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

of XXX

on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest

(Text with EEA relevance)

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

of **XXX**

on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid¹, and in particular Article 2(1) thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) The Commission's experience in applying the state aid rules to undertakings providing services of general economic interest within the meaning of Article 106(2) of the Treaty on the Functioning of the European Union ("the Treaty") has shown that the ceiling below which advantages granted to such undertakings may be deemed not to affect trade between Member States or not to distort or threaten to distort competition can, in some cases, differ from the general *de minimis* ceiling established in Regulation (EU) No XXX. Indeed, at least some of those advantages are likely to constitute compensation for additional costs linked to the provision of services of general economic interest. Moreover, many activities qualifying as services of general economic interest have a limited territorial scope.
- (2) On that basis, in 2012 the Commission adopted Commission Regulation (EU) No 360/2012² containing specific *de minimis* rules for undertakings providing services of general economic interest. Pursuant to Article 2(2) of that Regulation, aid granted to undertakings providing a service of general economic interest should be deemed not to affect trade between Member States or not to distort or threaten to distort competition provided that the total amount of aid granted for the provision of

¹ OJ L 248, 24.9.2015, p. 1.

² 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).

services of general economic interest received by the beneficiary undertaking does not exceed EUR 500 000 over any period of 3 fiscal years.

- (3) Regulation (EU) No 360/2012 was amended by Commission Regulation (EU) 2020/1474³ to prolong its period of application until 31 December 2023 and to enable undertakings which became undertakings in difficulty as a consequence of the COVID-19 pandemic to remain eligible under Regulation (EU) No 360/2012 in the period from 1 January 2020 to 30 June 2021.
- (4) In light of the experience gained in applying Regulation (EU) No 360/2012, it is appropriate to adjust the *de minimis* rules for aid for services of general economic interest to reflect the adjustments applied to the general *de minimis* Regulation (EU) No XXX, in order to ensure consistency between the general and the services of general economic interest *de minimis* Regulations to simplify the enforcement of both Regulations.
- (5) In addition, it is appropriate to increase the ceiling of *de minimis* aid for services of general economic interest that a single undertaking may receive per Member State over any period of 3 years to EUR 700 000. That ceiling should reflect the inflation that has taken place since the entry into force of Regulation (EU) No 360/2012 and the likely estimated developments during the period of application of this Regulation. That ceiling is necessary to ensure that any measure falling under this Regulation may be deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition.
- (6) Aid granted by a Member State should be taken into account even when financed entirely or partly by resources of Union origin under the control of that Member State. It should not be possible for aid measures exceeding the *de minimis* ceiling to be broken down into smaller parts in order to bring such parts within the scope of this Regulation.
- (7) For the purposes of the rules on competition laid down in the Treaty, an undertaking is any entity, be it a natural or a legal person, engaged in an economic activity, regardless of its legal status and the way in which it is financed⁴. The Court of Justice of the European Union has clarified that an entity ‘owning controlling shareholdings in a company’ and which ‘actually exercises that control by involving itself directly or indirectly in the management thereof’ must be considered as taking part in the economic activity of that company. Therefore, the entity itself must be regarded as an undertaking within the meaning of Article 107(1) of the Treaty⁵. The Court of Justice of the European Union has ruled that all entities that are controlled (on a legal or on a de facto basis) by the same entity should be considered as a single undertaking⁶.
- (8) For the sake of legal certainty, and in order to reduce the administrative burden, a clear and exhaustive list of criteria should be provided for determining when two or

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

⁴ Judgment of the Court of Justice of 10 January 2006, *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

⁵ Ibid, paragraphs 112 and 113.

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

more enterprises in the same Member State should be considered as a single undertaking. The Commission has selected criteria that are appropriate for the purposes of this Regulation from the well-established criteria for defining ‘linked enterprises’ as part of the definition of small or medium-sized enterprises (“SMEs”) in Commission Recommendation 2003/361/EC⁷ and in Annex I to Commission Regulation (EU) No 651/2014⁸. Those criteria should be applicable, given the scope of this Regulation, to both SMEs and large undertakings and should ensure that a group of linked enterprises is considered as one single undertaking for the application of the *de minimis* rule. However, enterprises that have no relationship with each other, except for the fact that each of them has a direct link to the same public body or bodies, should not be treated as being linked to each other. The specific situation of enterprises controlled by the same public body or bodies, in which the enterprises may have independent power of decision, should therefore be taken into account.

- (9) This Regulation should apply only to aid granted for the provision of a service of general economic interest. The beneficiary undertaking should therefore be entrusted in writing or in electronic form with the service of general economic interest in respect of which the aid is granted. While the entrustment act should inform the undertaking of the service of general economic interest in respect of which the aid is granted, it need not necessarily contain all of the detailed information as set out in Commission Decision 2012/21/EU⁹.
- (10) In view of the special rules that apply in the sectors of primary production of agricultural products, fisheries, and aquaculture, of the fact that undertakings in those sectors are rarely entrusted with services of general economic interest, and of the risk that amounts of aid below the ceiling set out in this Regulation could fulfil the criteria set out in Article 107(1) of the Treaty in those sectors, this Regulation should not apply to those sectors.
- (11) Considering the similarities between the processing and marketing of agricultural products, on the one hand, and of non-agricultural products, on the other, this Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met. On-farm activities necessary for preparing a product for the first sale (e.g. harvesting, cutting and threshing of cereals, or packing eggs) or the first sale to resellers or processors should not be considered as processing and marketing in this respect. This Regulation should therefore not apply to those activities.
- (12) The Court of Justice has stated that, once the Union has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States must refrain from taking any measure that might

⁷ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

⁸ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

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

undermine or create exceptions to it¹⁰. For that reason, this Regulation should not apply to aid for amounts fixed on the basis of the price or quantity of products purchased or put on the market in the agricultural sector. This Regulation should also not apply to aid linked to an obligation to share the aid with primary agricultural producers.

- (13) This Regulation should not apply to export aid or aid contingent upon the use of domestic goods or services over imported ones. Aid towards the costs of participating in trade fairs or towards the costs of studies or consultancy services needed to launch a new or existing product on a new market in another Member State or non-EU country in general does not constitute export aid.
- (14) The period of 3 years to be taken into account for the purposes of this Regulation should be assessed on a rolling basis. For each new grant of *de minimis* aid, the total amount of *de minimis* aid granted in the past 3 years needs to be taken into account.
- (15) Where an undertaking is active in sectors excluded from the scope of this Regulation but is also active in other sectors or has other activities, this Regulation should apply to those other sectors or activities, if the Member State concerned ensures that the activities in the excluded sectors do not benefit from the *de minimis* aid by appropriate means, such as separation of activities or separation of accounts. The same principle should apply where an undertaking is active in sectors to which lower *de minimis* ceilings apply according to the relevant *de minimis* Regulation. If an undertaking is not able to ensure that the activities in sectors to which lower *de minimis* ceilings apply only benefit from *de minimis* aid up to those lower ceilings, the lowest ceiling should apply to all of the undertaking's activities.
- (16) In order to avoid circumvention of maximum aid intensities laid down in various Union instruments, *de minimis* aid to undertakings providing services of general economic interest should not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity or aid amount exceeding that specified in the particular circumstances of each case by a block exemption regulation or a decision adopted by the Commission.
- (17) It is possible that a measure might not be considered to be State aid under Article 107(1) of the Treaty on grounds other than those set out in this Regulation. For instance, when the measure complies with the market economy operator principle or does not involve a transfer of state resources. In particular, Union funding centrally managed by the Commission that is not directly or indirectly under the control of the Member State does not constitute State aid. It should not be taken into account in determining whether the relevant ceiling met.
- (18) This Regulation does not cover all situations where a measure may not have any effect on trade between Member States and may not distort or threaten to distort competition. There may be situations where a beneficiary supplies goods or services to a limited area (including in an insular region) within a Member State and it is unlikely to attract customers from other Member States, and that it could not be envisaged that the measure would have more than a marginal effect on the conditions of cross-border investments or establishment. Such measures should be assessed on a case-by-case basis depending on the specific factual situation.

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

- (19) This Regulation should not affect the application of Regulation (EU) No XXX to undertakings providing services of general economic interest. Member States should remain free to rely either on this Regulation or on Regulation (EU) No XXX as regards aid granted for the provision of services of general economic interest.
- (20) The Court of Justice, in its *Altmark* judgment¹¹, has identified a number of conditions which must be fulfilled in order for compensation for the provision of a service of general economic interest not to constitute State aid. Those conditions ensure that compensation limited to the net costs incurred by efficient undertakings for the provision of a service of general economic interest does not constitute State aid within the meaning of Article 107(1) of the Treaty. If those conditions are not respected, compensation constitutes State aid which may be declared compatible on the basis of the applicable Union rules. In order to avoid this Regulation being applied to circumvent the conditions identified in the *Altmark* judgment, and in order to avoid *de minimis* aid granted under this Regulation affecting trade due to its cumulation with other compensation for the same service of general economic interest, *de minimis* aid under this Regulation should not be cumulated with any other compensation in respect of the same service, regardless of whether or not it constitutes State aid under the *Altmark* judgment or compatible State aid under Decision 2012/21/EU or under the Communication from the Commission 2012/C 8/03¹². Therefore, this Regulation should not apply to compensation received for the provision of a service of general economic interest in respect of which other types of compensation are also being granted, unless that other compensation constitutes *de minimis* aid according to other *de minimis* regulations and the cumulation rules set out in this Regulation are complied with.
- (21) For the purposes of transparency, equal treatment and correct application of the *de minimis* ceiling, all Member States should apply the same calculation method to the calculation of the total amount of aid granted. To facilitate the calculation, aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. Calculating the grant equivalent of transparent types of aid other than grants and aid payable in several instalments requires the use of market rates prevailing at the time of granting such aid. With a view to facilitate a common, transparent and simple application of the State aid rules, the market rates for the purposes of this Regulation should be the reference rates, set in line with the Communication from the Commission on the revision of the method for setting the reference and discount rates¹³.
- (22) This Regulation should apply only to *de minimis* aid which is transparent, that is to say aid for which it is possible to calculate the precise gross grant equivalent *ex ante* without it being necessary to carry out a risk assessment. Such a precise calculation is possible, for instance, for grants, interest rate subsidies and capped tax exemptions or other instruments that provide for a cap, ensuring that the relevant ceiling is not exceeded. Providing for a cap means that, as long as the precise amount of aid is not known, the

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

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

¹³ Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

Member State should assume that the amount is equal to the cap for the measure to ensure several aid measures together do not exceed the ceiling set out in this Regulation and to apply the rules on cumulation.

- (23) Aid comprised of capital injections should not be considered as transparent *de minimis* aid unless the total amount of the public capital injections does not exceed the *de minimis* ceiling. Aid comprised of risk finance measures taking the form of equity or quasi-equity investments as referred to in the risk finance guidelines¹⁴ should not be considered as transparent *de minimis* aid, unless the measure concerned provides capital that does not exceed the *de minimis* ceiling.
- (24) Aid comprised of loans including *de minimis* risk finance aid taking the form of loans should be considered transparent *de minimis* aid if the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time the aid is granted. To simplify the treatment of small loans of short duration, it is necessary to set out a clear rule that is easy to apply and takes into account both the amount of the loan and its duration. Loans that are secured by collateral covering at least 50% of the loan and that do not exceed either EUR 3 500 000 and a duration of 5 years or EUR 1 750 000 and a duration of 10 years may be considered as having a gross grant equivalent not exceeding the *de minimis* ceiling under this Regulation. This is based on the Commission's experience and takes into account the inflation which took place since the entry into force of Commission Regulation (EU) No 360/2012, as well as the likely developments during the period of validity of this Regulation. Given the difficulties in determining the gross grant equivalent of aid granted to undertakings that may not be able to repay the loan (for example, because this undertaking is subject to collective insolvency proceedings or because it fulfils the criteria under its national law for being placed in collective insolvency proceedings at the request of its creditors), this rule should not apply to such undertakings.
- (25) Aid comprised in guarantees, including *de minimis* risk finance aid taking the form of guarantees, should be considered as transparent if the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice for the type of undertaking concerned¹⁵. It is necessary to provide for a clear rule that is easy to apply and takes into account both the amount of the underlying loan and the duration of the guarantee. Setting out a clear rule should help to simplify the treatment of guarantees of short duration securing up to 80% of a relatively small loan, where losses are sustained proportionally and in the same way by the lender and the guarantor, and net recoveries generated from the recuperation of the loan from the securities given by the borrower reduce proportionally the losses borne by the lender and the guarantor. This rule should not apply to guarantees on underlying transactions that do not constitute a loan, such as guarantees on equity transactions. The guarantee should be considered as having a gross grant equivalent not exceeding the *de minimis* ceiling where the following conditions are met: (i) the guarantee does not exceed 80% of the underlying loan; (ii) the amount guaranteed does not exceed EUR 5 250 000; and (iii) the duration of the guarantee does not exceed 5 years. The guarantee should also be considered as having a gross grant equivalent not exceeding the *de minimis* ceiling where (i) the guarantee does not exceed 80% of the underlying

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

¹⁵ For instance, Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).

loan; (ii) the amount guaranteed does not exceed EUR 2 625 500; and (iii) the duration of the guarantee does not exceed 10 years.

- (26) In addition, Member States may use a methodology to calculate the gross grant equivalent of guarantees that has been notified to the Commission under another Commission Regulation in the State aid area applicable at that time and that has been accepted by the Commission as being in accordance with the Guarantee Notice¹⁶ or any succeeding notice, provided that the accepted methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake as part of the application of this Regulation. Given the difficulties in determining the gross grant equivalent of aid granted to undertakings that might not be able to repay the loan, this rule should not apply to such undertakings.
- (27) Upon notification by a Member State, the Commission should examine whether a measure that does not consist in a grant, loan, guarantee, capital injection, or risk-finance measure taking the form of an equity or quasi-equity investment, capped tax exemptions or other instruments that provide for a cap, leads to a gross grant equivalent that does not exceed the *de minimis* ceiling and therefore could fall within the scope of this Regulation.
- (28) The Commission should be able to check that State aid rules are complied with and in particular that aid granted under the *de minimis* rules adheres to the conditions thereof. In accordance with the principle of sincere cooperation laid down in Article 4(3) of the Treaty on European Union, Member States should facilitate the fulfilment of this task by having in place the necessary tools to ensure that the total amount of *de minimis* aid granted to the same undertaking for the provision of services of general economic interest does not exceed the overall permissible ceiling. Member States should monitor the aid granted to ensure that the relevant ceilings are not exceeded and the cumulation rules are complied with. In order to comply with that obligation, Member States should provide complete information on *de minimis* aid granted in a central register and check that any new grant of aid does not exceed the relevant ceiling.
- (29) To reduce the administrative burden, Member States should be able to decide not to register, in the central register information, *de minimis* aid that does not exceed on an aggregate EUR 1 000 to a single undertaking for a period of 3 years. This does not affect the obligation for Member States to ensure that the *de minimis* ceiling is not exceeded and that the other conditions set out in this Regulation are met.
- (30) Transparency rules aim to ensure better compliance, greater accountability, peer review and ultimately more effective public spending. Considering the legitimate interest in transparency to provide information to the public on the use of State funds, the Commission concludes that the publication, in a central register, of the name of the aid beneficiary, when the aid beneficiary is a natural person or a legal person which has the name of a natural person, does not unduly interfere with beneficiaries' right to protect their personal data.
- (31) It is appropriate to establish a set of conditions according to which any measure falling under this Regulation can be deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition. For this reason, the Regulation should also cover aid granted before its entry into force provided that

¹⁶ Ibid.

all the conditions set out in this Regulation are met. Similarly, support granted between 29 April 2012 and 31 December 2023 that met the criteria in Regulation (EU) No 360/2012 should be considered as exempt from notification under Article 108(3) of the Treaty. This Regulation should not affect the requirements of Union law in public procurement, the additional requirements set out in the Treaty or in sectoral Union legislation.

- (32) Having regard to the frequency with which it is generally necessary for the Commission to revise *de minimis* aid granted to undertakings providing services of general economic interest, the period of application of this Regulation should be limited. Therefore, this Regulation should enter into force on 1 January 2024 and apply until 31 December 2030.
- (33) Should the period of application of this Regulation expire without being extended, Member States should have an adjustment period of 6 months for *de minimis* aid covered by this Regulation.
- (34) This Regulation should replace Regulation (EC) No 360/2012 upon its expiry on 31 December 2023.

HAS ADOPTED THIS REGULATION:

Article 1

Scope

- 1. This Regulation applies to aid granted to undertakings providing a service of general economic interest within the meaning of Article 106(2) of the Treaty.
- 2. This Regulation does not apply to:
 - (a) aid granted to undertakings active in the fishery and aquaculture sectors, falling within the scope of Regulation (EU) No 1379/2013 of the European Parliament and of the Council¹⁷;
 - (b) aid granted to undertakings active in the primary production of agricultural products;
 - (c) aid granted to undertakings active in the sector of processing and marketing of agricultural products, in one of the following situations:
 - i. where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;
 - ii. where the aid is conditional on being partly or entirely passed on to primary producers;
 - (d) aid granted to export-related activities towards non-EU countries or Member States, namely aid directly linked to the quantities exported, the establishment and operation of a distribution network, or other current expenditure linked to the export activity;

¹⁷ Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000, OJ L 354, 28.12.2013, p. 1.

- (e) aid contingent upon the use of domestic goods and services over imported goods and services.
- 3. Where an undertaking is active in the sectors referred to in points (a), (b) or (c) of paragraph 2 and is also active in one or more of the sectors or has other activities falling within the scope of this Regulation, this Regulation shall apply only to those sectors or activities falling within the scope of this Regulation, and to aid granted in respect of those sectors or activities falling within the scope of this Regulation, provided that the Member State concerned ensures, by appropriate means, such as separation of activities or separation of accounts, that the activities in the sectors excluded from the scope of this Regulation do not benefit from the *de minimis* aid granted in accordance with this Regulation.

Article 2

Definitions

- 1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) ‘agricultural products’ means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products set out in Regulation (EU) No 1379/2013;
 - (b) ‘processing of agricultural products’ means any operation on an agricultural product resulting in a product that is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
 - (c) ‘marketing of agricultural products’ means holding or displaying an agricultural product with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing of agricultural products if it takes place in separate premises reserved for that purpose;
- 2. ‘Single undertaking’ means, for the purposes of this Regulation, all enterprises having at least one of the following relationships with each other:
 - (a) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;
 - (b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
 - (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
 - (d) one enterprise, which is a shareholder in, or member of, another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.

Enterprises having any of the relationships referred to in points (a) to (d) through one or more other enterprises shall also be considered to be a single undertaking.

Article 3

De minimis aid

1. Aid granted to undertakings for the provision of a service of general economic interest shall be deemed not to meet all the criteria set out in Article 107(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 108(3) of the Treaty if it fulfils all the conditions laid down in this Regulation.
2. The total amount of *de minimis* aid granted per Member State to a single undertaking providing services of general economic interest shall not exceed EUR 700 000 over any period of 3 years.
3. *De minimis* aid shall be deemed as granted at the moment that the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime, irrespective of the date of payment of the *de minimis* aid to the undertaking.
4. The ceiling laid down in paragraph 2 shall apply irrespective of the form of the *de minimis* aid or the objective pursued by it and irrespective of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin under the control of that Member State.
5. For the purposes of the ceiling laid down in paragraph 2, aid shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction of tax or other charges. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
6. Aid payable in several instalments shall be discounted to its value at the moment of it being granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time the aid is granted.
7. Where the relevant ceiling laid down in paragraph 2 would be exceeded by the grant of new *de minimis* aid for services of general economic interest, that new aid shall not benefit from this Regulation.
8. In the case of mergers or acquisitions, all prior *de minimis* aid granted to any of the merging undertakings shall be taken into account in determining whether any new *de minimis* aid to the new or the acquiring undertaking exceeds the relevant ceiling. *De minimis* aid lawfully granted before the merger or acquisition shall remain lawful.
9. If one undertaking splits into two or more separate undertakings, *de minimis* aid granted prior to the split shall be allocated to the undertaking that benefited from it, which is in principle the undertaking taking over the activities for which the *de minimis aid* was used. If such an allocation is not possible, the *de minimis* aid shall be allocated proportionately on the basis of the book value of the equity capital of the new undertakings at the effective date of the split.

Article 4

Calculation of gross grant equivalent

1. This Regulation shall apply only to aid in respect of which it is possible to precisely calculate the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment ('transparent aid').
2. Aid comprised of grants or interest rate subsidies shall be considered as transparent *de minimis* aid.

3. Aid comprised of loans shall be considered as transparent *de minimis* aid if:
 - (a) the beneficiary is neither subject to collective insolvency proceedings nor fulfils the criteria under its national law for being placed in collective insolvency proceedings at the request of its creditors. For large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least 'B-'; and either
 - (b) the loan is secured by collateral covering at least 50% of the loan and the loan amounts to either EUR 3 500 000 over 5 years or EUR 1 750 000 over 10 years; if a loan is for less than those amounts or is granted for a period of less than 5 or 10 years respectively, the gross grant equivalent of that loan shall be calculated as a corresponding proportion of the relevant ceiling laid down in Article 3(2) of this Regulation; or
 - (c) the gross grant equivalent has been calculated on the basis of the reference rate applicable at the time of the grant.
4. Aid comprised of capital injections shall only be considered as transparent *de minimis* aid if the total amount of the public injection does not exceed the *de minimis* ceiling laid down in Article 3(2) of this Regulation.
5. Aid comprised of risk finance measures taking the form of equity or quasi-equity investments shall only be considered as transparent *de minimis* aid if the capital provided to a single undertaking does not exceed the *de minimis* ceiling.
6. Aid comprised of guarantees shall be treated as transparent *de minimis* aid if the following conditions are met:
 - (a) the beneficiary is neither subject to collective insolvency proceedings nor fulfils the criteria under its national law for being placed in collective insolvency proceedings at the request of its creditors. For large undertakings, the beneficiary shall be in a situation comparable to a credit rating of at least 'B-'; and either
 - (b) the guarantee does not exceed 80% of the underlying loan at each moment in time, losses are sustained proportionally and in the same way by the lender and the guarantor, net recoveries generated from the recuperation of the loan from the securities given by the borrower reduce proportionally the losses borne by the lender and the guarantor, and either the amount guaranteed is EUR 5 250 000 and the duration of the guarantee is 5 years or the amount guaranteed is EUR 2 625 500 and the duration of the guarantee is 10 years; if the amount guaranteed is less than these amounts or the guarantee is for a period of less than 5 or 10 years respectively, the gross grant equivalent of that guarantee shall be calculated as a corresponding proportion of the relevant ceiling laid down in Article 3(2) of this Regulation; or
 - (c) the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice; or
 - (d) before implementation,
 - i. the methodology used to calculate the gross grant equivalent of the guarantee has been notified to the Commission under another Commission Regulation in the State aid area applicable at that time and accepted by the Commission as being in line with the Guarantee Notice, or any succeeding notice; and

- ii. that methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation.
7. Aid comprised of other instruments shall be considered as transparent *de minimis* aid if the instrument provides for a cap that ensures that the relevant ceiling laid down in Article 3(2) of this Regulation is not exceeded.

Article 5

Cumulation

1. *De minimis* aid granted in accordance with this Regulation shall not be cumulated with State aid in respect of the same eligible costs or with State aid for the same risk finance measure if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or decision adopted by the Commission.
2. *De minimis* aid under this Regulation may be cumulated with *de minimis* aid under other *de minimis* regulations up to the ceiling laid down in Article 3(2) of this Regulation.
3. *De minimis* aid under this Regulation shall not be cumulated with any compensation in respect of the same service of general economic interest, regardless of whether or not it constitutes State aid.

Article 6

Monitoring and reporting

1. Member States shall ensure that information on *de minimis* aid granted for services of general economic interest is registered in a central register at national or Union level. The central register shall be set up within 2 years after the entry into force of this Regulation. Information in the central register shall contain the identification of the beneficiary, the aid amount, the granting date, the granting authority, the aid instrument and the sector involved based on the statistical classification of economic activities in the Union ('NACE classification'). The central register shall be set up in such a way as to enable easy public access to the information. Member States may decide not to register in the central register information on *de minimis* aid that does not exceed EUR 1 000 to a single undertaking for a period of 3 years.
2. Member States shall register the information included in paragraph 1, in the central register, on *de minimis* aid granted by any authority within the Member State concerned within 20 working days following the granting of the aid.
3. Member States shall keep records of the registered information on individual *de minimis* aid for 10 years from the date on which the aid was granted and for each *de minimis* aid scheme for 10 years from the date on which the last individual aid was granted under such a scheme.
4. Member States shall grant new *de minimis* aid under this Regulation only after having verified that the new aid will not raise the total amount of *de minimis* aid granted to the undertaking concerned to a level above the ceiling laid down in Article 3(2) and that all the conditions laid down in this Regulation are met.

5. Member States using a central register at national level shall submit by 30 June every year aggregated data on *de minimis* aid granted for the previous year. The aggregated data shall contain the number of beneficiaries, the overall amount of *de minimis* aid granted and the overall amount of *de minimis* aid granted per sector, using the 'NACE classification'.
6. On written request by the Commission, the Member State concerned shall provide the Commission, within 20 working days or a longer period set out in the request, with all the information that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied with, and in particular the total amount of *de minimis* aid under this Regulation and under other *de minimis* regulations received by any undertaking.

Article 7

Transitional provisions

1. This Regulation shall apply to *de minimis* aid for the provision of services of general economic interest that was granted before the date of its entry into force where the aid fulfils all of the conditions laid down in this Regulation.
2. Any individual *de minimis* aid that was granted between an April 2012 and 31 December 2023 and fulfils the conditions set out in Regulation (EU) No 360/2012 shall be deemed not to meet all of the criteria in Article 107(1) of the Treaty and shall therefore be exempt from the notification requirement in Article 108(3) of the Treaty.
3. At the end of the period of validity of this Regulation, any *de minimis* aid which fulfils the conditions of this Regulation may be validly implemented for a further period of 6 months.
4. Until the central register is set up and covers a period of 3 years, where a Member State intends to grant *de minimis* aid to an undertaking in line with this Regulation, that Member State shall inform the undertaking in written or electronic form of the amount of the aid expressed as a gross grant equivalent and its *de minimis* character, referring directly to this Regulation. Where *de minimis* aid is granted to different undertakings in line with this Regulation based on a scheme and different amounts of individual aid are granted to those undertakings under that scheme, the Member State concerned may choose to fulfil its obligation by informing the undertakings of an amount corresponding to the maximum aid amount to be granted under that scheme. In such cases, the fixed sum shall be used for determining if the relevant ceiling laid down in Article 3(2) of this Regulation is met. Before granting the aid, the Member State shall obtain a declaration from the undertaking concerned, in written or electronic form, about any other *de minimis* aid received to which this Regulation or other *de minimis* regulations apply during the previous 2 years and the current year.

Article 8

Entry into force and period of application

This Regulation shall enter into force on 1 January 2024.

It shall apply until 31 December 2030.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula von der Leyen