

Input to *De minimis* consultation

28/June/2019

Interact

The purpose of this document is to harmonise the response of Interreg Programmes to the 'Targeted consultation to the stakeholders on the *De minimis* Regulation', open from 24.05.2019 to 19.07.2019.

There are 14 questions in the targeted consultation (see below). For each of those, we should find a harmonised answer.

The proposed answer are as follows:

1. Have you received support under the *De minimis* Regulation?

- ☐ Yes
- ☒ No
- ☐ Not applicable

2. Based on your experience with the application of the *De minimis* Regulation, is the definition of 'single undertaking' clear?

- ☐ Yes
- ☒ No
- ☐ I do not know

If not, please explain why and provide specific examples.
3000 character(s) maximum

For Interreg Programmes the notion of 'single undertaking' should not apply.

The notion of single undertaking (and especially finding out whether undertakings are linked) is very difficult to understand and significantly increases the administrative burden, especially for Interreg project applicants. It takes considerable effort to explain the concept of 'single undertaking' and there is always a high risk that applicants and future project partners make mistakes in applying it.

In an effort to reduce potential errors, Programmes or national controllers double check self-declarations, for example during on-the-spot visits to project partners. However, considering that Interreg Programmes cover two to 28 Member States, resources of Interreg Programmes are usually too limited to carry out such investigations (Joint Secretariats usually employ 5 to 20 persons).

*3. Based on your experience with the application of the *De minimis* Regulation, is the definition of 'single undertaking' adequate?

- ☐ Yes
- ☒ No
- ☐ I do not know

If not, please explain why and provide specific examples.
3000 character(s) maximum

The linkages between the undertakings are sometimes very complex and it is not easy to define if they constitute a single undertaking without employing specialised legal experts (mergers, subsidiaries, buy-outs, spin-offs, etc.). Considering the very limited potential of Interreg to distort the market, the 'single undertaking' notion is out of proportion in this context and should be abandoned.

*Amounts and cumulation

4. Have you encountered difficulties in applying the three-year-period to calculate the amount under the *De minimis* aid?

- ☒ Yes
- ☐ No
- ☐ I do not know

If yes, please explain why.

On a general note, in the context of Interreg, it is not clear which Member State grants the aid. If *De minimis* is granted in the context of an Interreg Programme, it has to be specified which Member State grants it.

There are several possibilities, and Programmes are free to choose. The fact that there is no standard approach among Programmes for identifying which Member State grants aid, creates confusion among applicants. Depending on the Member State granting the aid, project partners may or may not have reached the *De minimis* threshold.

- In some Programmes it was decided that it is always the country where the Managing Authority is located that grants the aid, regardless of the country where the project partner is located. This is relatively easy to administer but creates unequal treatment for project partners: Project partners located in the same country as the Managing Authority are much more likely to have already reached the *De minimis* threshold (e.g. through national funding Programmes provided by their own country) compared to project partners located in a different country than the Managing Authority.
- It is also possible for *De minimis* to be granted by the country where the project partner is located. This approach means, however that fewer potentially viable project partners can participate because they have reached the *De minimis* limit in their own country.

- In many ways for Interreg Programmes the best solution is to grant *De minimis* simultaneously by all Member States participating in the Programme. In this case, a single project partner can receive *De minimis* aid from several Member States, each time up to 200 000 EUR. This approach is known as ‘shared *De minimis*’ and has worked very well for Programmes, but only for those that do not involve a single country with a central register (see below).

In the context of Interreg, self-declarations need to be checked in terms of plausibility to avoid financial errors. In a multi-country environment this requires resources for each of the countries involved in the cooperation areas. However for many countries, Interreg is not a priority when it comes to State Aid due to the low amounts of funding involved and necessary national resources (national State aid experts) are often not available.

Another issues is caused by the definition of three years as fiscal years instead of calendar years. Since it depends on the fiscal year applied by the beneficiary to decide, whether new *De minimis* aid can be granted, project partners are being treated unequally, even within one and the same project partnership: For example, if for one project partner the fiscal year lasts from Apr-Mar and for the other from Jan-Dec, the first one is better off because it is possible to grant the aid in the first project in February 2016 and in the second project in May 2019.

A solution could be ‘*Interreg De Minimis*’ and ‘*Micro De minimis*’, explained in more detail in Point 13.

*5. Are the provisions on cumulation (Article 5) clear to apply?

- ☒ Yes
- ☐ No
- ☐ I do not know

If not, please explain why and provide specific examples.
3000 character(s) maximum

Interreg Programmes usually do not cumulate different *De minimis*. *De minimis* for agriculture and aquaculture and fisheries is very difficult/impossible to apply for Interreg Programmes.

*Transparency of aid and financial instruments

6. Are the transparency requirements for aid clear?

- ☐ Yes
- ☐ No
- ☒ I do not know

If not, please explain why and provide specific examples.
3000 character(s) maximum

Any experiences with financial instruments and *de minimis*?

*7. Have you encountered difficulties in applying the transparency requirements?

- ☐ Yes
- ☐ No
- ☒ I do not know

If yes, please explain why and provide specific examples.

3000 character(s) maximum

*8. What has been your experience in using loan, guarantee and equity instruments (financial instruments) under the *De minimis* Regulation? In particular:

a. Have you encountered any difficulties in calculating the gross grant equivalent of aid in loans or guarantees?

- ☐ Yes
- ☐ No
- ☒ I do not know

If yes, please explain why and provide specific examples.

[Not applicable to Interreg](#)

b. Have the criteria for small loans and guarantees of short duration under Article 4(3)(b) and Article 4(6)(b) simplified the handling of these instruments?

- ☐ Yes
- ☐ No
- ☒ I do not know

If not, please explain why and provide specific examples.

[Not applicable to Interreg](#)

c. For loan and guarantee instruments involving financial intermediaries, have you encountered any difficulties in passing on the aid to the final beneficiaries?

- ☐ Yes
- ☐ No
- ☒ I do not know

If yes, please explain why and provide specific examples.

3000 character(s) maximum

[Not applicable to Interreg](#)

*Monitoring

9. Have you encountered difficulties in the application of the rules on monitoring (Article 6)?

☒ Yes

☐ No

☐ I do not know

If yes, please explain why and provide specific examples.
3000 character(s) maximum

In addition to the issues of verifying self-declarations in an international context, as explained above, also **indirect aid to third party beneficiaries** causes significant problems in terms of monitoring. Administration of indirect aid leads to extremely high and disproportionate administrative burden for project partners and Programme authorities.

In Interreg, third parties (i.e. organisations not directly involved in the project partnership and not receiving funds from the Programme) can receive indirect State aid in the form of trainings or services. There is ample evidence that the market value of these trainings and services is typically very low (i.e. well below 20 000 EUR). At the same time many organisations can be recipients of these training or services in the context of a single project (e.g., 200 SMEs per training), making administration of potential State Aid to third parties very burdensome.

Additionally, projects often face difficulties attracting participants (third parties): Since signing a *De minimis* self-declaration requires a certain level of knowledge of State aid, third parties (most often SMEs with no experience in State aid) are often reluctant to sign and consequently opt out of the training/services.

Alternatively, projects could charge a fee to third parties receiving training or services to avoid State aid. However experience has shown that this approach also reduces the effect of the project as many are reluctant to pay for trainings or service that are often exploratory and experimental in nature (pilots). If charged a fee, the immediate benefit is not always evident to the recipients and thus reluctance is high.

In a cooperation context also the Member State granting the third party aid is unclear. In Interreg it is possible that direct aid is, for example, granted by the Member State where the Managing Authority is located, while indirect aid is granted by the Member State where the project partner implementing the service for third parties is located. Even though Programmes perform checks to verify the correctness of partners granting indirect aid, the variety of systems and approaches is prone to errors in the audit trail.

To complicate matters, often trainings or pilots are implemented jointly by project partners: In cases where e.g. a Polish and a German consortium implement a training/pilot measure for e.g. a Finnish recipient separation of indirect aid causes additional burden.

Please also note that in countries with central *De minimis* registers, it is basically impossible for project partners to register the indirect aid granted (see also below).

Finally, quantification of the amount of indirect aid granted can be very difficult. In most cases there are no comparable services or trainings on the market and real costs have to be calculated and divided among third parties. This approach is open to many different interpretations and creates unreliable audit trails.

A sound solution could be the implementation of micro *De minimis* for indirect aid (see below)

*10. If your national authorities do not have a central registry, what is your cost estimate in applying the requirements under Article 6 (such as the declaration to submit to your national authorities)?

In Interreg, costs are related to the administration of self-declarations (in the case of third party aid this can be many hundreds of them for one cooperation project only) as well as costs related to checking plausibility of these declaration in participating Member States.

Examples of the effort associated with the administration of self-declarations in Interreg (third party aid):

- Each Programme has to establish a procedure for how to deal with aid to third parties/indirect aid in a multi-country context, such as who collects the declarations and what is the role of national controllers. The rules of granting *De minimis* aid are well developed on the national level for granting authorities (like ministries, municipalities, agencies, secretariats etc.) but not for other organisations outside the system. Programmes have to inform potential beneficiaries and train project partners. They then need to follow up the process. This can, for example, involve on-site checks of beneficiaries and their national controllers.
- Project partners need to understand the concept of *De minimis*, prepare declarations with the help of the Programme JS, inform third parties and distribute declarations.
- Third party beneficiaries need to be convinced of the added value of signing the declaration, check how much *De minimis* was received within the last 3 fiscal years and sign the declaration, sometimes going through many levels of hierarchy.
- Often at this point participants in trainings or services are lost because they do not understand the purpose of the *De minimis* declaration and opt out of the training or service. This can potentially lead to further much bigger problems because the project then may no longer be able to meet its target and indicators.
- Project partners needs to collect signed declarations and check for completeness and correctness. They also need to submit declarations (e.g., to national controllers).
- National controllers need to check self-declarations. These checks range from e.g., consulting Programme databases to look for potential funding of the same

organisation in another Programme to elaborate on-site visits and detailed checks of the accounting system of the beneficiary.

- Project partners need to keep and manage the documentation for the next 10 years and present on request. It might generate additional costs apart from labour costs.

All these efforts listed above are clearly un-proportional considering the low amounts of aid involved: The Total value of *De minimis* for training and services to third parties is most often below 20 000 EUR per recipient.

Please note, however, that presently central registers tend to create even higher administrative burden for some Programmes authorities compared to self-declarations. In many (all?) central registers it is not possible to register *De minimis* aid from another country (see below). Programme authorities would also have to report to several central registers (with different languages and different user interfaces) thus having administrative efforts far exceeding those related to self-declarations.

*11. If your national authorities have a central registry, have you found such a central registry adequate to ensure compliance with the Article 6 conditions on awarding *De minimis* aid?

- ☐ Yes
- ☒ No
- ☐ I do not know

If not, please explain why and provide specific examples.

There are significant issues with central registers that are not directly related to Article 6. In all countries with central registers, Interreg Programmes experience problems with registering *De minimis* aid that was 1) granted by a body located outside the Member State OR 2) granted by a Member State to a foreign beneficiary (if the MA is located in country A and the beneficiary is located in country B then the beneficiary cannot be entered in the register of country A).

The more countries are having central registers the bigger the problem becomes.

As explained above, in the context of an Interreg Programme, it has to be specified which Member State granted the *De minimis* aid. This could, for example, be the country where the Managing Authority is located, or the country where the project partner is located. In these cases, central registers currently tend to work only if the project partner is located in the same country as the Managing Authority. In all other cases Programmes experience severe issues.

In the context of 'shared *De minimis*' many different Member States provide *De minimis* aid to a single project partner (see above). Using shared *De minimis* is a good option for Programmes but currently works only if no country with a central register is involved.

The following needs to be clarified in the *De minimis* Regulation:

- **Member States owning a central register must allow entering also foreign organisations in their own registers.** At the moment national registers are

meant to register *De minimis* aid granted to beneficiaries in the countries in which they are located. For Interreg, national registers have to open to foreign beneficiaries.

- **All Interreg Managing Authorities need to be allowed to grant *De minimis* aid to organisations located in different Member State.** In Interreg, contracts are concluded between the Managing Authority and the Lead Partner. Some Member States argue that if the Managing Authority (that signs the contract with the Lead Partner) is not located in their own country, they lack the legal basis for granting aid from their own country because they do not have a contractual relationship with the beneficiary.
- **Efficient procedures must be established to communicate *De minimis* aid granted to the various different national registers.** Read access is needed in order for Managing Authority to be able to check beneficiaries in national registers.

Access to national registers is currently regulated by national legislation. A solution should rather come from a higher legal act, namely a revision of the *De minimis* regulation.

*12. Should there be a centralised *De minimis* registry at the EU level?

- ☐ Yes
- ☐ No
- ☒ I do not know

If yes, please explain why and provide specific examples.
3000 character(s) maximum

For Interreg this could potentially have some advantages provided that:

- The option of shared *De minimis* is kept for Interreg and Interreg *De minimis* is introduced (see below).
- EC takes the lead and responsibility for this register
- It is possible for national authorities to register aid to foreign beneficiaries.
- It is possible for Managing Authorities to grant aid to beneficiaries located in a different Member State.

In order for Interreg to work, a central EU register would have to contain data from the previous 3 years considering that it is roughly one year left until the start of the new programming period and information needs to be available at Programme start.

It is unclear how a central EU register would affect the notion of ‘single undertaking’.

Other

13. Do you have any additional comments on the application of the *De minimis* Regulation?

A recent survey by Interact among Interreg Programmes showed that for the majority of Interreg Programmes, State aid constitutes less than 1% of the Programme budget (combined value of *De minimis* and GBER). Only 2,4% of Programmes report that 20% or more of their budget constitutes State aid.

In addition, all Interreg Programmes fund only projects that benefit more than one Member State. There is ample evidence that the potential of Interreg Projects to distort the market is very limited given the multi-country focus and the comparatively small amounts of subsidies provided by Interreg Programmes. Interreg's added value to the EU is widely recognised as is its contribution to uniting the European market across borders: Some cooperation projects could potentially have a distortive effect in one country but – at the same time – have strong positive effects on levelling the playing field across borders.

Due to Interreg's minor potential to distort competition between Member States, the introduction of an **Interreg *De minimis*** would be highly appreciated if aid granted under Interreg Programmes cannot be excluded completely from the State Aid regime.

Interreg *De minimis*:

- Can only be granted by Interreg Programmes and is equal for all Interreg Programmes.
- No need to monitor on a cross-Programme level. Monitoring is necessary at the Programme level only.
- Due to its multi-national nature, the envisioned threshold for Interreg *De minimis* is 500 000 EUR per Programme and undertaking. This amount reflects the reality of shared *De minimis* (see below*) and the threshold of SGEI *De minimis*.
- Covers funds provided by the Interreg Programme as well as any additional public contribution to the beneficiary in the context of the project (e.g. match funding through a national fund).
- Covers all State aid relevant project activities eligible in Interreg, including agriculture, aquaculture and fisheries.
- *De minimis* granted by an Interreg Programme to an undertaking should count over any period of three calendar years.

*In this context, please note that currently undertakings can receive considerably higher amounts of *De minimis* in some Programmes due to 'shared *De minimis*'. For example, a Programme with 7 participating Member States can give up to 1,4 mio EUR (7 * 200 000 EUR) *De minimis* to a single undertaking.

The alternative option of providing shared *De minimis* should be kept. Programmes should be able to choose between shared *De minimis* and Interreg *De minimis*. The option to choose between shared *De minimis* and Interreg *De minimis* should be clarified in the *De minimis* Regulation.

In addition, the introduction of **micro *De minimis*** can solve the issue with indirect aid: The envisioned threshold is 20 000 EUR per undertaking and project. Below this threshold, trainings and services would be considered negligible in comparison to the high

administrative burden required for managing such aid. Accordingly, such amounts would not count towards 'normal' *de Minimis*.

For Micro *De minimis* to work in Interreg, there should be no requirement to monitor it. The notion of single undertaking should not apply.

14. Please provide copies of any documents, data or studies that may be relevant for assessing the application of the *De minimis* Regulation.

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Additional information

Further to your replies of the questionnaire, you may provide below any additional comments, observations, information, or suggestions you deem relevant to share with us.

3000 character(s) maximum

You may also upload a file in relation to your response here: