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Trádála agus Fostaíochta  
Department of Enterprise,  
Trade and Employment

# **Ireland's position on proposed changes to the De Minimis Regulation 1407/2013**

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## Introduction

Ireland welcomes the opportunity to submit a Position Paper to the Commission on the proposed changes to the De Minimis Regulation.

Ireland welcomes the revision and also the proposed stability of the regulation until 2030.

The General De Minimis Regulation 1407/2013 is an important part of the State Aid framework and Irish Granting Authorities rely on it to provide small amounts of aid to undertakings that are most in need. The De Minimis Regulation is easy to use and comes with less administrative burden than other guidelines within the State Aid framework and therefore, makes this process simple and accessible.

[To achieve the ambition set out in the European Green Deal Communication and the REPowerEU Communication, significantly higher levels of investment will be required compared to the period 2014-2020. State aid rules have an important role to play in enabling and supporting the EU in fulfilling its Green Deal policy objectives and the role that the de minimis aid Regulation can play in delivering this higher level of investment must be considered – particularly in the context of the recently announced Inflation Reduction Act in the US and the massive level of subsidies the US already provides companies, again threatening to leave European companies at a disadvantage compared to their US counterparts].

The speed and simplicity of using the De Minimis Regulation has meant that it has been an invaluable tool of economic policy to support SMEs through the trio of crises in the Irish economy; Brexit, COVID-19 and now Russia's invasion of Ukraine.

The proposed amendments include an increase to the aid ceiling, which Ireland supports, and the introduction of a mandatory Register of De Minimis Aid granted. Considering the former, Ireland presented two methodologies in response to the Commission's Call for Evidence. In July 2022. However, the figure proposed by the Commission of EUR 275,000 remains insufficient. The limits should remain proportionate and not risk distorting the level playing field and Ireland believes this mission can still be achieved with a higher ceiling.

Ireland, like many other Member States does not currently have a central De Minimis Register. While such a register would provide us with useful data, it would also come with uncertainties for our Granting Authorities. In the face of this uncertainty it is evident that the 6 months transitional period is not a sufficient timeframe for Member States to design, build, test and implement such a register.

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## **Importance of De Minimis Aid for the Level Playing Field: Possibility for equal application**

Regulatory tools facilitating small aid amounts with less administrative complexities are important safeguards of the Level Playing Field. The simpler approach and lower aid amounts provide equal opportunities for all Member States, irrespective of fiscal or administrative capacity, to provide equal levels of State Aid to support policy objectives while avoiding a negative impact on trade and competition.

State Aid rules with complex administrative arrangements, and scope for large aid amounts only favour Member States with large budgets and large public administration systems that can practically utilise the flexibility provided. Therefore, Ireland considers that the De Minimis Regulation is the ideal solution to allow for State Aid that is appropriate, proportionate and necessary and minimises distortion of trade and competition by providing a legal basis and monetary limits that can be used equally in all Member States, large and small.

It is because of this equality of application, counterintuitively, that increasing the De Minimis ceiling, is actually supportive of the Level Playing Field. On this basis, Ireland is calling for an increase in the De Minimis ceiling as explained in the next section.

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## An increase to the aid ceiling

In response to the Commission's Call for Evidence on the De Minimis Regulation, Ireland identified two distinct methodologies for setting the aid ceiling:

- 1. Parity with the UK TCA: 325,000 IMF Special Drawing rights which provides a value of approximately EUR 408,000 (spot exchange rate on 4 January 2023)**
- 2. Actual and expected inflation: which outlined a figure of EUR 275,000**

Ireland welcomes the Commission's proposal to set the aid ceiling at EUR 275,000 in line with our own calculations for inflation. However, on the basis of further analysis, Ireland considers that a higher ceiling would be more appropriate and remain proportionate.

As described already, the simple nature of De Minimis Aid, means that it provides the possibility for equal application regardless of the size and structure of Member States. This means that a higher ceiling, allowing small Member States to support investment in a manner equal with larger Member States, protects the Level Playing Field.

In the past, the Commission have increased the De Minimis ceiling on the basis of inflation and 'experience' in using the regulation<sup>1</sup>. Therefore, experience of Granting Authorities applying the regulation, particularly those in small Member States, should also be taken into account as an appropriate justification for setting an aid ceiling.

To adequately support the level of necessary investment to achieve the Green Deal and REPowerEU objectives, Irish Granting Authorities, (based on their experiences applying the De Minimis Regulation for their client bases), would require a De Minimis Aid ceiling between EUR 300,000 and EUR 500,000. This level would be proportionate and practical, by facilitating administratively simple state aid support measures, at a level that still protects the Level Playing Field.

Additionally, Ireland also highlights the importance of parity with the UK TCA to ensure a Level Playing Field for EU businesses trading with the UK. The level of EU - UK trade remains significant, particularly for Ireland as the UK is our nearest neighbour and the only country with an open land border with the UK. A higher ceiling in the UK than in the EU threatens the Level Playing Field for EU businesses.

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:I26121>

Ireland acknowledges that the TCA does not contain any indexation, however, there is no reason why the ceiling could not be revised in the future, with inflation as the most suitable justification at that point.

At this point in time, an increase is justified and for the reasons described, the experiences of Irish Granting Authorities and parity with the UK are considered by Ireland to be appropriate justifications for setting the aid ceiling.

**Ireland considers that a ceiling up to EUR 400,000 will still maintain the level playing field without unduly affecting trade or competition.**

## Time period for calculating the aid ceiling

Although the ceiling has been amended, the three fiscal years condition has not. Finance and international trade moves faster than ever, and as such we consider that three fiscal years is too long. As with the monetary value, the time period was set at a time when trade and finance moved slower.

The last few years have shown us how quickly the global economic environment can shift, and Member States need De Minimis aid to quickly provide support. Undertakings who received support for Brexit challenges, still had to consider that aid during the COVID crisis and now again for the Ukraine crisis.

**Ireland therefore considers that two fiscal years would be more appropriate, and we ask the Commission to give consideration to such a change.**

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## Single Undertaking definition

Ireland agrees with the points raised by other Member States regarding the practical difficulties with the definition of Single Undertaking as set out in Point 2 of Article 2 of the draft text and the pre-existing Regulation 1407/2013.

The limited nature of De Minimis Aid means that it is often granted to micro-enterprises, including sole-traders, for whom it is very difficult to assess shareholding relationships with other entities related to the beneficiary.

In the context of a proposed register, Ireland acknowledges the experiences of other Member States that operate a register as regards the difficulties with the definition. For a register to operate effectively, this issue would need to be addressed.

It is acknowledged that changing this definition may impact the scope of the Regulation, for example, by changing the limit to apply at the level of the company rather than the Undertaking. Ireland would accept such a change in scope as it would align with our overarching position that administrative simplicity is important in maintaining the Level Playing Field. Moreover, the introduction of a central register would allow for an assessment of the nature of, and extent to which, cross-subsidization occurs and to design appropriate safeguards on the basis of the evidence and findings.

**Ireland therefore calls on the Commission to revise and simplify the definition for Single Undertaking**

**Should a revision of the definition impact on the scope of the regulation, the design of safeguards to avoid cross-subsidization should be evidenced by future data.**

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## A Mandatory Public Register

Ireland does not currently have a central register for general De Minimis Aid under Regulation (1407/2013). However, Ireland currently holds a Register for Agriculture De Minimis Aid (1408/2013) that is working well to ensure compliance with the national ceiling.

Ireland considers that the introduction of a mandatory register will create an administrative burden. Such a burden must be taken into account in any regulatory requirements introducing a mandatory register. The task of implementing such a register is substantial for smaller Member States such as Ireland and a longer implementation period (currently 6 months) should be allowed.

The experiences of Member States with public registers must be considered by the Commission. For example, Cyprus, who presented at the 1<sup>st</sup> Advisory Committee Meeting, and explained how the process from procurement to implementation took 4 years. This experience must be considered by the Commission and on this basis, Ireland proposes that a 'go-live date' should be later than 2024 and at that point only awards from the date of implementation of a potential register should be required.

Other Member States raised the practical difficulty of applying the definition for a "Single Undertaking" in the context of a De Minimis aid register. Ireland considers that this needs to be addressed in advance of the introduction of a register. This point is further elaborated in the previous section.

Ireland also asks for a detailed explanation of how operating aid and annualised tax reliefs would be treated on a register and considers that the approach should be made clear in advance of the introduction of a mandatory public register.

In the proposed De Minimis Regulation, the Commission have mentioned that such a register could be at a national or EU level and Ireland would propose that an EU register would be more appropriate. However, the design of such a register must be a collaborative process with involvement from Member States throughout.

Taking these points together forms Ireland's position:

**Ireland does not oppose the introduction of a mandatory register, which would be most appropriately developed at EU level and should involve a sufficiently long lead-in time. Such a register needs to be designed in close cooperation with Member States to ensure differences in structures are taken into consideration.**

**In advance of the introduction of a mandatory register, the Commission should revise the definition of a "Single Undertaking" and provide detailed guidance on the treatment of operating aid and annualised tax reliefs for such a register.**

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## Concluding remarks

Ireland thanks the Commission for their work in revising the De Minimis Regulation 1407/2013.

Due to the nature of De Minimis aid with small aid amounts and administrative simplicity, it can be applied equally in all Member States, irrespective of fiscal or administrative capacity. Increasing the scope of the regulation, while still keeping a low aid ceiling is conducive to the Level Playing Field. Regulations and Guidelines permitting large aid amounts with complex conditionalities favour large Member States, whereas De Minimis aid can be used equally by all Member States.

In summary, Ireland proposes a higher ceiling of EUR 400,000 would be more appropriate. We also propose the amendment of the three fiscal year time period in light of the current economic conditions.

Furthermore, the introduction of a mandatory register will lead to significant administrative burden to a small Member State such as Ireland and a longer lead in time should be considered by the Commission. The introduction and operation of a register must be carried out in a manner that minimises the administrative complexity for Granting Authorities.

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