



Finanšu ministrija

Ministry of Finance of the Republic of Latvia

Smilšu iela 1, Rīga, LV-1919, Latvia, phone +371 67095689, +371 67095578, fax +371 67095503,
e-mail pasts@fm.gov.lv, www.fm.gov.lv

Riga, 19.10.2018
No.7-7/18/5080

European Commission
Directorate-General for Competition
State Aid Greffe
Rue de la Loi/ Wetstraat, 200
B-1049, Brussels, Belgium
COMP-F3@ec.europa.eu

Subject: HT.5254-prolongation of the Commission Regulation (EU) No 360/2012

Latvian authorities have no objection to prolong the *Commission Regulation (EU) No 360/2012 on the application of Articles 107 and 108 of the Treaty on Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest* (hereinafter – Regulation No 360/2012) for a period of two years or until 31/12/2020.

Latvian authorities look forward to the consultation process during year 2019 regarding all *de minimis* regulations. Latvian authorities herewith forwards to the European Commission comments on Regulation No 360/2012.

- 1) Taking into account the recent explanation by the Commission provided in State Aid eWiki, clarification regarding application of ‘single undertaking’ or ‘economic unit’ definition to *de minimis* aid granted under the Regulation No 360/2012 should be included in the Regulation No 360/2012. Currently it is clear that *de minimis* aid limits are monitored for a single undertaking under Regulations No 1407/2013, No 1408/2013 and No 717/2014 and that economic unit level should be assessed in case of applying Regulation No 360/2012. There is reference to Court case in the answer in State Aid eWiki, nevertheless we would like to receive practical explanation in the document (Regulation No 360/2012) what linkages should be taken into account, since they may also be the same as in the case of single undertaking definition (controlling share).

Notion of Aid (point 11) states that “several separate legal entities may be considered to form one **economic unit** for the purposes of the application of State aid rules. That economic unit is then considered to be the relevant undertaking. In this respect, the Court of Justice considers the existence of a controlling share and other functional, economic and organic links to be relevant (*Judgment of the Court of Justice of 16 December 2010, AceaElectrabel Produzione SpA v Commission, C-480/09 P, ECLI:EU:C:2010:787, paragraphs 47 to 55;*

Judgment of the Court of Justice of 10 January 2006, Cassa di Risparmio di Firenze SpA and Others, C-222/04, ECLI:EU:C:2006:8, paragraph 112.).

In this regard, Latvian authorities consider that one of the criteria is the controlling share, but we are uncertain what the other criteria – ‘other functional, economic and organic links’ – mean in practice and what will be the relevant documents to verify these linkages. In order to avoid interpretation risks we would suggest the Commission to apply single undertaking definition in application of all *de minimis* regulations (Regulation No 1407/2013, Regulation No 1408/2013 and Regulation No 717/2014, and Regulation 360/2012). A written guidance from the Commission on how to assess these links in practice would be highly valued. For instance, one guidance that is sought is if the economic unit in case of Regulation No 360/2012 includes in practice only the companies that provide together the particular service of general economic interest.

- 2) Latvian authorities inquire if the Commission could consider amending Regulation No 360/2012 by excluding Article 1.2(h) (and respective recitals) since undertakings in difficulty criteria as outlined in the Community guidelines on State aid for rescuing and restructuring firms in difficulty are not applied in all other *de minimis* regulations. This definition is also not a precondition in the case of applying Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2012/21/EU). In this context, we consider that the requirement in Article 1.2(h) is too excessive.

Sincerely yours,

On behalf of

Deputy State Secretary on EU Funds Issues

Director of EU

Managing Department /Signature/

Funds

D.Rancāne

Investments