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DE MINIMIS AID – DRAFT PROPOSAL FOR A COMMISSION REGULATION

1. INTRODUCTION

The Commission is considering to raise the ceiling of the current *de minimis* Regulation from €100,000 to €150,000. This increase takes into account inflation and GDP growth in the EU since the *de minimis* ceiling was last increased. Aid measures which do not exceed €150,000 over a period of three years will be deemed to have no substantial effect on competition and trade between Member States and therefore not to constitute state aid in the meaning of the Treaty. They shall consequently be exempt from the notification requirement.

The *de minimis* proposal forms part of the implementation of the State Aid Action Plan, which outlines the guiding principles for a comprehensive reform of the state aid rules. In particular, the Commission intends to use the state aid rules to encourage Member States to contribute to the Lisbon strategy by focusing on commonly agreed, politically desirable objectives. In addition, the Commission wants to rationalise and streamline procedures, so that the rules are clearer and attention is focused on more distortive types of aid.

As set out in its response to the State Aid Action Plan, UNICE recognises the need for new rules for state aid measures that are unlikely to cause major distortions of competition, which would enable the Commission to focus on important cases. In this context, UNICE endorsed an increase in the *de minimis* threshold which would reflect inflation and GDP growth in the EU. However, UNICE also warned that it is essential that new rules will not harm transparent and effective state aid control in the common market.

UNICE's comments and suggestions for further development of the draft proposal for a new *de minimis* Regulation are set out below. Considering that the draft sets out what may be the criteria for designing new *de minimis* rules, UNICE's views are preliminary. It will give its final views about the proposed changes when the ultimate proposal is decided.

2. DE MINIMIS AID

UNICE in principle agrees that aid not exceeding a ceiling of €150.000 over any period of three years does not affect trade between Member States and/or does not distort or threaten to distort competition and therefore does not fall under Article 87 (1) of the Treaty. However, it should be borne in mind that there is currently no effective mechanism to check whether different Member States grant *de minimis* aid to the same company which happens to be operating in these different Member States, thereby significantly increasing the total amount of aid the

company in question is getting. Nor do the national registers for *de minimis* aid seem to be working effectively. Therefore, UNICE would insist that the Commission ensures that appropriate tools are put in place to guarantee that the entire mechanism is made more transparent and that abuse is avoided.

According to the draft proposal, a Member State which intends to grant *de minimis* aid has to inform the undertaking about the aid and obtain from this undertaking a written declaration about any other *de minimis* aid or other state aid received during the previous two fiscal years and the current fiscal year unless a Member State has set up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within that Member State from the moment the register covers a period of three fiscal years. The Member State shall only grant *de minimis* aid after having checked that this will not raise the total amount of *de minimis* aid received during the relevant period of three years to a level above the ceiling of €150,000. In addition, Member States must record and compile all the information regarding the application of the *de minimis* Regulation.

UNICE fears that these control mechanisms are not enough to ensure transparency and avoid abuse. Experience shows that Member States which do not have a central register of *de minimis* aid in practice do not have an exact overview of the total amount of *de minimis* aid within that Member State. Furthermore, there is a general lack of transparency because *de minimis* aid is not included in the Commission's state aid scoreboard.

In order to improve transparency, UNICE suggests the establishment of an additional rule which would require that the cumulative amount granted to enterprises shall not exceed a given value per Member State set out in the Regulation over any three-year period. This would require the Member States to have an overview of their total *de minimis* aid.

To further improve transparency and enhance control, UNICE proposes that Member States are required on a yearly basis also to forward information to the Commission about all existing *de minimis* aid schemes and the total amount of aid granted under each scheme. This information should be made publicly available in the Commission's on line version of the state aid scoreboard.

Lastly, UNICE believes that recovery of aid granted due to incorrect application of the *de minimis* Regulation or the state aid rules in general should be strengthened. In this context, UNICE suggests to exclude *de minimis* aid to companies which are the subject of an outstanding recovery order following a Commission decision declaring the aid illegal and incompatible with the common market. In UNICE's view this will significantly strengthen state aid control mechanisms. UNICE also refers to suggestions made in its comments on the State Aid Action Plan in the context of the Commission's plans to modernise the state aid practices and procedures.