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Preliminary comments on the revision of the regulation on *de minimis* for the agricultural sector

The agriculture *de minimis* Regulation is a well-functioning regulation that facilitates granting of smaller aid amounts in a fast and flexible way.

Denmark is generally aware of the fact that the *de minimis* regulation concerns the notion of aid, as *de minimis* aid is deemed not to meet all the criteria laid down in Article 107 (1) of the Treaty and is therefore not subject to the notification procedure. Denmark does not support differentiated *de minimis* thresholds depending on whether a Member State has a *de minimis* register or not. Rather, thresholds set out in the *de minimis* regulations should apply in the same way throughout the internal market. Therefore, Denmark supports the proposed amendment regarding a non-differentiated threshold.

It is important that the *de minimis* threshold is not increased unnecessarily so the regulation only concerns aid that does not distort the competition or the trade in the single market. It is noted that the Commission may increase the ceilings only to the extent that there is no risk of distorting competition and trade, and in this light proposes to increase the threshold to 37,000 euro per undertaking over a period of 3 years, taking developments since the latest revision in 2019 into account.

To comply with the current *de minimis* Regulation, the Danish authorities obtain declarations about other *de minimis* aid covered by the *de minimis* rules prior to granting aid under the regulation. Denmark will not oppose a public *de minimis* register, as it could help in particular larger undertakings that are part of a group and granting authorities to check if thresholds in the regulation have been reached. Denmark finds that this increases transparency and reduces the risk of granting unlawful aid. Furthermore, it helps to align the criteria to grant *de minimis* aid across the regulations. However, at the same time, it is also important that unnecessary administrative burdens are kept to a minimum – both for the beneficiaries and the granting authorities.

Denmark acknowledges that the Commission will indeed provide for an EU-register as an alternative to a national register, cf. article 6 (1) of the proposal. Furthermore, it is important that the Commission will provide sufficient technical guidance, and preferably introduces the public register at Union level in an already known set up. This could effectively be done by an add-on to the already existing Transparency Award Module.

It is also acknowledged that the Commission proposes to amend the calculation period from “3 fiscal years” to “3 years” as this will make administration of schemes where both the agriculture and general *de minimis* regulations apply easier. In the definition of an enterprise in Article 2 (2) c of Regulation 1408/2013, there is a slight variation compared to the general *de minimis* regulation. It would be appropriate to apply the exact same language.

As regards the content of a central register at the Union level set up by the Commission, it is important that such a register is able to establish and provide information on the link between the aid beneficiary and other entities when carrying out the required check of the total amount of *de minimis* aid granted to a single undertaking within the meaning of Article 3(2) of Regulation 1408/2013 over any period of 3 years.

A central register at the Union level should also be able to take into account the rules on cumulation of *de minimis* aid mentioned in the proposed Article 5 of the proposal and stipulated in Article 5 (2) of Regulation 2023/2831. It follows from the latter that *de minimis* aid granted to a single undertaking in accordance with Regulations 1408/2013 and 717/2014 may be cumulated with *de minimis* aid granted in accordance with Regulation 2023/2831, but the total amount of *de minimis* aid may not surpass the ceiling laid down in Article 3(2) of Regulation 2023/2831. Hence, a central register at the Union level should be able to provide the necessary information on *de minimis* aid granted to a single undertaking in accordance with Regulation 717/2014 and 2023/2831.

Considering the burdensome consequences for the aid beneficiary if the ceiling is exceeded, there seems to be a need for rules providing legal certainty on the legal consequences in a situation where an undertaking has obtained the right to receive *de minimis* aid according to the applicable national regime, cf. Article 3 (5), but where, in the period from the grant of aid until the aid is entered in the register, the undertaking is also granted *de minimis* aid from another national authority, which leads to the aid ceiling being exceeded, cf. Article 3 (9). The legal effect in a situation where an aid award has not been registered in the register and other authorities, which are about to grant aid, carry out the required check of the total amount of *de minimis* aid on the basis of the register, should be clearly stated in the rules.

Finally, it should be noted that there is a small mistake in the Danish language version of the draft. In preamble 6, there is a reference to article 4 (3) in the Treaty of *the Functioning of* the European Union. This should rightly have been article 4 (3) in the Treaty of the European Union.