NOTE FROM THE BELGIAN AUTHORITIES

TO THE EUROPEAN COMMISSION

DG COMP - Unit H6

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Subject: draft of the amendment to Commission Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (HT.100254)

1. **Comments**

Firstly, we do not understand why the increase in the de minimis threshold from 20,000 to 37,000 does not allow us to maintain the option of not having a register.

At present :

- if you don't exceed €20,000, you don't have to have a register.

- If the threshold rises to €25,000, a register will be required and we will also need to check that we are not providing too much support to a particular sector.

We could keep a procedure with two thresholds: €20,000 and €37,000.

We agree that in an ideal world, a comprehensive central register could indeed supply more legal certainty and less red tape. However, such a register can only work if there are sufficient guarantees as to the correctness and completeness of such a register. And that is not easy to achieve, especially in countries where there are a lot of decentralized aid granting authorities.

Belgium retains its earlier reservations and is against a mandatory central register based upon following arguments:

* The undertaking applying for the aid is the only one that can be 100% sure which aid was obtained by which granting authority. A declaration of honour is thus the only way to have legal certainty as there can never be 100% certainty that all de‐minimis aid granted by national, regional or local entities would be entered correctly and completely in the register.
* Moreover we also would like to point out a major procedural issue regarding the timing, which would render the whole central register impossible to use. The de-minimis threshold must be controlled at the moment of the granting of the aid. It is not the moment of the application for the aid, nor the moment of payment of the aid which is decisive but the moment of the decision to grant new aid. But if there would be an earlier granted de‐minimis aid, that was not yet entered into the register, than the following state aid granting authority cannot be aware of the earlier de‐minimis aid and thus it cannot apply the rules correctly.

A balance must be struck to assure enough time to complete such register and legal certainty for granting authorities without adding excessive administrative burden.

With the proposal of the Commission this register still leaves 20 days of legal uncertainty in which there is no clarity if aid has been granted to the enterprise that exceeds the threshold.

* In Belgium, we do not intend or want to set up 1 central federal control agency to centralize all the data on a Belgian level. This does not comply with our constitutional set up, nor with the division of competences and internal state structure. The European Commission should take into account the internal organization and Belgian state structures. We must avoid creating additional administrative burdens and move towards simplification.
* Another relevant factor are the costs. The building, maintenance, updates,… of such an IT system would bring along considerable costs, both on a technical level as well as personnel costs. That would also lead to difficult choices regarding the right format, interfaces and operational issues to connect the different databases and let them all work together, which cannot be achieved within a short timeframe.

Belgium thus remains against the mandatory use of one central de‐minimis register. If the Commission would indeed carry on with this obligation, there would be need for a longer transitory period.

Moreover, it is preferable that the EU Commission itself would provide for one uniform standard format and interface for that de‐minimis register for all 27 member states. We think that a comparable module to the TAM module would be appropriate. Via decentralized access rights, offices and users,… each granting authority would than for itself be responsible for the correct feed of the relevant data into the register. Indeed, if the register becomes compulsory, we are in favour of setting up a register at European level (instead of a register at Belgian level) and we are also advocating a system comparable to TAM.

Access rights and decentralised management per "office" are certainly necessary, so that no central input or approval is required; we particularly insist on the need for maximum decentralisation for encoding. Similarly, we hope that “bulk upload” will be possible because of the large number of beneficiaries expected. Finally, in order to make the use of the system as smooth as possible, we would like clear technical instructions, demonstrations, examples and FAQs to be made available to users.

To conclude on this point, we repeat that this register could be a useful “historical” overview, but it can never be a legally binding and complete instrument as the granting authority can never be sure that at the moment of the granting of the aid, all relevant data is already included in the register. In that way the register is a “nice to have” but in no way a solution to lower the administrative burden or to increase the legal certainty for undertakings and authorities. Quite to the contrary. For all of the reasons above Belgium finds the mandatory central register extremely disproportionate.

Belgium has always taken the position that the control on de‐minimis goes too far. De‐minimis aid is supposed to relate limited and targeted amounts of aid that don’t have an effect on trade or competition. We find it disproportionate and administratively too burdensome to set up elaborative control systems and procedures without taking into account the specific administrative structures of the Member States.

Belgium is therefore against the use of a central register. Nevertheless if a central register is to be used it is recommended that it also be introduced for the de minimis regulation on fisheries and aquaculture.

1. **Questions**

There are some questions we would like to see the answer to:

According to the proposal of the Commission, the declaration of honour will no longer be necessary 3 years after the register has been established. Will there still be a system in place that demands a declaration of honour to bridge the 20 days in which it is uncertain if more aid has been granted?

How will indirect beneficiaries be included in this register? Will they have access themselves? And if not, will there not still be a need for a kind of declaration of honour to make sure all direct and indirect aid is known?