

Maastricht, 13 June 2005

Dear Sirs,

First let me congratulate you on the scope of your state aid action plan that will prove to be of major value to the development of effective state aid control in the European Union.

As far as this action plan is concerned, I would like to make some remarks. These concern the *de minimis* threshold (paragraphs 38 of your action plan) and regional aid reform (paragraphs 41 and 44), in particular deprived urban areas and regional (fiscal) autonomy, and the adapting of procedural rules (paragraph 58).

My first remark concerns your proposal to increase the threshold under which *de minimis* aid may be granted. As the Court of Justice frequently indicated, even a small amount of aid can result in the distortion of competition within the EU and affect trade between Member States. Even though I am in favour of a *de minimis* aid regime in order for the Commission to focus on larger and more important cases of state aid we should take into account that the EC Treaty does not exclude such aid from the definition of state aid, despite of what Article 2 of the Enabling Regulation 994/98 and Regulation 69/2001 state. It is my opinion that raising the *de minimis* threshold will increase the number of cases where financial benefits that meet the definition of state aid (affecting trade and competition) will fall within the scope of the Commission's *de minimis* approach. Especially small and medium sized enterprises may suffer from this and be forced to approach the Community's courts in order to have smaller amounts of aid investigated anyway. Be that as it may, if you intend to increase the said threshold, I propose to study an alternative approach that does not exclude *de minimis* aid from the state aid definition but that allows for *de minimis* aid to be approved without objection by an exemption of notification.

Secondly, I would urge you to address two particular subjects in your reform of regional state aid. The present guidelines are not always suitable to address the issue of deprived urban areas. Even though the Commission decided not to extend the 1997 Guidelines, I submit that there is some need for new guidelines in this respect. Even though under the new regional aid map the number of NUTS II regions that will qualify for regional aid will be limited in the 'old' Member States, the question remains whether Member States that have no such qualifying regions should still be eligible for regional aid to deprived urban areas. Moreover, I submit that in the revision of the regional state aid framework the issue of regional political and fiscal autonomy should be addressed specifically since one should not put the favourable treatment of enterprises by an autonomous region – compared to the treatment in other regions of a Member State – on a par with regional (fiscal) aid.

Third, as far as efficiency and recovery is concerned it could be considered to introduce Community legislation that obliges Member States to introduce effective recovery procedures in their national laws setting certain minimum requirements, leaving it to the discretion of the Member State how to develop such procedure, in order to ensure that such procedure is in place once a Member State is faced with a decision to recover in order to prevent any delay in 'finding or designing' effective procedures afterwards.

I submit these issues to your consideration.

Yours sincerely,

Dr Raymond H.C. Luja  
Maastricht University

Contact details:

Maastricht University  
Department of Tax Law  
Dr Raymond H.C. Luja  
P.O. Box 616  
6200 MD Maastricht  
The Netherlands  
Phone +31-433882781  
Fax +31-433884868