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Contribution of FedEpl to the Commission consultation on de minimis regulation

I. Identification

(Organisation) name: Fédération des élus des Entreprises Publiques Locales

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La Fédération des élus des Entreprises publiques locales (Epl) rassemble les 1 400 sociétés d'économie mixte, sociétés publiques locales et sociétés d'économie mixte à opération unique. Les entreprises publiques locales sont des sociétés anonymes constituées par les collectivités territoriales, généralement associées à des partenaires privés, pour mettre en œuvre de manière performante et transparente, une politique de développement de leur territoire. Quelques exemples d'Epl : la Société d'exploitation de la Tour Eiffel (SETE), le Vendée Globe, la Régie immobilière de la Ville de Paris, l'ACCOR Arena, Ile de France Energies, la Cité de l'Espace etc. Au niveau européen, la Fédération des Epl est affiliée au réseau européen des 25 000 Entreprises publiques locales représentées à Bruxelles par SGI Europe, le mouvement des employeurs de service public et d'intérêt général, et un des partenaires sociaux de la Commission européenne.

II. Contribution to the Commission consultation on de minimis regulation : embedding In House

FedEpl strongly supports adequate control of State aid, allowing the development of a vibrant competitive market.

The de minimis rule aims to identify thresholds under which an economic advantage conferred to a market player is deemed not to be a State aid because its impact is too low to have an effect on competition and trade between Member States to any perceptible degree (Commission notice on the de minimis rule for State aid (96/C 68 /06)).

Such logic has also been applied in house undertakings by Directive 2014/24/EU of the European parliament and of the Council of 26 February 2014 on public procurement, so as to exempt contracts passed with such an entity from any obligation to tender.

In house undertakings have two key characteristics in this regard :

- They incorporate no private capital
- They carry out a minimum of 80% of their activities with controlling public legal entities.

These rules ensure that no competitive advantage is passed out to the private market:

- Nor through the capital of the in house undertaking
- Nor through potential spillover towards the market, as activities with its controlling persons can be regarded as an integrated delivery and outside activities are limited to 20%, which CJEU and the Commission seem to have implicitly considered "de minimis".

FedEpl would like to propose an amendment to the project regulation incorporating this reasoning into State aid. As Directive 2014/24/EU introduced a 20% criterion as proxy for de minimis threshold, State aid internal logic could be satisfied with treating those maximum 20% activities towards the private sector as the only potential source for advantage spillover.

The following amendment proposes to consider those potential spillover effects when calculating the gross grant equivalent.

Hence, gross grant equivalent should be calculated as the fraction of the financing corresponding to the spillover risk towards the private market, with a 20% maximum. To be consistent with other provisions of the project, we propose to calculate this real activity share as an average over the last 3 fiscal years.

Proposal on regulation project C(2023) 2578 final

Article 2 Definitions : Add a (d) under 1 : ***“in house undertaking” means an undertaking that satisfies conditions laid by article 12 of Directive 2014/24/EU of the European parliament and of the Council of 26 February 2014 on public procurement***

Article 4 Calculation of gross grant equivalent : add a 8. : ***Aid comprised in the financing of an in house undertaking consists in the proportion of this financing corresponding to the proportion of its activities carried out in the performance of tasks entrusted to it by other contractors than the controlling contracting authorities or other legal persons controlled by the same contracting authorities. This proportion is determined as an average over the last 3 fiscal years.***