

30 December 2022

EAPB feedback on review of rules on exemptions for small amounts of aid to services of general economic interest

The EAPB welcomes the possibility to provide feedback on the review of rules on exemptions for small amounts of aid to services of general economic interest (SGEI). The focus of the activities of EAPB members, public banks which act on behalf of their owners – national, regional and local authorities - is the implementation of targeted promotional measures. A large part of its promotional activities is devoted to supporting small and medium-sized enterprises. National, regional, but also European promotional funds are used for this purpose. In doing so, promotional banks always act on the basis of the European regulations on State aid. Against this background, we would like to comment as follows/

1) The de minimis threshold should be raised to at least EUR 800,000.

We expressly support the European Commission's proposal to raise the de minimis threshold. In view of the inflationary trend in Europe, but also worldwide, we consider this step to be urgently necessary.

The period from 2012 to 2030 should be used as the basis for the inflation-related calculation to determine the adjustment of the de minimis threshold. The inflation expectation values for the years 2023 and 2024 and the medium-term inflation rate of 2% for the years 2025 to 2030 (assumption of the ECB Governing Council's target). This should be factored in when determining the right threshold. Also in view of the current and future challenges that the European economy will inevitably have to deal with (e.g. consequences of the Corona pandemic, climate crisis, Russia's war of aggression on Ukraine, energy crisis, interest rate policy), we believe it would be appropriate to raise the SGEI de minimis ceiling to at least 800,000 euros. We believe that this adjustment would give the Member States more scope to take account of the EU's political objectives - climate targets, transformation of the economy by promoting digitalisation and sustainability, etc. - in a needs-based and tailored manner in the respective regions.

2) Adaptation of certain terms in the SGEI de minimis Regulation

We are expressly in favour of adapting the terms to the General De Minimis Regulation. In our view, this is essential for legal certainty.

At this point, several adjustments should be made and the relevant content defined analogously to the General De Minimis Regulation. This concerns the treatment of "undertakings in difficulty", which in future should also fall under the scope of the SGEI de minimis Regulation. The provisions of the SGEI de minimis Regulation on mergers and acquisitions should also be amended in line with the General De Minimis Regulation.

3) Continue to allow for Member State discretion with regard to the proper national tools based on self-declarations or registries

As already stated in our comments on the General De Minimis Regulation of July and December 2022, EAPB doubts that national public registries are the suitable tools for reporting State aid in all cases. The Commission should allow for Member State discretion with regard to the proper national tools based on self-declarations or registries. It is important that the obligation for companies to provide correct and updated information is enforced. Member States considering setting up a database should take into consideration experiences gathered by Member States who have already set up such registers. For example the agricultural aid register in Hungary distinguishes between requested aid and granted aid which enables the still-available de minimis amounts to be used effectively. Another example is Slovenia, which uses a public register alongside self declarations by companies. The Commission should allow for flexibility in the rules so that each Member State can have a system in place suitable to its needs, its political organisation (federal, centralised) as well economic sector structures.

A functioning register presupposes that all necessary data is recorded (on a daily basis) and not just within six months. Otherwise, obtaining a de minimis self-declaration will remain necessary even after the expiry of a period of three fiscal years. In our opinion, such daily updates are indispensable for a reliable register as a basis for granting new de minimis aid, as otherwise there is a risk of unlawful aid being granted. In the absence of daily updates, the risk that an outdated/incorrect data situation would be adopted and used as a basis for granting new aid would be very high. In our view, the register, as proposed by the Commission, would have inherent deficiencies. The central register must guarantee a clear identification of the aid recipient. This raises the question of how mergers, splits, takeovers, relocations, changes of name and links between individual companies can be mapped. For these situations, it is difficult to ensure data integrity over time, as social circumstances and contractual arrangements between companies that constitute "one single company" can change over the course of three tax years, and thus may also change the relevant aid figures.

In Member States where a register is established, it is worthwhile considering if the provision that the De Minimis threshold applies with reference to the current fiscal year and the previous two is still adequate and if it could not be replaced by a reference to calendar years. While it is a very practical provision because it allows you to check what has been declared by the companies with their financial statements, it is perhaps an unfair provision because it discriminates between identical companies that have chosen (arbitrarily) different end of fiscal years. Where a Member State has set up a central register the authorities know well on what date (all) the de minimis aid(s) was(were) granted while it has to acquire the information of when each individual company closes its balance sheet. This may lead to unnecessary administrative burden.