

Estonia's opinion on the Commission's draft *de minimis* aid Regulation

Estonia supports Commissions plans to raise the *de minimis* threshold, but finds the proposed number too low. Please find the further suggestions below.

1. We propose to raise the *de minimis* threshold per undertaking to at least EUR 300 000 (for road transport undertakings to at least EUR 150 000).

The Commission justifies the increase of the *de minimis* ceiling by inflation. The current threshold of EUR 200 000 has been in force since 2006 and the threshold set by the new regulation would remain in force until 2030. Therefore, the increase of the threshold by only EUR 75 000 is too low.

It has to be taken into account that the threshold applies to one undertaking, e.g. a group of undertakings, which means that if one of the undertakings in the group has received *de minimis* aid, this amount of aid must be taken into account in the calculation of the free limit of the group's *de minimis* aid and other undertakings in the group may receive either less *de minimis* aid by the amount of aid granted or, if the available limit is full, no *de minimis* aid can be granted to them.

The granting of *de minimis* aid must be simple, including that the *de minimis* threshold should be easy to remember. Thus, the thresholds proposed by the Commission should be amended and rounded up so that these would be easily remembered by the aid grantors and beneficiaries.

2. We also propose to review and update the *de minimis* thresholds in the Commission Regulation (EU) No 1408/2013, which applies to primary producers of agricultural products and in the Commission Regulation (EU) No 717/2014, which applies to fisheries.

The Commission has referred, inter alia, to inflation in the recitals to the amendment of Regulation (EU) No 1407/2013. Considering this, also the individual and national *de minimis* thresholds applicable to primary agricultural producers and fisheries need to be updated in the following Regulations:

- Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45), amended by the Commission Regulation (EU) 2022/2514 of 14 December 2022 (OJ L 326/8, 21.12.2022);

- Commission Regulation (EU) No 1408/2013 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 in the agriculture sector (OJ L 352/9, 24.12.2013), amended by the Commission Regulation (EU) 2019/316 of 21 February 2019 (OJ L 51 I/1, 22.02.2019).

3. We propose to supplement the definition of “single undertaking” in Article 2(2) of the draft Regulation by an explicit reference to the possibility of links through natural persons. e.g. by stipulating the last sentence of the Article 2 as follows:

“Enterprises having any of the relationships referred to in points(a) to (d) through one or more other enterprises, including through a natural person or persons engaged in an economic activity, shall also be considered to be a single undertaking”.

It is clarified in the preamble of the Regulation (recital 4) that when defining a single undertaking, the links arising through natural persons must also be taken into account if such a natural person is an undertaking. However, there is no clear reference to this in the notion of ‘single undertaking’. For the sake of legal clarity, it is necessary to include such clarification in Article 2(2).

There are also comments on the Estonian translation.

The term “fiscal year” has been translated into Estonian (already in the Regulation No 1407/2013) as “eelarve aasta”. As in Estonian language the term “majandusaasta” is used to define the reporting period of the company, for which the annual report is prepared, we ask the Commission to amend the translation as follows:

- in preambula, recital 10: to replace “eelarveaasta” by “majandusaasta”;
- in Article 3(2), the first and the second sentence: to replace “eelarveaasta” by “majandusaasta”;
- in Article 3(4), the second sentence: to replace “eelarveaasta” by “majandusaasta” and “eelarveaastate” by “majandusaastate”;
- in Article 6(1), the last sentence: to replace “eelarveaasta” by “majandusaasta”.

On the Advisory Committee on 14 December 2022 the Commission also invited the Member States to present in their submission the experience on the *de minimis* aid register.

Estonia has a State Aid and De Minimis Aid register since 2009. Aid grantors are responsible for entering the data into the register either manually or using interface. The register is functioning based on the Republic of the Government Regulation No 41 from the 05.06.2012 “Statute of the register of State Aid and De Minimis Aid”.

In the beginning, the register included only *de minimis* aid granted under the “general *de minimis* aid regulation”. Later the possibility to register SGEI *de minimis* aid was added and in 2014 the register was supplemented with a function allowing registering *de minimis* aid granted under the relevant Regulations to agriculture and fisheries and to calculate the free limit of *de minimis* aid taking into account the cumulation of *de minimis* aid between different *de minimis* aid Regulations. In the course of further IT developments, we added the function allowing to connect the beneficiaries forming “one undertaking” in the meaning of the *de minimis* aid Regulation and to cumulate aid granted to “one undertaking”. The main challenge is not to find the IT technical solution/formula but to detect correctly, which undertakings should be regarded as “one undertaking”.

There are also functions for the verification of how the national *de minimis* aid thresholds for agriculture and fisheries are followed and of how the agricultural sector thresholds established by the Commission Regulation (EU) 2019/316 of 21 February 2019 are followed.

There is also a function, which allows to book any kind of the *de minimis* aid in advance (up to one year), that is before the official decision on granting aid is made.

If to assess in general the merits of having a Register we can say that compared with the situation before there are certainly benefits for both grantors and beneficiaries. The experience with *de minimis* aid declarations has shown that beneficiaries did not know exactly what to show in the declaration and sometimes provided misleading information, e.g. showing double data or data about non-aid subsidy or data about State aid or showing both granted and paid aid.

Tallinn,

09.01.2023