

EU Consultation draft de-minimis regulation

Belgium comments – 14.12.2022

Belgium thanks the Commission for its continuing efforts to adapt the state aid rules in order to make them more efficient and user friendly.

We consider the de-minimis regulation an important instrument in our state aid tool box.

1. Higher threshold

Belgium is of the opinion that the proposed increase of the threshold up to 275.000 is insufficient and that a higher threshold of at least 500.000 euro should be set.

Alternatively, if the threshold would not be raised significantly higher, it might be a good solution to set that threshold only at the level of the legal entity applying for the aid, without taking into account linked undertakings. The granting and control of aid on the level of a group of linked enterprises creates an administrative burden and is not always easy to determine, even for the applying entity.

2. Mandatory central register

We agree that in an ideal world, a comprehensive central register could indeed supply more legal certainty and less red tape. However, such a register can only work if there are sufficient guarantees as to the correctness and completeness of such a register. And that is not easy to achieve, especially in countries where there are a lot of decentralized aid granting authorities.

Belgium retains its earlier reservations and is against a mandatory central register based upon following arguments:

- First of all it is a principal matter. Belgium has always taken the position that the control on de-minimis goes too far. De-minimis aid relates to very small and limited amounts of aid that don't even have an effect on trade or competition. By definition it does not concern state aid as defined in article 107 of the Treaty. We find it disproportionate and administratively too burdensome to set up elaborative control systems and procedures.
- We also reiterate our opposition against the lower TAM threshold of 100.000 euro, which is inconsequent as it requires to include aid amounts that remain below the de-minimis threshold that are not considered to be state aid in the sense of the Treaty.
- In Belgium there are a lot of decentralizes competences. Not only the federal government, but also the regions and the communities often have exclusive state aid competences. Besides that, there are also more local authorities (such as provinces, communes, intercommunal co-operations,...) that can grant little amounts of aid within their territory and competences.

Normally each Ministry, Department, Agency,... is competent to grant aid within its own competences and policy area. That also includes that they are all responsible for the correct application of the state aid rules, including the compliance with the rules to grant the (de-minimis) aid according to the legal requirements of the European legislation and the control thereof.

In Belgium, nor at the federal level, nor in the regions, there is a central controlling competent state aid agency that has the competence to control other state aid granting bodies, let alone that it would have the competence to make the other granting authorities change their legislation. Each aid granting authority is by itself responsible for the compliance with the state aid rules.

- The undertaking applying for the aid is the only one that can be 100% sure which aid was obtained by which granting authority. A declaration of honor is thus the only way to have legal certainty as there can never be 100% certainty that all de-minimis aid granted by national, regional or local entities would be entered correctly and completely in the register.
- Moreover we also would like to point out a major procedural issue regarding the timing, which would render the whole central register impossible to use. The de-minimis threshold must be controlled at the moment of the granting of the aid. It is not the moment of the application for the aid, nor the moment of payment of the aid which is decisive but the moment of the decision to grant new aid. But if there would be an earlier granted de-minimis aid, that was not yet entered into the register, than the following state aid granting authority can not be aware of the earlier de-minimis aid and thus it can not apply the rules correctly. As in TAM, presumably there would be a time frame of e.g. 6 months, wherein the granting authority must put the data in the register. That would render the whole idea of a register useless as each granting authority would still have to ask a declaration of honor to be sure. That would thus not be a diminishing administrative burden but indeed a doubling of the administrative burden.
- In Belgium, we do not intend or want to set up 1 central federal control agency to centralize all the data on a Belgian level. This does not comply with our constitutional set up, nor with the division of competences and internal state structure. The EU Commission can not and must not try to change the internal Belgian set up and state structures, provided of course that the member state Belgium at all times guarantees that each granting authorities shall comply with all state aid rules.

The different state aid granting authorities and regional entities are already taking steps in setting up subsidy registers as guidance to granting authorities and for the prevention of double subsidies. But this registers are for the moment not yet legally complete or binding, due to the great variety of potential aid granting entities.

- Another relevant factor are the costs. The building, maintenance, updates,... of such an IT system would bring along considerable costs, both on a technical level as well as personnel costs. That would also lead to difficult choices regarding the right format, interfaces and operational issues to connect the different databases and let them all work together, which can not be achieved within a short timeframe.

- Belgium thus remains against the mandatory use of one central de-minimis register. If the Commission would indeed carry on with this obligation, there would be need for a longer transitory period.
- Moreover, it would be important and preferable that the EU Commission itself would provide for one uniform standard format and interface for that de-minimis register for all 27 member states. We think that a comparable module to the TAM module would be appropriate. Via decentralized access rights, offices and users,... each granting authority would than for itself be responsible for the correct feed of the relevant data into the register.
- To conclude on this point, we repeat that this register could be a useful “historical” overview, but it can never be a legally binding and complete instrument as the granting authority can never be sure that at the moment of the granting of the aid, alle relevant data is already included in the register. In that way the register is a “nice to have” but in no way a solution to lower the administrative burden or to increase the legal certainty for undertakings and authorities. Quite to the contrary. For all of the reasons above Belgium finds the mandatory central register extremely disproportionate

3. Cumulation

Finally we also have a remark regarding the cumulation of de-minimis aid and other forms of aids, which is not always easy to comply with.

We think it would be really useful if the Commission would take this revision as an opportunity to clarify calculations rules on the gross grant equivalents, whether in terms of loans, guarantees or equity investments.

It is sometimes difficult to understand how to deal with the cumulation of de minimis aid with other state aid granted under other schemes (e.g. in particular provisional schemes, such as guarantees granted under the European Investment Fund and EFG programmes, 3.1 Temporary Framework).

Clear guidance and more legal certainty would be highly appreciated by all public operators and beneficiaries.