

Malta position on the draft *de minimis* Regulation

Reference is made to the draft *Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid* and the 1st Advisory Committee Meeting **on a revision of the General *de minimis* Regulation** held on 14 December 2022.

Further to the comments already made by Malta during the Advisory Committee Meeting, the Maltese Authorities would like to submit the following points for the Commission's consideration.

The *de minimis* threshold

The Maltese authorities believe that the *de minimis* threshold should be increased to at least EUR 500 000 and to at least EUR 250 000 in the case of undertakings performing road freight transport for hire or reward. Furthermore, the threshold should be increased to at least EUR 800 000 for investments related to the green and digital twin transition.

Unfortunately, the proposed capping of EUR 275 000 falls short of reflecting the realities being currently faced by the European Union, and is detached from the action necessary. The revision of the *de minimis* Regulation must be impactful for businesses, showing that the EU is understanding of the real challenges being faced by enterprises on the ground.

During the last revision of the *de minimis* ceiling, in 2006, growth in nominal GDP was used to justify the increase from EUR 100 000 to EUR 200 000. Using the same approach, between 2014 and 2021, Malta's GDP increased by 43% and inflation (as measured by the Harmonised Index of Consumer Prices - HICP) increased by a further 9%. This implies a nominal GDP growth of 52%. As a result of record inflation rates currently being registered across the Union and also globally, at a most basic level, the new ceiling should also take into account at least some element of inflation expectations. This is more so if the ceiling is to be valid for the usual seven-year period. Very conservatively, and similarly to what was done in the Commission's 2013 impact assessment, in order to have a forward-looking figure the most reliable option would be to use the target inflation rate of the European Central Bank of up to 2%. Given the current economic climate, these figures are very likely to be underestimated. In its latest baseline projections for the Euro Area, the European Central Bank (ECB) estimates inflation at 6.8% for 2022, 3.5% for 2023 before returning close to the 2% target in 2024.

In principle, the rate of inflation is surely one of the main drivers behind the *de minimis* threshold. However, it may be opportune to include an in-built automatic inflationary mechanism in order to ensure that *de minimis* aid does not become quickly outdated. Since the *de minimis* Regulation is expected to be in place between 2024 and 2030, we consider that it would be appropriate to include a mechanism that would reflect inflation periodically, or at least as part of a mid-term review, rather than awaiting the end of term of the Regulation.

Having said this, we believe that increasing the *de minimis* threshold should not simply be based on economic growth and inflation, but should also reflect other economic realities and social considerations, such as costs associated with regulatory complexities (e.g. product

safety, labelling, environmental considerations, etc), and the impact of technological change on expenditure.

Moreover, an increase in the *de minimis* threshold would also be in line with the Commission's adoption of higher limited amounts of aid as crisis measures during the COVID-19 outbreak and the aggression by Russia against Ukraine. The provision of compatible limited amounts of aid were introduced in the *Temporary Framework for State Aid Measures to Support the Economy in the Current COVID-19 Outbreak* and in the *Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia* as an extraordinary measure to provide Member States with the necessary flexibility during the crises. Malta believes that this flexibility should be permanently included in the general *de minimis* Regulation, given the very difficult economic realities faced by Member States in the current crisis and also the structural economic needs at present and for the next period during which the new *de minimis* Regulation will remain applicable.

The COVID-19 outbreak resulted in severe global supply chain stress and disruptions that impacted the ability of companies to operate. In addition, when the war between Ukraine and Russia erupted, this not only created significant uncertainty/price volatility for the price of energy, transport costs and food that resulted in significant inflation globally, but it also resulted in additional disruption to supply chains that were still clogged up. The increase in prices experienced over the last three years and the exorbitant inflationary push cannot be considered as an average. Nevertheless, the increase in prices is set to remain a constant.

Having negative shocks of this significant magnitude in such a condensed period, together with prolonged uncertainty for the foreseeable future, will require additional flexibility under the *de minimis* regime. This added flexibility will enable policy makers to be better equipped to assist companies to absorb consecutive negative shocks and to cover areas and activities that are not catered for or addressed by other State aid *acquis*.

An increase in the proposed *de minimis* threshold should in turn reflect itself in an increase in the threshold of loans and guarantees and an extension in the duration of loans and guarantees to fifteen years, with the maximum thresholds being adjusted accordingly.

In the case of aid comprised in loans, the loan amounts should be increased to at least EUR 2 500 000 or EUR 1 250 000 for undertakings performing road freight transport over five years, or EUR 1 250 000 or EUR 625 000 for undertakings performing road freight transport over 10 years.

For aid comprised in guarantees, the amount guaranteed should be increased to at least EUR 3 750 000 or EUR 1 875 000 for undertakings performing road freight transport when the duration of the guarantee is five years. In cases when the duration of the guarantee is 10 years, the amount guaranteed should be increased to at least EUR 1 875 000 or EUR 937 500 for undertakings performing road freight transport

The current draft Regulation puts all the territories within the EU within the same level. Islands, are in a particular difficult situation, therefore it is of extreme importance that Member States are given the necessary flexibility to address these regional disparities through *de minimis* aid.

Central *de minimis* aid register

Regarding the setting up of a central *de minimis* aid register containing complete information on all *de minimis* aid granted by any authority within Malta, we believe that to the extent that the publication of required information would not impact on commercially sensitive data, this initiative would ensure a streamlined approach regarding the implementation of *de minimis* aid across all Member States.

Malta would be in favour of a central register at Union level, which would provide granting authorities with an appropriate tool to ensure compliance with the respective *de minimis* threshold.

Definition of Single Undertaking

The Maltese authorities believe that the definition of ‘single undertaking’, should be further clarified, especially when it comes to situations when enterprises that have the same UBOs and that are active in the same or adjacent markets.

SMEs are being driven into a bureaucratic gridlock that makes it impossible for the SME applying, and genuinely needing the assistance to benefit. Circumstances where any SME is asked for the private documents of an unrelated (yet linked) company is completely unacceptable.

Once again, we also emphasise that circumstances and particulars of the various Member States must be taken into consideration as the links between enterprises is infinite. The way the Commission is guiding granting authorities to carry out the mapping to establish the concept of a ‘single undertaking’ has become an impossible task.

Whilst appreciating that certain systems have become necessary to curtail certain abuse, the Commission should acknowledge that the rules can be applied in a practical manner and that various risk-based options should be encouraged at Member State level. Whilst surely the rules are not intended to prevent genuine businesses from accessing *de minimis* aid, this is the unintended and very damaging consequence and the Commission should be aware of such.

Other considerations

Malta also urges the Commission to consider the inclusion of a *de minimis* type of aid allowable exclusively for cabotage costs incurred by undertakings based on islands within Member States. Such undertakings are not being placed on a level playing field as the additional transport costs incurred in the transportation of raw material and products from and to the mainland, will always place such operators on a competitive disadvantaged economic position.

Furthermore, in line with the contribution to the shift towards zero-emission mobility and to achieving the ambitious targets of the Green Deal, mainly the reduction of greenhouse gas emissions in the transport sector, it is believed that the provision in the Regulation stating that



de minimis aid shall not be used for the acquisition of road freight transport vehicles, should not apply to electric road freight transport vehicles.

The Maltese Authorities trust that Malta's submission will be taken into account in the ongoing discussions on the draft *de minimis* Regulation. We remain available for further discussions regarding the points raised.