Targeted consultation to the stakeholders on the De minimis Regulation

Fields marked with * are mandatory.

Introduction

In 2012, the Commission launched the State aid modernization (SAM) with the objectives to: 1) foster sustainable, smart and inclusive growth in a competitive internal market; 2) focus Commission's ex ante scrutiny on cases with the biggest impact on the internal market; and 3) streamline the rules and provide for faster decisions. In view of these objectives, the Commission has revised a number of State aid rules, including the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (hereinafter "De minimis Regulation).

In January 2019, the European Commission announced its intention to prolong seven sets of State aid rules for a period of two years[1] and launched a comprehensive policy evaluation in the area of State aid ("fitness check"). The aim is to verify the extent to which the objectives of the SAM have been reached, whether there is scope for further updating of the rules in view of the EU priorities under the new Multiannual financial framework, new EU legislation or developments on the internal and global market. Part of this exercise is the evaluation of the De minimis Regulation in order to assess whether the current rules are still fit for purpose.

Besides the general public consultation on the fitness check of EU State aid rules, this targeted consultation aims at asking supplementary questions in order to gather stakeholders' views on the implementation of the De minimis Regulation and receiving insights about potential gaps, overlaps or excessive regulatory burden. The main target group of this questionnaire are actual or potential recipients of de minimis aid and their competitors.

You are kindly invited to reply to a set of 14 questions. Please make sure that you use the save button as you proceed with the questionnaire to avoid losing information that was already inserted - especially in the case of questions with open replies. At the end of the survey you will have an opportunity to provide broader, more general comments and to upload documents, which you consider to be relevant.

The Commission will publish an analysis of the results of the fitness check and examine possible follow up actions at the beginning of 2020.

Thank you for participating in this consultation.

About you

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• Do you agree with the publication of your identity as described above:
  ☒ Yes.
  ☐ No, I wish my contribution to be anonymous.

Please provide your contact details below.

• Language of my contribution:
  English

• Name:
  AGFW e.V.

• I am giving my contribution as:
  Business association

• Country of origin:
  Germany

• E-mail address:
  d.moczko@agfw.de

Please describe the main activities of your company/organisation/association, if applicable.

500 character(s) maximum

Representation of companies active in District Heating and Cooling sector as well as operators of CHP plants
• Scope of your activities
  ○ International
  ○ National
  ○ Regional
  ○ Local

Transparency register number

250 character(s) maximum
Please if your organisation is on the transparency register. This is a voluntary database for organisations seeking to influence EU decision making.

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Questionnaire

• Factual information

1. Have you received support under the De minimis Regulation?
  ○ Yes
  ○ No
  ○ Not applicable

• Definitions

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

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 definition of a single undertaking is not adequate. This hinders the AGFW’s member undertakings from applying the De minimis Regulation. The definition is especially problematic in the case of communal undertakings. It is a common practice in Germany, that a so called Stadtwerke (municipal utility) constitutes a related undertaking. The particulate tasks of the municipal utility, e.g. energy supply (electricity, gas,
District Heating), water resource management, telecommunication, waste management etc., are carried out by separate undertakings, which are subsidiary undertakings. Hence, it is a complex structure of undertakings (a group), which are all to be considered as a single undertaking in the meaning of the De minimis Regulation. The definition is therefore not adequate, taking the ceiling of the help and the maximum three-year-period, as well as the differentiated and complex assignments of the particular subsidiary undertakings into account. This stops the undertakings from applying for De minimis aid, as the coordination of subsidies received by particular subsidiaries is connected to a burden and often exceeds the capacities of the undertakings.

What is more, the communal undertakings are active in sectors, which have no impact on the internal market (District Heating, water management), and therefore taking these activities into consideration while defining the single undertaking, is not adequate.

Therefore, the AGFW is of the opinion that either the ceiling of aid considered as de minimis would have to be raised or the understanding of “single undertaking” would have to be extended.

**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.

*3000 character(s) maximum*

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*

The provisions on cumulation are not clear to apply. The first problem is the clear understanding of the same eligible costs, especially which exact expenditures fall under this group. Due to technical reasons national regulations should be applicable and taken as reference.

The second problematic aspect is, that the final sum of the aid received is not known in the initial phase of the project, and therefore the undertakings cannot assess whether the cumulated aid will exceed the thresholds provided. A typical example basing on project development in Germany is that the undertakings receive aid (e.g. KfW 432) for project development, which falls under the De minimis Regulation, because it does not exceed the provided ceiling. As a part of the project the developer establishes a scheme for the desired investment including the calculation of the required subsidies. Only then the exact sum is known and it is possible to assert, taking also the de minimis aid into account, as it is considered to relate to the same eligible costs, whether it would exceed the cummulation ceilings. This is therefore not possible at the point, when the de minimis aid is granted. As the undertakings fear the necessity to pay the aid back, they do not apply for the de minimis aid at all.

In the opinion of the AGFW the de minimis aid should not be taken into consideration while applying the ceiling relating from the GBER or other legal acts. The two systems should be regarded separately.
• 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

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.

3000 character(s) maximum

   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.

3000 character(s) maximum
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)

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**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)

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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)?

I don't know

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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. (3000 character(s) maximum)

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

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

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.

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

Thank you for your participation.

Contact

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