

## Luxembourg contribution to the first draft proposal for the revision of the *de minimis* regulation

If, generally speaking, Luxembourg welcomes the revision of the *de minimis* regulation, which it considers as an important tool at the disposal of Member States to grant small amounts of aid, particularly in the context of the economic downturn caused by Russia's military aggression of Ukraine, it has reservations regarding particular points.

### ➤ Notion of single undertaking

Luxembourg regrets that there is no consistency between the notion of single undertaking in art. 2 of the draft regulation and, for instance, the SME definition of Annex I of the GBER. Indeed, why is art. 2 of the draft regulation silent on the exercise of a dominant influence over an enterprise through natural persons, where the activities are performed on the same or adjacent markets? While Luxembourg admits that it would be cumbersome to take into account the links between enterprises via physical persons when applying the *de minimis* regulation, it also wonders if this inconsistency is compatible with the jurisprudence of the Court of Justice regarding the notion of undertaking.

### ➤ *De minimis* ceiling

While Luxembourg welcomes the increase of the *de minimis* ceiling, it is in disagreement with the *method* chosen by the Commission to implement this increase. Instead of simply raising the ceiling itself, Luxembourg believes that the Commission should shorten the assessment period from 3 to 1 fiscal year. Concretely, this would mean that Member States could award up to 200 000 euros to a single undertaking over a period of 1 fiscal year. This would simplify the award of *de minimis* aid, in particular in light of the new *de minimis* register foreseen by art. 6 of the draft regulation, but also ensure that the measure does not qualify as State aid. Has the Commission considered this option and, if yes, could it explain why it did not retain it?

If the assessment period remains the same (i.e. 3 fiscal years), Luxembourg considers that the proposed ceiling of 275 000 euros per single undertaking should not be raised any more. Otherwise, this would allow Member States to fund bigger project that could be deemed to have an effect on trade between Member States and to distort or threaten to distort competition within the meaning of art. 107, para. 1, of the TFUE.

### ➤ *De minimis* register

Similar to the majority of the Member States, Luxembourg strongly opposes to the implementation of the public *de minimis* register foreseen in art. 6 of the draft regulation. Such a register would lead to a disproportionate increase of administrative burden regarding measures that do not qualify as state aid and are therefore not subject to state aid control.

Luxembourg is also of the opinion that the implementation of such a register would not provide the desired legal certainty, in particular because of the complexity of the notion of single undertaking, the time lag between granting and registering the aid, and would possibly make potential beneficiaries believe that they are entitled to the delta.

These reasons lead Luxembourg to believe that a public register on which undertakings and different granting authorities can rely on only makes sense if the amount of aid is assessed at the level of the aid beneficiary (legal entity) rather than on the one of the single undertaking.

Moreover, if at all, the implementation of the *de minimis* register should take place at EU level and not at Member State level. Luxembourg would like to point out that it is completely unrealistic to have such register set up at Member State level within 6 month after the entry into force of the new *de minimis* regulation (i.e. by mid-2024). Indeed, the implementation of such a register would have to go through the national legislative process, IT development and would require training for the subsequent users.

In addition, could the Commission please clarify the following?

- How long the information should be publicly available on the *de minimis* register? In other word, could the data be deleted after the relevant period has elapsed, that is after 3 fiscal years? Or could the data be deleted only after 10 years, as art. 6, para. 5, of the draft regulation might suggest?
- What is the rationale behind keeping the information regarding *de minimis* aid granted on the basis of an aid scheme for 10 years after the award of the last aid, as it is foreseen in art. 6, para. 5, of the draft regulation? What is to be understood by “*records on a de minimis aid scheme*”? If information on individual aid granted on the basis of an aid scheme is meant, this would lead to an unacceptable increase in administrative burden for Member States. The records on *de minimis* aid awards should be kept 10 years from the date on which aid was granted, whether it is *ad hoc* aid or aid based on an aid scheme.

#### ➤ Transition period

Considering the length of it's national legislative process, Luxembourg invites the Commission to increase the transition period foreseen in art. 7 of the draft regulation to 18 months.