

14 October 2013

## BUSINESSEUROPE VIEWS ON THE NEW DRAFT DE MINIMIS REGULATION

BUSINESSEUROPE welcomes the opportunity to provide comments to this second consultation for the revision of the de minimis rules.

BUSINESSEUROPE believes that a further discipline in the field of State Aid is very important and urgently needed, especially in light of the apparent move towards more decentralization of state aid control.

### - De minimis aid

Under the current de minimis Regulation the ceiling is set at € 200.000 per undertaking over three fiscal years. The Commission asserts that on the basis of its experience and all the data gathered during the review so far, including through the public consultation last summer, there is no indication that a higher ceiling would be justified.

We note that, compared to the current rules, the draft regulation now explicitly applies the above threshold to de minimis aid granted *per Member State* to a single undertaking (see art. 3, para 2) while currently it is “the total de minimis aid granted to any one undertaking”.

The current implicit de minimis limit per undertaking across all Member States in total was extremely difficult to enforce. Before deciding whether to grant an aid, no information was available to a single Member States on de minimis aid provided by other Member States to potential beneficiaries.

We support therefore the Commission current proposal and agree that the current threshold is maintained<sup>1</sup>. However, given that the regulation will be applicable until 2020, we recommend the Commission to ensure that the ceiling takes due account of future economic developments as well as the foreseeable inflation until 2020. In this context, we recommend the Commission to publish the conclusions of its impact assessment on this important point.

We appreciate the specification that the threshold applies per Member State, which avoids misapplication and inconsistency, and therefore increases legal certainty. However, there remains a risk of “aid-shopping”, i.e. companies may receive up to € 200.000 from each of the 28 different Member States.

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<sup>1</sup> The Portuguese Federation CIP believes that the threshold should be raised to € 500.000.



### **- Monitoring and reporting**

As specified in our previous comments, BUSINESSEUROPE supports the proposed introduction of a central register, with the objective of achieving effective control on de minimis aid. The setup of such a register, in fact, would enable the European Commission to better evaluate the correct application of the “de minimis” regulation and to assess the aggregate effect of “de minimis” aids granted at the Member State level. Since the design of such a register should not entail excessive costs for national authorities, and must not result in an increase in red tape for business, we appreciate that recital 23 allows Member States to design and establish their register in accordance with their national structures provided they ensure its effectiveness.

Articles 6.1 and 6.6 on the central register refer to “beneficiaries”. However, for the registers to be of any use, they will need to identify aid paid to “single undertakings” as defined. This would be of particular relevance to groups with multiple subsidiaries trading under different names.

The supervision and control of de minimis aid could be strengthened in other ways too. In this context, the other monitoring and reporting obligations indicated in article 6 of the draft regulation seem appropriate. We strongly support the proposal in article 6.6 for Member States to report to the Commission on the application of the de minimis regulation on a yearly basis and the Commission’s commitment to make this information public.

### **- Definition of “undertaking in difficulty”**

Currently, the criteria to identify what an “undertaking in difficulty” is are currently included in the existing Community guidelines on State aid for rescuing and restructuring firms in difficulty.

The newly introduced criteria linked to debt to equity ratio (article 2 iv) and interest coverage ratio (article 2 v) seem to be unsuitable for determining whether an undertaking is in difficulty for the purposes of this regulation. Whether or not an undertaking is in difficulty cannot be determined by a single indicator, but needs several. Yet each of the alternative criteria proposed by the Commission is intended to be a deciding factor on whether an undertaking is in difficulty.

As an example, the equity ratio can differ hugely from one business to another, depending on the various kinds of business, risk-involvement and sector or market competition. This kind of assessment has to be done on a case-by-case basis to be effective and targeted.

We recommend instead that the draft regulation makes a dynamic reference to the definition in the existing Community guidelines on State aid for rescuing and restructuring firms in difficulty.



### **- Safe harbour provisions for small loans and sureties**

BUSINESSEUROPE endorses the creation of a safe harbour for certain loans and guarantees as foreseen in article 4 paragraphs 2 and 5. For the safe harbour to apply, the Commission needs to ensure that the gross grant equivalent would, if calculated, be within the €200,000 ceiling.

The proposed safe harbour will markedly reduce the administrative effort involved in granting small loans and guarantees.

Both provisions for aid comprised in loans and aid comprised in guarantees refer to a duration not exceeding 5 years for the highest amounts. Limiting the duration of the loan underlying the loan surety or guarantee to five years might be inadequate as the duration of loans secured by state sureties or guarantees (e.g. by development banks) is often longer, and investment financing also often calls for longer durations. In addition, the safe harbour's duration limit complicates financing possibilities for SMEs over the longer term.

BUSINESSEUROPE recognises that in cases where the safe haven does not apply, this just means that the gross grant equivalent calculation has to take place, without necessarily stopping the aid being given. Nevertheless, given the significant administrative savings that could accrue, we suggest that the Commission should consider a more flexible safe harbour provision to be introduced to help address the above points.

### **- Other issues**

In our previous comments, we urged for a clarification of the notion of undertaking in the regulation, as the de minimis aid ceiling is linked to this notion, but it is sometimes uncertain whether the aid ceiling has to be calculated at group-level, production site level etc. We therefore appreciate that in the new draft the Commission provides criteria to establish when entities should be considered as a single undertaking, making the regulation more predictable for companies and workable in practice.

Regarding de minimis aid granted to undertakings performing road freight transport, we recommend that the last sentence of article 3, paragraph 2, is made consistent with recital 5 by specifying that the exclusion in the application of minimis aid for the acquisition of road freight transport vehicles, would only apply to undertakings "performing road freight transport for hire or reward".

Also, the draft article should specify that the exclusion does not include activities where the road freight transport is not the main activity of the undertaking, but just a necessary means to the development of that main activity (mail services, produce marketing, etc.).



BUSINESSEUROPE believes the draft regulation should make reference to the European Court of Justice's Deggendorf case-law, and state clearly that de minimis aid will not be applicable to companies subject to an outstanding recovery order following a previous Commission decision declaring the illegality and incompatibility of the aid. A reference to the Deggendorf principle would be in line with point 77 in the Commission notice "Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid" from November 2007 which states that "[...] The Commission intends to integrate this principle into all forthcoming State aid rules and decisions".

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