



Response of the Dutch authorities to the revision of the general *de minimis* Regulation (HT.5647), The Hague 19 December 2022

This response reflects the views of the Dutch 'Interdepartementaal Staatssteun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representation of the regional and local authorities. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands.

This is the response of the Dutch authorities to the proposed revision of Commission 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 which is set to expire on 31 December 2023.

The draft Regulation proposes the following changes compared to the current Regulation:

- i. a proposed ceiling of EUR 275 000 as the amount of *de minimis* aid that a single undertaking may receive per Member State over any period of three years. This increase of the ceiling aims to take into account the inflation (for the period 2014-2030, since the last increase of the ceiling was in 2006 and took in consideration the period until 2013). The ceiling for aid comprised in loans, aid comprised in guarantees and aids for undertakings performing road freight transport is also adapted.
- ii. The introduction of a mandatory public register at national or EU level where EU Member States provide complete information on *de minimis* aid granted by any authority.

General comments

The Dutch authorities welcome the revision and proposed extension of the *de minimis* Regulation until 31 December 2030. The Dutch authorities thank the European Commission for the opportunity to comment on a draft regulation through this public consultation. Regarding the revision of the *de minimis* Regulation, the Dutch authorities would like to bring the following comments to the attention of the European Commission.

The Dutch authorities are of the opinion that a well-functioning EU Internal Market that provides a level playing field is indispensable for European companies to thrive, to scale and to become leaders in global markets. The EU-competition rules have been an essential element of the success of European industry and the EU State aid rules are a central pillar for preventing subsidy races among EU Member States. According to the Dutch authorities State aid should be limited to clearly justified cases and subject to strict criteria. This means that horizontal State aid exemptions without applying further criteria or notifications should be limited to relatively small amounts of aid.

Due to the relatively small amounts addressed in the *de minimis* Regulation, the overall impact of a single aid case on the single market seems small. However, for small businesses active in EU-wide-markets, even small amounts of aid may distort competition in their field of operations. At the same time, it is clear that, in order to support the pursuit of certain public policy aims initiated by public authorities, *de-minimis* aid has been proven to be of great significance.

The *de-minimis* threshold

In light of the above, the *de-minimis* threshold should balance the effectiveness and proportionality of measures with the possible effect on competition on the internal market. An moderate increase of the *de-minimis* threshold taking into account inflation since 2006 is welcomed and seen as reasonable by the Dutch authorities. However, a further increase up to a maximum of EUR 500.000, in line with the *de-minimis* threshold for services of general economic interest would be preferred by the Dutch authorities. Ideally, this is an amount that can easily be divided over three years. Also a further increase of the specific threshold for transport – important in the transition to a zero emission transport system – would also be welcomed.

Moreover, the Dutch authorities would like to suggest to introduce either a mandatory (biannual or mid-term) review of the *de-minimis* threshold by the European Commission (much like the system used in the public procurement rules) or an automatic inflation correction mechanism based on adjusted input parameters to deal with inflation until 2030.

Monitoring

The Dutch authorities do not support the proposed introduction of a mandatory public register at national or EU level under the label of strengthening the transparency requirements. This also due to the fact that *de-minimis* aid does not qualify as State aid within the meaning of Article 107, paragraph 1 of the Treaty on the Functioning of the European Union. Moreover, there are already many checks and balances in place, *e.g.* the national accountancy rules, courts of audit, democratic control and national courts. The Dutch authorities have serious doubts whether a mandatory public register would ensure better compliance. Moreover transparency in general seems already ensured by the TAM transparency aid module and the practice in the Netherlands of publishing subsidy decisions. Additionally, another specific mandatory public register, aside from the Transparency Aid Module, will increase the administrative burden. Transparency could also be strengthened, *e.g.* by including an obligation for the granting authority to publish the granting of aid using the *de minimis* Regulation. This would be less burdensome.

The position of the Dutch authorities is that requiring a self-declaration of the companies regarding *de minimis* aid already received would seem appropriate in the light of the responsibilities that companies also have at the moment when applying for *de minimis* aid. If the European Commission is concerned with/ about obtaining a total overview of *de minimis aid*, it could also be requested that the self-declarations could be (digitally) generated at a particular point at a national or EU level. According to the Dutch authorities such a system entails less administrative burden and is more effective.