



Urząd Ochrony Konkurencji i Konsumentów

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Mr. Olivier Guersent
Director-General
Directorate General for Competition
European Commission

HT.5647 - Revision of the General *de minimis* Regulation

Dear Mr. Guersent,

Following the public consultation currently being conducted by the European Commission on the draft Commission Regulation (EU) on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (hereinafter: the draft Regulation on *de minimis* aid), I would like to inform that Polish authorities do not raise objections to the aid ceilings proposed by the European Commission nor to the proposal concerning the register of *de minimis* aid.

Nevertheless, the Polish authorities would like to make the following comments:

- **Article 3(2) of the draft Regulation on *de minimis* aid:**

According to the wording of Article 3(2) of the draft Regulation on *de minimis* aid: „The total amount of *de minimis* aid granted per Member State to a single undertaking shall not exceed EUR 275 000 over any period of 3 fiscal years.” and „The total amount of *de minimis* aid granted per Member State to a single undertaking performing road freight transport for hire or reward shall not exceed EUR 137 500 over any period of 3 fiscal years.”. The Polish authorities propose to remove the phrase “any” regarding the limit of *de minimis* aid and the limit of *de minimis* aid for road freight transport in

order to avoid discrepancies and interpretation doubts. Amendment of Article 3(2) of the draft Regulation on *de minimis* aid consisting in the introduction (in the Polish language version of the draft Regulation on *de minimis* aid) of the above-mentioned wording may lead to doubts as to the method of calculating the *de minimis* aid limit. At the same time, it should be noted that it can be inferred from point (10) of the preamble to the draft Regulation on *de minimis* aid that the European Commission's approach as regards the calculation of the permissible limit of *de minimis* aid has not changed.

- **Article 3(7) of the draft Regulation on *de minimis* aid:**

The Polish authorities propose extending Article 3(7) of the draft Regulation on *de minimis* aid to also regulate the situation of transformation of an enterprise. In view of the above, we propose the following wording of Article 3(7) of the draft Regulation on *de minimis* aid: „*In the case of mergers, transformations or acquisitions, all prior de minimis aid granted to any of the merging undertakings or a transforming undertaking shall be taken into account in determining whether any new de minimis aid to the new or the acquiring undertaking exceeds the relevant ceiling. De minimis aid lawfully granted before the merger, transformation or acquisition shall remain lawful.*”.

- **Article 4 of the draft Regulation on *de minimis* aid:**

The Polish authorities propose supplementing Article 4 of the draft Regulation on *de minimis* aid, which concerns the criteria for assessing the transparency of aid, with transparency criteria for aid granted in the form of tax reliefs/exemptions, analogous to those for loans, guarantees and other forms of aid.

- **Article 6(2) of the draft Regulation on *de minimis* aid:**

The Polish authorities welcome the proposal to introduce an obligation to keep a "central *de minimis* aid register" at the national or EU level (depending on the preference of the Member State). Keeping a register, in the opinion of the Polish authorities, is the best possible way to monitor the non-exceedance of the *de minimis* aid limit. In Poland, a continuously updated, publicly available register, in which information on all state aid and *de minimis* aid cases are collected, excluding aid in agriculture and fisheries, has been operating since 2016. At present, it is treated as an additional tool for verifying the level of use of the *de minimis* aid ceiling by a given entrepreneur („double check tool”), used by entities examining applications for aid as an option. This is due to the fact that currently the monitoring system for this type of aid is based on certificates issued by entities granting aid or declarations of the

entrepreneur, which are the only binding documents on the basis of which the possibility of granting further aid is decided.

In the context of the introduction of the concept of "central *de minimis* aid register" in the draft Regulation on *de minimis* aid, in the opinion of the Polish authorities, its definition needs to be clarified, in particular with regard to the frequency of its updating (the deadline for submitting reports on *de minimis* aid granted) and whether this register should collect information on the links between the direct beneficiary and its linked enterprises as referred to in Article 2 (2) of the draft Regulation on *de minimis* aid, current as of the date of granting the aid (where Polish authorities would like to point out that this is a highly problematic issue due to the lack of transparent and unambiguous rules in this regard, as well as the volatility of linkage relations between companies over time). As the "central *de minimis* aid register" is planned to be available publicly, the scope of a search tool should be determined, i.e. what kind of information should be searchable, for instance only information on *de minimis* aid granted to a given beneficiary or information on *all de minimis* cases presented for example by grantor or by legal basis. In addition, given the applicable cumulation rules for different types of *de minimis aid*, Polish authorities doubt whether the "central *de minimis* aid register" should contain information on all cases of *de minimis* aid, regardless of the fact that *de minimis* aid has been granted in accordance with other *de minimis* aid regulations, in particular whether it should include aid granted in the fishery and agriculture sector.

Yours sincerely,

Piotr Pełka

Dyrektor

Departamentu Monitorowania

Pomocy Publicznej

/podpisano elektronicznie/