



Courtesy translation:

SPANISH POSITION.

**1st Advisory Committee: revision of REGULATION 1407/2013, 18th DECEMBER, ON
THE APPLICATION OF ARTICLES 107 AND 108 TFEU TO *DE MINIMIS* AID.**

I.- IN GENERAL.

Spain welcomes the increase in the *de minimis* ceiling from 200,000 euros to 275,000 euros per company in the last three tax years (an increase of 37'5%).

However, we request to homogenise the ceiling for processing and marketing companies.

II.- FISHERIES.

In line with our previous positions, we insist to see **companies processing and marketing fishery and aquaculture products**, under the same conditions as the rest of the agri-food industry.

In this regard, we reiterate the position maintained in the negotiation of the specific Regulation on *de minimis* aid in the fisheries sector: the ceiling for these companies must **be equal to the general *de minimis* ceiling.**

We do not see any justification for the exclusion of fisheries product processing companies from the scope of application of this R. 1407/2013, nor do we see any justification for the different treatment with respect to agricultural product processing and marketing industries.

In addition, if it is considered necessary to ensure that aid to these companies must not have an impact on primary production, the same formula of Regulation 1407/2013 could be used for the processing and marketing industry of agricultural products, which excludes them from the scope of application only when the aid is conditional on part or all of it being passed on to primary producers.

Therefore, **in order to ensure a level playing field for all companies processing and marketing agricultural, fisheries and aquaculture products**, we propose that companies processing and marketing fisheries and aquaculture products should not be excluded from the scope of this Regulation and that the equal treatment of companies processing and marketing agricultural products should be guaranteed.



III.- OR: CANARY ISLANDS.

This increase (to 275.000€ and 137.500€) **is clearly insufficient for the Canary Islands as an Outermost Region (OR).**

We request an exception by increasing the threshold to 500,000 euros, including all sectors, on the basis of:

- The permanent and combined nature of the structural limitations of the ORs recognised in Article 349 TFEU: remoteness, insularity, small size, difficult topography and climate, and economic dependence on a small number of products, which generates additional costs for companies located in these regions.
- The need to deploy, in a simple and rapid manner, instruments to help OR businesses operating in vulnerable economies and in specific geographical environments. They are close to third countries which have significantly lower labour and marketing costs and which benefit from preferential agreements with the EU.
- The ORs have the highest unemployment rates in the EU, which have been aggravated by the various crises, and which clearly show the competitiveness and growth challenges facing these regions.

Based on these reasons we understand that the requested increase of the threshold will not have any effect on trade between Member States or any actual or potential distortion of competition.

IV.- GROSS GRANT EQUIVALENT (Recital 16 and Article 4.3.b).

A serious translation error has been detected.

Both Recital 16 and Article 4(3)(b) of this Draft state that "*Aid comprised in loans shall be considered as transparent de minimis aid if:*

*(a) and (b) the loan is secured by collateral ("**garantía**" in Spanish) covering at least 50 % of the loan and the loan amounts..."*

However, the current English text still reads '*Aid comprised in loans shall be considered to be transparent de minimis aid if:*

*(a) (...) and (b) the loan is secured by collateral (in the Spanish text, "**garantía real**") covering at least 50 % of the loan and amounting to..."*

The issue is not trivial and generates (harmful and undesired) legal consequences since, in Spain, the "**garantía real**" comprises mortgage, pledge and antichresis (Articles 1857 to 1886 of the Civil Code), while the surety and the guarantee are personal guarantees. Therefore, **with the new wording, it would only be possible to guarantee the loan with a mortgage, ruling out surety and collateral.**



There is no justification for this and the correction is necessary. The adjective "real" seems to be only a consequence of the use of an automatic translator. Moreover, it does not appear in either the English ("collateral") or French ("sûretés") versions.

V.- MONITORING. *DE MINIMIS* AID REGISTER (Article 6).

Spain has a National Database of Subsidies (BDNS), which collects information on subsidies and other state aid granted by Spanish public administrations and related or dependent entities.

The National Database of Subsidies operates as the National System of Publicity of Subsidies and Public Aid and is the website (www.infosubvenciones.es) that publishes *exhaustively* the state aid and *de minimis* aid at national level in compliance with the provisions of the European regulations (to consult *de minimis* aid in English: www.infosubvenciones.es/bdnstrans/GE/en/concesiones/minimis).

Since *de minimis* aid has already been registered in the BDNS since 2016, the **central *de minimis* aid Register** was launched in 2020, with effect from 1 January 2020.

On 1 January 2023, the 3-year deadline foreseen in the Regulations for the administrative simplification system (e.g. Art. 6.2 R. 1407/2013) and the raising of the aid ceiling (Art. 1.2 R. 2019/316) will come into effect.

All granting administrations can consult *de minimis* aid for the previous three years; in addition, from 1 January 2023, an electronic service will be operational that allows companies to obtain a certificate from the BDNS with the *de minimis* aid registered during the last three fiscal years.

However, experience over the years has highlighted issues that need to be taken into account when amending the rules governing *de minimis* aid:

- In Spain there are three levels of administration (national, regional and local) with more than 8,000 different granting bodies. In this situation, it is possible that several administrations are simultaneously granting aid to the same beneficiary. The *de minimis* aid register cannot report aid that has been granted very recently.

Without prejudice to the obligation of Member States to monitor the cumulation of *de minimis* aid, **the undertaking should be responsible** for reporting other *de minimis* aid received which has not yet been registered in the *de minimis* Register. Under no circumstances should the new system be interpreted as exempting the beneficiary entity from liability. This responsibility of the beneficiary should be *expressly* provided for in the new Regulation, in order to avoid interpretative doubts.



- With regard to the ideas contained in the minutes of the 1st meeting of the Advisory Committee for the revision of the general *de minimis* Regulation, we are of the opinion that the idea of having a central *de minimis* Register at national level in each MS, as Spain already does, is appropriate. However, given the small amount of aid of this nature, it does not make much sense to go for a cumulative solution at EU level, since the effects of this aid on competition are mainly local. Another thing would be for it to be designed and functionally deployed in a similar way to the TAM: as a *subsidiary and optional system* for those MS that do not wish to create their own Registry.

In any case, it would be prudent to require the national Registers to provide the same conditions of publicity and transparency as those laid down in R. 651/2014 et al, through freely accessible websites and at least with an interface in English. In this regard, attention is drawn to how useful it is for aid applicants to be able to already know which *de minimis* aid is registered in the SNDB, even if they have to continue to self-declare the aid received according to the solution of art. 6.1 of R. 1407/2013.

- As regards the determination of the maximum thresholds for the cumulation of *de minimis* aid, as the Commission is aware, in Spain, the BDNS registers and publishes all aid, whatever the amount and whatever the economic sector for which it is granted. The BDNS model seeks to automate control solutions and, from this point of view, the establishment of different and changing thresholds introduces complexity into the system and makes it difficult to introduce automatic solutions. Let us consider that we are dealing with 5 different *de minimis* thresholds (SGEI, general regime, road haulage, fisheries and agriculture), which may change in the near future; and that in the Spanish BDNS they operate in a similar way -but not the same way- as the thresholds for cumulation of aid that were established in the Temporary Framework for COVID aid or in the Framework for aid deriving from the invasion of Ukraine, for example.

From this point of view of control, **European legislation should tend to standardise solutions on the cumulation of aid** (by establishing unequivocally whether the reference for cumulation should be the nominal or the equivalent aid, for example), establishing equal and permanent thresholds and avoiding as far as possible casuistry in the setting of new thresholds and the way they are determined.

Madrid, 14 de diciembre de 2022

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