



Response of the Dutch authorities to the revision of the *de minimis* state aid rules for services of general economic interest Regulation (HT.6507), The Hague, 30 May 2023

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 revised replacement of Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (*de minimis* SGEI Regulation) which is set to expire on 31 December 2023.

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

- i. an increase of the SGEI *de minimis* ceiling from EUR 500 000 to EUR 650 000 that an SGEI provider 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 2012-2030);
- ii. the alignment of certain concepts in the SGEI *de minimis* Regulation with the general *de minimis* Regulation (in particular the concept of "single undertaking" and provisions on "undertakings in difficulties" and "mergers and acquisitions");
- iii. the introduction of a mandatory public register at national or EU levels.

General comments

The Dutch authorities welcome the revised replacement of the *de minimis* SGEI Regulation, which will remain in force 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* SGEI 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. 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 to safeguard the level playing field in the Internal Market and to prevent 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.

Services of general economic interest such as healthcare services and social (economic) services (e.g. social housing) are pivotal sectors of the Dutch welfare state. Due to the existing number of small sized subsidy request for social and healthcare services and taking into consideration the necessity to provide aid to these activities in situations of market failure, the Dutch authorities welcome the revised replacement of the *de minimis* SGEI regulation.

Due to the special characteristics of SGEI's compared to other economic activities and the relatively small amounts addressed in the *de minimis* SGEI Regulation, the overall impact of a single aid case on the single market seems limited. Especially in the sector of SGEI's, where actors are less involved in commercial activities. 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 for SGEI's has been proven to be of great significance.

The *de minimis* SGEI threshold

In light of the above, the *de minimis* SGEI threshold should balance the effectiveness and proportionality of measures with the possible effect on competition on the internal market. An increase of the *de minimis* SGEI threshold to a EUR 650.000 taking into account inflation since 2012 is welcomed and seen as reasonable by the Dutch authorities.

The Dutch authorities would like to suggest to introduce either a mandatory (biannual or mid-term) review of the *de minimis* SGEI 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. The position stated here is analogous to the position of the Dutch authorities with regard to the revision of the general *de minimis* Regulation. Compliance with rules and conditions for State aid is important and already ensured by numerous checks and balances currently in place, e.g. the national accountancy rules, courts of audit, democratic control and national courts. The Dutch authorities have not seen evidence that a mandatory public register would ensure better compliance and therefore expresses serious doubts concerning its implementation. Additionally, another specific mandatory public register, aside from the Transparency Aid Module, will increase the administrative burden.

Transparency could be strengthened, e.g. by including an obligation for the granting authority to publish the aid granted using the SGEI *de minimis* Regulation or the TAM transparency aid module register above a certain threshold, as this is currently not an obligation under the *de minimis* SGEI Regulation. This would be less burdensome.

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