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BUSINESSEUROPE VIEWS ON THE NEW DE MINIMIS REGULATION

BUSINESSEUROPE welcomes the opportunity to provide comments to the revision of the de minimis rules.

BUSINESSEUROPE believes that a further increase in discipline in the field of State Aid is very important and urgently needed, especially in light of the apparent move towards more decentralization of state aid control. The following comments are made with that aim in view.

- De minimis aid

Under the current de minimis Regulation the ceiling is set at € 200.000 per undertaking over three fiscal years. On the basis of the Commission's experience and all the data gathered during the review so far, including through the public consultation last summer, there is no indication that a higher ceiling would be justified.

We support therefore the Commission conclusion and strongly agree that the current threshold is maintained. An increase in the threshold would entail an increased risk of distorting free and fair competition. This would especially be the case in sectors with overcapacity – in combination with a large number of smaller undertakings – where even small aid amounts could have detrimental effects on competition. Furthermore it is important to have in mind that the Court consistently has held that “the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that intra-Community trade might be affected” (e.g. C-172/05, Heiser, para-graph 32; Case C-280/00, Altmark, paragraph 81).

We appreciate the clarification in the proposal regarding the calculation of de minimis aid in the context of mergers and splits. However, it would be useful to clarify what is meant by “demonstrate by appropriate means” in a split situation in order to allocate the de minimis aid rightly between the parties.

The de minimis aid ceiling is linked to the notion of an undertaking, but it is sometimes uncertain whether the aid ceiling has to be calculated at group-level, production site level etc., hence we urge the Commission to clarify the notion of undertaking in the regulation.

- Monitoring and reporting

The draft proposes the introduction of a central de minimis register. BUSINESSEUROPE strongly agrees with the objective of achieving an effective control on de minimis aid. The setup of such a register, in fact, would enable the European Commission to better evaluate the correct application of the “de minimis” regulation and to assess the aggregate effect of “de minimis” aids granted at the Member State



level¹. BUSINESSEUROPE is however concerned that the design of such a register should not entail excessive costs for national authorities, and must not result in an increase in red tape for business.

The supervision and control of de minimis aid could be strengthened in other ways too. In this context, the other monitoring and reporting obligations indicated in article 6 of the draft regulation seem appropriate. We strongly support the proposal for Member States to report to the Commission on the application of the de minimis regulation on a yearly basis. The annual reports should be made public on the Commission's website.

- Other issues

Also, BUSINESSEUROPE believes the draft regulation should make reference to the European Court of Justice's Deggendorf case-law, and state clearly that de minimis aid will not be applicable to companies subject to an outstanding recovery order following a previous Commission decision declaring the illegality and incompatibility of the aid.

A reference to the Deggendorf principle would be in line with point 77 in the Commission notice "Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid" from November 2007 which states that "[...] The Commission intends to integrate this principle into all forth-coming State aid rules and decisions".

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¹ "In this respect, BUSINESSEUROPE notes that maximum cumulative amounts of de minimis aid granted per Member State already apply in the in the sector of agricultural production (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:337:0035:0041:EN:PDF> (article 3.3 + annex))."