

Romanian Position Paper
proposed revision of Commission Regulation (EU) No. 1407/2013 on the application of
Articles 107 and 108 of the Treaty on the Functioning of the European Union to
***de minimis* aid**

Romania welcomes the EC proposal to increase of the ceiling as the amount of *de minimis* aid to 275 000 EUR per undertaking per Member State over any period of three years. However, Romania considers that a higher ceiling would be more appropriate, respectively 500.000 EUR for the general *de minimis* aid. Also, as other Member States claimed at the meeting of the Advisory Committee (which took place on-line, on 14.12.2022), we support the possibility of eliminating the ceiling for the transport sector in order to have a single ceiling.

We also consider appropriate the new monitoring and transparency tool, namely, the public registry at national or EU level, where Member States could provide complete information on *de minimis* aid granted by any authority. However, a prolongation of the 6 months period in order to create such a registry would be more than necessary.

Furthermore, in response to the Commission consultation on the draft proposal to the *de minimis* Regulation review¹, please find below Romania's proposals and comments:

I. With regard to paragraph 4 of the preamble

In point 4 of the preamble of the document, the Commission refers to the term "entity", according to the decisions of the ECJ (footnotes 7, 8, 9 of the preamble of the regulation). Therefore, we believe that **a correlation should be made between the terms “single undertaking” used in the definition provided for in art. 2 (2) and the term “entity” in the preamble**, since the undertaking means any entity - legal person or a natural person.

Please also see the amendment proposal from point VII of this document as regards the provisions of Article 4.

II. As regards the Article 2 point (2) – definition of single undertaking

Some of the Romanian authorities consider appropriate to review the definition of the single undertaking, as the main reason for introducing the definition of the single undertaking in conjunction with the application of the *de minimis* Regulation is the concern for the non-distortion of competition on a given market. In this case, maintaining the current form of **the definition of the “single undertaking” strongly disadvantages companies under the control of a single entity but operating in different economic sectors**: for example, a shoe company and a knitwear company, both under the control of a single third party, cannot be suspected of inducing a distortion on the footwear or knitwear market if both would use *de minimis* aid individually. Unfortunately, the current form of the definition of “single undertaking” prevents the two undertakings from accessing public funding to which their competitors in each of the two markets have access.

Please also see the amendment proposal from point VII of this document as regards the Article.

III. As regards to Article 3 point (2) - increase of the ceiling up to EUR 275 000 and respectively 137.500 EUR for road freight transport

¹ In response to the European Commission request HT.5647 - Invitation to the 1st Advisory Committee meeting on a revision of the General *de minimis* Regulation.

1) Ceiling – increase

In principle, Romania welcomes the increase of the ceiling. However, as a result of the opinions received from the national authorities, Romania proposes a higher value for the *de minimis* ceiling, respectively **500.000 EUR² for the general *de minimis* aid**, which would better reflect the reality outside the Eurozone, respectively of the Member States that do not use the EUR currency but apply the *de minimis* legislative framework, uniformly.

The proposal to increase the *de minimis* ceiling to 275.000 euro takes into account only the inflation in the Eurozone (estimated at 1.92% / year on average, from 2006 to 2022). This aspect was also highlighted during the public consultation carried out by the Commission between 27 June 2022 and 25 July 2022 (available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13458-State-aid-exceptions-for-small-value-aid-minimis-actualization-aid-/feedback_ro?p_id=31239560). The arguments³ are related, in particular, to the evolution of inflation from 2006 (the year the current ceiling was established) until now, as well as the immediate and long-term perspectives (the next update of the cap being foreseen for 2030), to which additional elements are added such as the evolution of construction prices or inflation outside the Eurozone. The latter argument is also important for RO, given that the inflation rate in Romania between 2006 and 2021 was 69.1% and for the year 2022 the latest forecasts of the BNR⁴ indicate an annualized inflation of 13.9%, which is equivalent to an inflation of more than 92.6% compared to 2006. For 2023 (at the end of which the new threshold should come into force) inflation would reach 107.06% compared to 2006.

We also consider that other arguments⁵ for increasing the *de minimis* ceiling are the following:

a) The new ceiling of the *de minimis* aid should take into account the galloping evolution of inflation in general, but especially of the inflation in the last period, of about 200-300% in some industrial sectors and of 500% in others, associated with the multitude of financings public funds (including temporary aid from the pandemic and those generated by the war in Ukraine) that fall under *de minimis* aid and whose access is vital for the survival of companies in the current economic and geo-political context:

- increasing energy efficiency;

- increasing the competitiveness of enterprises – re-technologization, digitalization etc;

- repositioning on global markets where costs have increased 2-3 times, by participating in international fairs, as well as to external missions to promote export offers etc.

b) The new ceiling must be correlated with the ambitious economic and environmental protection objectives and with the fight against climate change as proposed by the EC for the next period, as well as with the economic instability as a result of the Covid-19 pandemic, the energy and raw material crises at the EU level, but also in Romania, on top of which came Russia's war in Ukraine in 2022.

c) The increase in the ceiling must take into account the imperative of the EC, which has constantly supported the need to reduce the economic-social gaps in the EU territory. This is only achievable through substantial support to mitigate shocks that could reduce – to the point

² Taking into account also that at the end of 2023, the updated value with inflation compared to 2006 will be higher than the new threshold proposed by the Commission.

³ We mention that these arguments were communicated by the Regional Center Development Agency (ADR Centru (<http://www.adrcentru.ro/>) to the Romanian Competition Council (05.12.2022).

⁴ the National Bank of Romania.

⁵ These justifications were communicated to the Romanian Competition Council by the Romanian Export Council.

of cancellation – the effectiveness of stimulus measures or increase the resilience of the economy and companies' efforts to align with EC objectives;

d) The new ceilings must be correlated with the chain effects, triggered by the price increases for fuels and raw materials, generated by the health crisis and amplified by the outbreak of the war in Eastern Europe, which affected and deeply affects the entire European economy.

As a second proposal, in the context of the review of the ceiling for *de minimis* aid, in the event that the ceiling increases above the limit proposed by the Commission will not be accepted, some Romanian public entities consider appropriate to establish a periodic updating mechanism in relation to consolidated inflation at the level of the entire Union (not only of the Eurozone), even if the operationalization of a constant updating mechanism with the inflation rate can cause difficulties in calculating the ceiling at different times (taking into account the dynamic benchmark of three fiscal years) as well as a hazard for the beneficiaries.

Furthermore, some Romanian public entities proposed to clarify the reference period. In this regard, the accumulation of aid could be reduced from three fiscal years to two fiscal years, which would not necessarily equate to an equivalent increase in the ceiling but to greater elasticity of the mechanism. In this sense, please find the following text that we propose: *"The total value of the de minimis aid granted per Member State to a single undertaking must not exceed [the revised de minimis threshold] in any period of three consecutive financial years, including the current financial year"*.

2) The period of 3 financial years

As regards to Article 3, point (2), namely the provision **"in any period of 3 financial years"** – **there is not clearly specified whether they are consecutive or random**, so that no correlation is ensured with the provisions of point 10 of the preamble and those of article 6 point 1, last paragraph.

3) The possibility of removing the differentiated ceiling for the freight transport sector - so that there would be only one *de minimis* ceiling, as the freight transport sector remains an essential factor for facilitating intra-community trade (the share of road freight transport increased marginally, from 51.3% in 2005 to 52% in 2019).

IV. As regards to Article 3, point (4) there are only 2 funding sources, respectively, the State budget (which is understood) and Union resources, so it must be clarified whether the regulation also applies to aid granted from other European funding sources but non-EU (for example, EEA or Norwegian grants or Swiss contribution).

V. As regards to Article 3 point (6) - If, by granting new *de minimis* aid, the relevant ceiling would be exceeded, no beneficiary of the new aid could benefit from the provisions of this regulation.

a) We propose to review the provision with the following text: *"If the relevant ceiling provided in paragraph (2) would be exceeded, by granting new de minimis aid, the undertaking may opt, until this aid is granted, to reduce the requested financing or for renouncing, in whole or in part, previous aid already received in order not to exceed this ceiling"* (The justification was carried up according to the **ECJ Decision in case C 608/19**).

The reduction of the requested funding can also be carried out in the situation where there is no previously granted aid.

b) Or, another proposal would be the following text:

„If, by granting new de minimis aid, the relevant ceiling provided for in paragraph (2) would be exceeded and the beneficiary does not update or cannot update its aid application by the date of grant, no beneficiary of the new aid could benefit from the provisions of this regulation.”

VI.As regards to Article 3 point (8)

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. 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.

Please note the proposal to introduce a new text, respectively: *"In the event that an undertaking is divided into **two or more separate undertakings**, the de minimis aid granted before the separation is allocated to the undertaking that benefited from them, this being, in principle, the undertaking that takes 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 based on the book value of the share capital of the new undertakings at the effective date of the separation".*

VII.As regards to the review of Article 4 for the *Calculation of the gross grant equivalent in the draft regulation*, please see the following amendment proposals:

- a) We propose to complete Article 2 with the definition of “gross grant equivalent”.
- b) Article 4 (2) provides that “aid consisting of grants and interest subsidies shall be considered as transparent *de minimis* aid”.
- c)According to paragraph 14 of the preamble: “In order to ensure transparency, equal treatment and effective monitoring, this Regulation should apply only to *de minimis* aid for which it is possible to calculate accurately ex ante the gross grant equivalent without the need for a risk assessment (‘transparent aid’). Such precise calculation may be made, for example, for grants, interest rate subsidies, capped tax exemptions or other instruments providing for a maximum limit that can ensure that the relevant ceiling is not exceeded”.

In relation to the regulatory intention referred to in paragraph 14 of the preamble, we propose to complete point 2 of Article 4 of the draft Regulation, as follows:

“Aid consisting of grants, interest rate subsidies, capped tax exemptions or other instruments providing for a maximum limit capable of ensuring that the relevant ceiling is not exceeded shall be considered as transparent de minimis aid”.

VIII.As regards to Article 6 point (2) – we consider that the 6-month period associated with the development of the new **registry is insufficient, considering all the specific formalities that will have to be fulfilled and also the need for an institutional framework, at national level.**

IX.As regards to Article 8 – Entry into force

We consider appropriate that the entry into force of the new *de minimis* regulation should take place **as soon as possible**, without waiting for the expiry of the current regulation. Justification: benefits of realizing the new *de minimis* schemes directly on the basis of the revised legislation, with more favorable and predictable provisions for beneficiaries.

X.Romania proposes to introduce a general provision within the *de minimis* Regulation according to which state aid, including *de minimis* aid granted by a Member State for investments made by undertakings from another Member State on the territory of that State, should be subject to prior consultations/ agreements between the two States, in order to ensure that they are in line with the objectives of the economic, social and development policy of the respective State.