisory and support services linked to cooperation and delivered by external consultants and service providers;
- 3) travel expenses, costs of equipment and investment expenditure directly related to the project and depreciation of tools and equipment used directly for the project.

(b) The services referred to in paragraph a(2) shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or routine advertising.

(c) The aid intensity shall not exceed 50 % of the eligible costs.

Aid for research and development projects, Article 25

(a) The aided part of the research and development project shall completely fall within one or more of the following categories:

- 1) industrial research;
- 2) experimental development;
- 3) feasibility studies.

‘Industrial research’ means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and notably for generic technology validation.

‘Experimental development’ means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services.

‘Feasibility study’ means the evaluation and analysis of the potential of a project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats, as well as identifying the resources required to carry it through and ultimately its prospects for success.

(b) The eligible costs of research and development projects shall be allocated to a specific category of research and development and shall be the following:

- 1) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;
- 2) costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible;
- 3) Costs for of buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;
- 4) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
- 5) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project.

(c) The eligible costs for feasibility studies shall be the costs of the study.

(d) The aid intensity for each beneficiary shall not exceed:

- 1) 50 % of the eligible costs for industrial research;
- 2) 25 % of the eligible costs for experimental development;
- 3) 50 % of the eligible costs for feasibility studies.

(e) The aid intensities for industrial research and experimental development may be increased up to a maximum aid intensity of 80 % of the eligible costs as follows:

- 1) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
- 2) by 15 percentage points if one of the following conditions is fulfilled:
 - 2.1) the project involves effective collaboration:

- between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs, or
 - between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10 % of the eligible costs and have the right to publish their own research results;
- 2.2) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.

(f) The aid intensities for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

Investment aid for research infrastructures, Article 26

(a) Where a research infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.

(b) The price charged for the operation or use of the infrastructure shall correspond to a market price.

(c) Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.

(d) The eligible costs shall be the investment costs in intangible and tangible assets.

(e) The aid intensity shall not exceed 50 % of the eligible costs.

(f) Where a research infrastructure receives public funding for both economic and non-economic activities, Member States shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid.

‘Research infrastructure’ means facilities, resources and related services that are used by the scientific community

to conduct research in their respective fields and covers scientific equipment or sets of instruments, knowledgebased resources such as collections, archives or structured scientific information, enabling information and communication technology-based infrastructures such as grid, computing, software and communication, or any other entity of a unique nature essential to conduct research. Such infrastructures may be ‘single-sited’ or ‘distributed’ (an organised network of resources) in accordance with Article 2(a) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (1).

Please consider also recital point (49) of GBER regulation when implementing this article.

Training aid, Article 31

(a) Aid shall not be granted for training which undertakings carry out to comply with national mandatory standards on training.

(b) The eligible costs shall be the following:

- 1) trainers' personnel costs, for the hours during which the trainers participate in the training;
- 2) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project. Accommodation costs are excluded except for the minimum necessary accommodation costs for trainees' who are workers with disabilities;

- 3) costs of advisory services linked to the training project;
- 4) trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.

(c) The aid intensity shall not exceed 50 % of the eligible costs. It may be increased, up to a maximum aid intensity of 70 % of the eligible costs, as follows:

- 1) by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers;
- 2) by 10 percentage points if the aid is granted to medium-sized enterprises and by 20 percentage points if the aid is granted to small enterprises.

(d) Where the aid is granted in the maritime transport sector, the aid intensity may be increased to 90% of the eligible costs provided that the following conditions are met:

- 1) the trainees are not active members of the crew but are supernumerary on board; and
- 2) the training is carried out on board of ships entered in Union registers.

Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards, Article 36

(a) The investment shall fulfil one of the following conditions:

- 1) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;
- 2) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards.

(b) Aid shall not be granted where investments are undertaken to ensure that undertakings comply with Union standards already adopted and not yet in force.

(c) Exceptions to paragraph (b) are stipulated in Article 36(4) of Regulation 651/2014.

(d) The eligible costs shall be the extra investment costs necessary to go beyond the applicable Union standards or to increase the level of environmental protection in the absence of Union standards. They shall be determined as follows:

- 1) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
- 2) in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs.

(e) The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

(f) The aid intensity shall not exceed 40 % of the eligible costs.

(g) The aid intensity may be increased by:

- 1) 10 percentage points for aid granted to medium sized undertakings and by 20 percentage points for aid granted to small undertakings;
- 2) 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Investment aid for energy efficiency measures, Article 38

(a) Aid shall not be granted under this Article where improvements are undertaken to ensure that undertakings comply with Union standards already adopted, even if they are not yet in force.

(b) The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined as follows:

- 1) where the costs of investing in energy efficiency can be identified in the total investment cost as a separate investment, this energy efficiency-related cost shall constitute the eligible costs;
- 2) in all other cases, the costs of investing in energy efficiency are identified by reference to a similar, less energy efficient investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the energy efficiency-related cost and constitutes the eligible costs.

(c) The costs not directly linked to the achievement of a higher level of energy efficiency shall not be eligible.

(d) The aid intensity shall not exceed 30 % of the eligible costs.

(e) The aid intensity may be increased:

- 1) by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings;
- 2) by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Investment aid for the promotion of energy from renewable sources, Article 41

(a) Investment aid for the production of biofuels shall be exempted from the notification requirement only to the extent that the aided investments are used for the production of sustainable biofuels other than food-based biofuels. However, investment aid to convert existing food-based biofuel plants into advanced biofuel plants shall be exempted under this Article, provided that the food-based production would be reduced commensurate to the new capacity.

(b) Aid shall not be granted for biofuels which are subject to a supply or blending obligation.

(c) Aid shall not be granted for hydropower installations that do not comply with Directive 2000/60/EC of the European Parliament.

(d) The investment aid shall be granted to new installations only. No aid shall be granted or paid out after the installation started operations and aid shall be independent from the output.

(e) The eligible costs shall be the extra investment costs necessary to promote the production of energy from renewable sources. They shall be determined as follows:

- 1) where the costs of investing in the production of energy from renewable sources can be identified in the total investment cost as a separate investment, for instance as a readily identifiable add-on component to a pre-existing facility, this renewable energy-related cost shall constitute the eligible costs;
- 2) where the costs of investing in the production of energy from renewable sources can be identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid, this difference between the costs of both investments identifies the renewable energy-related cost and constitutes the eligible costs;
- 3) for certain small installations where a less environmentally friendly investment cannot be established as plants of a limited size do not exist, the total investment costs to achieve a higher level of environmental protection shall constitute the eligible costs.

(f) The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

(g) The aid intensity shall not exceed:

- 1) 45% of the eligible costs if the eligible costs are calculated on the basis of paragraph (e)(1) or paragraph (e)(2);
- 2) 30% of the eligible cost if the eligible costs are calculated on the basis of paragraph (e)(3).

(h) The aid intensity may be increased:

- 1) by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings;
- 2) by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

(i) Where aid is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid intensity may reach 90 % of the eligible costs. Such a bidding process shall be non-discriminatory and provide for the participation of all interested undertakings. The budget related to the bidding process shall be a binding constraint in the sense that not all participants can receive aid and the aid shall be granted on the basis of the initial bid submitted by the bidder, therefore excluding subsequent negotiations.

Investment aid for remediation of contaminated sites, Article 45

(a) The investment shall lead to the repair of the environmental damage, including damage to the quality of the soil or of surface water or groundwater.

(b) Where the legal or physical person liable for the environmental damage under the law applicable in each Member State without prejudice to the Union rules in this matter — in particular Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (2) as amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries (3), Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (4) and Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC (5) — is identified, that person must finance the remediation in accordance with the ‘polluter pays’ principle, and no State aid shall be granted. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, the person responsible for the remediation or decontamination work may receive State aid.

(c) The eligible costs shall be the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may be considered as eligible investment in the case of the remediation of contaminated sites.

(d) Evaluations of the increase in value of the land resulting from remediation shall be carried out by an independent expert.

(e) The aid intensity shall not exceed 90 % of the eligible costs.

Investment aid for waste recycling and re-utilisation, Article 47

(a) The investment aid shall be granted for the recycling and re-utilisation of waste generated by other undertakings.

(b) The recycled or re-used materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner. Aid to waste recovery operations other than recycling shall not be block exempted under this Article.

(c) The aid shall not indirectly relieve the polluters from a burden that should be borne by them under Union law, or from a burden that should be considered a normal company cost.

(d) The investment shall not merely increase demand for the materials to be recycled without increasing collection of those materials.

(e) The investment shall go beyond the state of the art.

(f) The eligible costs shall be the extra investment costs necessary to realise an investment leading to better or more efficient recycling or re-use activities compared to a conventional process of re-use and recycling activities with the same capacity that would be constructed in the absence the aid.

(g) The aid intensity shall not exceed 35 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Aid for culture and heritage conservation, Article 53

(a) Aid is not exempted from the notification and Regulation (EU) No 651/2014 does not apply to aid which exceeds for investment aid for culture and heritage conservation EUR 150 million per project; operating aid for culture and heritage conservation EUR 75 million per undertaking per year.

(b) The aid shall be granted for the following cultural purposes and activities:

- 1) museums, archives, libraries, artistic and cultural centres or spaces, theatres, cinemas, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;
- 2) tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State;
- 3) intangible heritage in any form, including folklorist customs and crafts;
- 4) art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
- 5) cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
- 6) writing, editing, production, distribution, digitisation and publishing of music and literature, including translations.

(c) The aid may take the form of:

- 1) investment aid, including aid for the construction or upgrade of culture infrastructure;
- 2) operating aid.

(d) For investment aid, **the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment and the aid intensity can be up to 90 %**. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism. The operator of the infrastructure is allowed to keep a reasonable profit over the relevant period.

(e) For operating aid, the aid amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. This shall be ensured ex ante, on the basis of reasonable projections, or through a clawback mechanism.

(f) For aid not exceeding EUR 2 million, the maximum amount of aid may be set, alternatively to the method referred to in paragraphs (d) and (e), at 80 % of eligible costs.

(g) For investment aid, the eligible costs shall be the investment costs in tangible and intangible assets, including:

- 1) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80 % of either the time or the space capacity per year is used for cultural purposes;
- 2) costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;
- 3) costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;

4) costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;

5) costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project

‘Operating profit’ means the difference between the discounted revenues and the discounted operating costs over the relevant lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid.

The principles and explanations of how the operating profit is calculated can be found in the guidelines for profit generating projects¹⁴ and in the GBER “Frequently Asked Questions” document¹⁵.

(h) For operating aid, the eligible costs shall be the following:

1) the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;

2) costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;

3) costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitisation and of use of new technologies as well as costs of improving accessibility for persons with disabilities;

4) operating costs directly relating to the cultural project or activity, such as rent or lease of real estate and cultural venues, travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, loan, lease and depreciation of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a result of the project or activity; depreciation charges and the costs of financing are only eligible if they have not been covered by investment aid;

5) costs for personnel working for the cultural institution or heritage site or for a project;

6) costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.

Aid for sport and multifunctional recreational infrastructures, Article 55

(a) Aid is not exempted from the notification and Regulation 651/2014 does not apply to aid which exceeds for investment aid for sports and multifunctional infrastructures EUR 30 million or the total costs exceeding EUR 100 million per project; operating aid for sport infrastructure EUR 2 million per infrastructure per year.

(b) Sport infrastructure shall not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20 % of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.

(c) Multifunctional recreational infrastructure shall consist of recreational facilities with a multi-functional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities.

¹⁴ Guidelines for profit generating projects for the period 2014-2020,
http://www.struktuurifondid.ee/public/Juhend_tulu_teenivatele_projektidele_2014-2020_mai_2015.pdf

¹⁵ General Block Exemption Regulation (GBER). Frequently Asked Questions,
http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf

(d) Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.

(e) The aid may take the form of:

- 1) investment aid, including aid for the construction or upgrade of sport and multifunctional recreational infrastructure;
- 2) operating aid for sport infrastructure.

(f) For investment aid for sport and multifunctional recreational infrastructure the eligible costs shall be the investment costs in tangible and intangible assets.

(g) For operating aid for sport infrastructure the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid.

(h) For investment aid for sport and multifunctional recreational infrastructure, **the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment and the aid intensity can be up to 90 %**. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

(i) For operating aid for sport infrastructure, the aid amount shall not exceed the operating losses over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

(j) For aid not exceeding EUR 2 million, the maximum amount of aid may be set, alternatively to the method referred to in paragraphs (h) and (i), at 80 % of eligible costs.

‘Operating profit’ means the difference between the discounted revenues and the discounted operating costs over the relevant lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid.

The principles and explanations of how the operating profit is calculated can be found in the guidelines for profit generating projects¹⁶ and in the GBER “Frequently Asked Questions” document¹⁷.

Investment aid for local infrastructures, Article 56

(a) Aid is not exempted from the notification and Regulation (EU) No 651/2014 does not apply to aid which exceeds EUR 10 million or the total costs exceeding EUR 20 million for the same infrastructure.

(b) This Article shall not apply to aid for infrastructures that is covered by other sections of Chapter III of the Regulation No 651/2014 with the exception of Section 1 — Regional aid. This Article shall also not apply to airport infrastructure and port infrastructure.

(c) The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of the infrastructure shall correspond to market price.

¹⁶ Guidelines for profit generating projects for the period 2014-2020,
http://www.struktuurifondid.ee/public/Juhend_tulu_teenivatele_projektidele_2014-2020_mai_2015.pdf

¹⁷ General Block Exemption Regulation (GBER). Frequently Asked Questions,
http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf

(d) Any concession or other entrustment to a third party to operate the infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

(e) The eligible costs shall be the investment costs in tangible and intangible assets.

(f) The aid amount **shall not exceed the difference between the eligible costs and the operating profit of the investment and the aid intensity can be up to 90 %**. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism.

(g) Dedicated infrastructure shall not be exempted under this Article.

‘Operating profit’ means the difference between the discounted revenues and the discounted operating costs over the relevant lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid.

‘Dedicated infrastructure’ means infrastructure that is built for ex-ante identifiable undertaking(s) and tailored to their needs.

The principles and explanations of how the operating profit is calculated can be found in in the guidelines for profit generating projects¹⁸ and in the GBER “Frequently Asked Questions” document¹⁹.

Aid for inland ports, Article 56c

(a) Aid is not exempted from the notification and Regulation 651/2014 does not apply to aid which exceeds for aid for inland ports with eligible costs of EUR 40 million per project (or EUR 50 million per project in an inland port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013); as regards dredging a project is defined as all dredging carried out within one calendar year.

(b) The eligible costs shall be the costs, including planning costs, of:

- 1) investments for the construction, replacement or upgrade of port infrastructures;
- 2) investments for the construction, replacement or upgrade of access infrastructure;
- 3) dredging.

(c) Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops, as well as for port superstructures shall not be eligible costs.

(d) The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment or dredging and the aid intensity can be up to 90 %. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism.

(e) Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis. The aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.

(f) For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraph (d).

“Port” means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of

¹⁸ Guidelines for profit generating projects for the period 2014-2020,
http://www.struktuurifondid.ee/public/Juhend_tulu_teenvivatele_projektidele_2014-2020_mai_2015.pdf

¹⁹ General Block Exemption Regulation (GBER). Frequently Asked Questions,
http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf

those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators in the port.

“Maritime port” means a port for, principally, the reception of sea-going vessels.

“Inland port” means a port other than a maritime port, for the reception of inland waterway vessels.

“Port infrastructure” means infrastructure and facilities for the provision of transport related port services, for example berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, alternative fuel infrastructure and infrastructure for the collection of ship-generated waste and cargo residues.

“Access infrastructure” means any type of infrastructure necessary to ensure access and entry from land or sea and river by users to a port, or in a port, such as roads, rail tracks, channels and locks.

“Dredging” means the removal of sediments from the bottom of the waterway access to a port, or in a port.

“Vessels” mean floating structures, whether self-propelled or not, with one or more surface displacement hulls;

“Inland waterway vessels” mean vessels intended solely or mainly for navigation on inland waterways or in waters within, or closely adjacent to, sheltered waters.

10.2 COMMISSION REGULATION 702/2014 (BLOCK EXEMPTION REGULATION FOR THE AGRICULTURE AND FORESTRY SECTOR AND FOR RURAL AREAS, ABER)²⁰

10.2.1 General conditions

Scope, Article 1

(a) This Regulation shall apply to aid in favour of micro, small and medium sized enterprises (SMEs) active in the agricultural sector, namely primary agricultural production, the processing of agricultural products and the marketing of agricultural products, with the exception of Articles 14, 15, 16, 18 and 23 and Articles 25 to 28 which shall only apply to SMEs active in the primary agricultural production.

(b) This Regulation shall not apply to:

- 1) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;
- 2) aid contingent upon the use of domestic over imported goods;
- 3) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters;
- 6) aid where the grant of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services;
- 7) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the internal market.

The SME definition is given in point 2 and the definition of the undertaking in difficulty is given in point 14 of Article 2 of the ABER regulation.

²⁰ Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1–75), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1461831642582&uri=CELEX:32014R0702>

Incentive effect, Article 6

(a) This Regulation shall apply only to aid which has an incentive effect. Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before **work on the project or activity has started**.

(b) Ad hoc aid granted to large enterprises shall be considered to have an incentive effect if, in addition to ensuring that the condition laid down in paragraph (a) is fulfilled, the Member State has verified, before granting the ad hoc aid concerned, that documentation prepared by the beneficiary establishes that the aid will result in one or more of the following:

- 1) a material increase in the scope of the project or activity due to the aid;
- 2) a material increase in the total amount spent by the beneficiary on the project or activity due to the aid;
- 3) a material increase in the speed of completion of the project or activity concerned;
- 4) in the case of investment ad hoc aid, that the project or activity would not have been carried out as such in the rural area concerned or would not have been sufficiently profitable for the beneficiary in the rural area concerned in the absence of the aid.

(c) By way of derogation from paragraphs (a) and (b), the following category of aid is not required to have or shall be deemed to have an incentive effect:

- 1) aid for promotion measures in the form of publications aimed at raising awareness of agricultural products among the wider public where the conditions laid down in Article 24(2)(b) are fulfilled;

‘Start of works on the project or activity’ means the earlier of either the start of the activities or the construction works relating to the investment, or the first legally binding commitment to order equipment or employ services or any other commitment that makes the project or activity irreversible; buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works or activity.

Cumulation, Article 8

(a) Aid with identifiable eligible costs, exempted from the notification requirement of Article 108(3) of the Treaty under this Regulation, may be cumulated with:

- 1) any other State aid, as long as those measures concern different identifiable eligible costs;
- 2) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under Regulation 702/2014.

(b) State aid exempted under this Regulation shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in Chapter III of this Regulation.

10.2.2 State aid articles to apply for projects

Aid for investments in tangible assets or intangible assets on agricultural holdings linked to primary agricultural production, Article 14

(a) The investment may be carried out by one or more beneficiaries or concern a tangible asset or intangible asset used by one or more beneficiaries.

(b) The investment shall pursue at least one of the following objectives:

- 1) the improvement of the overall performance and sustainability of the agricultural holding, in particular through a reduction of production costs or the improvement and re-deployment of production;
- 2) the improvement of the natural environment, hygiene conditions or animal welfare standards, provided that the investment concerned goes beyond Union standards in force;
- 3) the creation and improvement of infrastructure related to the development, adaptation and modernisation of agriculture, including access to farm land, land consolidation and improvement, the supply and saving of energy and water;

4) the achievement of agri-environmental-climate objectives, including the biodiversity conservation status of species and habitat as well as enhancing the public amenity value of a Natura 2000 area or other high nature value systems, defined in the national or regional rural development programmes of Member States, as long as investments are non-productive;

5) the restoration of production potential damaged by natural disasters, adverse climatic events which can be assimilated to natural disasters, animal diseases and plant pests and the prevention of damages caused by those events.

(c) The aid shall cover the following eligible costs:

1) the costs for the construction, acquisition, including leasing, or improvement of immovable property, with land only being eligible to an extent not exceeding 10 % of the total eligible costs of the operation concerned;

2) the purchase or lease purchase of machinery and equipment up to the market value of the asset;

3) the general costs linked to the expenditure referred to in points 1) and 2), such as architect, engineer and consultation fees, fees relating to advice on environmental and economic sustainability, including feasibility studies; feasibility studies shall remain eligible expenditure even where, based on their results, no expenditure under points 1) and 2) is incurred;

4) the acquisition or development of computer software and the acquisition of patents, licences, copyrights and trademarks;

5) expenses for non-productive investments linked to the objectives referred to in paragraph (b) point 4);

6) in the case of irrigation, the costs for investments that fulfil the conditions set out in Article 14(6)(f) of Regulation 702/2014;

7) in the case of investments aimed at the restoration of agricultural production potential damaged by natural disasters, adverse climatic events which can be assimilated to natural disasters, animal diseases or plant pests the eligible costs may include the costs incurred for restoring the agricultural production potential up to the level it was at before the occurrence of those events;

8) in the case of investments aimed at the prevention of damages caused by natural disasters, adverse climatic events which can be assimilated to natural disasters, animal diseases or plant pests, the eligible costs may include the costs of specific preventive actions.

(d) Aid shall not be granted in respect of the following:

1) the purchase of production rights, payment entitlements and annual plants;

2) the planting of annual plants;

3) drainage works;

4) investments to comply with Union standards, with exception of aid granted to young farmers within 24 months from the date of their setting-up;

5) the purchase of animals, with exception of aid granted for investments pursuant to paragraph (b) point 5).

(e) The aid intensity shall be limited to:

1) 50 % of the amount of the eligible costs in less developed regions and in all regions whose GDP per capita for the period from 1 January 2007 to 31 December 2013 was less than 75 % of the average of the EU-25 for the reference period but whose GDP per capita is above 75 % of the GDP average of the EU-27;

2) 40 % of the amount of the eligible costs in other regions.

(f) The rates provided for in paragraph (e) may be increased by 20 percentage points, provided that the maximum aid intensity does not exceed 90% in accordance with Article 14(13) of Regulation 702/2014. As regards non-productive investments referred to in paragraph (b) point 4 and investments for the restoration of production potential referred to in paragraph (b) point 5, the maximum aid intensity shall not exceed 90 %. For investments in relation to preventive measures, referred to in paragraph (b) point 5, the maximum aid intensity shall not exceed 80 %. However, it may be increased to up to 90 % if the investment is carried out collectively by more than one beneficiary.

Aid for investments in connection with the processing of agricultural products and the marketing of agricultural products, Article 17

(a) The investment shall concern the processing of agricultural products or the marketing of agricultural products.

(b) Investments in connection with the production of food based biofuels shall not be eligible for aid under this Article. Working capital shall not be considered to be an eligible cost.

(c) The aid shall cover the following eligible costs:

- 1) the construction, acquisition, including leasing, or improvement of immovable property, with land only being eligible to an extent not exceeding 10 % of total eligible costs of the operation concerned;
- 2) the purchase or lease purchase of machinery and equipment up to the market value of the asset;
- 3) general costs linked to expenditure referred to in points 1) and 2), such as architect, engineer and consultation fees, fees relating to advice on environmental and economic sustainability, including feasibility studies; feasibility studies shall remain eligible expenditure even where, based on their results, no expenditure under in points 1) and 2) is incurred;
- 4) acquisition or development of computer software and acquisitions of patents, licenses, copyrights, trademarks.

(d) The aid intensity shall not exceed:

- 1) 50 % of the amount of the eligible costs in less developed regions and in all regions whose GDP per capita for the 2007-2013 period was less than 75 % of the average of the EU-25 for the reference period but whose GDP per capita is above 75 % of the GDP average of the EU-27;
- 2) 40 % of the amount of the eligible costs in other regions.

(e) The rates referred to in paragraph (d) may be increased by 20 percentage points, provided that the maximum aid intensity does not exceed 90 % for operations:

- 1) linked to a merger of producer organisations; or (b) supported in the framework of the EIP;
- 2) supported in the framework of the EIP.

(f) Costs, other than those referred to in paragraph (c) point 1 and (c) point 2, connected with leasing contracts, such as lessor's margin, interest refinancing costs, overheads and insurance charges shall not be considered to be eligible costs. Working capital shall not be considered to be an eligible cost. Aid shall not be granted in respect of investments to comply with Union standards in force.

(g) Aid shall not be granted in respect of investments to comply with Union standards in force.

Aid for knowledge transfer and information actions, Article 21

(a) Aid shall cover vocational training and skills acquisition actions, including training courses, workshops and coaching, demonstration activities and information actions. Aid may also cover short-term farm management exchange and farm visits. Aid to demonstration activities may cover relevant investment costs.

(b) The aid shall cover the following eligible costs:

- 1) the costs of organising the vocational training, skills acquisition actions, including training courses, workshops and coaching, demonstration activities or information actions;
- 2) the costs for travel, accommodation and per diem expenses of the participants;
- 3) the cost of the provision of replacement services during the absence of the participants;
- 4) in the case of demonstration projects in relation to investments the conditions referred to in Article 21(3)(d) of Regulation 702/2014 shall be fulfilled.

(c) The costs referred to in Article 21(3)(d) of Regulation 702/2014 shall only be eligible to the extent used for the demonstration project and for the duration period of the demonstration project. Only the depreciation costs corresponding to the life of the demonstration project, as calculated on the basis of generally accepted accounting principles, shall be considered as eligible.

(d) Aid referred to in paragraph (b) point 1 and (b) point 3 shall not involve direct payments to the beneficiaries. The aid referred to in paragraph (b) point 1 and (b) point 3 shall be paid to the provider of the knowledge transfer and information actions.

(e) The aid intensity shall be limited to 90% of the eligible costs.

(f) In the case of demonstration projects referred to in paragraph (c) the maximum aid amount shall be limited to EUR 100 000 over 3 fiscal years.

Aid for promotion measures in favour of agricultural products, Article 24

(a) The aid shall cover the costs for:

- 1) the organisation of and participation in competitions, trade fairs and exhibitions;
- 2) publications aimed at raising awareness of agricultural products among the wider public.

(b) The publications referred to in paragraph (a) point 2) shall not refer to any particular undertaking, brand name or origin. However that restriction shall not apply to reference to the origin of agricultural products covered by:

- 1) quality schemes as referred to in Article 20(2)(a) of Regulation 702/2014, provided that the reference corresponds exactly to that protected by the Union;
- 2) quality schemes as referred to in Article 20(2)(b) and (c) of Regulation 702/2014, provided that the reference is secondary in the message.

(c) The aid shall cover the following eligible costs for the organisation of and participation in competitions, trade fairs and exhibitions referred to in paragraph (a) point 1):

- 1) participation fees;
- 2) travel costs and costs for the transportation of animals;
- 3) costs of publications and websites announcing the event;
- 4) the rent of exhibition premises and stands and costs of their installation and dismantling;
- 5) symbolic prizes up to a value of EUR 1 000 per prize and per winner of a competition.

(d) The aid shall cover the following eligible cost for publications aimed at raising awareness of agricultural products among the wider public referred to in paragraph (a) point 2):

- 1) costs of publications in print- and electronic media, websites, and spots in electronic media, on radio or television, aimed at presenting factual information on beneficiaries from a given region or producing a given agricultural product, provided that the information is neutral and that all beneficiaries concerned have equal opportunities to be represented in the publication;
- 2) costs for the dissemination of scientific knowledge and factual information on:
 - 2.1) quality schemes as referred to in Article 20(2) of Regulation 702/2014 open to agricultural products from other Member States and third countries;
 - 2.2) generic agricultural products and their nutritional benefits and suggested uses for them.

(e) The aid intensity shall be limited to 90% of the eligible costs.

10.3 COMMISSION REGULATION NO 1388/2014 (BLOCK EXEMPTION REGULATION FOR THE FISHERY AND AQUACULTURE SECTOR, FIBER)²¹

10.3.1 General conditions

Scope, Article 1

(a) This Regulation shall apply to aid granted to small and medium-sized enterprises (SMEs) active in the production, processing or marketing of fishery and aquaculture products.

(b) This Regulation shall also apply to aid granted to undertakings active in the production, processing or marketing of fishery and aquaculture products to make good the damage caused by natural disasters in accordance with Article 44 of Regulation 1388/2014 independently of the size of the beneficiary of the aid.

²¹ Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37–63), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1461855795092&uri=CELEX:32014R1388>

(c) This Regulation shall not apply to:

- 1) aid the amount of which is fixed on the basis of price or quantity of products put on the market;
- 2) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;
- 3) aid contingent upon the use of domestic over imported goods;
- 4) aid granted to undertakings in difficulty, with the exception of aid to make good the damage caused by natural disasters;
- 5) aid where the grant of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services;
- 6) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by natural disasters.

The SME definition is given in point 2 and the definition of the undertaking in difficulty is given in point 5 of Article 3 of the FIBER regulation.

Incentive effect, Article 6

(a) This Regulation shall apply only to aid which has an incentive effect. Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before **work on the project or activity starts**.

Cumulation, Article 8

(a) Aid exempted by Regulation (EU) No 1388/2014 may be cumulated with:

- 1) any other State aid, as long as those measures concern different identifiable eligible costs;
- 2) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under Regulation (EU) No 1388/2014.

(b) State aid exempted under Regulation 1388/2014 shall not be cumulated with any *de minimis* aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those referred to in Chapter III of Regulation (EU) No 1388/2014.

10.3.2 State aid articles to apply for projects

Aid for innovation, Article 13

(a) The aid fulfils the conditions of:

1) Article 25(1) and (2) of Regulation (EU) No 508/2014:

1.1) The owner of a fishing vessel having received support under this Chapter shall not transfer that vessel outside the Union during at least the five years following the date of actual payment of that support to the beneficiary. If a vessel is transferred within that time-frame, sums unduly paid in respect of the operation shall be recovered by the Member State, in an amount proportionate to the period during which the condition set out in the first sentence of this paragraph has not been fulfilled.

1.2) Operating costs shall not be eligible unless otherwise expressly provided for in Chapter I (Sustainable development of fisheries) of Regulation (EU) No 508/2014.

2) Article 26 of Regulation (EU) No 508/2014:

2.1) In order to stimulate innovation in fisheries, the European Maritime and Fisheries Fund (EMFF) may support projects aimed at developing or introducing new or substantially improved products and equipment, new or improved processes and techniques, and new or improved management and organisation systems, including at the level of processing and marketing;

2.2) Operations financed under this Article shall be carried out by, or in collaboration with, a scientific or technical body, recognised by the Member State or the Union. That scientific or technical body shall validate the results of such operations;

2.3) The results of operations financed under this Article shall be adequately publicised by the Member State in accordance with Article 119 of Regulation No 508/2014.

(b) The intensity of public aid is fixed by Article 95 of Regulation (EU) No 508/2014.

Aid for advisory services, Article 14

(a) The aid fulfils the conditions of:

1) Article 25(1) and (2) of Regulation (EU) No 508/2014:

1.1) The owner of a fishing vessel having received support under this Chapter shall not transfer that vessel outside the Union during at least the five years following the date of actual payment of that support to the beneficiary. If a vessel is transferred within that time-frame, sums unduly paid in respect of the operation shall be recovered by the Member State, in an amount proportionate to the period during which the condition set out in the first sentence of this paragraph has not been fulfilled.

1.2) Operating costs shall not be eligible unless otherwise expressly provided for in Chapter I (Sustainable development of fisheries) of Regulation (EU) No 508/2014.

2) Article 27 of Regulation (EU) No 508/2014:

2.1) In order to improve the overall performance and competitiveness of operators and to promote sustainable fisheries, the EMFF may support:

2.1.1) feasibility studies and advisory services that assess the viability of projects potentially eligible for support under this Chapter;

2.1.2) the provision of professional advice on environmental sustainability, with a focus on limiting and, where possible, eliminating the negative impact of fishing activities on marine, terrestrial and freshwater ecosystems;

2.1.3) the provision of professional advice on business and marketing strategies.

(b) The intensity of public aid is fixed by Article 95 of Regulation (EU) No 508/2014.

Aid for partnership between scientists and fishermen, Article 15

(a) The aid fulfils the conditions of:

1) Article 25(1) and (2) of Regulation (EU) No 508/2014:

1.1) The owner of a fishing vessel having received support under this Chapter shall not transfer that vessel outside the Union during at least the five years following the date of actual payment of that support to the beneficiary. If a vessel is transferred within that time-frame, sums unduly paid in respect of the operation shall be recovered by the Member State, in an amount proportionate to the period during which the condition set out in the first sentence of this paragraph has not been fulfilled.

1.2) Operating costs shall not be eligible unless otherwise expressly provided for in Chapter I (Sustainable development of fisheries) of Regulation (EU) No 508/2014.

2) Article 28 of Regulation (EU) No 508/2014:

2.1) In order to foster the transfer of knowledge between scientists and fishermen, the EMFF may support:

2.1.1) the creation of networks, partnership agreements or associations between one or more independent scientific bodies and fishermen, or one or more organisations of fishermen, in which technical bodies may participate;

2.1.2) the activities carried out in the framework of the networks, partnership agreements, or associations referred to in point 2.1.1.

(b) The activities referred to in point 2.1.2 of paragraph (a) may cover data collection and management activities, studies, pilot projects, dissemination of knowledge and research results, seminars and best practices.

(c) The intensity of public aid is fixed by Article 95 of Regulation (EU) No 508/2014.

Aid to promote human capital, job creation and social dialogue, Article 16

(a) The aid fulfils the conditions of:

1) Article 25(1) and (2) of Regulation (EU) No 508/2014:

1.1) The owner of a fishing vessel having received support under this Chapter shall not transfer that vessel outside the Union during at least the five years following the date of actual payment of that support to the beneficiary. If a vessel is transferred within that time-frame, sums unduly paid in respect of the operation shall be recovered by the Member State, in an amount proportionate to the period during which the condition set out in the first sentence of this paragraph has not been fulfilled.

1.2) Operating costs shall not be eligible unless otherwise expressly provided for in Chapter I (Sustainable development of fisheries) of Regulation (EU) No 508/2014.

2) Article 29 of Regulation (EU) No 508/2014:

2.1) In order to promote human capital, job creation and social dialogue, the EMFF may support:

2.1.1) professional training, lifelong learning, joint projects, the dissemination of knowledge of an economic, technical, regulatory or scientific nature and of innovative practices, and the acquisition of new professional skills, in particular linked to the sustainable management of marine ecosystems, hygiene, health, safety, activities in the maritime sector, innovation and entrepreneurship;

2.1.2) networking and exchange of experiences and best practices between stakeholders, including among organisations promoting equal opportunities between men and women, promoting the role of women in fishing communities and promoting under-represented groups involved in small-scale coastal fishing or in on-foot fishing;

2.1.3) social dialogue at Union, national, regional or local level involving fishermen, social partners and other relevant stakeholders.

(b) The intensity of public aid is fixed by Article 95 of Regulation (EU) No 508/2014.

Aid to added value, product quality and use of unwanted catches, Article 27

(a) The aid fulfils the conditions of:

1) Article 25(1) and (2) of Regulation (EU) No 508/2014:

1.1) The owner of a fishing vessel having received support under this Chapter shall not transfer that vessel outside the Union during at least the five years following the date of actual payment of that support to the beneficiary. If a vessel is transferred within that time-frame, sums unduly paid in respect of the operation shall be recovered by the Member State, in an amount proportionate to the period during which the condition set out in the first sentence of this paragraph has not been fulfilled.

1.2) Operating costs shall not be eligible unless otherwise expressly provided for in Chapter I (Sustainable development of fisheries) of Regulation (EU) No 508/2014.

2) Article 42 of Regulation (EU) No 508/2014:

2.1) In order to improve the added value or quality of the fish caught, the EMFF may support:

2.1.1) investments that add value to fishery products, in particular by allowing fishermen to carry out the processing, marketing and direct sale of their own catches;

2.1.2) innovative investments on board that improve the quality of the fishery products.

(b) The support referred to in point 2.1.2 of paragraph (a) shall be conditional on the use of selective gears to minimise unwanted catches and shall only be granted to owners of Union fishing vessels that have carried out a fishing activity at sea for at least 60 days during the two calendar years preceding the date of submission of the application for support.

(c) The intensity of public aid is fixed by Article 95 of Regulation (EU) No 508/2014.

Aid to fishing ports, landing sites, auction halls and shelters, Article 28

(a) The aid fulfils the conditions of:

1) Article 25(1) and (2) of Regulation (EU) No 508/2014:

1.1) The owner of a fishing vessel having received support under this Chapter shall not transfer that vessel outside the Union during at least the five years following the date of actual payment of that support to the beneficiary. If a vessel is transferred within that time-frame, sums unduly paid in respect of the operation shall be recovered

by the Member State, in an amount proportionate to the period during which the condition set out in the first sentence of this paragraph has not been fulfilled.

1.2) Operating costs shall not be eligible unless otherwise expressly provided for in Chapter I (Sustainable development of fisheries) of Regulation (EU) No 508/2014.

2) Article 43 of Regulation (EU) No 508/2014:

2.1) For the purpose of increasing the quality, control and traceability of the products landed, increasing energy efficiency, contributing to environmental protection and improving safety and working conditions, the EMFF may support investments improving the infrastructure of fishing ports, auctions halls, landing sites and shelters, including investments in facilities for waste and marine litter collection.

2.2) In order to improve the safety of fishermen, the EMFF may support investments in the construction or modernisation of shelters.

2.3) Support shall not cover the construction of new ports, new landing sites or new auction halls.

(b) The intensity of public aid is fixed by Article 95 of Regulation (EU) No 508/2014.

Aid for marketing measures, Article 41

(a) The aid fulfils the conditions of Article 68 of Regulation (EU) No 508/2014:

1) The EMFF may support marketing measures for fishery and aquaculture products which are aimed at:

1.1) finding new markets and improving the conditions for the placing on the market of fishery and aquaculture products, including the options set in point 1(b) of Article 68;

1.2) promoting the quality and the value added by facilitating the options set in point 1(c) of Article 68;

1.3) contributing to the transparency of production and the markets and conducting market surveys and studies on the Union's dependence on imports;

1.4) contributing to the traceability of fishery or aquaculture products and, where relevant, the development of a Union-wide ecolabel for fishery and aquaculture products as referred to in Regulation (EU) No 1379/2013;

1.5) drawing up standard contracts for SMEs, which are compatible with Union law;

1.6) conducting regional, national or transnational communication and promotional campaigns, to raise public awareness of sustainable fishery and aquaculture products.

(b) The operations referred to in point 1 of paragraph (a) may include the production, processing and marketing activities along the supply chain.

(c) The operations referred to in point 1.6 of paragraph (a) shall not be aimed at commercial brands.

(d) The intensity of public aid is fixed by Article 95 of Regulation (EU) No 508/2014.

Aid for the processing of fishery and aquaculture products, Article 42

(a) the aid fulfils the conditions of Article 69 of Regulation (EU) No 508/2014:

1) The EMFF may support investments in the processing of fishery and aquaculture products that:

1.1) contribute to energy saving or reducing the impact on the environment, including waste treatment;

1.2) improve safety, hygiene, health and working conditions;

1.3) support the processing of catches of commercial fish that cannot be destined for human consumption;

1.4) relate to the processing of by-products resulting from main processing activities;

1.5) relate to the processing of organic aquaculture products pursuant to Articles 6 and 7 of Regulation (EC) No 834/2007;

1.6) lead to new or improved products, new or improved processes, or new or improved management and organisation systems.

(b) As regards enterprises other than SMEs, the support referred to in paragraph (a) shall only be granted through the financial instruments provided for in Title IV of Part Two of Regulation (EU) No 1303/2013.

(c) The intensity of public aid is fixed by Article 95 of Regulation (EU) No 508/2014.

11. DE MINIMIS AID REGULATIONS

11.1 COMMISSION REGULATION (EU) No 1407/2013 (*general de minimis aid*)²²

Scope, Article 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;
- (b) aid granted to undertakings active in the primary production of agricultural products;
- (c) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- (d) aid contingent upon the use of domestic over imported goods;
- (e) Where an undertaking is active for examples in the sectors referred to in points (a) or (b) 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 distinction of costs, 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;
- (f) 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.

De minimis aid, Article 3

- (a) The total amount of *de minimis* aid granted per Member State to a **single undertaking** shall not exceed EUR 200 000 over any period of three 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 100 000 over any period of three fiscal years. This *de minimis* aid shall not be used for the acquisition of road freight transport vehicles.
- (b) Single undertaking' includes, for the purposes of granting *de minimis* aid, all enterprises having at least one of the relationships with each other as stipulated in Article 2(2) of Regulation (EU) No 1407/2013
- (c) *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.

Cumulation, Article 5

- (a) *De minimis* aid granted in accordance with Regulation (EU) No **1407/2013** may be cumulated with *de minimis* aid granted in accordance with Commission Regulation (EU) No 360/2012²³ up to the ceiling laid down in that Regulation. It may be cumulated with *de minimis* aid granted in accordance with *de minimis* Regulation (EU) No 1408/2013 and *de minimis* Regulation (EU) No 717/2014 up to the relevant ceiling laid down in Article 3(2) of Regulation (EU) No 1407/2013.

- (b) *De minimis* aid shall not be cumulated with State aid in relation to the same eligible costs if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by

²² 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. 1–8), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1456584567623&uri=CELEX:32013R1407>

²³ 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. 8–13), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474275090876&uri=CELEX:32012R0360>

a block exemption regulation or a decision adopted by the Commission. *De minimis* aid which 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.

The definition of the single undertaking is given in point 2 of Article 2 of the Regulation (EU) No 1407/2013.

11.2 COMMISSION REGULATION (EU) No 1408/2013 (*de minimis* aid in the agriculture sector)²⁴

Scope, Article 1

This Regulation applies to aid granted to undertakings active in the primary production of agricultural products, with the exception of:

- (a) aid the amount of which is fixed on the basis of the price or quantity of products put on the market;
- (b) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- (c) aid contingent upon the use of domestic over imported goods.
- (d) 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 Regulation (EU) No 1407/2013, that 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 distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with that Regulation.

De minimis aid, Article 3

- (a) The total amount of *de minimis* aid granted per Member State to a single undertaking shall not exceed EUR 15 000 over any period of 3 fiscal years;
- (b) *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.

The definition of the single undertaking is given in point 2 of Article 2 of the Regulation (EU) No 1408/2013.

Cumulation, Article 5

- (a) 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 Regulation (EU) No 1407/2013, *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) No 1407/2013, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with Regulation (EU) No 1407/2013.
- (b) 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

²⁴ 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. 9–17), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1456584809270&uri=CELEX:32013R1408>

Regulation (EU) No 717/2014 up to the ceiling laid down in that Regulation, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with Regulation (EU) No 717/2014.

(c) *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 which 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.

11.3 COMMISSION REGULATION (EU) No 717/2014 (*de minimis* aid in the fishery and aquaculture sector)²⁵

Scope, Article 1

This Regulation applies to aid granted **to undertakings in the fishery and aquaculture sector**, with the exception of:

- (a) aid the amount of which is fixed on the basis of price or quantity of products purchased or put on the market;
- (b) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- (c) aid contingent upon the use of domestic over imported goods;
- (d) aid for the purchase of fishing vessels.
- (e) Where an undertaking is active in the fishery and aquaculture sector and is also active in one or more of the sectors or has other activities falling within the scope of Regulation (EU) No 1407/2013, that 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 distinction of costs, that the activities in the fishery and aquaculture sector do not benefit from the *de minimis* aid granted in accordance with that Regulation.
- (f) Where an undertaking is active in the fishery and aquaculture sector as well as in the primary production of agricultural products falling within the scope of Commission Regulation (EU) No 1408/2013, this Regulation shall apply to aid granted in respect of the former sector provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with this Regulation.

De minimis aid, Article 3

- (a) The total amount of *de minimis* aid granted per Member State to a single undertaking in the fishery and aquaculture sector shall not exceed EUR 30 000 over any period of three fiscal years.
- (b) *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.

The definition of the single undertaking is given in point 2 of Article 2 of the Regulation (EU) No 717/2014.

Cumulation, Article 5

²⁵ Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45–54), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1456585432986&uri=CELEX:32014R0717>

(a) Where an undertaking is active in the fishery and aquaculture sector and is also active in one or more of the sectors or has other activities falling within the scope of Regulation (EU) No 1407/2013, *de minimis* aid granted for activities in the fishery and aquaculture sector 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) No 1407/2013, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the activities in the fishery and aquaculture sector do not benefit from *de minimis* aid granted in accordance with Regulation (EU) No 1407/2013.

(b) Where an undertaking is active in the fishery and aquaculture sector as well as in the primary production of agricultural products, *de minimis* aid granted in accordance with Regulation (EU) No 1408/2013 may be cumulated with *de minimis* aid in the fishery and aquaculture sector in accordance with this Regulation up to the ceiling laid down in this Regulation, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with this Regulation.

(c) *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 which 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.

11.4 COMMISSION REGULATION (EU) 360/2012 (de minimis aid granted to undertakings providing services of general economic interest)²⁶

Scope, Article 1

This Regulation applies to aid granted to undertakings providing a service of general economic interest within the meaning of Article 106(2) of the Treaty. This Regulation does not apply to:

- (a) aid granted to undertakings active in the fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000;
- (b) aid granted to undertakings active in the primary production of agricultural products;
- (c) aid granted to undertakings active in the processing and marketing of agricultural products, in the following cases:
 - (i) when 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,
 - (ii) when 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, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity.
- (e) aid contingent upon the use of domestic over imported goods.
- (f) aid granted to undertakings active in the coal sector, as defined in Council Decision 2010/787/EU.
- (g) aid granted to undertakings performing road freight transport for hire or reward.
- (h) aid granted to undertakings in difficulty.

²⁶ 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. 8–13), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1536756357850&uri=CELEX:32012R0360>

De minimis aid, Article 2

(a) The total amount of de minimis aid granted to any one undertaking providing services of general economic interest shall not exceed EUR 500 000 over any period of three fiscal years. This ceiling shall apply irrespective of the form of the de minimis aid and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin. The period shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

(b) Where the overall amount of de minimis aid under this Regulation granted to an undertaking for the provision of services of general economic interest exceeds the ceiling laid down in paragraph (a), that amount may not benefit from this Regulation, even for a fraction not exceeding that ceiling. In such a case, the benefit of this Regulation may not be claimed for this aid measure.

(c) De minimis aid under this Regulation shall not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that stipulated in the specific circumstances of each case by a block exemption regulation or decision adopted by the Commission.

(d) 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 paragraph (a).

(e) 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.

12. VERIFYING STATE AID AND DE MINIMIS AID IN PROJECT APPLICATIONS

12.1 The decision which of the abovementioned regulations/articles to apply shall be indicated by the applicants and/or partners in full applications. After the eligibility check and the assessment of the project summaries the JTS will also check the State aid relevance in those applications that will be asked to present the full application. The JTS will consult the applicants in order they could indicate the State aid / de minimis aid schemes in their final applications (if relevant). If the supported project activities are related to different regulations/articles the differentiation should be made in order to understand which activity corresponds to which regulation/article. The applicants and/or partners should consider carefully the implications before opting which regulations/articles to use.

The applicants and beneficiaries are invited to contact the Managing Authority (MA) and the Joint Technical Secretariat (JTS) to receive assistance and information about the possible State aid / *de minimis* aid matters related to the project idea.

12.2 Please notice that falling under State aid / *de minimis* rules has an effect on project activities, co-financing rates and amounts, but also on the starting date of project and its activities. It is the responsibility of project partners to contact and continue co-operation with the MA/JTS in order to ensure the eligibility of the activities, taking into account relevant State aid / *de minimis* aid rules, to identify possible incompatibilities of project activities with State aid / *de minimis* aid rules and to get guidance how to implement the project in line with the regulations.

12.3 In addition the overall budget and the eligible costs shall be indicated for every activity. By drawing up the budget and the eligible costs the applicant and/or partner has to follow the provisions of the corresponding State aid / *de minimis* aid regulations and the applicable co-financing rates.

12.4 During the assessment of the full applications the JTS will check if the selected State aid / *de minimis* aid instruments can be applied to the activities for which the support is asked. If no appropriate State aid instruments can be applied, the applicant and/or partner has to remove the ineligible actions or costs from the application.

The general system of how the State aid / *de minimis* aid clearance is performed is shown below.

