

Position of the European Association of Guarantee Institutions (AECM) on the Commission's decision to prolong for two years seven sets of state aid rules, otherwise expiring in 2020, and launch an evaluation on the application of EU state aid rules adopted as part of the State Aid Modernization (SAM) process

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Introductory remarks

On 7 January 2019, the European Commission announced its decision to prolong for 2 years seven sets of state aid rules, otherwise expiring in 2020 and launch an evaluation on state aid rules, which were adopted as part of the State Aid Modernization process. The aim of the aforementioned evaluation is to provide a basis for decisions, to be taken by the Commission in the future, about whether to further prolong or possibly update the rules.

The European Association of Guarantee Institutions (AECM) cordially welcomes the Commission's initiative and would like to provide input as to the current application of the regulations governing state aid rules.

General remarks

AECM appreciates the implementation of the State Aid Modernization reform (SAM) which has been fostering growth in a strengthened, dynamic and competitive internal market while preventing potential distortions of competition. SAM has been simplifying the procedure for aid granting authorities at national, regional and local levels allowing them to provide a range of actions boosting competitiveness and measures in favor of SMEs. Yet, our members are seeing room for improvement in the current rules.

Remarks on the *de minimis* Regulation (1407/2013)

AECM is very much in favor of the *de minimis* Regulation, which we find relatively simply. We do believe that the *de minimis* Regulation strikes the right balance between state funding and the general objective of preventing potential distortions of competition. Exemption from notification reduces the administrative burdens and complexities that managing authorities would otherwise face. AECM also finds the definition of the 'single undertakings' as envisaged in Article 2 paragraph 2, a reasonable and proportionate one. Therefore, we strongly suggest maintaining it in the future.

- 1) However, practice has shown that further Commission's clarifications are needed as related to:

- Aid to export-related activities

Under the current *de minimis* Regulation it is envisaged that aid related to export activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity, does not fall under the provision of the *de minimis* Regulation. In this context the question arises what happens if the *de minimis* aid is used for granting working capital loans in the situation where money is used for purchase of production materials, goods etc. which after the manufacturing or without it, are sold internally and/or abroad, including goods that are sold via online shops and e-platforms (e.g. Amazon). Does the aforementioned activity represent an export-related activity or not?

The same goes for the situation where a guarantee for an investment loan is offered to a single undertaking whose business activity is related to rental equipment and purchasing equipment.

According to our opinion a clarification on the notion of aid to export-related activities within the meaning of Article 1 paragraph 1 point (d) is needed and the provision should also clarify the application of the *de minimis* Regulation on undertakings coming from small countries and located close to borders, since these SMEs are more likely to be disadvantaged by this provision.

In this regard, AECM recalls the judgement of the Court of Justice of the European Union in Case C-518/16 Sofia City Court, Bulgaria¹ where the Court referring to the Article 1 paragraph 1 point (d) of the Commission Regulation No 1998/2006² (currently replaced by Commission Regulation No 1407/2013, but where the provision remains exactly the same) decided (see point 55 and 56 of the aforementioned judgement) that Article 1 paragraph 1 point (d) of Regulation No 1998/2006 does not exclude all aid which may have an impact on exports, but only that which has as its direct purpose, by its very form, the promotion of sales in another State. It follows that investment aid, on condition of it not being, in one form or another, determined, in principle and in its amount, by the quantity of the goods exported, is not included within 'aid to export-related activities' within the meaning of Article 1 paragraph 1 point (d) of Regulation No 1998/2006 and therefore does not come within the scope of application of that provision, even if the investments thus supported facilitate the development of goods intended for export.

- How a public institution shall act as a public investor
Currently, there is a lack of legal certainty and practical examples which would guide the national institutions on applying the private investor principle.
- Calculation of the gross grant equivalent (GGE)
Article 4 paragraph 6 of the *de minimis* Regulation provides 3 options for the calculation of the GGE. Yet, practice has shown that the combination of state resources with Union resources and tranching of the risk complicates the calculation of the aid element. Therefore, in order to facilitate such calculation, AECM kindly asks the Commission for clear guidelines and practical examples on how to calculate the GGE. Moreover, referring to the transparency of the *de minimis* aid comprised in guarantees, as envisaged in Article 4, paragraph 6 point (b), we consider that the limitation of the duration of guarantee to 5 years for the amount guaranteed equal to EUR 1 500 000 and to 10 years for the amount equal to EUR 750 000, is disproportionate, since practice shows that higher credit amounts require longer duration. Consequently, AECM suggests imposing no time restriction and calculate the GGE for three years allowing longer guarantees duration.

- 2) Further, referring to Article 3 paragraph 2 of the *de minimis* Regulation, we suggest increasing the ceiling of EUR 200 000 to EUR 300 000 as the amount of *de minimis* aid,

¹<http://curia.europa.eu/juris/document/document.jsf?text=&docid=199769&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=78377>

² <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:379:0005:0010:en:PDF>

that a single undertaking may receive over any period of three years, should be adapted to the inflation that will have occurred by the end of the next programming period (= end of 2027).

- 3) As regarding Article 3 paragraph 6 point (2), AECM suggests revising the discounting requirement for the aid payable in several instalments and set a reasonable threshold for small amounts of aid that would be exempted from discounting obligation. In practice, discounting *de minimis* aid of small sums that are payable in several instalments, i.e. once a month or once a quarter, implies high administrative costs on behalf of the managing authorities. Therefore, and in line with the reasoning of the provisions laid down in Article 6 paragraph 1, AECM suggests applying no discounting obligation.
- 4) Lastly, AECM welcomes the fact that enterprises in difficulty are no longer excluded from the scope of the *de minimis* Regulation. Yet, Article 4 paragraph 6 point (a) stipulates that the “safe harbors” for the calculation of the gross grant equivalent (amount of state aid) included in guarantees and loans are only applicable to enterprises that are in a position to repay such loans in the meaning that:
 - the beneficiary is not subject to collective insolvency proceedings nor fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors;
 - in case of large undertakings, the beneficiary is in a situation comparable to a credit rating of at least B-.AECM considers that the definition of insolvency is negative for start-ups and therefore suggests reintroducing an exception for the companies up to 3 years, as set out in the former *de minimis* Regulation.

About AECM's members

The 48 members of the European Association of Guarantee Institutions (AECM) are operating in 29 countries in Europe. They are either private sector guarantee schemes or public promotional institutions or banks. Their mission is to support SMEs in getting access to finance. They provide guarantees to SMEs that have an economically sound project but do not dispose of sufficient bankable collateral. AECM's members operate with counter-guarantees from regional, national and European level.

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