

De Minimis Aid

**Commission Regulation (EU) 2023/2831 of 13 December 2023
on the application of Articles 107 and 108 of the TFEU
to de minimis aid**

Day 2 – Tuesday, 27 February 2024

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The training has been organised by EIPA and CPVA
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Content of Presentation

- Quick review of the old (expired) €200k de minimis Regulation and the other de minimis Regulations
- New €300k de minimis Regulation (EU) 2023/2831
 - Scope & Definitions
 - Maximum ceiling, form of aid
 - Gross Grant Equivalent calculations
 - Cumulation rules
 - Monitoring and Reporting
 - Transitional Provisions

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Overview of the old (expired) de minimis Regulation

- [Reg \(EU\) No 1407/2013](#) – main de minimis regulation until 31.12.23
- Scope – **all sectors, except**
 - fisheries and aquaculture sector
 - primary production of agricultural products
 - processing and marketing of agricultural products, where there is a risk of aid passing on to primary producers
 - aid to export-related activities
 - aid contingent upon the use of domestic over imported goods
- Max €200k per MS to a single undertaking over any period of 3 fiscal years.
- Max €100k per MS to a single undertaking performing road freight transport for hire or reward.
- Monitoring – de minimis declarations or central register



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Other de minimis Regulations 1/3

- [1408/2013 - Primary agriculture](#)
 - Expires 31 December 2027
 - Maximum €20,000 but up to €25,000 allowed in some cases
 - Per Member State to a single undertaking over any period **of 3 fiscal years**.
 - Cumulation - Where an undertaking is also active in one or more of the sectors or has other activities falling within the scope of the general or the fisheries and aquaculture de minimis Regulations or is receiving other State aid **check the rules on cumulation**.
 - Monitoring - de minimis declarations or central register – *currently no plans to require awards to be uploaded to a central MS register or EU register*



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Other de minimis Regulations 2/3

- [717/2014 – fisheries](#)
 - Expires 31 December 2029
 - Processing and marketing now under the main de minimis Regulation – *“Considering the nature of the activities... and the similarities with other processing and marketing activities, [the general de minimis Regulation] should apply to undertakings active in the processing and marketing of fishery and aquaculture products, provided that certain conditions are met.”*
 - Maximum €30,000 but up to €40,000 allowed in some cases
 - Per Member State to a single undertaking over any period *of 3 fiscal years*
 - Cumulation – Where an undertaking is also active in other sectors *check the rules on cumulation*
 - Monitoring - de minimis declarations or central register – currently no plans to require awards to be uploaded to a central MS register or EU register



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Other de minimis Regulations 3/3

- [2023/2832 – Services of General Economic Interest](#)
 - Old Regulation expired on 31 December 2023
 - Ceiling increased from €500k to €750k *over any period of 3 years*, per Member State to a single undertaking
 - Single undertaking - enterprises that have no relationship with each other than a direct link to the same public body or bodies, or to the same *non-profit entity or entities*, shall not be treated as a single undertaking for the purposes of this Regulation.
 - Cumulation - *may be cumulated with any other de minimis aid, but check the cumulation rules*. Compensation in respect of the same SGEI is not allowed, nor is cumulation with State aid, if it would exceed the highest relevant aid intensity or aid amount in a block exemption regulation or decision.
 - Reporting - from 1 January 2026, information must be uploaded to central MS register or EU register



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2024 – 2030 De Minimis Regulation (EU) 2023/2831

- Recitals - paras 1 – 30
- Article 1 - Scope
- Article 2 - Definitions
- Article 3 - De minimis aid
- Article 4 - Calculation of gross grant equivalent
- Article 5 - Cumulation
- Article 6 - Monitoring and reporting
- Article 7 - Transitional provisions
- Article 8 - Entry into force and period of application



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Article 1 - Scope

- Applies to aid granted to undertakings *in all sectors, except:*
 - a) Those in the *fisheries and aquaculture* sector
 - b) Those *processing and marketing of fishery and aquaculture products, where the amount of the aid is fixed on the basis of price or quantity of products purchased or put on the market*
 - c) Those involved in *primary production of agricultural products*
 - d) Those *processing and marketing of agricultural products, where there is a risk of aid passing on to primary producers*
 - e) Export-related activities
 - f) Use of domestic over imported goods
- When undertaking is active in excluded sectors (a), (b), (c) or (d) and is also active in other sectors, de minimis aid is allowed, but aid provider must ensure (e.g. by a separation of accounts) that the undertaking's activities in the excluded sectors do not benefit from the de minimis aid granted.



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What is meant by Export aid?

In June 2001, the Commission became aware of a scheme in the Land of Mecklenburg-Western Pomerania that allowed aid to be provided to SMEs to incentivise the sale and export of products from Mecklenburg-Western Pomerania.

The objective was to *"develop or recover trans-regional and export markets. These include markets outside Mecklenburg-Western Pomerania, i.e. markets in Germany and other Member States and in third countries."*

The Mecklenburg-Western Pomerania scheme comprised of 4 sub-programmes:

- A – Market-launch activities;
- B – Participation in fairs and exhibitions in Germany and abroad;
- C – Offices shared abroad; &
- D – Foreign trade assistants.

The Commission initially concluded that this may be incompatible with [Article 107 of the TFEU] and it opened a formal investigation.



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EC Decision (2003/595/EC)

On 5 March 2003 the Commission adopted a decision on the aid scheme

EC Decision (2003/595/EC) - <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003D0595>

This concluded that only sub-programmes A and B fell within the scope of the de minimis regulation.

Sub-programmes C and D were concluded to be 'export aid' and as such were excluded from the scope of the de minimis Regulation.

But, the decision only related to *"exports inside the EC, the EEA and countries that have the official status of candidates for accession to the EU."*



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Discussion Question – Does this mean Member States can provide de minimis aid for 'export-related activities' in third countries?



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Discussion Question – Does this mean Member States can provide de minimis aid for 'export-related activities' in third countries?

No – When the Commission next revised the de minimis Regulation it clarified, in (EC) No 1998/2006, that aid to export-related activities towards third countries or Member States was not permitted.



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Article 2 - Definitions

1. 'agricultural products'
2. 'primary agricultural production'
3. 'processing of agricultural products'
4. 'marketing of agricultural products'
5. 'fishery and aquaculture products'
6. 'primary production of fishery and aquaculture products'
7. 'processing and marketing of fishery and aquaculture products'
8. 'financial intermediary'
9. 'Single undertaking'

Single Undertaking

All enterprises having at least one of the following relationships with each other are a Single undertaking.

- a) one enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
- b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or pursuant to a provision in its memorandum or articles of association;
- d) 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 that enterprise, a majority of shareholders' or members' voting rights in that enterprise.



Single Undertaking

The Court of Justice of the European Union has ruled that **all entities which are controlled (on a legal or on a de facto basis)** by the same entity should be considered as a **single undertaking**.

See C-382/99 Netherlands v Commission [2002] ECR I-5163

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61999CJ0382>



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Article 3 – De minimis aid

- De minimis aid measures are not subject to the notification requirement in Article 108(3) of the TFEU
- *"The total amount of de minimis aid granted per Member State to a single undertaking shall not exceed €300,000 over any period of 3 years"*
- De minimis aid is granted the moment the legal right to receive the aid is conferred on the undertaking, irrespective of the date of payment
- The €300k de minimis ceiling applies **irrespective of the form of the aid or the objective pursued**
- Aid shall be expressed as a **gross cash grant** or when aid is granted in a form other than a grant, as a **gross grant equivalent**
- When the €300k ceiling would be exceeded by the grant of new de minimis aid, that new aid cannot be awarded under the Regulation
- Further rules for mergers or acquisitions or if an undertaking splits into two or more separate undertakings



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Article 4 - Calculation of GGE 1/2

- All de minimis aid must be calculated as a gross cash grant or a gross grant equivalent (GGE) of the aid, ex ante without any need to undertake a risk assessment (i.e. the amount of aid must always be transparent).
- Grants or interest rate subsidies shall be considered as transparent de minimis aid.
- Aid comprised in loans shall be considered as transparent if it satisfies conditions in Article 4(3) on solvency, collateral and the reference rate used for the GGE calculation.
- Capital injections are transparent if the total amount of the public injection does not exceed the de minimis ceiling.

Article 4 - Calculation of GGE 2/2

- Risk finance measures in the form of equity or quasi-equity investments only transparent if the capital to a single undertaking does not exceed the de minimis ceiling.
- Aid comprised in guarantees only transparent de minimis aid if it satisfies specific conditions in Article 4(6) (a) to (d).
- Article 4(7) relates to whether any aid is received by financial intermediary implementing one or more de minimis aid schemes
- Article 4(8) details that aid comprised of other instruments is transparent de minimis aid, if the instrument has a cap that ensures the €300k ceiling is not exceeded.



Article 5 - Cumulation

- De minimis aid (under the general de minimis Regulation (EU) 2023/2831) may be cumulated with de minimis aid granted under the SGEI de minimis Regulation, meaning a single undertaking could (in theory) receive €1,000,050 (i.e. €300k + €750k) over any period of 3 years
- General de minimis aid may be cumulated with de minimis aid granted under the agricultural and the fishery and aquaculture de minimis Regulations as long as the €300k ceiling is not exceeded.
- De minimis aid granted in accordance with the main de minimis Regulation cannot not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if the cumulation would exceed the highest relevant aid intensity or aid amount in a block exemption regulation or a decision adopted by the Commission. But, De minimis aid that is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission.



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Article 6 - Monitoring and reporting

- Until 31 Dec 2023, either a 'Central de minimis register' or 'declaration from an undertaking.
- But, from 1 January 2026, information on *general and SGEI* de minimis aid granted must be registered in a central register or a register at Union level.
- The information must be uploaded within 20 working days following the grant of the aid and must be accurate
- Records must be kept for 10 years from the date aid was granted
- No new de minimis aid can be awarded until checks completed to confirm the relevant ceilings are not exceeded and all conditions are complied with.
- Member States using a national register must, by 30 June, provide Commission with data on de minimis aid granted for the previous year
- If the Commission requests information on the awarding of de minimis aid to an undertaking, this must be provided within 20 working days



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Article 7 - Transitional provisions

- Public authorities can continue to use the old de minimis Regulation for 6 months (i.e. until 30 June 2024) – see Article 7(4) of [\(EU\) No 1407/2013](#)
- Until the central Member State or Union registers are set up and cover a period of 3 years, Member States can continue to grant de minimis aid providing they inform the undertaking in written or electronic form of the amount of the aid, expressed as a gross grant equivalent and its de minimis character, referring directly to the general or SGEI de minimis Regulations.
- Before granting the aid, the Member State shall obtain a 'de minimis declaration' from the undertaking, in written or electronic form, about any other de minimis aid it has received to which the general or other de minimis regulations apply over any period of 3 years.



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Article 8 – Start and End dates

- The general de minimis Regulation (EU) 2023/2831 entered into force on 1 January 2024
- It applies until 31 December 2030.



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ECA Special Report No 15 2011

ECA comments on the monitoring of de minimis aid

25. Although Member States are required to record and compile all the information regarding the application of the de minimis Regulation and to provide this information to the Commission on written request, in practice the Commission does not monitor the respect of the conditions for granting de minimis aid. Several aid-grantors declared that the respect of the ceiling of de minimis aid is very difficult to check and that they have no clear idea if the ceiling is generally respected or not.



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ECA Special Report No 15 2011

Key points in Commission response:

Since support granted on the basis of the de minimis Regulation does not constitute State aid within the meaning of Article 107(1) TFEU, it is not included in the monitoring of approved and block exempted schemes.

As there is no legal obligation to monitor non-aid measures, the Commission would check compliance if there were suspicions or complaints. However, no complaints have been received.

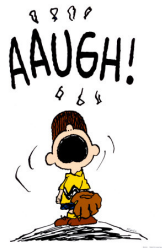
Due to the small amounts involved, verification that the de minimis rule is being respected cannot be given the same priority as GBER or other aid measures, which may have more significant effects on competition and trade between Member States.



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Thanks for your attention!



The training has been organised by EIPA and CPVA under the Framework Contract Nr 2023CE160AT004. The opinions expressed are those of the contractor only and do not represent the EC's official position.

