

## Factsheet 2: De minimis support in Interreg Baltic Sea Region

### Please note:

Legal basis: 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: [http://ec.europa.eu/competition/state\\_aid/legislation/de\\_minimis\\_regulation\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf)

This factsheet is a summary of the key points of “the Regulation” but is not a substitute for the full text of the Regulation, to which reference should be made.

### 1. Summary

The overall aim of the *de minimis* principle is allow comparatively small amounts of support to be offered without being caught by the State aid rules. This is based on the assumption that small amounts of support do not have a significant impact on competition and trade in the European Economic Area (EEA). The *de minimis* facility can play a useful role in Interreg Baltic Sea Region in those cases where the presence of State aid cannot be excluded. This Regulation does not apply to fisheries or agriculture (separate rules apply to these sectors) or to export-related activities. *De minimis* support is generally subject to a ceiling of EUR 200,000 in a three-year period calculated per single undertaking, per Member State. Specific eligibility and monitoring criteria must also be met.

### 2. Geographical coverage

The Regulation applies throughout the EEA.

### 3. Sectoral exclusions

The *de minimis* Regulation does not apply to undertakings involved in:

- Fisheries and aquaculture (a separate *de minimis* Regulation applies)
- Primary agricultural production<sup>1</sup> (a separate *de minimis* Regulation applies)

<sup>1</sup> ‘agricultural products’ means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products covered by Regulation (EC) No 104/2000 (e.g. animals, vegetables, fruits)

- Processing<sup>2</sup> and marketing<sup>3</sup> of agricultural products where support is linked to the quantities of product bought from producers or is partly conditional on being passed on to producers.

#### 4. Excluded activities and expenditure

*De minimis* support is eligible for a wide range of operational costs and investments, including expenditure on tangible assets, and intangible ones such as patents and licences. However, the following types of spend are explicitly *excluded*:

- Support for exporting through, for example, support linked to quantities exported, the development of an export network or operating costs associated with export activity
- Support which is conditional on using domestic over imported goods
- Support for acquiring road freight transport vehicles by undertakings in the road haulage business.

#### 5. Single undertakings

The ceiling on *de minimis* aid is calculated per single undertaking per Member State. The intention here is that multiple subsidiaries of the same firm in *different* Member States could each receive *de minimis* aid without the ceiling being breached. Conversely subsidiaries of the same firm could not each receive *de minimis* support from the *same* Member State. However, there has been some debate about the applicability of ‘per Member State’ in the context of Interreg programmes. In Interreg Baltic Sea Region only the Member State in which the MA/JS is located (i.e. Germany) will be used as the basis for assessing eligibility for *de minimis* support.

The notion of a ‘single undertaking’ includes all enterprises having at least one of the following relationships with one another:

- one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprises
- one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise

<sup>2</sup> ‘processing of agricultural products’ means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale

<sup>3</sup> ‘marketing of agricultural products’ means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose.

- one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association
- one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of the enterprise, a majority of shareholders' or members voting rights in that enterprises.

Although the Regulation refers to 'enterprises', in practice, this encompasses any entity engaged in an economic activity – this could include associations, charities, universities, and so on.

These criteria are intended to ensure that a group of linked entities is treated as a single undertaking for the purposes of the *de minimis* rule, but that entities which have no relationship with each other except for the fact that each of them has a direct link to the same public body or bodies are not treated as being linked to each other.

It can also be assumed that, for example, different departments of one university would be regarded as part of a single undertaking, i.e. the university.

In calculating the amount of aid, special care must be taken where the recipient has been the subject of a merger or a split from another organisation. In the case of mergers and acquisitions, all prior *de minimis* aid is taken into account in determining whether new *de minimis* support can be paid. *De minimis* aid lawfully granted before a merger or acquisition shall remain lawful. If an undertaking splits into two or more separate undertakings, *de minimis* support granted before the split shall be allocated to the undertaking that benefitted from it, which is in principle the undertaking taking on the activities for which *de minimis* support was used. If this split is not possible, *de minimis* support will be allocated proportionately on the basis of the book value of the equity capital of the new undertaking at the date of the split.

## 6. Amounts of support

The total **amount** of *de minimis* aid per Member State (i.e. Germany in case of Interreg Baltic Sea Region) to a single undertaking is:

- EUR 200,000 over a period of three fiscal years
- EUR 100,000 over a period of three fiscal years for single undertakings performing road freight transport for hire or reward (as noted above, the aid must not be used to acquire road freight transport vehicles)

*De minimis* aid is deemed to be granted when the legal right to receive the aid is conferred, irrespective of the date of payment. In Interreg Baltic Sea Region this is understood as the date

when the last contracting party signs the subsidy contract. The period of three fiscal years is determined with reference to the fiscal year of the undertaking.

Where the relevant ceiling would be exceeded by the grant of new *de minimis* aid, none of the new aid may benefit from the *de minimis* Regulation. This means that if an application is received which would result in the ceiling being exceeded, *de minimis* support cannot be awarded in whole or in part, even if a partial award would not result in the ceiling being exceeded.

Direct support from Interreg Baltic Sea will be in the form of grants. Where partners provide indirect support to end users (for example in the form of subsidised consultancy or access to facilities) where the State aid element cannot be eliminated, it will be necessary for the partner to calculate the value of that support. The project partner would then be responsible for obtaining the self-declaration from the beneficiary and reporting to the relevant Member State, if a central register exists.

## 7. Ensuring compliance

When granting a *de minimis* support to a particular undertaking, the awarding body must check that the new support will not raise the total amount of *de minimis* support received by that undertaking during the relevant three-year period above the EUR 200,000 (or EUR 100,000, as applicable) ceiling. This can be done in two ways:

- either the Member State has a central register of *de minimis* support containing complete information on all *de minimis* support granted by any authority within the Member State (within Interreg Baltic Sea Region, Estonia, Lithuania and Poland operate such systems), or
- the enterprise is explicitly informed about the *de minimis* character of the support and the Member State obtains from the enterprise concerned a self-declaration about other *de minimis* aid received during the two previous fiscal years and the current fiscal year.

In Interreg Baltic Sea Region undertakings (i.e. applicants that carry out State aid relevant activities) will have to complete a *de minimis* declaration concerning the amount of *de minimis* support which they have already received from Germany in the preceding three years.

## 8. Monitoring

Where it is proposed to grant *de minimis* support, the recipient must be informed in writing of the amount and the *de minimis* character of the support – this ensures that the recipient is in a position to comply with future self-declarations on *de minimis* support if required.

Information about the application of the Regulation must be compiled and recorded. This must contain all the information needed to show that the conditions of the regulation have been met. Records of individual *de minimis* support must be maintained for 10 fiscal years from the date on which the aid was granted. Where *de minimis* support is offered under an aid *scheme*, records must be maintained for 10 years from the date on which the last individual support was granted under the scheme. This information must be available on request from the Commission within 20 working days, but does not require to be actively reported to the Commission otherwise.

## 9. Administrative arrangements

If support is offered on the basis of the *de minimis* Regulation, the applicant will be formally informed of this and will require to submit a formal *de minimis* declaration regarding past *de minimis* support.

This formal declaration shall be subject to a plausibility check.

In case of a positive plausibility check, the applicant can be granted *de minimis* support. After signature of the subsidy contract between the MA/JS and the lead partner, each recipient of *de minimis* support in the project must be informed in writing of the amount and the *de minimis* character of the support (i.e. *de minimis* award letters are issued to the respective project partners).

Where *de minimis* support is provided to a lead partner or partner in a project, the monitoring and administrative arrangements are the responsibility of the MA/JS.

Where a partner provides indirect aid to end users (for example through subsidised training) and seeks to ensure State aid compliance on the basis of the *de minimis* Regulation, that partner shall be responsible for ensuring that the terms of the *de minimis* regulation are met, including the monitoring and administrative arrangements outlined here. Partners that intend to frame aid to third parties within the *de minimis* Regulation are encouraged to get familiar with that regulation and, if needed, seek further information at national level.<sup>46</sup> If national rules allow, the example *de minimis* declaration for aid to third parties and/or the example *de minimis* award letter available on the Programme website may be used.

---

<sup>4</sup> A contact list of national State aid experts will be provided on the Programme website. These experts provide general information on State aid and support in the understanding of “economic activities”. If needed, the national State aid experts also provide specific national information and documents (e.g. national template for *de minimis* certificates/confirmation letters) and national contacts in the area of concern (e.g. contact to national State aid registers). However, the national State aid experts will not provide information on State aid in the programme. And, the experts will not carry out a detailed assessment of State aid in the project and/or establish a State aid solution. The final decision and responsibility for identifying activities providing State aid to third parties and the suitable State aid solution remains with the concerned project partner.

## 10. Other relevant documents

- 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:  
[http://ec.europa.eu/competition/state\\_aid/legislation/de\\_minimis\\_regulation\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf)
- *De minimis* declaration
- *De minimis* award letter
- Factsheet 1: State aid in Interreg Baltic Sea Region
- Factsheet 3: The General Block Exemption Regulation
- Factsheet 4: Guidance on State aid definition