

**Latvian opinion on**  
**Commission Regulation amending 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 DRAFT (hereafter – the draft Regulation) (HT.5647)**

**Latvian authorities broadly welcome the draft regulation.**

It is highly important to regularly adjust the state aid rules (including, de minimis aid limit) to fit the economic realities, especially taking into account the recently experienced annual inflation rates that in some EU Member States following Russia's aggression against Ukraine clearly exceed 20%. After the increase in inflation the purchasing power decreases, and the interest rates rise reducing further the ability for market participants to successfully operate and have sufficient operating resources. In order to maintain the competitiveness, there is a necessity to develop aid programmes containing rules that are adequate to the current situation in the market. Thus, **we urge the Commission to adjust the de minimis limits to economic realities as soon as possible already at the beginning of 2023.**

Henceforth, we provide more detailed comments regarding the draft Regulation.

| No. | Place in the document text | Comments/Proposals   |
|-----|----------------------------|--|
| 1.  | Preamble                   | Latvian authorities kindly ask the Commission to clarify in the Preamble of the draft Regulation why the amount of aid in the road freight transport sector is set at a lower level than in other types of business, including passenger commercial transport. Does this follow from the fact that the trucking companies are medium-sized companies, and would such an argument be indeed sufficient justification for a lower aid amount? <b>The argument that a lower de minimis ceiling needs to be set in the road freight transport sector</b> because undertakings carrying out commercial goods transport are below average in size, <b>is no longer considered valid</b> as there has been significant change in the road transport sector over the past ten years, for example, by implementation smart technologies. In order to make the companies in the road freight transport sector competitive, they have improved their fleet in terms of both quality and quantity, thereby changing the size of the company more towards a medium-sized company. |

|    |  |   |
|----|--|---|
| 2. | <p><i>Article 1. Scope</i></p> <p>Para 1. “This Regulation applies to aid granted to undertakings in all sectors, with the exception of:</p> <p>(a) aid granted to undertakings active in the fishery and aquaculture sector, falling within the scope of Regulation (EU) No 1379/2013;”</p> | <p>Article 1(1)(a) states that “<i>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, falling within the scope of Regulation (EU) No 1379/2013</i>”. But there is a legal uncertainty regarding interpretation and application of Article 5(d) of Regulation (EU) No 1379/2013, namely: “<i>‘fishery and aquaculture sector’ means the sector of the economy which comprises all activities of production, processing and marketing of fishery or aquaculture products</i>”. Unlike the agriculture, where primary production is separated from the production and marketing, definition for fishery and aquaculture sector contains production, processing, and marketing. Hence, there is question whether entities that operate only in one of those activities (i.e., NACE 10.20 Processing and preserving of fish, crustaceans, and molluscs, 46.38 Wholesale of other food, including fish, crustaceans, and molluscs, 47.23 Retail sale of fish, crustaceans and molluscs in specialised stores) are applicable to receive aid in line with de minimis aid regulation for fishery and aquaculture sector or in line with general de minimis regulation. Additional explanation either in the preamble or Article 1(1)(a) on this issue would be very much appreciated to ensure correct application of the draft Regulation. To clarify, the condition regarding undertakings active in the fishery and aquaculture sector, falling within the scope of Regulation (EU) No 1379/2013, is unclear and interpretation creates problems in the application of de minimis rules in relation to undertakings that buy fish and carry out fish processing, but do not fish themselves. <b>We believe that there should be a clear distinction in de minimis regulation also for the fishery and aquaculture (similar to agriculture) sector that the aid under general de minimis regulation does not apply to primary producers.</b> Please, note that paragraph 1(a) of Article 1 should be in line with the new regulation proposal which will replace Regulation (EU) No 1379/2013.</p> |
| 3. | <p><i>Article 3. De minimis aid</i></p> <p>Para 2. “The total amount of <i>de minimis</i> aid granted per Member State to a single undertaking shall not exceed EUR 275 000 over any period of 3 fiscal years.</p>   | <p>Latvian authorities welcome the Commission’s suggestion to increase <i>de minimis</i> aid ceiling but given the current economic realities, we suggest that the de minimis threshold <b>should be increased to at least 500 000 euro when maintaining the existing three-year period and the single undertaking notion</b>. At the same time, there needs to be an objective to review the set threshold regularly after period of 3-to-5 years.</p> <p>Some background statistics: The change in consumer prices in October 2022 compared to January 2006 is 101.6%. Given the rise in inflation, the sharp increase in costs affects all sectors due to</p>  |

|    |  |  |
|----|--|--|
|    | <p>The total amount of <i>de minimis</i> aid granted per Member State to a single undertaking performing road freight transport for hire or reward shall not exceed EUR 137 500 over any period of 3 fiscal years. If an undertaking performs road freight transport for hire or reward and also carries out other activities to which the ceiling of EUR 275 000 applies, the ceiling of EUR 275 000 shall apply to the undertaking, provided that the Member State concerned ensures, by appropriate means such as separation of activities or separation of accounts, that the benefit to the road freight transport activity does not exceed EUR 137 500 and that no <i>de minimis</i> aid is used for the acquisition of road freight transport vehicles”</p> | <p>various economic and political factors. The current level of energy prices, if sustained over a prolonged period, will not only mean further price increases but will also pose a significant threat to the growth prospects of the economy. Support programmes are needed to ensure that the economic situation improves, thereby contributing to the overall stability of the economy. The economic realities ask for member states to develop programmes that allow granting operating aid (even though it is undoubtedly the most distorting aid) and the <i>de minimis</i> aid regulations here are practically the only state aid regulations that permits operating aid as compatible aid.</p> <p>Furthermore, since there are also other countries operating in the European Economic area, also the state aid rules that they observe should be aligned. One of the biggest trading partners of the EU is United Kingdom. Since in the UK-EU Trade &amp; Cooperation Agreement (TCA) a Small Amounts of Financial Assistance were foreseen (distinctly similar to EU State aid <i>de minimis</i> grants) establishing <b>the limit per organisation up to a maximum of 325,000 Special Drawing Rights</b>, the rules in the EU for <i>de minimis</i> aid should correspond aptly. Thus, this is another argument to increase <i>de minimis</i> threshold well beyond the proposed 275 000 EUR – more specifically to <b>410 000 euro</b> (applying exchange rate of January 2, 2023 and rounding up). Here one should take into account also that for the UK the limit is applied to a 3-year period, albeit only per one organisation.</p> <p>Thus, Latvian authorities would be willing to assess a rather controversial alternative - to set <i>de minimis</i> threshold at the beneficiary level (not the single undertaking level). There is already a precedent for that – the transparency rules establish a 100 000 euro reporting limit per beneficiary. Waiving the rule to calculate <i>de minimis</i> aid received at the single undertaking level would reduce the administrative burden both for beneficiary and the aid grantor (as it should well be the case for a <i>de minimis</i> aid regulation that is being ‘advertised’ as the simplest one in application). Nonetheless, weighting all pros and cons, at this moment we consider that the inherent flexibility allowing to receive larger <i>de minimis</i> amounts at the group level rather than to receive comparably much smaller amounts at the level of each beneficiary, goes in the right direction allowing to attract resources where it is strategically more required for the group to grow altogether.</p> |
| 4. | Article 6. Monitoring  | <p>In Latvia, there is a <i>de minimis</i> register introduced in 2019 and as of January 1, 2022 it contains full data on <i>de minimis</i> aid granted in the 3-year period used for monitoring the <i>de minimis</i> threshold.</p>  |

|  |   |
|--|---|
| <p><i>Point 2. “Member States shall ensure that a central de minimis aid register containing complete information on all de minimis aid granted by any authority within the Member State concerned is made available. The central de minimis aid register shall be set up within 6 months after the entry into force of this Regulation. The central de minimis aid register must be set up in such a way as to enable easy access to the information. Information must be published in a non-proprietary spreadsheet data format, which allows data to be searched, extracted, downloaded and easily published on the internet, for instance in CSV or XML format. <b>The central de minimis aid register must be accessible through a website without any restrictions, such as prior user registration. Alternatively, Member States can provide complete information on all de minimis aid granted by any authority within the Member State concerned in a register at Union level. Paragraph 1 shall cease to apply from the moment where the information of the central register covers a period of three fiscal years.”</b></i></p> | <p>The register contains data on aid granted under all four de minimis regulations. A horizontal legal act establishes the procedures for monitoring and granting de minimis aid<sup>1</sup>. The register is accessible for all aid recipients via tax authority registry and for all aid grantors it is accessible through a website with prior user registration. We consider it vital to ensure that aid grantors who input the data in the register shall be registered, otherwise it would not be possible to ensure data quality, reliability and trust. In the meanwhile, the data for 3 fiscal years on de minimis aid granted is available via Open Data portal<sup>2</sup> and also on webpage of Ministry of Finance<sup>3</sup>. Information is published in a non-proprietary spreadsheet data format, which allows data to be searched, extracted, downloaded, and easily published on the internet - in CSV or XML format. Data is updated daily.</p> <p>Thus, please, <b>amend point 2 of Article 6</b> that <b>if the data on de minimis aid granted by any authority is publicly available</b> (in CSV or XML format) even if there is user registration in place for national de minimis system (for instance, due to data security and data quality reasons), <b>the monitoring is well ensured and there is no obligation to provide de minimis data in a register at EU level</b>. Also, any requirement to transfer the data from a central de minimis registry in the member state to the EU level registry would create unnecessary administrative burden and is not justified.</p> <p>In addition, <b>regarding the timetable to develop the system</b> – in the draft regulation the timetable is far from realistic. For us the development of the register following the procurement procedure started on January 31, 2018 and the register was put into production on April 10, 2019 (the development time was 1 year and 2 months). Moreover, prior to that the development of register’s technical specification was also outsourced (procurement was launched on July 24, 2017, the contract was signed in August, 2017 and the results were delivered in September, 2017) and the procurement procedure for the developer of the register also took several months. Altogether – from the initial managerial decision to really have the register (based on independent expert opinion) <b>until it was put in the production, it took ~2 years</b>.</p> |
|--|---|

<sup>1</sup> <https://likumi.lv/ta/en/en/id/303512-regulations-regarding-procedures-for-accounting-and-granting-ide-minimisi-aid-and-samples-of-ide-minimisi-aid-accounting-forms> (the translation at this moment is not updated, but it clearly depicts all the basic rules/principles)

<sup>2</sup> <https://data.gov.lv/dati/eng/dataset/pieskirtais-de-minimis-atbalsts-latvija>

<sup>3</sup> [https://deminimismekletajs.fm.gov.lv/lv/sadala/komercdarbibas\\_atbalsta\\_kontrole/de\\_minimis\\_atbalsta\\_uzskaites\\_sistema/](https://deminimismekletajs.fm.gov.lv/lv/sadala/komercdarbibas_atbalsta_kontrole/de_minimis_atbalsta_uzskaites_sistema/) (in Latvian)

|    |   |   |
|----|---|---|
| 5. | <p><i>Article 7. Transitional provisions</i></p> <p>“1. This Regulation shall apply to aid granted before its entry into force if the aid fulfils all the conditions laid down in this Regulation. Any aid which does not fulfil those conditions will be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.”</p> | <p>Latvian authorities ask the Commission to provide clarification (in the preamble) <b>whether the de minimis aid that is granted before the date the draft regulation would enter into force</b> (after the Regulation is published in the Official Journal of the European Union) <b>is considered compatible</b> and in line with the draft regulation, if one could later verify that all the conditions laid down in the draft regulation are fulfilled (including, the threshold established in the draft regulation).</p> |
| 6. | <p><i>Article 8. Entry into force and period of application</i></p> <p>“This Regulation shall enter into force on 1 January 2024.</p> <p>It shall apply until 31 December 2030.”</p>  | <p>Given the significant annual inflation and that it affects all sectors, Latvian authorities ask the Commission to establish that the draft regulation (at least, concerning the de minimis aid thresholds) enters into force much sooner than 1 January 2024.</p>  |