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IMPACT ASSESSMENT

Accompanying the document

COMMISSION REGULATION (EU) No .../..

**on the application of Articles 107 and 108 of the Treaty on the Functioning of the
European Union to de minimis aid**

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Executive Summary Sheet
Impact assessment on the Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to <i>de minimis</i> aid
A. Need for action
Why? What is the problem being addressed?
<p>In the context of the State Aid Modernisation (SAM) State aid policy should facilitate well designed aid targeting market failures and objectives of common European interest. The Commission also aims to focus its enforcement efforts on cases with the biggest impact on the internal market, to streamline rules and take faster decisions. The review of the <i>de minimis</i> Regulation, which expires on 31 December 2013, is directly linked to the prioritisation objective and therefore represents an important element of the SAM initiative. The main problems are related to:</p> <ul style="list-style-type: none"> - (i) the definition of the right ceiling which has to ascertain that aid measures can be deemed not to have any effect on trade and competition and are therefore not subject to State aid rules; - (ii) the use of conditions that are simple and easy to apply for local granting authorities; and - (iii) ensuring monitoring and transparency of <i>de minimis</i> measures in the best possible way.
What is this initiative expected to achieve?
<p>The revision of these rules shall ensure that the <i>de minimis</i> Regulation remains a simple tool to support mainly small and medium-size enterprises (SMEs) by:</p> <ol style="list-style-type: none"> 1. Simplification: allowing for the greatest simplification possible without affecting trade and competition in the internal market; 2. Legal certainty: Defining clear rules providing legal certainty; 3. Prevention of distortions on competition and trade in the internal market; and 4. Ensuring compliance with the rules and in particular the ceiling.
What is the value added of action at the EU level?
<p>The State aid rules on <i>de minimis</i> aid fall under the competence of the Commission and the EU enjoys an exclusive competence in this field of law, the present action is therefore not subject to a subsidiarity test. State aid control is an exclusive competence of the Commission as Member States (MS) cannot be expected to scrutinise each other. State funding meeting the State aid criteria of the TFEU requires notification to the Commission. However, the Council may determine categories of aid that are exempted from this notification requirement. By virtue of Regulation (EC) No 994/98 the Council empowered the Commission establish in a Regulation a ceiling below which aid measures are deemed not to meet all the State aid criteria and are therefore exempted from the notification procedure.</p>
B. Solutions
What legislative policy options have been considered? Is there a preferred choice or not? Why?
<p>The policy options can be subdivided between those concerning the (i) ceiling; (ii) other conditions for application and (iii) monitoring. Concerning the ceiling different levels, further differentiations of ceilings and the introduction of a cap have been considered. In respect of the other conditions for applications further simplifications and clarifications have been discussed for the definitions of ‘undertaking’ and ‘undertakings in difficulty’ as well as on the rules on cumulation and ‘transparent aid’ (aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without the need to undertake a risk assessment). As regards enhancing compliance through monitoring is has been considered to systematically enhance monitoring and the advantages and disadvantages of a mandatory register have been taken into consideration.</p> <p>Based on this impact assessment, the Commission would prefer the option of maintaining the ceiling, except for road passenger transport where the general ceiling would apply. It would favour the option to keep the current monitoring system. In addition the Commission favours the option of introducing further simplifications and clarifications concerning the definition of ‘undertaking’ and ‘undertakings in difficulty’. Concerning the ‘transparent aid’ instruments it favours the adaptation of the rules for loans and guarantees which includes the introduction of an additional ‘safe harbour’ for loans.</p> <p>These preferred options are consistent with the State Aid Modernisation initiative and are focussing on simplifying and clarifying the rules while having regard to preventing distortions of competition.</p>
Who supports which option?

In general, all the MS and stakeholders which have participated in the consultations agree on the positive effects of the support granted under the *de minimis* Regulation, with specific reference to positive effects on SMEs (in particular, access to finance). The *de minimis* Regulation is easy to apply, it is very flexible, quick and efficient, and entails low administrative burden. The majority of the answers also underline the essential role played by this instrument during the recent economic and financial crisis, combined with the temporary measure introduced with the Temporary Framework. Nevertheless MS are divided on the question whether to increase the ceiling or not while most other stakeholders would support an increase. However, possible distortions from an easier access to aid in certain countries or markets than in others have been recognised by some MS and European representations of undertakings.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The preferred options ensure further simplification and clarification of the rules while having regard to preventing distortions of competition. Administrative burden shall be kept as low as possible. The preferred options shall ensure that the *de minimis* Regulation continues to be a simple and flexible tool to support mainly SMEs.

What are the costs of the preferred option (if any, otherwise main ones)?

Both the absolute level of costs of the proposal and the differences between the current costs and the proposed changes to it are minimal. The proposed policy as such will not lead to expenses; the costs relate only to enforcement and depend on the administrative organisation. Under the current Regulation, the main administrative burden on the granting authority is ensuring that an undertaking does not receive aid above the *de minimis* ceiling. This can be done either by (i) obtaining *ex ante* declarations from undertakings of other *de minimis* aid received, or (ii) setting up, maintaining, entering data in and checking a central registry. The proposed option to leave MS the choice between both monitoring systems will avoid the additional costs which the imposition of a compulsory register would entail.

In principle, the Regulation does not impose direct administrative burdens on undertakings, including SMEs and micro-enterprises, but only on public authorities. In practice, however, it appears that there are some burdens for undertakings, depending on the granting procedure the public administration chooses. This applies in particular in the declaration system where undertakings need to keep all granting documents for the last three fiscal years to make a declaration on *de minimis* aid received during this period to the administration.

In conclusion, the costs of compliance vary between MS depending inter alia on the structure (federal, central), the aid granting practice (e.g. number of aid granting authorities involved) and the monitoring system chosen. In the absence of data, they cannot be quantified.

How will businesses, SMEs and micro-enterprises be affected?

The *de minimis* Regulation has positive effects on the support granted to undertakings, in particular SMEs (mainly access to finance). It does in principle not impose direct administrative burdens on undertakings, including SMEs and micro-enterprises, as explained under the previous question.

Will there be significant impacts on national budgets and administrations?

Under the preferred option there will not be a significant impact.

Will there be other significant impacts?

The initiative has no significant other impacts e.g. environmental or social.

D. Follow up

When will the policy be reviewed?

The *de minimis* Regulation will apply for a period of 7 years. During this period a study will be carried out to prepare the ground for the next policy review. It is intended to include also data and an analysis on the feasibility of the possible introduction of a central register. It is also envisaged that an evaluation will be launched about two years before the end of the period, starting with a public consultation based on a detailed questionnaire on the application of the various rules.

1. PROCEDURAL ISSUES AND CONSULTATION OF THIRD PARTIES

1.1. Identification

This Impact Assessment (IA) will explore the need and the options for reviewing the existing *de minimis* Regulation¹, which provides conditions under which an aid measure is deemed not to be State aid. Under this Regulation MS can grant up to EUR 200 000 over any period of three fiscal years to any one undertaking without any notification to the Commission.

The current Regulation is applicable until 31 December 2013. The on-going revision of the *de minimis* Regulation is an important element of the State Aid Modernisation (SAM) initiative², launched on 8 May 2012 through a Commission Communication³, which framed the political debate on the modernisation of State aid control.

1.2. Organisation and timing

The project has been led by the Directorate General (DG) for Competition. The chronology of the project is presented in Annex 3.

The following services were part of the Impact Assessment Steering Group (IASG): the Directorate General for Competition, the Secretariat General, the Legal Service, the Directorate General for Economic and Financial Affairs, the Directorate General for Enterprise and Industry, the Directorate General for Employment, Social Affairs and Inclusion, the Directorate General for Agriculture and Rural Development, the Directorate General for Mobility and Transport, the Directorate General for Environment, the Directorate General for Research and Innovation, the Directorate General for Maritime Affairs and Fisheries, the Directorate General for Regional Policy, and the Directorate General for Energy.

This Group met on 11 September 2012 to discuss the main issues and on 22 November 2012 to discuss the results of the public consultation and the various options. A further meeting took place on 29 May 2013 where the results of the first Advisory Committee, which took place on 23 May 2013, as well as of the consultation on the first draft of the Regulation were discussed. In addition a first draft of this report was discussed with the IASG, the first four chapters of which had been distributed to the group beforehand, and was generally endorsed. The final meeting of the IASG took place on 7 October 2013.

1.3. Opinion of the Impact Assessment Board

The Board issued its Opinion on 8 November 2013; its overall opinion was positive.

The following improvements had been requested by the Board:

"The report should be improved in a number of respects. First, the problem definition should focus on areas in which real problems have been identified, namely those related to legal uncertainty, while also explaining why other issues which could seem problematic, such as the current level of ceilings in the *de minimis* Regulation or specific SME needs do not pose major problems. Second, in the assessment of the impacts the report should give a more

¹ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p.5).

² http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

³ Commission Communication COM (2012) 209 final, *EU State Aid Modernisation (SAM)*, 8.5.2012.

balanced and detailed presentation of the way in which positive impacts for beneficiaries and costs for public authorities interact, especially with regard to the introduction of a compulsory register. The phasing out of the separate ceiling for transport should be briefly discussed in a separate section. Third, the report should explain what information Member States will be able to collect to monitor the implementation, and should clearly set out how the *de minimis* Regulation will be evaluated. Finally, the report should be more specific in the references to input received from different categories of stakeholders, especially on the problem, the policy options and the expected impacts."

These comments have been taken into account and the report has been amended along these lines. Concerning the first comment the problem definition in relation to legal uncertainty has been better explained and the baseline scenario has been supplemented (section 2.4.). Further it has been explained why the current level of the ceiling does not pose major problems in section 2.4.1, what information is available and why data have been provided only from some MS in sections 2.1.3 and section 2.4.1. As regards the second comment details have been added on the interaction of positive impacts for beneficiaries and costs for public authorities with regards to the assessment of the option to introduce a compulsory central register (section 5.3.3 and 5.4). In addition, the ceiling in the transport sector has been discussed separately in section 5.1.2. Concerning the third comment the merits of a study in order to assess in detail the feasibility and the practical modalities of central registers has been better explained in section 5.3.3 and the section on evaluation has been supplemented accordingly (section 7). As regards the last comment more specific references to views expressed by stakeholders have been added throughout the report and it has been referred to the summaries of the public consultations in Annexes 4-6 more often.

1.4. Consultation and expertise

1.4.1. Public Consultation

A first public consultation was carried out between 26 July and 18 October 2012⁴. MS and stakeholders were invited to provide input on their experience with the *de minimis* Regulation, on the basis of a questionnaire. In order to ensure that as much information as possible was gathered, this questionnaire focused not only on general questions relating to the application of the Regulation, but also on factual information regarding its use and on practical issues, including monitoring. 101 replies were submitted, of which 23% from MS, 47% from other public authorities (PA) and 30% from a wide variety of different other stakeholders. The responses are summarised in Annex 4.

The public was consulted on a first draft of the Regulation from 20 March to 15 May 2013. To this consultation 128 replies were received: 20 from MS (AT, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LV, NL, PL, PT, SE, SK and UK); 28 from other PA and 80 from other stakeholders (mainly registered and non-registered organisations). The replies are summarised in Annex 5.

The public was again consulted from 17 July to 9 September 2013⁵ on the second draft Regulation published in the Official Journal on 8 August 2013. 68 replies were received from 23 MS (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IT, LT, LV, MT, PL, PT, SE, SI, SK and UK), 7 other PA and 38 other stakeholders. The replies are summarised in Annex 6.

⁴ http://ec.europa.eu/competition/consultations/2012_de_minimis/index_en.html

⁵ http://ec.europa.eu/competition/consultations/2013_second_de_minimis/index_en.html

MS were also consulted at the two Advisory Committee meetings of 23 May 2013 and 20 September 2013. The responses to these consultations have been taken into account in the problem definition, the definition of the policy options and the analysis of their impact.

1.4.2. Consultation of other Institutions

Other institutions were not formally consulted on the revision of the *de minimis* Regulation. However, the European Economic and Social Committee⁶, the Committee of the Regions⁷ and the European Parliament⁸ provided own initiative opinions on the SAM package in which they also stated their views as regards the *de minimis* Regulation. The three institutions called for a higher ceiling for the *de minimis* Regulation. Moreover, the Committee of the Regions pointed out that clarification of impact on cross-border trade and the notion of undertaking could be a suitable starting point for focusing on aid with actual and significant internal market relevance. The European Parliament also stressed that the Member States (MS) will have to ensure *ex ante* compliance of *de minimis* measures with State aid rules in order to preserve a sufficient level of control and called on the Commission to ensure that there is a long-term reduction in State aid.

2. PROBLEM DEFINITION

2.1. The context

2.1.1. The State Aid Modernisation (SAM) initiative

The financial and economic crisis confirmed the importance of State aid control to protect the integrity of the single market and promote recovery. While it has increased the risk for anticompetitive reactions, the crisis has also increased the demand for greater State involvement, while putting strains on MS' budgets whose spending capacity is increasingly uneven. In this context, the SAM reform project is part of the larger framework of EU policies to overcome the crisis and pave the way to recovery and growth.

On 8 May 2012, the Commission adopted the SAM Communication, which sets out the objectives of an ambitious reform of State aid control, which aims at contributing to the broader EU agenda to foster growth. In this context, State aid policy should focus on facilitating well-designed aid targeted at market failures and objectives of common European interest. The Commission also aims at focusing its enforcement on cases with the biggest impact on the internal market, as well as at streamlining rules and taking faster decisions. The review of the *de minimis* Regulation is directly linked to the prioritisation objective and therefore represents an important element of the SAM initiative.

2.1.2. The de minimis Regulation

Under Article 107(1) TFEU, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain

⁶ European Economic and Social Committee, INT/647, 5 November 2012, "Opinion of the Section for the Single Market, Production and Consumption on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU State Aid Modernisation (SAM) COM(2012) 209 final".

⁷ Committee of the Regions, ECOS-V-035, 98th plenary session, 29-30 November 2012, Opinion, EU State Aid Modernisation (SAM).

⁸ European Parliament, Motion for a Resolution further to Question for Oral Answer B7 0102/2013 pursuant to Rule 115(5) of the Rules of Procedure on state aid modernisation (2012/2920(RSP)), 14.1.2013, B7 0024/2013.

undertakings or the production of certain goods is, in so far as it affects trade between MS, incompatible with the internal market. However, in application of Article 109 TFEU, the Council, by adopting Regulation (EC) No. 994/98⁹ ('Enabling Regulation') enabled the Commission to set out in a Regulation a ceiling below which aid measures are deemed not to meet all the criteria of Article 107(1) TFEU and are therefore not subject to the notification obligation under Article 108(3) TFEU.

Therefore, on the basis of the Enabling Regulation, the Commission adopted the first *de minimis* Regulation on 6 December 2000, which was replaced on 15 December 2006 by the current Regulation, which expires on 31 December 2013. The Regulation has greatly simplified the treatment of small aid measures and provided legal certainty for granting authorities and for beneficiaries.

Under the *de minimis* Regulation, aid measures below a certain ceiling are deemed not to have an impact on competition and not to affect trade in the internal market; therefore they do not have to be notified under Article 108(3) TFEU. As from its entry into force on 1 January 2007 and in view of experience applying the previous Regulation, developments in inflation and gross domestic product between 2000 and 2006 and likely developments going forward, the current Regulation raised this *de minimis* ceiling from EUR 100 000 to EUR 200 000 per undertaking over any period of three fiscal years. Given the small average size of road transport undertakings (previously excluded from the scope of the Regulation), a ceiling of EUR 100 000 was set for that sector.

The ceiling is to be understood as a gross cash grant. Where the aid takes a form other than a grant, the amount to be considered is the gross grant equivalent of the aid.

Apart from the ceiling, other conditions set out in the Regulation, *inter alia*, exclude from its scope certain sectors, activities¹⁰ and undertakings in difficulty, lay down rules on permissible aid instruments ("transparent aid: aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without need to undertake a risk assessment") and contain safe harbour rules enabling easier calculation of the gross grant equivalent for guarantees. The Regulation contains a cumulation rule that does not allow for cumulation with State aid if the aggregate amount in respect of the same eligible costs exceeds an aid intensity fixed by the relevant block exemption Regulation or Commission Decision. Finally, the current Regulation allows MS to choose to monitor compliance with the ceiling by means of: (i) a system of declarations by companies on *de minimis* aid received during the current and the two preceding years; or (ii) a central register containing complete information on all *de minimis* aid granted by any authority within the MS.

The Commission adopted last year, as a complement to the general *de minimis* Regulation, a *de minimis* Regulation specific to compensation for the provision of a service of general economic interest (SGEI *de minimis* Regulation¹¹) with a ceiling of EUR 500 000 per undertaking over three fiscal years. This higher amount, in comparison to the general *de minimis* of EUR 200 000, is justified by the fact that the support measures at least in part compensate for the extra costs incurred for the provision of the public service.

⁹ OJ L 142, 14.05.1998, p. 1-4 as amended by Council Regulation (EU) No 733/2013 of 22 July 2013 (OJ L 204/11 of 31 July 2013).

¹⁰ See Article 1 of the current *de minimis* Regulation excluding aid to the fishery and aquaculture sectors as well as the sector of primary production of agricultural products for which specific *de minimis* Regulations with lower ceilings apply. Further export aid and aid for the acquisition of road freight vehicles are excluded.

¹¹ Commission Regulation (EU) No 360/2012 on the application of Articles 107 and 108 TFEU to *de minimis* aid granted to undertakings providing SGEI, OJ L 114, 26.04.2012, p. 8-13.

Within the State aid legal framework the *de minimis* Regulation constitutes the most simple tool available for MS wanting to grant State support. Besides the *de minimis* Regulation different instruments are available going from block exempted State aid to aid that needs to be notified. Each has a different logic and corresponding procedure. For higher amounts of support, which constitute State aid within the meaning of Article 107(1) TFEU, but contribute to EU 2020 objectives and are not creating a risk of significant distortions, the GBER¹² is the appropriate instrument. Aid complying with the criteria set out for different types of aid in the GBER, is exempted from the notification requirement under Article 108(3) TFEU. As it is more important in amount, MS are subject to stricter criteria, including also monitoring and reporting rules, but the administrative burden is still limited because there is no notification obligation. Finally, for aid that does not fall under the GBER, notification is required under the applicable Guidelines (e.g. Guidelines on regional aid, R&D&I, risk finance, etc.). This is typically the case for large amounts of aid that exceed the notification threshold and are liable to create more significant distortions of competition.

De minimis aid can be granted as individual aid measure or in the context of a scheme set up by MS. Some MS use more individual measures while others make a very specific use of schemes and have e.g. specific guarantee schemes for SME under the *de minimis* Regulation. *De minimis* aid can also be used in the context of the structural funds.

Expenditure under Structural Funds may, if channelled through the MS, constitute either *de minimis* aid or block exempted aid or even be outside both Regulations depending on the type of measure granted. Coherence is ensured because State aid rules also apply to State aid that is co-financed under the Structural Funds.

2.1.3. *De minimis* aid in figures

Since *de minimis* aid is excluded from the notification obligation of Article 108(3) TFEU, little quantitative data is available. Furthermore, the Commission has so far not imposed reporting obligations on MS for this type of measure. Most MS have not set up a central register nor do they have a central overview of *de minimis* aid granted by the different regional and local authorities. In particular, there is a lack of data as regards the total amount and the sectoral distribution of measures granted under the *de minimis* Regulation.

The Commission, however, has tried to gather relevant data through its public consultations and by contacting the MS that have set up a central register for *de minimis* aid¹³. In general, data regarding *de minimis* aid granted is very diverse and shows a very different use of the *de minimis* Regulation from one MS to another.

Data on total amount granted and trends

The Commission received data on the total amount of *de minimis* aid spent for certain countries with a *de minimis* register (CY: on average EUR 23 million/year; CZ: on average EUR 293 million/year; EE: on average EUR 14 million/year; LT: on average EUR 56 million/year¹⁴; PL: on average EUR 667 million/year; PT: on average 479 million/year¹⁵; SI:

¹² Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3) – currently under review.

¹³ CY (until 2009), CZ (since 2010), EE (since 2009), EL (since March 2013), LT (since 2005), PL (since 2013), PT (since 2002), SI (since 2002). One MS is in the process of introducing a central register (SK) and others have an indicative central register which works together with a system of declarations (BG and HU).

¹⁴ The data is based on the 2007/2012 period, apart from CY (until 2009) and CZ (from 2010).

¹⁵ EUR 1.9 billion over the period 2008-2011.

on average EUR 50.5 million/year) and for other countries having a central register which is not constantly updated (BG: on average EUR 75 million/year and HU: on average EUR 68 million/year). The Commission also received non comprehensive and approximate data from MS without a central *de minimis* register (FI: on average EUR 200 million/year; SE: on average EUR 88.8 million/year). Other MS¹⁶ provided only partial data for some regions or from some ministries or informed that they cannot provide such data because of the federal granting structure and the lack of a legal basis to collect such data on local or regional level as *de minimis* aid is legally not State aid. Further, in most instances it seems that MS do not have such data readily available and would not be willing to bear the considerable costs of collecting data from a high number of local and regional authorities. Table 1 below summarizes the data received from the MS with a central register or statistics, while Annex 7 gives a complete overview of answers received from MS on the request of data on the total amount of *de minimis* aid. It is worth describing the situation in some MS in order to give a more complete picture based on the data available.

In one of the larger MS of the EU (PL – 38.2 million inhabitants), the data illustrates that the aggregate amount granted under *de minimis* can be significant. The total *de minimis* aid granted increased significantly over the last 5 years from EUR 260 million in 2007 to EUR 1.160 million in 2010, with a slight reduction to a preliminary estimated amount of EUR 830 million in 2011. For this 5 year period, *de minimis* aid represented in Poland on average a considerable share of all State aid, *i.e.* 13.2%.

The same trend of general increase (and a decrease during 2011) of *de minimis* aid granted can also be observed in one of the smallest MS (SI – 5.4 million inhabitants): EUR 24.8 million in 2007, EUR 28.7 million in 2008, EUR 84.5 million in 2009, EUR 61.8 million in 2010 and EUR 52.7 million in 2011. In a slightly smaller MS (LT – 3.2 million inhabitants), a similar trend can be observed: EUR 23 million in 2007, EUR 27 million in 2008, EUR 101 million in 2009, EUR 56 million in 2010 and EUR 74 million in 2011. Also in PT (10.5 million inhabitants) partly the same trend could be observed but a decrease only took place as of 2011: in 2007 EUR 68 million, for 2008/2009 EUR 1 035 million, EUR 660 million in 2010, 206 million in 2011. In SE (9.5 million inhabitants) an important increase could only be noted for the year 2010 (2007: EUR 73.6 million, 2008: EUR 68.5 million; 2009: EUR 62 million, 2010: EUR 96.4 million, 2011: EUR 76.6 million).

In FI (5.4 million inhabitants) the approximate data show a consistently higher aggregate amount of aid granted (EUR 1 000 million for the entire period of 2007 to 2011). The data also show the same trend of increasing *de minimis* aid until 2010 and then decreasing in 2011: EUR 32.5 million in 2007, EUR 197.5 million in 2008, EUR 245.6 million in 2009, EUR 284.5 million in 2010, and EUR 239.8 million in 2011. Comparing the total for the five years period of FI to another Member State with the same number of inhabitants (SI - EUR 252.6 million) FI distributed ca. 4 times the amount of SI.

The increasing trend in 2008-2009 seems to coincide with the peak of the crisis, and the subsequent decrease in 2010 or 2011 could be probably explained by the recovery from the crisis or tighter budgets or both.

¹⁶ See replies to the public consultation on the basis of a questionnaire, Q 1 by AT, DE, EL, ES, IR, IT and FR, the latter did not respond to the questions on data. See also Annex 7.

Table 1: Total amount of aid from MS with register or statistics¹⁷

MS	Authority	Total Amount of Aid					
		Years/Amount		Yearly Average	2007	2009	2011
CY (until 2009)	National State Aid Authority	2007/2009	€ 69,102,894	€ 23,034,298	€ 23,271,395	€ 26,963,967.00 (until 29/10/2009)	/
CZ (from 2010)	Office for the Protection of Competition	Jan 2010 - Sept 2012	€ 805,000,000	€ 402,500,000			
EE	Ministry of Finance (coordination of SA)	2007/2011	€ 70,340,000	€ 14,068,000	€ 9,950,000	€ 16,270,000	€ 17,450,000
LT	Lithuanian Agency for Support in Competition and State Aid	2007/2011	€ 281,918,707	€ 56,383,742	€ 23,116,049	€ 101,137,478	€ 74,065,444
PL	Office of Competition and Consumer Protection (142 authorities)	2007/2011	€ 3,336,200,000	€ 670,000,000	€ 260,000,000	€ 770,000,000	€ 830,000,000
PT	Register Report	2008/2012	€ 1,916,472,922	€ 394,220,092	€ 68,288,864	see 2008	€ 206,312,579
SI	Ministry of Finance	2007/2011	€ 252,579,407	€ 50,507,037	€ 24,798,502	€ 84,534,445.82	€ 52,740,314
BG	Republic of Bulgaria	2008/2012	688,253,000 BGN / € 351,506,068	63,169,642	/	40,846,000 BGN / € 20,879,900	250,240,000 BGN / € 127,799,749
HU	State Aid Monitoring Office	2007/2012	€ 376,671,996	€ 35,328,030	€ 853,772	€ 35,996,975	€ 84,157,591
FI	Ministry of Employment and Economy	2007/2011	€ 1,000,035,465	€ 200,007,093	€ 32,535,081	€ 245,635,833	€ 239,848,563
SE	Ministry of Industry	2007/2011	€ 444,407,420	€ 88,881,484			

Data on the distribution per undertaking

The data available on the use of the current *de minimis* Regulation (see table 2 below) show that the great majority of beneficiaries receive a quite limited amount. A rather large sample (including the total amount spent under the *de minimis* Regulation for 7 MS with a central register¹⁸) shows that the average amount per beneficiary per year is below EUR 30 000 and the vast majority of beneficiaries receive below EUR 50 000 per year. As set out above in this section, also to the request of this type of data several MS provided only partial or no data. Annex 8 sets out the answers received from MS on the request of data on the average amount of *de minimis* aid per undertaking

Data of the above mentioned MS where the Commission has the distribution of aid amounts per beneficiary and year shows that between 69% and 89% of the beneficiaries receive below EUR 10 000 per year and between 82% and 97% of the beneficiaries receive below EUR 50 000 year¹⁹. Only between 0.9% and 4% receive above EUR 100 000 in a particular year. The Commission only has data on the aggregate amount per beneficiary over a three-year period from the central register of SI. This data shows that 91% of the beneficiaries receive below EUR 10 000 over a three-year period, 98% receive below EUR 50 000 over a three-year period and only 0.8% receive an amount between EUR 100 000 and 200 000 over a three-year period. For PT the Commission received such information for a four years period

¹⁷ The first group of seven MS have a central register, while BG and HU have a central register which is not constantly updated and are additionally using declarations. FI and SV provided statistical approximate data and SE indicated that the information is not exhaustive, but does cover the majority of *de minimis* aid – see complete table in Annex 7.

¹⁸ BG, CY, CZ, HU, LT, PT and SI.

¹⁹ HU presents slightly different percentages, with the following average distribution per undertaking: 35% below EUR 10 000 per year and 86% below EUR 50 000 per year.

(2008-2011): 64% of the beneficiaries receive below EUR 10 000; 91% receive below EUR 50 000 and only 3.4% receive an amount between EUR 100 000 and 200 000.

Furthermore, the Commission received data on the average amount granted per beneficiary each year in various countries and regions.

In e.g. PL, the average amount granted per beneficiary is generally small, amounting to approximately EUR 6 250 in 2011. In LT, for 2011, the average amount granted per beneficiary was around EUR 6 500. In BG and HU the average amount granted per beneficiary in the entire period 2007/2011 (average) appears slightly higher: around EUR 12 200 and, EUR 20 000, respectively. In PT the average amount over the four years period 2008-2011 is EUR 22 899 per beneficiary. In FI the estimate provided to the Commission of the average amount granted per beneficiary in the entire period (average) is approximately EUR 25 000.

Table 2: Distribution per undertaking from MS with register or statistics²⁰

MS	Authority	No of Beneficiaries (per year - average)	Average Amount Per Undertaking (per year)				Average Distribution Per No of Beneficiaries % (per year)			
			Entire Period	2008	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
CY (until 2009)	National State Aid Authority	5,358	€ 13,219.67	€ 9,097.00	/	/	69.0%	23.7%	5.0%	0.9%
CZ (from 2010)	Office for the Protection of Competition	68,944	€ 12,000.00	/	/	/	81.0%	11.0%	4.0%	4% (0.8% more than € 190,000)
EE	Ministry of Finance (coordination of SA issues)	3,955		€ 3,029.00	€ 8,361.00	€ 2,504.00	/	/	/	/
LT	Lithuanian Agency for Support in Competition and State Aid	43,541	22,276 LTL / € 6,451.58	11,538 LTL / € 3,341.64	25,876 LTL / € 7,494.43	22,633 LTL / € 6,554.97	87.7%	9.4%	1.8%	1.1%
PL	Office of Competition and Consumer Protection (142 authorities)	619,000	€ 5,490.58	€ 4,653.15	€ 6,444.00	€ 6,257.53	/	/	/	/
PT	Register Report	20,935	€ 22,899.00	€ -		€ -	64.0%	27.0%	0.0%	3.4%
SI	Ministry of Finance	10,693	/	/	/	/	76.4%	5.4%	0.7%	0.5%
							91.6% **	6.7% **	1% **	0.7% **
BG	Republic of Bulgaria	24860	24,000 BGN / € 12,258.30	7,000 BGN / € 3,575.82	30,000 BGN / € 15,335.60	31,000 BGN / € 15,835.71	88.9%	6.2%	1.6%	3.3%
HU	State Aid Monitoring Office	14413	€ 20,002.62	€ 12,313.45		€ 27,060.32	35.0%	51.0%	11.0%	2.0%
FI	Ministry of Employment and Economy	37574	€ 23,574.69	€ 42,649.20	€ 13,765.00	€ 12,330.28	82.0%	15.0%	2.0%	1.0%

Data on the average size of the recipients

As regards the MS for which the Commission received detailed data on this point, as shown in table 3 below, around 90% of the beneficiaries are micro and small undertakings and more than 95% are SMEs.

²⁰

The first group of 7 MS have a central register, while BG and HU have a central register which is not constantly updated and are additionally using declarations. FI provided statistical approximate data – see complete table in Annex 8.

Table 3: Dimension of the recipient undertaking from MS with register or statistics²¹

MS	Authority	% Dimension of the Recipients (based on amounts)			
		micro	small	medium	large
EE	Enterprise Estonia (50% of de minimis aid in Estonia)	55.1%	22.1%	16.4%	6.4%
PL	Office of Competition and Consumer Protection (142 authorities)	83.0%	11.0%	3.0%	4.0%
SI	Ministry of Finance	74.1%	9.8%	5.2%	3.6%
	by measure	93.8%	2.7%	1.1%	0.8%
BG	Republic of Bulgaria	78.3%	14.5%	5.5%	1.7%
HU	State Aid Monitoring Office	60.0%	35.0%		2.0%
FI	Ministry of Employment and Economics (including Temporary Framework)	86.0%	10.0%	3.0%	1.0%
AT	Federal Ministry of Agriculture, Forestry, Environment and Water (AT)		71.0%	13.0%	14,5%

Data on the type of instrument

Grants are by far the most used instruments, but loans and guarantees play also an important role. As regards the MS for which the Commission received detailed data on this point²²- see table 4 below - between 80% and 90% of the instruments are grants. The overall majority of the granting authorities which answered the questionnaires declared as well that they mainly or only use grants²³.

²¹ The first group of three MS which provided data on this point have a central register, while BG and HU have a central register which is not constantly updated and are additionally using declarations. Finland and Austria provided statistical approximate data. For complete replies on the request for these data see Annex 9.

²² CZ, Slovenia, LT, EE, PL, FI, and the Umbria Region (IT).

²³ For example, various SE and LT authorities, Waterwegen en Zeekanaal (BE), the Business Agency of the city of Vienna (AT), and the Danish Transport authority (DK).

Table 4: Type of aid from MS with register or statistics²⁴

MS	Authority	Type of Aid	
		Average Per Instrument (amount in EUR)	Average Per No of Recipients
CZ (from 2010)	Office for the Protection of Competition	Grants: 87%; Guarantees: 4%; Waived penalties: less than 2%	Grants: 60%; Guarantees: 1,8%; Waived penalties: 27% of aid;
EE	Ministry of Finance (coordination of SA issues)	Grants: 90.73%; Guarantees: 7.62%	Grants: 96.45%; Guarantees: 2.91%
LT	Lithuanian Agency for Support in Competition and State Aid	Grants: 80%; Coverage of losses incurred as a result of providing a guarantee: 12%; tax deferrals: less than 1%	Grants: 70%; Tax deferrals: 16%
PL	Office of Competition and Consumer Protection (142 authorities)	Grants: 83%; Tax grants 12%; Preferential loans: 2%	Grants: 76%; tax grants 12%; Preferential loans 9%;
SI	Ministry of Finance	Grants: 87.8%; Guarantees:	Grants: 94%; Guarantees: 2.4%
BG	Republic of Bulgaria	Grants, Soft loans, Guarantees, Rescheduling and Deferral of	
HU	State Aid Monitoring Office	Mainly grants, (also loans and guarantees)	
LV	Ministries for Agriculture; of Education and Science; of Welfare	Mainly Grants (also guarantees, loans and investments in share capital / risk capital investments).	
DE	Permanent Representation	Probably mostly grants, loans and guarantees	
FI	Ministry of Employment and Economics (including Temporary Framework)	Loans: 8.7%, Grants: 89.2%, guarantees and capital injections: less than 2%	

Data on sectors benefitting from de minimis aid

The information received by the Commission shows that *de minimis* aid is generally used in a very wide variety of sectors, with no particular pattern – see Annex 11. E.g. BG and DE declared that *de minimis* aid is used in all sectors, and other MS indicated a very long list of sectors (e.g. agriculture, manufacturing, tourism, energy, environment, health, food, arts, education, real estate, transport inland waterways, crafts, etc.) each representing a very small percentage of the total²⁵. E.g. SE, listed some actions regarding very diverse sectors, from the health care sector (average amount of aid per undertaking around EUR 12 000), to the automotive sector (average amount of aid per undertaking around EUR 100 000), or to forestry (average amount of aid per undertaking less than EUR 5 000).

2.1.4. The financial crisis and the special rules

In 2008, the Commission adopted a Temporary Framework (TF) which was amended several times until 2011²⁶ and has expired at the end of 2011. The temporary aid measures pursued three objectives: first, to immediately address insufficient access to finance and thereby help provide for continuity in companies' businesses; second, to ensure that limited amounts of aid reach the recipients in the most rapid and effective way; third, to encourage companies to continue investing into a sustainable future, including the development of green products. On

²⁴ The first group of five MS have a central register, while BG and HU have a central register which is not constantly updated and are additionally using declarations. FI, LV and DE provided approximate data. For complete replies on the request for this type of data see Annex 10.

²⁵ CZ, SI and FI

²⁶ Communication of the Commission — Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 16, 22.1.2009, p.1), as amended (OJ C 83, 7.4.2009, p. 1), (OJ C 303, 15.12.2009, p. 6) and (OJ C 261, 31.10.2009, p. 2).

the basis of the TF, MS were allowed to grant the following four types of aid: (i) Grant EUR 500 000 per undertaking to cover investments and/or working capital over a period of two years (hereafter: the 500k measure). (ii) Offer State guarantees for loans at a reduced premium. The guarantee may relate to both investment and working capital loans and it may cover up to 90% of the loan. The reduction of the guarantee premium can be applied during a period of 2 years following the granting of the guarantee. (iii) Offer aid in the form of subsidised interest rate applicable to all types of loan. This reduced interest rate could be applied for interest payments until the end of 2012. (iv) Offer subsidised loans for the production of green products involving the early adaptation to or going beyond future Community product standards. The TF has been mainly used as a stimulus measure during the first phase of the financial crisis, in particular by some MS. The most heavily used categories of the TF in term of expenditure were the 500k measure and the risk capital measure which were no longer available under the prolonged TF in 2011²⁷.

The 500k measure was an instrument to grant aid of up to EUR 500 000 without restrictions on eligible costs or aid intensities and with almost no conditions attached to it (apart from the ceiling) but limited in duration. This measure expired at the end of 2010, with a transitional period for pending applications. All schemes were limited in time (end 2010). The 500k measure was therefore sometimes considered as comparable to a *de minimis* measure and its analysis can therefore serve as a proxy of potential risks to competition by the grant of an aid up to a ceiling of EUR 500 000. However, it is important to indicate that the 500k measure under the TF was legally not a *de minimis* measure. This measure constituted a new temporary aid which was declared compatible by the Commission under Article 107(3)(b) TFEU and which was directly linked to the financial crisis. It was possible to cumulate it with *de minimis* aid, but within the limit of EUR 500 000 for the period 2008 – 2010.

The 500k measure was used by 23 MS, only BE, CY, DK and SE did not apply for it. Indicated or estimated budgets for 500k measures varied greatly across MS from a maximum of 16 billion (DE), 10 billion (AT) or 2 billion (GR) to a minimum of 1 million (BU). Only approximately 9.5% of the budgets have been used by MS (see tables in Annexes 4 and 5). MS have confirmed to the Commission that the amounts effectively granted under the TF were indeed much lower than the planned budget. The budget had been consciously set at a very high level given the uncertainties as to the depth and duration of the crisis.

Importantly, there were significant differences between MS expenditure for 500k measures; one could differentiate three groups. A first group of 11 MS spent between EUR 106 million (FR) and 670 million (PT): CZ, DE, IE, EL, ES, FR, IT, HU, AT, PT and UK. Another group of 4 MS spent between EUR 24 million (SK) and 57 million (NL): NL, SI, SK and FI. A third group of 6 MS spent less than EUR 10 million: EE, LV, LT, LU, MT and PL. BG and RO have not reported any expenditure although both had notified a 500k scheme. Regarding the size of the beneficiary, data shows that in the majority of the MS, the measure was mostly used for SMEs, although some MS made quite a selective application (e.g. NL subsidising some large companies in the construction sector).

However, the data are only approximate as MS provided few details on the use of the schemes (eligible costs, types of investments financed) and in many countries, e.g. DE, IT and FI, the schemes were implemented in a decentralised way by the relevant awarding authorities at regional or local level or by public institutions. Further not all MS were able to report expenditure under the 500k measures because in many instances that measure was combined with existing aid measures. In addition the data in relation to the measure included in the TF

²⁷ Communication of the Commission — Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 6, 11.1.2011, p.5).

has to be interpreted carefully because its use might have been strongly influenced by the crisis. It is thus possible that certain MS which made use of this measure specifically for crisis purposes would not use it, or not to the same extent, outside a crisis period. Moreover, it remained possible for MS to grant aid under the normal rules (instead of or in addition to under the TF).

Table 5: TF 500k measures budgets and expenditure²⁸

Budgets notified by MS for 500k measures in mio EUR				500k expenditure report year 2013 in mio EUR SA less AFT (agriculture, fisheries and transport)				
Year MS	2009	2010	Total budget 2009-2010	2009	2010	2011	2012	Total exp. 2009-2012
BE	0	0	0.00	na	na	na	na	na
BG	0	1	1.00	0	0	0	0	0.00
CZ	1.00	nF	nF	2.69	304.82	89.03	17.69	414.23
DK	0	0	0.00	na	na	na	na	na
DE	16,300.00	nF	16,300.00	95.60	98.78	16.09	0.00	210.47
EE	204.4	0.00	204.40	0	0.77	0	0	0.77
IE	350.00	0.00	350.00	60.95	87.20	6.11	0.21	154.47
EL	2,000.00	0.00	2,000.00	128.76	2.57	89.35	125.89	346.56
ES	1,400.00	0.00	1,400.00	1.42	244.52	7.11	7.35	260.40
FR	nF	nF	nF	45.52	59.00	1.24	0	105.76
IT	1.27	nF	nF	1.27	39.66	281.38	0	322.31
CY	0	0	0.00	na	na	na	na	na
LV	86.00	0.00	86.00	2.07	2.60	0	0	4.66
LT	43.4	13.20	56.60	0.00	0.11	3.13	4.29	7.53
LU	15.00	0.00	15.00	1.76	6.17	0	0	7.93
HU	1.33	nF	nF	117.22	53.25	0.03	0	170.49
MT	40.00	0.00	40.00	1.18	0.21	0	0	1.39
NL	nF	0.00	0.00	11.20	29.41	15.17	1.64	57.42
AT	10,000.00	0.00	10,000.00	176.35	25.60	3.51	11.75	217.21
PL	260.46	83.65	344.11	1.06	1.28	0	0	2.34
PT	750	0	750.00	320.73	281.52	67.62	0	669.87
RO	22	0	22.00	0	0	0	0	0.00
SI	120.00	0.00	120.00	15.37	13.89	0	0	29.26
SK	400.00	0.00	400.00	1.48	16.62	4.99	1.08	24.17
FI	300.00	0.00	300.00	12.52	36.98	0	0	49.50
SE	0	0	0.00	na	na	na	na	na
UK	1,168.00	0.00	1,168.00	69.03	62.67	0.54	0	132.24
Total	33,462.86	97.85	33,560.71	1,066.18	1,367.62	585.29	169.90	3,188.99

2.2. Key problems in relation to *de minimis* aid

The *de minimis* Regulation aims to strike a balance between simplification on the one hand and not distorting competition in the internal market on the other. Enforcement practice and public consultation have identified the following issues:

- **Simplification:** Within SAM the Commission aims at focusing its enforcement on cases with the biggest impact on the internal market, as well as at streamlining rules and taking faster decisions. In this context many MS and stakeholders requested a higher ceiling, clearer and simpler definitions, and safe harbour provisions beyond the current rule for guarantees.

²⁸

The budgets refer in most cases to the amounts mentioned in decisions but in some instances also to answers by MS to a questionnaire. nF: No figure mentioned in the decision; na: not applicable as no application for 500k has been made. Information for 2012 is provisional. The expenditure for the years 2009, 2010 and 2011 may deviate from the information published in the corresponding State Aid Scoreboards due to corrigenda provided by MS after the year of reporting. For the purpose of this overview and the analysis in the context of amending the *de minimis* Regulation, the expenditure refers to the direct grant of EUR 500 000.

- **Preventing competition distortions:** Most MS have been unable to provide the Commission with aggregate data on the use of the Regulation, which makes it very difficult to assess effects on trade and competition and to set an appropriate ceiling. Also, analysis is needed as to whether the current monitoring system is sufficient to ensure compliance with the ceiling.

2.2.1. *Definition of the ceiling*

The key problem in relation to the regulation of a *de minimis* instrument is the definition of the right ceiling. It has to be ascertained which aid measures can be deemed not to have any effect on trade and competition and are therefore not subject to State aid rules. Therefore, the underlying driver is the difficulty of striking the right balance between two aspects that would both have negative consequences.

On the one hand, setting the ceiling too low would lead to unnecessary administrative burden for public authorities granting the aid. Measures exceeding the low ceiling would either have to be notified or designed in a way that they can be covered by an exemption provision.

On the other hand, setting the ceiling too high would lead to an increased real risk of the aid measure having an effect on trade and distorting competition. The ceiling should be set at such a level that it can be deemed that there is no effect on trade or competition.

In addition the cumulative effect of *de minimis* aid can distort competition in the single market and be detrimental to growth. Cumulative effects can be harmful in particular in sectors characterised by a large number of small undertakings. Therefore the current Regulation contains a lower ceiling (half of the general amount) for the road transport sector. For sectors that are particularly sensitive, lower ceilings and caps²⁹ on the total amount of aid which can be paid out have been introduced. Such a cap does not exist in relation to the general *de minimis* Regulation.

The mixed views expressed by stakeholders confirm that the ceiling is a key problem in the revision of the Regulation. Some MS are of the opinion that the general ceiling is too low and suggested increasing it to EUR 500 000, while other MS consider the current ceiling clear and adequate or oppose an increase of the ceiling. The majority of the public authorities and other granting bodies which replied to the consultations as well as many private stakeholders are in favour of an increase of the ceiling to EUR 500 000 and to raise the ceiling in the road transport sector to half of this amount. However, Business Europe and two Confederations of Enterprises, in contrast, strongly oppose any increase of the ceiling.³⁰

2.2.2. *Need for clarity and legal certainty*

The *de minimis* Regulation is designed to allow a small amount of aid to be granted under minimum conditions ensuring that its use is simple and legally certain. It should therefore contain definitions and conditions which are easily applicable.

Many MS and stakeholders highlighted various problems (other than the question of the appropriate ceiling) with the application of the Regulation during the first public consultation on the basis of a questionnaire³¹ which indicates that further simplifications as well as

²⁹ Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production OJ L 337/35 of 21.12.2007 and Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004, OJ L 193/6 of 25.07.2007.

³⁰ See summaries in Annexes 4 and 5.

³¹ See summary in Annex 4.

clarifications of certain definitions and conditions to ensure legal certainty are necessary. The most frequent problems raised can be grouped and summarised as follows:

1. Uncertainty as to the interpretation of the notion of undertaking: The notion of undertaking is of particular importance as the ceiling applies per undertaking. The current definition follows the general definition in competition law, which uses economic rather than legal criteria and means any entity engaged in an economic activity. Entities with the same owner (i.e. which are controlled by the same entity) are considered as a single undertaking. Therefore the problem of the definition of undertaking arises in particular as regards groups of companies and in case of mergers and acquisitions. The consultations have indicated potential non-compliance with this definition and therefore with the rules on the ceiling. Further clarifications in the Regulation may be necessary to ensure that granting authorities and beneficiaries can find all relevant rules in the Regulation and that these are easy to apply.
2. Uncertainty as to the interpretation of the definition of "undertakings in difficulty", excluded from the scope of the regulation and to the question whether this exclusion is still justified;
3. Uncertainty as to what constitutes the 'road transport sector' and doubts as to the justification for a lower ceiling;
4. uncertainty as to how to apply the rules on cumulation and uncertainty regarding how to deal with forms of support that are not explicitly directed at specific eligible costs. Further doubts were voiced on the legitimacy of the very existence of cumulation rules as such: many stakeholders, including one Member State (DE), suggested that *de minimis* aid should be freely cumulated with State aid (as it is non-aid).
5. Requesting further guidance on the distinction between transparent and non-transparent aid which - although considered, in general, clear and adequate – presents some weaknesses. In particular, one Member State and a considerable number of stakeholders highlighted that the distinction between guarantees based on schemes and ad-hoc guarantees is not justified. Others noted that the rules are too complicated or suggested including other forms of financing. Moreover, it was suggested to introduce a simplified system for calculating aid in the form of loans, in the same way as established in the current Regulation for aid in the form of guarantees.

As regards the issues outlined above, some MS and stakeholders requested clarifications of various conditions of the Regulation (in particular the notion of undertaking, cumulation rules, the specific provisions for the transport sector and transparent forms of aid), while others also requested simplification measures that go beyond a mere clarification (such as free cumulation of *de minimis* aid with other State aid measures; inclusion of firms in difficulty; removal of the separate ceiling for the road transport sector).

2.2.3. *Appropriate monitoring*

Finally, another problem related to the *de minimis* Regulation is how to best ensure monitoring and transparency. Currently MS have a choice to ensure compliance by undertakings with the ceiling either by a system of declarations or by a central register. In general, the consultation confirmed that a system of declarations is used much more widely than a central register (only 9 MS³² currently have a central register and one further Member State, CY, abandoned it in 2009³³). BG and HU have central registers which work together

³² CZ, EE, EL, HR, LT, PL, PT, SK and SL

³³ The central register has been replaced by a system of declaration: the main problem with the register was the difficulty to design a system based on "undertakings" considering the difficulty to update it in case of modifications to the structure of the beneficiaries

with a system of declarations. At least 6 further MS³⁴ have a central register for *de minimis* aid in the agricultural sector. Moreover, both authorities and stakeholders explained that they often encounter difficulties in applying the provisions on monitoring (e.g. the requirement to keep records for 10 years). The consultation on the basis of a questionnaire has revealed that most MS which do not have a register were not able to provide statistical data on the use of *de minimis* aid (see Annexes 7-11). This lack of data makes it difficult to analyse the impact on competition.

2.3. Who is affected, in what ways and to what extent?

There are two main categories of stakeholders that are affected by the Regulation.

First, PA (MS and their administrative entities - regions, cities and municipalities) finance a large variety of small aid measures. The decision whether a certain measure constitutes State aid within the meaning of Article 107(1) TFEU is crucial for establishing the applicable rules. Regional or local authorities often encounter difficulties in this respect, especially in relation to small aid measures. If a measure qualifies as *de minimis*, the procedure is greatly simplified and administrative burden of public authorities is kept to the minimum. Therefore, the *de minimis* Regulation is very important because it offers legal certainty.

Second, companies are affected, and most specifically potential or actual recipients of aid and their competitors. In view of the small amounts involved, many beneficiaries are SMEs. A too low *de minimis* ceiling would deprive potential beneficiaries of larger amounts of public financing with no strings attached and which can be granted more quickly than if notification is required or more detailed criteria, as set out for example in the GBER, apply. On the contrary, a too high ceiling would favour the aid beneficiaries and could distort competition at the expense of their competitors. A too high ceiling would further favour undertakings in MS with higher resources over undertakings in MS with budgetary constraints. The greater the disparity between the actual *de minimis* ceiling and the appropriate ceiling ensuring no effect on trade and competition, the greater the impact on the stakeholders. Moreover, apart from the ceiling, other conditions set out in the Regulation can also create difficulties for the application and therefore have an impact on the beneficiaries in terms of legal certainty in the qualification of a measure as *de minimis* aid.

2.4. How would the problem evolve, all things being equal? (Baseline scenario)

The baseline scenario involves prolonging the current Regulation until 2020, *i.e.* maintaining the *de minimis* ceilings (EUR 200 000 in general and EUR 100 000 for the road transport sector) and all other provisions as they stand.

2.4.1. Baseline scenario for the ceiling

The general ceiling

In 2006 the previous ceiling of EUR 100 000 had been doubled to EUR 200 000 for the period 2007-2013. The increase took into account (i) the evolution of inflation and gross domestic product (GDP) of the EU in the years 1996-2005 and (ii) expected economic developments until 2013 (recital 2 of the current *de minimis* Regulation).

Under the baseline scenario the current ceiling would be maintained for the period of application of the new Regulation until 2020.

³⁴

FI, HU, IE, IT, LV and SE replied that they have such a register in the public consultation of DG AGRI.

The data gathered through the public consultation and from MS with a *de minimis* register show that amounts spent under *de minimis* measures are on average rather small and that the ceiling is most probably not exhausted for the vast majority of beneficiaries (see section 2.1.3. and Annex 8). As the Commission had only received data from some MS it informed MS in both Advisory Committee meetings that no data had been provided to support an increase. However, no further data has been provided by MS.

It had however been argued by some MS (ES, HU, and PT) and other stakeholders³⁵ that that an increase would be necessary to help SMEs. While it is true that in general *de minimis* aid has a more positive impact on SMEs compared to large companies, because *de minimis* aid is a constant size and therefore, comprises a larger proportion of turnover of SMEs when compared to the turnover of large economic operators, it should also be pointed out that this argument may plead against an increase. Indeed, the stronger the impact of the measure (which is in principle higher for SMEs than for large companies), the higher the risks that it affects trade or distorts competition. An increase can therefore not be justified by the objective to help SMEs, for which other possibilities exist under the State aid rules. The GBER, which is also being revised in the context of SAM, is a better instrument to respond to this need in a targeted and more effective way. The GBER enables SMEs to receive different categories of aid, in particular investment aid, access to finance (risk finance aid) and aid for start-ups. In addition they are also eligible for other categories of aid like training, research & development and innovation aid. These categories are currently extended and enlarged in the context of the review of the GBER. The difficulties of access to finance mainly for SMEs may justify the granting of State aid e.g. under GBER, but are not relevant to determine whether a measure is small enough not to distort competition and thus to be considered as *de minimis*. Against this background it is understandable that MS did not provide data which could in any event not justify their claim.

The ceiling in the transport sector

Concerning the road transport sector a lower ceiling (half of the amount) currently applies for both road passenger and freight transport. In view of the special rules which apply in this sector and of the risk that even small amounts of aid could fulfil the State aid criteria the transport sector had previously been excluded from *de minimis* aid in Regulation 69/2001³⁶. In 2006 it was considered that given the evolution of the transport sector, in particular the restructuring of many transport activities following their liberalisation, it was no longer appropriate to exclude the transport sector from the scope of the Regulation. A lower ceiling was however set in order to take account of the average small size of undertakings active in the road freight and passengers transport sector.

In the baseline scenario all transport will continue to fall under a lower ceiling while data on the evolution of the sector show that the reasons underlying the stricter treatment of the transport sector are no longer valid for passenger transport (see section 5.1.2.2. below). The result of maintaining the status quo would thus be that passenger transport is treated stricter than other sectors in a comparable situation.

2.4.2. Baseline scenario for further clarifications and simplifications of the rules

Under the baseline scenario the problems of legal certainty referred to in section 2.2.2 above would not be resolved. The current uncertainty as to the interpretation of legal notions, in

³⁵ E.g. Reply to consultation on first draft by AGFW (DE) of 15 May 2013, p.7; ARAMIS (FR) on 14 May, p.1-2 2013; Generalitat de Catalunya (ES) of 15 May 2013, p.2; FFG (AT) of 13 May 2013, p.2; Scottish Enterprise (UK) of 15 May 2013, p.1-2.

³⁶ See recital 3 of Regulation 69/2001.

particular the notion of undertaking, the definition of undertaking in difficulty and the cumulation rules can lead a public authority either to erroneously grant a higher amount of *de minimis* aid than provided for in the Regulation, to deny aid to undertakings which are eligible or to grant *de minimis* aid to undertakings which are not eligible. Such a scenario would therefore prolong a situation of legal uncertainty and potential misapplication of the rules in these instances. As in the *de minimis* Regulation it is appropriate to provide public administrations with all necessary definitions for the granting of the *de minimis* measure, the legal certainty issues stemming from the current definitions or an absence of explicit definitions in the text can only be clarified by revising the wording in the text of the Regulation.

Notion of undertaking

While the definition of an undertaking as an economic unit pursuant to the case law is in principle applicable for State aid purposes, in practice it is not always easy to apply and creates a significant burden for administrations, if properly applied. It became apparent in the second Advisory Committee³⁷ that not defining the notion has led many MS to apply the ceiling per legal entity and to grant *de minimis* aid up to the ceiling to several different legal entities of the same economic group. Not clarifying these rules would continue this situation of legal uncertainty and potential non-compliance.

Definition of undertaking in difficulty

Currently firms in difficulty are excluded from the scope of application of the *de minimis* Regulation. While experience has shown that although the objective of excluding firms in difficulty is legally justified as all support to undertakings in difficulty shall be dealt with in the context of a rescue operation or a restructuring plan in accordance with the Community guidelines on State aid for rescuing and restructuring firms in difficulty (R&R Guidelines)³⁸, there are a number of difficulties with its practical implementation. In particular smaller authorities find it rather hard to check that firms are not in difficulty and ask for clearer automatic criteria. Currently the granting authority has to check all criteria ("hard" and "soft") of the 2004 R&R Guidelines. The discussion on the appropriate criteria is on-going in the review procedure of these Guidelines (see Annex 16).

While the "hard" criteria currently foreseen in point 10 of the R&R Guidelines (see Annex 16) are straightforward to apply even for smaller authorities, basically the granting authority has to analyse whether the undertaking has lost half of its capital or is eligible for insolvency proceedings, the "soft" criteria in point 9 and 11 of the R&R Guidelines require a detailed economic assessment and a weighted appreciation of all details of the particular situation by the local granting authority. The latter create a considerable burden for administrations when they use the *de minimis* Regulation.

The analysis is therefore currently burdensome and rather subjective as regards the "soft" criteria, depending on a broad assessment of the financial situation of the undertaking. The impact of applying also "soft" criteria is that more undertakings (SME or large) qualify as being in difficulty and are therefore excluded from the *de minimis* Regulation.

Furthermore, it should be noted that this scenario is even stricter than the current GBER which uses only automatic "hard" criteria for SMEs (loss of more than half of the capital or

³⁷ See also replies to the consultation on the first draft by CZ, of 16 May 2013, p.1-2; EE, reply of 15 May 2013, p.1; FR, reply of 27 May 2013, p.3; LT, reply of 16 May 2013, p.2; PL, reply of 15 May 2013, p.1; reply by PT of 16 May 2013, p.4.

³⁸ OJ C 244, 1.10.2004, p. 2–17.

admitted to insolvency proceedings)³⁹. It can be argued that the rules for *de minimis* aid should not be stricter than those for (potentially much larger) GBER aid.

Referring only to the definition in the R&R Guidelines which is in addition difficult to apply may have let some administrations in praxis to granting *de minimis* aid to an undertaking that should not have been eligible.

The result of maintaining the status quo would therefore be that, due to the legal uncertainty and the inconsistency with the GBER rules, granting authorities would continue to apply the exclusion of undertakings in difficulty in an incorrect way and different across MS.

Cumulation rules

The current rules do not allow for a cumulation of *de minimis* aid with other State aid in respect of the same eligible costs if the cumulation would result in an aid intensity exceeding that allowed under the general State aid rules. As the public consultation on the basis of a questionnaire has revealed the problem of uncertainties in its application (see Annex 4⁴⁰ and section 2.2.2 above), continuing this rule without further clarifications would result in a situation where granting authorities may continue not to correctly apply the rule in certain instances. This scenario would therefore not increase legal certainty and ensure more compliance.

Provisions on transparent aid instruments

The *de minimis* Regulation only applies to transparent aid instruments, i.e. aid instruments where it is possible to calculate precisely the gross grant equivalent of the aid ex ante without having to undertake a risk assessment. The baseline scenario maintains this concept which is fundamental to ensure the respect of the ceiling. The question is, however, which instruments are considered as transparent. Under the current Regulation a safe-harbour is only provided for guarantees based on a scheme, which is set irrespective of the duration of the guarantee. For other instruments, in particular loans, there is no safe-harbour.

This scenario would, therefore, not enable increasing simplification and legal certainty although it would be feasible (as set out in the other options – see section 5.2.4.2) to define an additional safe harbour for loans and therefore to simplify the calculation of its gross grant equivalent.

2.4.3. Baseline scenario concerning monitoring

MS have currently a choice to monitor the respect of the ceiling and the cumulation rules through a declaration by the undertaking or the set-up and use of a central register. Under the baseline scenario this choice in monitoring systems is continued which could ensure compliance but would not solve the problem of the lack of data to measure the impact of the ceiling on completion for a future policy review.

2.5. Is the EU action justified on the basis of subsidiarity?

State funding meeting the criteria in Article 107(1) TFEU constitutes State aid and requires notification to the Commission pursuant to Article 108(3) TFEU. Pursuant to Article 109 TFEU however, the Council may determine categories of aid that are exempted from this notification requirement. By virtue of Regulation (EC) No 994/98 the Council empowered the

³⁹ Rec. 15 and article 1(7) GBER, Commission Regulation (EC) No 800/2008 cited above.

⁴⁰ Annex 4, p.3.

Commission to set out in a Regulation a ceiling below which aid measures are deemed not to meet all the criteria laid down in Article 107(1) TFEU and are therefore exempted from the notification procedure provided for in Article 108(3) TFEU. As therefore the State aid rules on *de minimis* aid fall under the competence of the Commission and the EU enjoys exclusive competence in this field of law (Article 3(1)(b) TFEU), the present initiative is not subject to a subsidiarity test (article 5 (3) TEU).

3. OBJECTIVES

3.1. The general EU policy objective

The overall objective of the review is directly linked to the SAM objectives of fostering growth in a strengthened, dynamic and competitive internal market, focusing enforcement on cases with the biggest impact on the internal market, streamlining and clarifying rules and taking faster decisions.

More specifically, the general objective of fostering growth covers the promotion of well-designed aid measures that target clear market failures and objectives of common interest in line with the EU 2020 objectives, as well as contributing to the goal of promoting more efficient and effective public spending of State subsidies.

3.2. The specific EU objectives

Given the problems outlined in section 2, the general objective can be achieved by focusing on the following specific objectives.

3.2.1. Simplification

The introduction of the *de minimis* Regulation has greatly simplified the granting of small amounts of aid. Defining simple rules that are easy to apply, including a ceiling below which there is no need for prior notification to and approval by the Commission, leads to a reduction in administrative burden for central, regional and local authorities. One of the aims of the revision is to establish whether the ceiling and the conditions for its application are as simple as possible without affecting trade and competition in the internal market or whether there is scope for further simplification or clarification.

As the public consultation on the basis of a questionnaire has revealed that some notions as the notion of undertaking, the definition of undertakings in difficulty and the cumulation rules are considered difficult to apply, the objective is to simplify these notions further in the new regulation. Further there seems scope for simplification concerning the calculation of the gross grant equivalent for loans and in the sector of road passenger transport, to which the general ceiling could be applied. The *de minimis* rules shall offer a simple tool to MS; therefore this objective is of high importance.

3.2.2. Legal certainty

Defining clear rules is key to legal certainty with regard to the criteria whereby measures are deemed not to constitute State aid. The ceiling set in the Regulation assumes that there is no effect on trade and/or competition below it and it has the effect that such aid needs not be scrutinised, consequently ensuring legal certainty. The revision of the Regulation seeks to preserve that legal certainty, and to improve it where problems have been highlighted by stakeholders; in particular concerning the notion of undertaking, the definition of undertakings in difficulty and the cumulation rules.

3.2.3. *Prevention of distortions in the internal market*

A *de minimis* Regulation only covers measures which are deemed not to have any effect on trade and competition; therefore this objective is of highest importance. As regards effect on competition, not only the effect of individual measures is relevant but also the aggregate effects of small measures granted within a sector.

SAM aims at better preventing distortions between firms and MS in the internal market. The extent to which a MS has recourse to *de minimis* aid may be a cause for concern, especially in a context of economic downturn and MS' uneven budgetary capabilities. Therefore, setting the right *de minimis* ceiling, taking account of cumulative effects, and defining the appropriate conditions for its use, should also contribute to this SAM objective.

To achieve this objective the ceiling has to be set at a level which allows that the measure is deemed not to have effects on competition and trade. Further a clear definition of the cumulation rules follows from this objective.

3.2.4. *Ensuring compliance with the rules*

Compliance with the rules is crucial to ensure that there are no distortions of competition and trade in the internal market. Therefore the Regulation should contain an effective and efficient procedural mechanism in terms of monitoring as well as clear and simple rules as set out above⁴¹ to ensure compliance with the substantive provisions of the Regulation and in particular with the ceiling.

4. POLICY OPTIONS

Regarding the choice of legal instrument, the modification of the *de minimis* Regulation can only be achieved by the adoption of a Commission Regulation revising that text (in accordance with Article 108(4) TFEU and Article 2 of Council Regulation 994/98, which constitute the legal basis for the *de minimis* Regulation). Allowing the *de minimis* Regulation to lapse upon its expiry was immediately discarded, as this would clearly go against the objectives of simplification and legal certainty. The various policy options concern the following:

4.1. Ceiling

This section will present the policy options that are envisaged for the most substantial issue, i.e. the general ceiling of the Regulation. Apart from the option of no policy change, four options have been analysed in more detail. In the first public consultation in general, all respondents agreed on the positive effects of the support granted under the *de minimis* Regulation, with specific reference to positive effects for SMEs (in particular, access to finance). The *de minimis* Regulation is considered as easy to apply, very flexible, quick and efficient, and entails low administrative burden. Without a *de minimis* Regulation even small amounts of aid would need to be notified, since the European Courts have held repeatedly that also small amounts of aid can have an effect on trade and competition⁴².

⁴¹ Sections 0 and 0

⁴² E.g. Case C-303/88, Italy v. Commission; C-71/04, Junta de Galicia; C-172/03 Wolfgang Heiser; T-214/95, Het Vlaamse Gewest v. Commission.

4.1.1. General ceiling

4.1.1.1. No policy change

This scenario would consist in continuing the current policy without any change, which means that the current *de minimis* ceiling would not be modified. Aid below EUR 200 000 over a period of three fiscal years will continue to be deemed no aid, while for the road transport sector this ceiling will be maintained at EUR 100 000 over three years.

Although the ceiling would not be modified under this option, the objectives of simplification and legal certainty, already catered for under the current Regulation, could be developed further by addressing other substantive issues in relation to which clarification could be given and simplification achieved (see section 4.2).

4.1.1.2. Adjusting the ceiling to take into account future inflation

Since the increase of the ceiling in 2006 from EUR 100 000 to EUR 200 000 already took into account expected inflation during 2007 to 2013 (see recital 2 of the current Regulation), this option basically takes into account expected future inflation during the period of the application of the new Regulation and adjusts the ceiling accordingly.

4.1.1.3. Substantial increase of the current ceiling

This option entails a higher increase of the current *de minimis* ceiling. As explained, MS and stakeholders often took the EUR 500 000 measure in the TF⁴³ and the EUR 500 000 ceiling in the SGEI *de minimis* Regulation⁴⁴ as inspiration to request an increase to this level.

4.1.1.4. Further differentiation of the current ceiling

Another option would be a differentiated approach, i.e. setting different ceilings by sector. Sector-specific *de minimis* ceilings (possibly combined with caps per MS) could better take into account the respective competitive conditions in different sectors. Currently, a sectoral approach is followed in the *de minimis* Regulations for agriculture and for fisheries and in the general *de minimis* Regulation for the road transport sector (half of the current amount). For the future it can also further be differentiated between road passenger and road freight transport sector. Differences in development concerning the sizes of undertakings in the two sectors could justify a differentiated approach in the aid ceiling.

4.1.1.5. Introducing a cap or other mechanism to cater for the cumulative impact of *de minimis* aid

A limit on the aggregate spending by a MS (for example in relation to its GDP) could also be envisaged to address the problem of the cumulative effects of a large number of smaller *de minimis* measures. An example of such an aggregate cap can be found in the Regulations for the agricultural sector and for the fisheries sector. A cap or other mechanism for cumulative impact could also be based on a sector-specific approach, i.e. for instance a cap per sector.

⁴³ Measures under the 500k measure in the TF (see section 0 above) fall within the scope of Article 107(1) TFEU since they exceed the ceiling of EUR 200 000 per company indicated in the current *de minimis* Regulation and are compatible State aid.

⁴⁴ Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 TFEU to *de minimis* aid granted to undertakings providing SGEI, (OJ L 114, 26.4.2012, p.8).

4.1.1. Ceiling for the road transport sector

A lower ceiling (EUR 100 000) is currently foreseen in the road transport sector.

4.1.1.1. No policy change

This option would consist in continuing the current policy without any change, which means that the ceiling for this sector would be set at half the amount of the general ceiling.

4.1.1.2. Differentiate between passenger and freight road transport

This option would differentiate between the road passenger transport sector, where the general ceiling could be applied, and the road freight transport sector, for which a lower ceiling may still be justified. Differences in development concerning the sizes of undertakings in the two sectors could justify a differentiated approach in the aid ceiling.

4.1.1.3. Applying the general ceiling to all road transport sector

This option would apply the general *de minimis* ceiling to the road transport sector.

4.2. Further clarifications and simplifications of the rules in different provisions

As explained in section 2.1.2, the Regulation contains additional conditions beyond the *de minimis* ceiling. These other conditions can also give rise to difficulties for the application of the Regulation. The review seeks to address these and simplify the rules as much as possible. These concern the following.

4.2.1. Notion of undertaking

The *de minimis* ceiling is based on an amount per undertaking. For the purposes of the rules on State aid an undertaking is generally defined as any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed⁴⁵. The notion thus goes beyond this Regulation and might be part of the future Notice on the notion of State aid. The Court of Justice⁴⁶ has ruled in the context of the *de minimis* Regulation that entities which are controlled (on a legal or on a de facto basis) by the same entity should be considered as one undertaking. Since this is not apparent from the current Regulation, the concept of undertaking can easily be misunderstood as referring to a legal entity. In addition, MS and stakeholders have raised *de minimis* specific problems, in particular concerning mergers, acquisitions and splits of companies.

4.2.1.1. No policy change

The current Regulation is based on the notion of undertaking but does not provide any definitions or explications to facilitate its application.

⁴⁵ ECJ Case C-222/04 *Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze SpA et al.* [2006] I-289.

⁴⁶ ECJ Case C-382/99 *Netherlands v Commission* [2002] I-5163.

4.2.1.2. Replace ‘undertaking’ by ‘legal entity’

Using only the legal entity receiving the *de minimis* aid as relevant for the application of the ceiling, would be very easy to apply and has been requested by some MS and stakeholders⁴⁷.

4.2.1.3. Further clarification and simplification

Clarification would enable stakeholders to find the most relevant information in one document and to avoid the misunderstanding that undertaking refers to one legal entity. This option could establish clear criteria to determine when several entities constitute one single undertaking. For example, in the current GBER, Article 3 of Annex I clarifies under what circumstances separate legal entities have to be taken into account for the purpose of the SME definition. These established criteria could be used as a basis for a specific definition for the purposes of the *de minimis* Regulation with a view to reducing the administrative burden in defining the notion of aid in specific cases.

In addition to explaining the general definition of the notion of undertaking, certain *de minimis* specific questions could be clarified, most importantly how to deal with mergers and acquisitions or splits during the period of three financial years that is used in the Regulation when checking compliance with the ceiling.

4.2.2. *Exclusion of undertakings in difficulty*

4.2.2.1. No policy change

This option maintains the exclusion from the Regulation of undertakings in difficulty. By referring for the definition of undertakings in difficulty to the R&R Guidelines the current Regulation uses both clear "hard" criteria and more flexible "soft" criteria that require a detailed analysis of the particular circumstances of the undertaking.

4.2.2.2. Clarification and simplification of the definition of undertakings in difficulty

To reduce the administrative burden in assessing whether an undertaking is in difficulty this option uses only "hard" criteria for the assessment without taking "soft" criteria requiring an individual assessment into account (e.g. inability to stay in business without the aid).

4.2.2.3. Remove exclusion of firms in difficulty

This option would include undertakings in difficulty in the scope of application of the Regulation (as was the case in the previous *de minimis* Regulation 69/2001).

4.2.3. *Cumulation rules*

4.2.3.1. No policy change

This option maintains the current rule that no cumulation with State aid for the same eligible costs is possible if the total amount exceeds the maximum aid intensity allowed under other instruments.

⁴⁷ Replies by CZ, EE, FR, PT as well as Bundesverband öffentlicher Banken (DE), Deutscher Bauernverband (DE), European Association of Public Banks (BE) and Waterwegen en Zeekanaal NV (BE) to the consultation on the first draft, see Annex 5, p.4.

4.2.3.2. Clarification and simplification

This option includes a better explanation of the key concepts of the cumulation rules and thereby simplifies the rules.

4.2.3.3. Free cumulation of *de minimis* aid with other State aid

Such simplification has been requested by some stakeholders and two MS (AT and DE) on the grounds that *de minimis* aid is not considered as State aid.

4.2.4. *Provisions on transparent aid*

The *de minimis* Regulation only applies to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without the need to undertake a risk assessment ('transparent aid'), most importantly grants, loans and guarantees. It has to be assessed whether the rules on transparent aid should be modified.

4.2.4.1. No policy change

This option considers the current rule as appropriate and sufficiently clear.

4.2.4.2. Adapt the rules for loans and guarantees

This option consists of adaptations of the rules for loans and guarantees in order to achieve more consistency among different aid instruments and to simplify the application of the Regulation. Measures could include further safe-harbour provisions for loans and guarantees⁴⁸ that take into account both the amount and the duration of the instrument.

4.2.4.3. Widen the range of aid instruments

This option would open up the range of permissible aid instruments and could include specific safe-harbour provisions for additional instruments, such as risk finance measures.

4.3. **Enhancing compliance through monitoring**

Monitoring requirements should also be clarified and simplified, whilst ensuring compliance with the provisions of the Regulation, in particular the ceiling. The options discussed here are the following.

4.3.1. *No policy change*

This option would keep the current system, where MS have the choice either to set up a central register for all *de minimis* measures or to obtain a declaration from the undertaking on past *de minimis* measures.

4.3.2. *Current system but stricter systematic monitoring and enforcement*

Under this option, the choice between setting up a central register for all *de minimis* measures and a system of declarations from the undertaking on past *de minimis* measures received will be maintained. However, monitoring and enforcement from the side of the Commission would be strengthened, in particular by systematic checks and monitoring.

⁴⁸ Currently there is already a safe-harbour provision for guarantees where the underlying loan provided under a guarantee scheme does not exceed EUR 1 500 000 per undertaking (EUR 750 000 in the road transport sector) and the guarantee does not exceed 80 % of the underlying loan.

4.3.3. *Mandatory de minimis register*

This option would introduce the central *de minimis* register as the general rule with an appropriate transitional period. This option would also allow reporting, since MS would have all the information available in the register, and would thereby facilitate monitoring by the Commission.

5. IMPACT OF THE OPTIONS

The potential impact of the proposed options will be compared to the baseline scenario by analysing its impact mainly on the economy and on competition (economic impacts). The potential impact on society (social impact) and consumers is likely to be indirect and difficult to quantify, especially in light of the general character of *de minimis* aid measures⁴⁹, and of the fact that a social objective is not necessarily pursued by granting authorities. Furthermore, the potential environmental impacts, if any, would be very indirect and probably negligible (see chapter 5.5 below). Concerning a possible impact of the initiative on fundamental rights as laid out in the Charter of Fundamental Rights, only an impact on the right to good administration (Article 41) seems possible and will be discussed in the section on administrative burden (5.4).

From a methodological point of view, the *de minimis* Regulation aims at striking the right balance between simplification on the one hand, and avoiding competition distortions in the internal market, on the other hand.

As detailed in section 2.3, the main stakeholders are the public authorities, the aid beneficiaries and their possible competitors on the market.

5.1. Ceiling

5.1.1. *General ceiling*

The ceiling should be set at a level below which it can be deemed that there is no effect on trade or competition. Therefore a possible increase has to be analysed very prudently. Possible wide-scale use of *de minimis* aid and its aggregate effects could be a cause for concern, especially in a context of economic downturn and MS' uneven budgetary possibilities. Possible distortions from an easier access to aid in certain countries or markets than in others have been recognised by some MS and stakeholders⁵⁰ in reply to the questionnaire.

5.1.1.1. No policy change

This option has the benefit that it meets the object of legal certainty as stakeholders are already familiar with the current ceiling of EUR 200 000. It has worked well and can be considered as not too high, since no cases are known of measures under the *de minimis* rule that would have distorted competition. This is confirmed by the fact that we have no *de minimis* specific complaints and that in the replies to the questionnaire no examples of effect

⁴⁹ *De minimis* measures do not need to be linked to a specific objective and are used for a wide variety of measures, types of beneficiaries and sectors. Furthermore, given their limited amount, the potential indirect impact is even more difficult to measure.

⁵⁰ Replies to consultation on first draft by FI of 14 June 2013, p.1; IT, reply of 27 May 2013, p.1; UK, reply of 5 June 2013, p.1; Andalusia (ES), reply of 6 May 2013, p.1; Liverpool (UK), reply of 9 May 2013, p.1; BusinessEurope (BE), reply of 22 May 2013, p.1; Confederation of Danish Industries (DK), reply of 15 May 2013, p.2; and Associazione Bancaria Italiana (IT), reply of 14 May 2013, p.2.

on trade have been indicated despite a specific question⁵¹. It can also be considered as not too low since the data (see Annex 8) show that on average the amounts spent under *de minimis* measures are rather small and in most cases the ceiling is not exhausted. However, not increasing the ceiling does not take into account inflation and is therefore in fact slightly lowering the ceiling from an economic viewpoint.

5.1.1.2. Adjusting the ceiling to take into account future inflation

As said above, the increase in 2006 already took account of the inflation 2007-2013. At the time an increase to EUR 150 000 was originally proposed, to take account of the nominal GDP growth (including both real GDP growth – see Annex 12 - and inflation – see Annex 13) of the EU-25 in the years 1996-2005 which was around 50%. It can thus be deduced that the final increase to EUR 200 000 was based on the expectation that nominal GDP growth during 2006 to 2013 would be around 33.3%. In fact the nominal GDP growth for this period was much lower because of the economic crisis. The real GDP growth rate 2006-2012 was in reality only 6.13%; taking into account the forecast for 2013 it would be 5.71% - see tables in Annex 12⁵². Inflation in the period 2006-12 was 15.7% - see table in Annex 13⁵³, meaning that the nominal GDP growth for that period could be estimated at approximately 21.8% (=15.7% + 6.13%). This would have justified on economic grounds only a further increase from EUR 150 000 to EUR 180 000 at the time to take account of the nominal GDP growth 2006-12 of approximately 21.8%.

However it should be considered whether the nominal GDP growth rate which has been chosen in 2006 as an indicator for adjusting the *de minimis* ceiling is the most appropriate one. GDP is a measure of the economic activity, defined as the value of all goods and services produced less the value of any goods or services used in their creation. An increase in the volume of economic activity does not seem to justify an increase in the *de minimis* ceiling. It could be argued that inflation alone is the more relevant indicator to determine a neutral increase of the ceiling in economic terms, since it does not take into account the increase in the volume of the economic activity. Rather, it measures the increase in the price level, which can actually have a strong impact on undertakings' financing needs and therefore is a more relevant indicator to estimate a neutral increase of a ceiling in economic terms. The Harmonised Indices of Consumer Prices provide the official measure of consumer price inflation in the euro-zone for the purposes of monetary policy in the euro area and assessing inflation convergence as required under the Maastricht criteria (see Annex 13). On that basis an increase to EUR 180 000 would have been more than "neutral" in economic terms at the time taking into account both inflation and GDP growth. The inflation alone during the period 2006-2012 of 15.7% would have justified an increase of the ceiling of up to EUR 175 000. The actual inflation during the period 2014-2020 could then be taken into account in the next revision of the ceiling in 2020.

In order to have a forward looking figure the most reliable option would be to use the target inflation rate of the European Central Bank of up to 2% as Eurostat only publishes a forecast for the next year. As the Regulation will be applicable for 7 years (2014-2020) a *de minimis* ceiling of around EUR 230 000 could be justified at the end of that period (see table below) which would reflect a total inflation for the period of 14.9%. In order to take a ceiling which would be feasible for each year of the duration of the Regulation an average value may be calculated which is approximately EUR 215 000. This estimate seems also realistic in

⁵¹ Replies to question 11 negative by all MS and vast majority of stakeholders; negative replies to question 12 see summary in Annex 4, p.1.

⁵² Eurostat Real GDP growth rate – volume – last update 1 October 2013 - See Annex 12.

⁵³ Eurostat Harmonized Indices of Consumer Prices, last updated 26 September 2013 – see Annex 13.

comparison to the current inflation: the inflation during the previous 7 years (2006-12⁵⁴) was with 15.7% very close to the estimate below for the next 7 years (14.9%).

Table 6: Increase of *de minimis* ceiling to take account of future inflation

Years	Target inflation (ECB)	<i>De minimis</i> ceiling in EUR
0	-	200 000
1	2%	204 000
2	2%	208 080
3	2%	212 242
4	2%	216 486
5	2%	220 816
6	2%	225 232
7	2%	229 737

It can be safely assumed that such a small increase would not affect the conclusion concerning distortions of competition or trade. However, neither would it enable the grant of significantly higher amounts under the simple *de minimis* conditions and it would therefore have only a small positive impact on the simplification objective as well as the reduction of administrative burdens.

5.1.1.3. Substantial increase of the current ceiling

An increase of the ceiling will result in more measures falling outside the field of State aid control. While a high ceiling will simplify the State aid treatment of a larger number of cases, the ceiling can legally only be set at a level below which it can be deemed that there is no impact on trade or competition.

The data gathered through the public consultation and from MS with a *de minimis* register show that amounts spent under *de minimis* measures are on average rather small and that the ceiling is most probably not exhausted for the vast majority of beneficiaries. A rather large sample (including the total amount spent under the *de minimis* Regulation for 7 MS) shows that the average amount per beneficiary per year is below EUR 30 000. Data of 5 MS where we have the distribution of aid amounts per beneficiary and year shows that between 69% and 89% of the beneficiaries receive below EUR 10 000 per year and between 82% and 97% of the beneficiaries receive below EUR 50 000 per year. Only between 0.5% and 4% receive above EUR 100 000 per year – see Annex 8. Under these circumstances the Commission informed MS in both Advisory Committee meetings that no data had been provided to support such an important increase and invited MS advocating an increase to provide data to substantiate the request. Further MS had been informed that the evidence received from MS on the use of the *de minimis* shows that in the vast majority of cases the existing ceiling was not exhausted. Some MS, like IT and UK⁵⁵, recognised that only insufficient and incomplete data is available at the European level, which does not allow an evaluation of the economic impact of an increase. However, no further data has been provided by MS. It appears that

⁵⁴ Coinciding mainly with the duration of application of the current Regulation (2007-13).

most MS which do not have a central register – including many MS advocating for an increase of the ceiling -do not collect and are not able or willing to collect data on *de minimis* either as this would involve considerable costs of collecting data from a high number of local and regional authorities. As currently no reporting obligation applies MS are not obliged to collect such data but only to record and compile such data, which can be done at the level of the granting authority.

As a preliminary step, in order to address the lack of data and determine what the effect of a substantial increase could be, the Commission has looked at the information available on notifications of small amounts of aid (up to EUR 500 000) and aid schemes.

A preliminary analysis based on the available data shows that there are very few notifications of small amounts up to EUR 500 000 and also few complaints about such small measures. This can be explained by the fact that for such cases MS would currently either use the GBER or notify an aid scheme. Actually, 80% of aid is granted via approved schemes and GBER measures. For most of these measures it is not possible to identify how much each firm receives, and in particular whether the aid is between the current *de minimis* threshold and the larger potential future ceiling. It is very likely, though, that this may concern a large proportion of aid beneficiaries under those measures. This suggests, first, that an increase of the *de minimis* amount would not substantively reduce the number of cases handled by the Commission (cases of small amounts can be roughly estimated at 7 cases per year⁵⁶). As regards the Commission's caseload, and the burden of notification for national authorities, the number of small value cases is thus not significant. Therefore, a significant reduction of workload for MS or for the Commission could not be expected. More generally, if it should be avoided that certain minor cases are notified to the Commission, an exemption from notification seems to be a more appropriate solution because it addresses precisely the issue (avoiding notification while defining the objective and conditions for exemption which ensure that the aid granted is "good aid"), whereas an increase of the *de minimis* ceiling would mean that the substantive State aid provisions will not apply.

Second, it is reasonable to expect that an increase of the *de minimis* ceiling might entail a shift from aid currently granted under the GBER or under an approved scheme to *de minimis* aid. Monitoring cases already show evidence of instances where granting authorities could have chosen GBER but used *de minimis* schemes mainly as there are no compatibility conditions to comply with for *de minimis* aid⁵⁷. Such a shift would appear undesirable as the GBER seeks to facilitate well-designed aid targeted at market failures and objectives of common European interest. The GBER is the main instrument to fulfil the SAM objective to ensure that State aid policy focusses on facilitating well-designed aid targeted at market failures and objectives of common European interest as it foresees specific eligibility criteria for each category of aid. This type of aid, rather than untargeted and unconditional *de minimis* aid, is better suited to promote growth and quality of public finance.

In a simple instrument like the *de minimis* Regulation where funds can be granted with a minimum of conditions, there is an inherent risk that the aid may not always be "good aid" (see also reply by FI to the questionnaire⁵⁸). One of the aims of the SAM initiative is to focus

⁵⁶ Research in the DG COMP registry ISIS accounted for 19 cases (9 notifications and 10 complaints) that involved an aid between EUR 200 000 and EUR 500 000 between 2008 and 2011.

⁵⁷ In the context of this year's monitoring exercise, there are 3 cases where MS (EE, PT and UK), after having considered a scheme as regional, training or other type of approved/block exempted scheme and having reported expenditure accordingly (for the purposes of the Scoreboard), they changed their position in the course of our investigation and considered that, in fact, these were *de minimis* aid schemes.

⁵⁸ Reply by FI to consultation on first draft of 14 June 2014, p.1.

on facilitating well-designed aid targeted at market failures and objectives of common European interest. The main instrument of the Commission to identify well-designed and targeted measures that the public authorities can implement without individual Commission assessment is the GBER.

The higher ceilings in the SGEI *de minimis* Regulation and the TF have also been invoked as a possible argument for an increase of the ceiling. However, those ceilings can be justified by specific reasons which do usually not apply to general *de minimis* measures. They are therefore not suitable as an argument in favour of a possible substantial increase. For SGEI the specific justification of the higher *de minimis* ceiling is that at least some of the advantages granted to those undertakings are likely to constitute compensation for additional costs linked to the provision of SGEI.

The Commission's experience with the TF, which has expired since, has shown that there are very significant differences between MS expenditure (see section 2.1.4) and a risk of competition distortions. Taking into account the elements above it was found that, overall a substantial increase of the ceiling would entail a number of significant risks of competition distortions with potentially high negative impacts.

First, the cumulative amount of expenditure under *de minimis* can be very considerable as shown in particular by the data on the use of the TF, which can be taken as a proxy for a reviewed *de minimis* Regulation with an increased ceiling. Available evidence shows a large potential use: the Commission approved aid amounts of EUR 33.5 billion in 2009, which would, if it had been fully implemented, constitute about 46% of the total amount of (non-crisis) aid. Although in practice only a small percentage of the 500k measures have been implemented (approximately 9.5% of the budgets⁵⁹) this shows the potential impact. Further the evidence shows a wide difference of actual expenditure across MS, with some disbursing large aggregate amounts (e.g. PT and CZ as regards the amount of aid; DE as regards the nominal value spent; HU as compared to the total amount of *de minimis* aid granted⁶⁰), others making a highly selective sectoral use (e.g. NL for large companies in the construction sector) or resorting to financial engineering (DE using the 500k measure to extend guarantees to large companies).

Some MS, such as BE, CY, DK and SE, in contrast have not spent any aid under the 500k measure.⁶¹ The scope for significant distortions across MS seems considerable because of these wide differences in the use of the measure. This seems even more important in times of crisis, when there are great differences between the different MS as regards available resources. Regarding the size of the beneficiary, data shows that in roughly half of the MS, the 500k measure was mostly used for SMEs, although some MS made quite a selective application (e.g. NL subsidising some large companies in the construction sector). Although it is possible that certain MS which made use of this measure specifically for crisis purposes would not use it, or not to the same extent, outside a crisis period, the risk is currently not negligible given the economic situation in the EU. Further it has to be taken into consideration that some MS make not insignificant use of *de minimis* aid; for example, PL

⁵⁹ See above section 0.

⁶⁰ Comparing the total amount of 500k expenditure in HU in 2009 (approx. 117 mio – see table 5 in section 2.1.4 above) to the total amount of *de minimis* aid (approx. 36 mio – see annex7) the former exceeded the latter by more than three times.

⁶¹ Also the amount spent by PL (for which we have data on their expenditure under the *de minimis* Regulation, see para. 6 above) is rather low (EUR 1.26 million. for 2010; EUR 1.05 million for 2009). PL therefore provides an interesting example of a MS with considerable spending under the general *de minimis* Regulation (but on average low amounts; average amount EUR 6 500), that did not significantly increase its expenditure due to the higher available ceiling under the TF.

used this instrument alone up to EUR 1.16 billion in 2010. For the *de minimis* Regulation the ceiling should be set at a level below which it can be deemed that there is no effect on trade or competition, the lessons learnt from the use of the 500k measure within the TF would advocate against a significant increase of the *de minimis* ceiling to an amount comparable to the one of the 500k measure.

Second, as *de minimis* aid is not subject to any substantive requirements nor linked to any legitimate policy objective, there is a tension between on the one hand the Commission's approach to those objectives and efficient public financing under SAM and on the other hand an increase in the *de minimis* ceiling, which would allow for higher amounts of non-specific aid. There is a potential risk as regards regional cohesion which has also been raised by some regional authorities⁶². Since MS having a higher spending capacity can easily make more use of a high *de minimis* ceiling, it can distort competition to the detriment of poorer MS and is in contrast to the general objective of regional cohesion. Further the higher ceiling would not only mean that measures currently falling under the GBER or being notified⁶³ might partly be granted under the *de minimis* Regulation, but MS may be incentivised to also grant *de minimis* measures they would not grant at all under the currently applicable rules. If MS are entirely free to design the measures because they fall under a *de minimis* Regulation where no criteria apply, they might design them in a more distortive way.

Third, there is a legal risk since the CJEU has held repeatedly that even small amounts of aid can have an effect on trade and competition. While the Court has so far accepted the lawfulness of the *de minimis* Regulation, the legal value of the Regulation remains fragile because the notion of aid in Article 107(1) TFEU is an objective concept defined directly by the Treaty. A significant increase in the *de minimis* ceiling would lead to an increased real risk of an aid measure having an effect on trade and distorting competition. From the point of view of legal certainty, it is crucial to minimise the risk that the Court may no longer accept the ceiling set by the Commission in its *de minimis* Regulation.

In addition to the risks set out above, the potential positive economic impact of such an important increase would be difficult to measure. While in theory undertakings could receive easier access to finance under an increased ceiling, this would in practice very much depend on the budgetary possibilities of the MS. As set out above, the difficulties of access to finance may justify the granting of State aid (mainly under GBER), but are not relevant to determine whether a measure is small enough to be deemed not to distort competition and thus to be considered as *de minimis*. Furthermore, there would be no guarantee that the types of aid granted under a higher *de minimis* ceiling would serve legitimate policy objectives.

5.1.1.4. Further differentiation of the current ceiling

It could be argued that sector-specific *de minimis* ceilings (possibly combined with caps per MS) could better take into account the respective competitive conditions in different sectors. Currently, a sectoral approach is followed in the *de minimis* Regulations for agriculture and for fisheries and in the general *de minimis* Regulation for the road transport sector.

In these sectors specific justifications for a lower *de minimis* ceiling apply. In the agricultural sector⁶⁴ there is a lower ceiling of currently EUR 7 500 and a cap of 0.75 % of annual output

⁶² Reply by Highland and Island Enterprise to first consultation of 23 May 2013, p.2; reply by Junta de Andalucía of 6 May 2013, p.3

⁶³ e.g. as schemes which ensure certain criteria to limit distortions of competition.

⁶⁴ Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production (OJ L 337, 21.12.2007, p.35)

in the agricultural sector of the MS. Agricultural production in the Community is normally characterised by the fact that every commodity is produced by a large number of very small producers, producing largely interchangeable goods within the framework of common organisation of the market. Therefore, it has to be ensured that both the amount of aid received by individual producers remains small, and the overall level of aid granted to the agriculture sector does not go above a small percentage of the value of production. This Regulation is currently under reform and the IA has concluded that an increase to EUR 10 000 with a cap of 1% is the preferred option.

Given the similarities of the production patterns in the agricultural and fisheries sector the *de minimis* rules for the fisheries sector⁶⁵ currently state that a limited amount of State aid can be given to fisheries companies (EUR 30 000 per company over a period of three fiscal years) if the total amount of funding given by a MS to its fishing industry does not exceed 2.5 % of the total production value of the fisheries sector. This Regulation is also currently under reform.

Concerning the road transport sector the lower ceiling and the options are discussed below under section 5.1.2.

No justifications for particular rules in other sectors were received during public or inter service consultation and no problems have been brought to the Commission's attention for particular sectors⁶⁶. This can be understood as indication that there are currently no strong justifications for a different ceiling in other sectors. In addition, the results from the public consultation do not indicate any sectoral distortion with the current Regulation which would require targeted sectoral ceilings.

Applying this option to other sectors seems particularly disproportionate in view of the simplification objective. As for the sectoral limitations to aggregate spending discussed below, this option would make the *de minimis* Regulation much more complicated instead of providing a simple approach to the cases with the least competitive impact and it would run counter to the Commission's policy to avoid sectoral approaches for State aid. Moreover, it would be very challenging to define the relevant sectors and find the right balance as regards the number of different ceilings while keeping the Regulation operational. Practical difficulties can also be expected for companies active in different sectors, which may increase monitoring problems. An additional major difficulty would be determining an appropriate amount per sector, which would be very complex and controversial. From an administrative point of view, this option would raise further difficulties as concerns monitoring, in particular for MS with decentralised granting responsibility.

In conclusion applying this option to other sectors could be more effective in preventing competition distortions while creating more complex rules which would go against the simplification objective and reduce legal certainty.

5.1.1.5. Introducing a cap or other mechanism to cater for the cumulative impact of *de minimis* aid

A limitation to the aggregate spending per MS (for example in relation to its GDP) could also be envisaged to address the problem of cumulative effects of a large number of smaller *de minimis* measures. The introduction of a cap would likely incentivise MS to introduce internal rules to allocate *de minimis* aid (e.g. across regions) and monitor its granting, thereby

⁶⁵ Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004 (OJ L 193, 25.7.2007, p.6)

⁶⁶ See summaries of the public consultations in annexes 4-6.

contributing to a better quality of public finance. This approach is followed in the agricultural *de minimis* Regulation.

However, first of all the experience with the current *de minimis* ceiling, as also reflected in the public consultation, did not show any strong reason why such a cap would be needed. Furthermore, a general cap without specific spending limits for specific sectors might not be able to address the problem of aggregate distortive effects since MS would be free to use their entire amount in one sector. Although the fact that a cap would have to be allocated to different authorities within a MS, which need to find a politically acceptable distribution between themselves could to a certain extent serve as an implicit safeguard against too much concentration in one sector, the risk of a sectoral agenda cannot be excluded even in a system with a cap. In the agricultural sector, it was possible to model the impact on competition and trade resulting from full allocation of the total *de minimis* to one sector. This would be more challenging under the general *de minimis* Regulation given the higher aid amounts, the lack of available data and the complexity involved in defining the relevant sectors and setting the appropriate ceiling.

Furthermore, a cap would create significant administrative burden because not only the compliance with the cap has to be ensured and monitored but MS would also have to allocate their cap to different granting authorities (different regions, municipalities, etc.). Therefore this option seems particularly disproportionate in view of the simplification objective. Also this option would make the application of the *de minimis* Regulation much more complicated and therefore create legal uncertainty instead of providing a simple approach to the cases with the least competitive impact.

5.1.2. Ceiling for the road transport sector

5.1.2.1. No policy change

This option would consider that the lower ceiling is still justified for both road freight and road passenger transport.

The lower ceiling would continue to apply to the whole road transport sector which can be defined as any movements of goods and/or passengers using a road vehicle on a given road network⁶⁷. It therefore includes both road passenger and road freight transport. Road passenger transport includes any person who makes a journey by a road vehicle. Drivers of passenger cars, excluding taxi drivers, are counted as passengers. Service staff assigned to buses, motor coaches, trolleybuses, trams and goods road vehicles are not included as passengers. Road freight transport includes any goods moved by road goods vehicles. Road vehicle are designed, exclusively or primarily, to carry goods. Included are: Light⁶⁸ and heavy⁶⁹ goods road vehicles, road tractors and agricultural tractors permitted to use roads open to public traffic. For the purposes of the *de minimis* Regulation only the amount of aid in the transport sector is relevant. Other problems of the *de minimis* Regulation (legal certainty, clarification) are common across sectors. Other problems of the transport sector are not relevant for the *de minimis* Regulation and are better addressed in more complex State aid instruments (e.g. aviation guidelines, State aid for maritime transport).

⁶⁷ Glossary for transport statistics, 4th edition: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-10-028/EN/KS-RA-10-028-EN.PDF

⁶⁸ Light vehicles with a gross vehicle weight of not more than 3 500 kg, designed exclusively or primarily to carry goods, e.g. vans and pick-ups, see glossary in the previous fn.

⁶⁹ Heavy goods road vehicles with a gross vehicle weight above 3 500 kg, designed, exclusively or primarily, to carry goods, see glossary in fn **Error! Bookmark not defined..**

Cumulative effects can be harmful in particular in sectors characterized by a large number of small undertakings. Keeping the lower ceiling for both road freight and road passenger transport is therefore only justified if it would still be necessary to take account of the average small size of undertakings active in both sectors. The impact would be that road passenger transport would not be able to benefit from the general ceiling although the characteristics of the sector no longer justify such as stricter treatment (see section 5.1.2.2. below).

5.1.2.2. Differentiate between passenger and freight road transport

This option would involve applying the general ceiling to road passenger transport while applying half the amount to road freight transport. Recent data show that the passenger transport sector is no longer characterized by a large number of very small companies.

Based on Eurostat information set out in Annexes 14 and 15, it has been proposed in the draft Regulation that for other types of transport than road freight transport, including road passenger transport, there is no longer a reason to deviate from the general *de minimis* ceiling. While the road freight transport sector continues to be characterised by the very small average size of undertakings, this is not so much the case for the sector of passenger transport, where the average size of undertakings has increased. Furthermore, in most cases, State financing is granted under SGEI rules (where a specific higher *de minimis* ceiling applies): e.g. companies active in "Urban and suburban passenger land transport " employed on average 63 employees in 2010 and undertakings in the category of "Other passenger land transport n.e.c. "employed on average 13 employees in 2010. In the road freight transport business the average in 2010 was just 6 employees.

Therefore, there is no longer a reason not to apply the general ceiling. The application of the general ceiling to road passenger transport would simplify the rules in this sector and would be in line with the SGEI *de minimis* Regulation and therefore increase legal certainty.

This option would maintain the lower ceiling for the road freight transport as the Commission sees a need to take account of the very small average size of the undertakings. As set out above pursuant to Eurostat data in road freight transport, the size of the companies is still very small on average, for example one-truck businesses are common. It should be avoided that the possibilities offered by the *de minimis* Regulation are misused and help keep artificially alive very small unviable undertakings and therefore impede market-led sector restructuring and consolidation. Furthermore, applying the general ceiling could lead to significant aggregate effects on competition in a sector characterised by small undertakings. Therefore, it seems justified that the road freight transport sector continues to have a lower ceiling than the other sectors. In the Commission's experience undertakings usually do not operate in both sectors⁷⁰ therefore a clear separation seems possible.

5.1.2.3. Applying the general ceiling to all road transport sector

This provision would be very easy to apply and removes possible delineation problems. Some stakeholders⁷¹ request to apply the general ceiling to the road transport sector, some highlight the importance for outermost regions (PT), others the discrimination between goods and passenger transport, others have raised the argument that the small average size of the

⁷⁰ The Commission is not aware of a phenomenon of overlapping between the two sectors: It seems very rare to find a company who operates in both sectors; the sole cases would be a freight transport company who would offer bus services for hire or some sort of holding with participations in both freight and transport companies. Statistical data usually refers to the main activity.

⁷¹ One MS (PL), one representation of remote regions (FR), one chamber of commerce (CZ), one association of financial institutions (BE) and several stakeholders from the transport sector (BE, DE, ES, PL) - see summary of second public consultation on the first draft of the Regulation, Annex 5, p.3.

undertakings is not a characteristic only of the road transport sector and therefore this sector should not be singled out.

However, as set out above, there are still competition law concerns for road freight transport. Pursuant to settled case law even aid of a relatively small amount is liable to affect trade between MS, where there is strong competition in the sector in which the recipient operates. Given the relatively small size and high potential for distortion of competition in the sector for road freight transport, in particular in case of cumulative sector effects, there is a need for a lower *de minimis* ceiling.

In conclusion the legal presumption that all *de minimis* measures have no effect on trade and competition would be at risk, which would create legal uncertainty. Further different rules would apply for the SGEI *de minimis* Regulation which is also not desirable on the legal certainty objective.

5.2. Further clarifications and simplifications of the rules in different provisions

As the practice of the Commission has shown and MS and stakeholders have confirmed in the public consultation, the following other conditions create considerable difficulties in the application of the Regulation. The 'no policy change' option therefore does not guarantee simplification, legal certainty, prevention of distortions and promotion of good aid, and does not ensure compliance.

The clarifications in the notion of undertaking or the definitions or undertaking in difficulty do not seek to broaden nor tighten, in principle, the scope of application of the Regulation but to ensure their correct legal interpretation and application.

5.2.1. Notion of undertaking

5.2.1.1. No policy change

The *de minimis* ceiling is based on an amount per undertaking. This option does not provide any indications by the Commission on how to interpret the notion of undertaking, which is defined by the case law of the CJEU on State aid law and general competition law and is based on an economic concept rather than a legal entity. It can therefore be difficult to interpret and apply. Without further clarification there is therefore a risk that possible misapplications and different interpretations across MS would continue.

Therefore, this option, while theoretically complying with the simplification objective, would not improve legal certainty and not remedy the current misapplication and different application of the notion across MS. Granting aid exceeding the *de minimis* ceiling, especially in the long-run (2020), cannot be considered as not affecting competition and trade between MS. Such legal uncertainty would therefore go against the aim to ensure compliance with the *de minimis* Regulation

5.2.1.2. Replace 'undertaking' by 'legal entity'

Using only the legal entity receiving the *de minimis* aid as relevant for the application of the ceiling would be very easy to apply and has been requested by many MS⁷², but would neither be legally possible nor economically justified. The formal legal concept that only looks at the legal entity involved would allow very high amounts to be made available to groups with many subsidiaries, thereby creating significant distortions of competition and putting these

⁷² See previous footnote.

groups in a better situation than many SMEs and microenterprises not having such an economic structure. This would make it more difficult to ensure that all aid granted as *de minimis* aid can be deemed not to affect trade and distort competition. Therefore this request does not seem to be a valid option; it would not create legal certainty and ensure compliance with the case law on the notion of undertaking.

5.2.1.3. Clarification and simplification

As clarifications have been requested by many stakeholders⁷³, this option would seek to find a balance between, on the one hand, the need to apply the economic notion of undertaking and, on the other hand, the objective of providing administrations with a clear definition that is not too burdensome to check in each individual case.

A clear and simplified definition should reflect economic reality and avoid undue distortions. Based on the case law of the Courts, such a definition should be based on the notion of control. The CJEU 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 undertaking⁷⁴. The notion of control is also used in the SME definition⁷⁵ in order to determine when groups of companies still constitute a SME. This definition is generally used and also incorporated in State aid legislation (see Article 3 of Annex I of the GBER which provides under what circumstances separate legal entities have to be taken into account for the purpose of the SME definition). It therefore forms a good basis for clarifying the notion of undertaking in the *de minimis* Regulation. With a view to ensuring simplification and limitation of the administrative burden, this option would use only the most relevant criteria of the definition, basically the concept of "linked enterprises" of this definition. These would catch the very large majority of cases and at the same time provide a practicable and proportionate tool to administrations. The concept of "partner enterprises" can be larger than the concept of control used by the case law and would therefore and for reasons of simplification not be used in the definition retained in the *de minimis* Regulation. The concept of "linked enterprises" covers most instances of "de jure" control but not all instances of "de facto" control by an undertaking, which is very difficult to define in a clear and exhaustive way, and would put a disproportionate burden on administrations. By using an exhaustive list of clear criteria this definition could in principle provide legal certainty and reduce administrative burden by simplifying the practical application of the notion of undertaking. However, it became apparent in the 2nd AC that, in the absence of a definition, most MS currently do not carry out any checks of *de facto* and *de iure* control and many MS apply the ceiling per legal entity. These MS are opposed to the new definition proposed in the draft Regulation which they consider to constitute an additional burden. A further simplification of the notion though does not seem legally possible as the definition has to respect the case law. This definition could contribute to better compliance, in particular for those MS that have not applied the notion correctly because of the lack of clarity. Such a clear definition would avoid further inquiries on interpretation to the Commission. The proposed criteria are already familiar to public authorities and should be applied, given the scope of this Regulation, to all undertakings, i.e. including large undertakings.

⁷³ Several MS (CZ, PT, EE, EL, FR, IT, LT, LV, PL, PT), public authorities (BE, IT, PL) and stakeholders (AT, BE, DE, DK, IT) – among them many trade and banking organisations such as BusinessEurope (BE) and the European Association of Public Banks (BE). Summary of the replies to the second public consultation on the first draft of the Regulation (March to May 2013) Annex 5, p.4.

⁷⁴ Case C-382/99 Netherlands v Commission [2002] ECR I-5163.

⁷⁵ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance) (notified under document number C(2003) 1422), OJ L 124 of 20.5.2003, p36, article 3(3).

This option would also include a clarification on how splits and mergers or acquisitions of undertakings should be dealt with setting out clear rules on the allocation of previously granted *de minimis* aid to the undertakings concerned. Such rules requested by many stakeholders⁷⁶ would complete those concerning the notion of undertaking.

5.2.2. Exclusion of 'undertakings in difficulty'

5.2.2.1. No policy change

The current Regulation excludes undertakings in difficulty on the basis that it is not appropriate to grant operating aid to firms in difficulty outside a restructuring context and because it is difficult to determine the gross grant equivalent of aid granted to firms in difficulty. This option provides for strict treatment of undertakings in difficulty and ensures that they all fall under the specific provisions of the R&R Guidelines. Also for the recently adopted SGEI *de minimis* Regulation, a strict approach was taken and undertakings in difficulty were excluded.

Without further clarification the risk of different applications across MS and misinterpretations would continue.

5.2.2.2. Clarification and simplification of the definition of undertakings in difficulties

This option responds to a continuous request from stakeholders and makes the determination of when a firm is in difficulty much easier. It relies on automatic, "hard" criteria and removes the need to check the "soft criteria" which are perceived as disproportionate for an instrument directly applicable by local authorities. The simplification implied under this option would create legal certainty and ensure better compliance, while continuing to have regard to preventing distortions of competition.

The content of the automatic "hard" criteria is currently under revision in the context of the new R&R Guidelines. Aligning the definition of firms in difficulty with the outcome of that discussion as far as is useful and proportionate for the *de minimis* Regulation appears desirable. This option would be in line with the general principle to provide "per se" rules to public authorities instead of rules that require a complex assessment. In the second draft of the *de minimis* Regulation⁷⁷ it is proposed to use the current hard criteria for SMEs in the GBER (Article 1(7)) with the small simplification not to consider in addition the most recent 12 months. These existing criteria are loss of half of the capital or eligibility for insolvency proceedings.

In addition 3 new criteria (see annex 16) have been proposed in the draft Regulation, two of these new criteria relate to ratios - debt to equity and interest cover ratios – and one to credit rating.⁷⁸ The appropriateness and/or exact content of these last three criteria is still under review in the context of the R&R Guidelines.

Given the fact that firms fulfilling only the "soft" criteria would no longer be excluded from the scope of the *de minimis* Regulation, this option could in some cases also mean that very small measures would no longer have to be dealt with under the R&R rules and that for

⁷⁶ CY, CZ, FI, PL, PT and SV - see Annex 4 - Summary of the replies to the public consultation on the basis of a questionnaire, p.3.

⁷⁷ OJ C 229/1 of 8 August 2013, article 2(e), (i)-(III), see annex 16.

⁷⁸ It is also envisaged that a SME which has been in existence for less than three years shall not be considered to be in difficulty unless it meets the condition for the insolvency procedure. See annex 16.

certain SMEs a *de minimis* measure could replace rescue aid by providing urgently needed liquidity.

A clear majority of stakeholders welcomed in the public consultation the proposed simplification and reduction of administrative burden by limiting the definition of firms in difficulty with reference only to hard criteria⁷⁹. However, it became apparent in the second Advisory Committee that most MS currently do not or not fully analyse whether an undertaking is in difficulty. Most MS (AT, BE, CY, CZ, DE, EE, EL, FI, FR, HR, IE, IT, LT, LU, LV, MT, NL, PL, PT, SI, UK) raised the issue that the newly introduced ratio criteria - the debt to equity and interest cover ratios - in the hard criteria would lead to a large proportion of SMEs being treated as being in difficulty and thus excluded from *de minimis* aid (according to DE up to 1/3 of all SMEs). These MS considered that those ratios were not only not appropriate for the definition but also very burdensome to check for small administrations. Also the criteria on credit rating agencies was not considered appropriate as the vast majority of beneficiaries of the *de minimis* Regulation do not have a credit rating.

In light of the objectives of simplification and legal certainty, the definition finally retained should be based on criteria that are clear, straightforward and easy to apply also for small and local administrations. Most MS agreed in the second Advisory Committee that the first three of the proposed hard criteria would be appropriate and sufficient. However, it was also thought that the definition of firms in difficulty was more properly discussed in the context of the R&R Guidelines. It therefore appears appropriate to use only the first three criteria of the definition for the *de minimis* Regulation like in the current GBER Regulation. In that way the exclusion would be limited to only those undertakings having lost half of their capital or eligible for insolvency proceedings, so that the very large majority of undertakings (in particular SME and micro) remain eligible. Any such solution implying further simplification of the definition would be limited to the *de minimis* Regulation, for the purposes of ensuring proportionality.

5.2.2.3. Remove the exclusion of undertakings in difficulty

This option would extend the scope of the *de minimis* Regulation and would provide a simplified application of the rules since authorities would no longer need to determine whether a firm is in difficulty, which has been highlighted as a source of administrative burden and uncertainty. Moreover, very small measures would in all cases no longer have to be dealt with under the quite complex and demanding R&R rules. It could also be seen as a legally sound option since the previous *de minimis* Regulation (Regulation 69/2001) was applicable to firms in difficulty. The more lenient treatment of firms in difficulty under the *de minimis* Regulation could be counterbalanced, on an aggregate level, by stricter rules on rescue and restructuring aid.

However, a small subset of firms, namely smaller firms that can be rescued with *de minimis* aid, would be treated much more leniently than under the current rules, which may have a potential distortive effect. In addition, there are difficulties linked to determining the gross grant equivalent of aid granted to undertakings of this type. Indeed, for loans and guarantees the safe harbours are calculated on the basis of firms which are not in difficulty and considering a default rate of 13% as a worst case scenario. For firms in difficulty the gross grant equivalent of a loan or guarantee would be much higher than the *de minimis* ceiling,

⁷⁹ Among them MS (DE, EE, EL, HU, LT, LV), public authorities (UK) and some trade and banking organisations such as the Deutsche Industrie- und Handelskammertag (DIHK) (DE), Confindustria (IT) and the European Association of Public Banks (EAPB) (BE) – see summary of second public consultation on the first draft of the Regulation, Annex 5, p. 3

even up to the full amount of the loan or guarantee. It does not appear possible to deem that such cases do not affect trade and/or distort competition.

5.2.3. Cumulation rules

While under the previous *de minimis* Regulation (Regulation 69/2001) *de minimis* aid and State aid could be freely cumulated, the cumulation provision was inserted in 2006 in order to avoid the circumvention of aid intensities. This is based on the idea that while the *de minimis* amount is not distortive as such, it can become distortive if granted in addition to State aid for a specific project.

5.2.3.1. No policy change

The current Regulation does not allow for a cumulation of *de minimis* aid with other State aid in respect of the same eligible costs if the cumulation would result in an aid intensity exceeding that allowed under the general State aid rules. Without further clarification, there is a risk that granting authorities may continue not to correctly apply the rule in certain instances.

5.2.3.2. Clarification and simplification

This option would limit modifications to a clarification of the cumulation rules that apply for all possible cumulation scenarios by incorporating in the text of the Regulation the established practice of the Commission. Clarifications have been requested by several stakeholders⁸⁰. A possible clarification requested by many stakeholders would be to make express reference to risk finance measures as in the Commission practice also cumulation with aid for the same risk finance measure is excluded.

As *de minimis* aid can be (and often is) granted without referring to specific eligible costs, the cumulation prohibition often does not apply. The Commission has accepted this practice as it seems inherent to *de minimis* aid that it is not linked to eligible costs. It could therefore be envisaged to clarify this *expressis verbis* in the provision as many queries by stakeholders refer to this issue. On the other hand such a provision could be understood as an invitation to circumvent the cumulation rules.

Such clarifications would simplify the rules and provide more legal certainty. They would therefore also have a positive effect on ensuring compliance.

5.2.3.3. Free cumulation of *de minimis* aid with other State aid

All cumulation issues could be solved by allowing for free cumulation of State aid with *de minimis* aid. While this might be perceived as a relaxation of the rules, this makes the application in practice much simpler. Several stakeholders – including one MS (DE), one public authority (ES) and several trade and banking organisations (BE, DE, IT) – suggested free cumulation of *de minimis* aid with State aid as the former is not considered State aid⁸¹.

While it can be observed that this option can lead to the same costs being compensated for twice, it can also be argued that since the *de minimis* concept is not based on specific eligible costs or projects, it is in the nature of *de minimis* measures that the financing can be granted as "free money". Indeed, while the current Regulation prohibits cumulation of *de minimis* with aid if the maximum aid intensities would be exceeded, it would still be possible to grant the

⁸⁰ See replies to consultation on first draft by CZ of 16 May 2013, p.3 and by FI of 14 June 2013, p.1.

⁸¹ See summary of second public consultation on the first draft of the Regulation, Annex 5, p. 5.

same *de minimis* aid separately and without an explicit link to the aid project. The prohibition therefore basically has a formal value and there are arguably no strong reasons to insist on this formal point, given that there is no difference as regards the economic impacts and that the cumulation rules create many uncertainties and additional burden for authorities. On the other hand, such reasoning would be perceived as inviting the circumvention of aid intensities. Further, some stakeholders expressly supported the cumulation rules⁸².

In summary, this option - while simplifying the rules - would bear some risks as it could encourage circumvention of other State aid rules. Moreover, consistent cumulation rules throughout all State aid instruments seem to be able to better ensure legal certainty and compliance than free cumulation for one instrument.

5.2.4. Provisions on transparent aid

5.2.4.1. No policy change

The *de minimis* Regulation only applies to transparent aid instruments, *i.e.* aid instruments where it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without having to undertake a risk assessment. This option maintains this concept which is fundamental to ensure the respect of the ceiling. However, it has to be decided, which instruments are to be considered as transparent and in addition for which a simplified calculation method of the gross grant equivalent can be provided. Under the current Regulation a list of transparent forms of aid is foreseen, however a safe-harbour is only provided for guarantees based on a scheme, which is set irrespective of the duration of the guarantee.

5.2.4.2. Adapt the rules for loans and guarantees

This option would use safe harbours for those instruments where these are possible to define in a straightforward manner, which is only the case for guarantees and loans. Each safe harbour has to be defined to ensure that it corresponds to the gross grant equivalent. The safe-harbour provisions therefore define a ceiling and take account of the duration since the latter is crucial to establish the gross grant equivalent.

For a guarantee this would in certain cases be stricter than the current safe harbour, but it is necessary to achieve consistency within the Regulation (between different aid instruments) and it is a consequence of the fact that the current Regulation was not sufficiently precise in that respect. This option suggests introducing as a safeguard a time limit for guarantees of 5 years (safe-harbour ceiling of EUR 1.5 million for guarantees for up to 5 years). To enlarge the scope of the safe-harbour, this rule would also apply to ad-hoc guarantees, not only to guarantees based on a scheme.

As regards loans, this option would provide simplification by introducing a safe-harbour provision which had been requested by some MS and stakeholders⁸³. The amount should be lower than for guarantees and should take account of the duration of the loan. This option would also include a safe-harbour ceiling of EUR 1 million for loans up to 5 years secured by a certain level of collateral (covering at least 50% of the loan).

⁸² See replies to consultation on first draft by Gobierno Vasco (ES) and Bundesverband der Deutschen Industrie e.V. BDI (DE), reply of 16 May 2013, p.1.

⁸³ Response by DE, BG, Catalunya and some registered organisations of the financial industry (Bundesverband öffentlicher Banken and Network of European Financial Institutions (BE)) to the public consultation on the basis of a questionnaire, Q 16.

The safe-harbour will provide for a simplification as for a loan or guarantee to which the safe-harbour provision is applicable it would not be necessary to calculate the gross grant equivalent on the basis of the applicable reference rate. The calculation of the safe-harbour provision is in line with the Commission Communication on the revision of the method for setting the reference and discount rates⁸⁴. The premium applied to obtain the reference rate for a loan is calculated in this communication according to the borrower's creditworthiness and collaterals. The proposed safe-harbour is calculated on a worst case scenario taking a weak credit rating of B- below which an undertaking would be no longer credit worthy. The reference rate calculation uses the same base rate and credit margin for each of the years. Applying this to a 5 year loan the safe-harbour was therefore estimated at EUR 1 million.

The limitation in years is needed in order to ensure that the safe-harbour can indeed guarantee that the *de minimis* ceiling is not exceeded. As the majority of the stakeholders⁸⁵ requested a longer duration for both loans and guarantees further safe-harbours with 10 year duration have been proposed. At the request of many stakeholders, the calculation of the gross grant equivalent for loans and guarantees with smaller amounts and shorter durations has been clarified by adding the formula and an example.

In summary this option can provide further simplification and legal certainty as it uses established rules for the calculation of the gross grant equivalent; it would therefore also ensure better compliance while continuing to prevent competition distortions.

5.2.4.3. Widen the range of aid instruments

Some stakeholders⁸⁶ requested to consider further aid instruments as transparent, e.g. equity participations, risk capital measures and capital injections⁸⁷. While it is acknowledged that such measures are not the same as grants, it is however very difficult to define their gross grant equivalent and thus to establish a safe harbour for these instruments that ensures that in all instances the gross grant equivalent remains below the general ceiling.

Covering more complex instruments would require very specific rules or calculation methods, or additional conditions that are difficult to apply. However, the *de minimis* concept is meant to be used for small and straightforward cases, so that it does not fit well for more complex measures where the aid amount is difficult to determine. In conclusion such an extension of the aid instruments would go against the objective of simplification and legal certainty and it seems almost impossible to ensure in all instances that competition and trade are not distorted.

5.3. Enhancing compliance through monitoring

5.3.1. No policy change

Under the current *de minimis* Regulation, MS can choose to ensure compliance with the ceiling and the cumulation rules either by a central register on all *de minimis* measures granted in the respective MS or by obtaining a declaration of the undertaking on all *de minimis* aid received in the current and the two preceding years. Under both systems, MS must carry out some tasks, in particular the calculation of the gross grant equivalent for loans and guarantees, the check of whether the beneficiary is part of a group and the check of how

⁸⁴ OJ C 14, 19.1.2008, p.6.

⁸⁵ 7 MS (AT, CZ, DE, ES, HU, LT, LV), some public authorities (BE, EIF) and many trade and banking organisations - see Annex 6, summary of the replies to the second public consultation on the first draft of the Regulation (March to May 2013), p.4.

⁸⁶ Response by DE and BG as well as the National trust (UK) to the public consultation on the basis of a questionnaire, Q 16.

⁸⁷ This is currently only possible if the total amount does not exceed the applicable *de minimis* ceiling.

much *de minimis* aid was received in the past. The only difference in this respect is that in a system of declarations the information on new *de minimis* aid has to be communicated to the beneficiary and the declaration of the beneficiary on past *de minimis* aid is needed, while in case of central register the register can provide the information contained in the declaration. The system of declarations has on the one hand disadvantages as it relies entirely on the information provided by the undertaking, which could make false statements in order to achieve higher amounts. Moreover, some undertakings have complained that the system of declarations is in practice often complicated for companies because public authorities (contrary to their obligations) do not always clearly earmark measures as *de minimis* aid or do not clearly specify their gross grant equivalent, nor the date of granting, so that the company has difficulties in providing a correct declaration. In addition, the public consultation on the basis of a questionnaire has revealed that most of the MS which do not have a central register also do not have a central overview of *de minimis* aid granted by the different regional and local authorities; this is particularly true for MS whose administrative system is federal or decentralised. In particular, there is a lack of data as regards the total amount and the sectoral distribution of measures under the *de minimis* Regulation (see Annexes 7 and 11). Because of this lack of overview on *de minimis* aid granted MS do not have reliable tools to evaluate their policy choices and the Commission does not have data for its policy reviews.

On the other hand the declaration system has the merit of presenting a simple but still reliable solution to those MS who are not willing to set up a central register but use declarations, often on oath, considered by them as creating less administrative burden. If correctly applied the system is not necessarily less reliable than a register, which depends on the quality of the data entered. Ultimately, if MS carry out proper checks either on the basis of declarations or through a register, compliance can be ensured. Although some MS were also able to provide data, even though they do not have a central register, in general no comprehensive data are available in MS which have chosen the declaration system.

In conclusion this option does not appear to contribute to the objectives of increasing legal certainty and preventing distortions of competition. Although compliance may be ensured under both systems, only a register is able to provide an overview of all *de minimis* aid granted. In the absence of full data, the Commission is not well equipped to design its *de minimis* policy. On the other hand, as argued by many MS and public authorities in both Advisory Committees and through the public consultations⁸⁸, the declaration system creates a considerably lower administrative burden than a central register.

5.3.2. *Current system but stricter systematic monitoring and enforcement*

Under this option, the choice between declarations and a register would continue, but enforcement efforts by the Commission would be enhanced. The Commission can already now (based on Article 3(3) of the current Regulation) in case of doubts request information from MS in order to assess whether the conditions have been complied with, in particular the total amount of *de minimis* aid received by any undertaking. Under this provision MS have an obligation to record and compile all the information regarding the application of the *de minimis* Regulation. Such records shall contain all information necessary to demonstrate that the conditions of the *de minimis* Regulation have been complied with. On written request, the MS concerned shall provide the Commission, within a period of 20 working days or such longer period as may be fixed in the request, with all the information that the Commission considers necessary for assessing whether the conditions of this Regulation have been

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See Annexes 4-6.

complied with, and in particular the total amount of *de minimis* aid.⁸⁹ On this basis it is possible to carry out random or targeted monitoring checks to verify compliance.

The Commission is regularly confronted with alleged *de minimis* measures in its cases (in the form of a number of measures, where the MS argues for some small part to be *de minimis* aid). This option would require in these cases a very thorough check on the conditions of the Regulation. It would also require all information to be requested from the respective MS and a careful assessment. Further targeted checks would need to be made whenever other indications of an incorrect use of the *de minimis* Regulation are present.

In addition, random checks under a monitoring exercise could be envisaged in the context of the yearly monitoring exercise. DG Competition has conducted ex-post, sample based controls of existing aid schemes in the form of the so-called "monitoring exercises" since 2006-2007⁹⁰. Currently the yearly monitoring sample is established on the basis of MS' annual reports on all existing aid schemes. The monitoring exercise mainly concerns aid measures falling under GBER as well as aid granted under aid schemes approved by the Commission. This exercise serves to detect and tackle irregularities and more generally to enhance MS' discipline, thereby ensuring compliance and preventing competition distortions.

In its Communication on State Aid Modernisation adopted on the 8th May 2012, the Commission noted that "a lower administrative burden through less notification obligations can only be envisaged if it is accompanied by increased commitment and delivery on the part of the national authorities in terms of compliance" and that "consequently, ex post control by the Commission will have to be stepped-up". In its 2011 report on the efficiency of State aids procedures, the Court of Auditors⁹¹ also invited the Commission to step-up its monitoring activities both in terms of sample size and scope, which has been done in the recent exercises.

Currently, in the yearly monitoring exercise *de minimis* aid is not included as there is currently no annual reporting obligation on MS for *de minimis* aid. Increased monitoring would require the availability of *de minimis* reports or data from which the Commission could select sample cases. Data could be delivered through annual reporting or requested by the Commission on basis of the *de minimis* Regulation in case of doubts on the correct application of the Regulation. However, this would be very difficult to implement for MS without central register, because the collection of data from all granting authorities would be very burdensome. In the absence of reports or data requests, the Commission could only monitor in cases where it is occasionally made aware of the existence of a *de minimis* measure (e.g. if a MS argues that part of an aid scheme falls under the *de minimis* rule, as explained above). This would not allow a more systematic, targeted monitoring of all MS. Further systematic monitoring of *de minimis* aid would raise concerns of proportionality as it seems more worthwhile for the Commission to concentrate its monitoring efforts on cases where important amounts of aid have been granted.

It is therefore considered that the option of a seriously reinforced monitoring would require either a central register or a comprehensive reporting obligation, which would both create a considerable administrative burden and could therefore be considered as disproportionate in the context of *de minimis* aid.

⁸⁹ Article 3(3) of the current regulation.

⁹⁰ Legal basis are Art. 108(1) TFEU providing "the Commission shall, in cooperation with MS keep under constant review all systems of aid existing in those States" as well as the cooperation obligation for MS in Art. 4(3) TEU and specific provisions in the procedural Regulation (Council Regulation (EC) No 659/1999 of 22 March 1999 OJ L83, 27.3.1999, p.1 Art. 17, 21).

⁹¹ See the recommendation n° 1 of the Court of Auditors Report (pt. 96, p. 41-, publicly available under <http://eca.europa.eu/portal/pls/portal/docs/1/10952771.PDF>).

5.3.3. Mandatory *de minimis* register

The register could overcome the difficulties described and provide a comprehensive picture, useful both for the MS and for the Commission for their policy decisions. Currently 9 MS have a national register or are in the process of setting it up: CZ (since 2010), EE (since 2009), EL (since March 2013 – mandatory as of July 2013), HR, LT (since 2005), PL (since 2013, but still using declarations), PT (since 2002), SK (in development process) and SI (since 2002). Two MS have an indicative central register which works together with a system of declarations (BG and HU). A further five MS have a central register for *de minimis* aid in the agricultural sector (FI, IE, IT, LV, SE). The systems vary a lot between MS but some (e.g. in the Baltic States) gained experience from one another. Some registers cover all types of State aid (EE, EL, LT, PL, SI) and *de minimis* aid, while others cover *de minimis* aid only (CZ, but including agricultural *de minimis* aid; PT; SK).

It should be recognised that setting up the register involves a considerable administrative burden at the moment of creating the register, in particular in federal states where issues of legal competence within some MS (AT, BE, DE) have been raised. This is the main reason why 10 MS (AT, BE, CY, DE, DK, FR, IE, RO, SE, UK) opposed a central register in the first Advisory Committee and 14 in the second. Some of these MS also contested the Commission's competence as *de minimis* aid is not State aid within the meaning of Article 107(1) TFEU. However, it could be argued that such a competence is inherent to Art. 2 of the Enabling Regulation⁹², which authorises the Commission to fix a level below which certain aids do not meet all the criteria of Article 107(1) TFEU. A competence to set such a *de minimis* ceiling necessarily comprises a competence to adopt rules and mechanisms to control the respect of that ceiling.

Concerning the administrative burden involved in the setting up of such a register, the Commission received the following information. Those MS which already have a register, which are mainly smaller MS, usually took 1.5-2 years to set it up. However some MS set it up gradually: e.g. PL took 10 years to give access to all local authorities, as it was done in several phases. The systems vary in particular pursuant to the number of local authorities having access. While in some MS the local entities are granting *de minimis* aid and therefore need access⁹³, this is not the case in some other MS where only bigger local authorities or central bodies⁹⁴ are granting *de minimis* aid. Some MS also informed us of the administrative costs to set up such a system and to maintain it⁹⁵; but these are probably not comparable from one MS to another. In conclusion, this information is not sufficient in order to be able to draw a representative and sufficiently solid conclusion regarding operating cost of a *de minimis* register. It is therefore impossible to provide figures to quantify the impact of this policy option compared to a system based on declaration.

A significant proportion of the costs generated by setting up a central register are one-off costs. Once the register is created, it would facilitate the granting procedure and future administrative checks and provide very useful data to both MS and the Commission.

⁹² Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, OJ L 142/1 of 14.5.1998 as amended by Council Regulation (EU) No 733/2013 of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, OJ L 204/11 of 31.7.2013.

⁹³ e.g. CZ: 220 entities; LT: 190 entities; PT: ca. 100 entities; SI: ca. 400 entities; PL: 4.500 entities

⁹⁴ e.g. EE: 23 entities; EL: 40-50 entities

⁹⁵ e.g. CZ: EUR 135 000 total administrative costs for set-up and EUR 2 000 monthly for maintenance including personal costs of ½ FTE; EL: ca. EUR 100 000 for set-up; LT: EUR 38 000 for set-up; EUR 2 600/y + 1 FTE for maintenance; PL: ca. EUR 250 000 for the set-up and maintenance EUR 3 000 quarterly; BG: costs of 2-3 FTE for maintenance and checks.

However, the register would need to be maintained regularly and training would need to be ensured for local authorities. Granting authorities would no longer have to ask for declarations from the beneficiaries and check these but could check the register. This is only possible, however, if completeness of the register can be ensured. Therefore a proposal to consider a threshold (e.g. register only for aid above a certain amount), would make it impossible for granting authorities to rely on the register to check the aid amounts already received by a beneficiary. A well-functioning register could shift the administrative burden from undertakings to the authorities (that have to check and enter data), which seems particularly important for smaller undertakings.

Many MS⁹⁶ pointed to problems with the notion of undertaking in a register. Registers are usually relying either on the tax number (EL, PL, and PT) or the business/company registration number (EE, CZ, and SI). CY even informed the Commission that it changed back from a register it had for two years to a system of declarations because of this constraint⁹⁷. As set out above, the Commission considered it possible to accommodate these concerns to some degree by clarifying and simplifying the notion of undertaking. In this instance the Commission considers that it could be sufficient for the granting authority to receive in the application form of the beneficiary a list of the linked enterprises which are considered one single undertaking. The PA could then check in a register the amounts this undertaking has already received in the past three years. It would also be possible but not required for the granting authority to make reference to this list in the register itself. Some MS with register informed the Commission that they are checking the group structure of the beneficiary mainly by checking the shareholder structure (EL, SI) relying on information provided by the beneficiary (EL) or by the system (SI). However, other MS mentioned in the 2nd AC that they are currently only checking aid cumulation on the legal entity level with the register and would consider a check of linked entities very burdensome (CZ, EE, HR, LT, PL, PT⁹⁸). These MS considered that checking the linked entities would increase the administrative burden in such a way that the administrative costs for the check would be higher than the amount of *de minimis* granted. The fact that the argument is raised most forcefully in the context of a register suggests that the notion of undertaking is currently often not correctly applied. This check could be less burdensome in a system of declarations. In a register it would require additional burden, which could be eased partly if the administration is entitled to rely on a declaration on oath in this respect. In any event, it would appear that there is gap between the practical impact of this option and the theoretical impact.

To address the problems raised by MS and set out above, this option could be accompanied by a transitional period of at least 2 years to set-up the register and a further three years for MS to obtain full records of three years. The Commission could provide further guidance to MS in the set-up of their national registers.

As the positive and negative effects on administrative burden differ very much between MS it seems very difficult to compare and quantify them. It can, however, be established on the basis of the experience in MS with a central register that this option facilitates on the one hand administrative checks for the granting authority and thereby increases compliance and ensures prevention of competition distortions. A central register could further provide data to the Commission for future evaluation of the *de minimis* rules. Finally it also reduces administrative burdens for the undertakings which no longer need to keep the granting decisions for three fiscal years and provide the administration with it in a system with a register. This seems particularly important for micro-enterprises which usually have less

⁹⁶ Replies to the questionnaire by: EE of 19 October 2012, p.12, PT of 18 October 2012, p.1, by CZ of 17 October 2012, p.9; by PL of on 19 October 2012, p.19; by CY PermRep reply of 19 October 2012, Q18.

⁹⁷ Reply by CY PermRep to the questionnaire, Q 20.

⁹⁸ See Annexes 5 and 6, summary of the replies to public consultation on the first and second draft.

capacity for administrative tasks. On the other hand setting up a register would create considerable administrative burden in particular for federal MS.

It therefore seems reasonable to assess the feasibility and the practical modalities of central registers in detail before imposing it on MS. Going forward such a study could be undertaken with MS to decide on the possible introduction of a register on the level of MS or the EU for the next policy review. This study could also include further data collection in particular for MS without a central register. Regarding the idea of an EU register the envisaged study and the further developments in other areas of State Aid Modernisation, which includes a transparency initiative, should provide further information so that an informed decision can be taken on the legal and practical feasibility thereof for the next review.

5.4. Administrative burden

The *de minimis* Regulation is specifically designed to enable small amounts of aid to be granted subject to minimal conditions and therefore involving a minimal administrative burden in comparison with other State aid instruments.

Under the current Regulation the main administrative burden on the granting authority is ensuring that an undertaking does not receive aid above the *de minimis* ceiling. This monitoring can be done either by:

- obtaining *ex ante* declarations from undertakings of other *de minimis* aid received; or
- or setting-up, maintaining, entering data in and checking a central register. While creating important costs for setting-up and maintaining the register, it facilitates once in place administrative checks for the granting authority and thereby increases compliance and ensures prevention of competition distortions (see above section 5.3.3).

The development of administrative burdens under the different options has been discussed in detail above, in particular in the context of the monitoring requirements (section 5.3).

In principle, the Regulation does not impose direct administrative burdens on undertakings, including SMEs and micro-enterprises. In practice, however, it appears that there are some burdens for undertakings, particularly with the declaration system. These will be discussed below in section 5.4.1.

The positive and negative effects on administrative burden for the granting authority differ however very much between MS and depend inter alia on the structure (federal, central), the aid granting practice (e.g. number of aid granting authorities involved) and the monitoring system chosen. This has become apparent when the MS with a register have been requested to present in detail the administrative costs of the set-up and functioning of the register, as set out in pages (see section 5.3.3 above). It therefore seems very difficult to compare and quantify administrative costs in the different MS. It can, however, be established on the basis of the experience in MS with a central register that this option, while creating important costs for setting-up and maintaining the register, may facilitate, once in place, administrative checks for the granting authority and thereby increase compliance and ensure prevention of competition distortions. This, however, presupposes that the register is correctly used and, on the basis of the feedback received in the Advisory Committee; this does not seem to be always the case, in particular concerning the notion of undertaking (see section 2.4.2 above).

Quantifying the administrative cost of the different options has proven impossible due to the lack of public information and the unwillingness of MS to provide data of the costs involved

in the operation of a *de minimis* scheme. The unwillingness to provide quantitative data (e.g. to measure the burden of the declaration system/register system) can also be explained by the fact that the majority of the MS are explicitly opposed to the introduction of a central register or reporting obligation⁹⁹. Further in most instances it seems that MS do not have such data readily available and would not be willing to bear the considerable costs of collecting data from a high number of local and regional authorities. They consider that the system of declarations works well and would be less burdensome. A system of declarations might equally ensure compliance and prevent distortions of competition. It is only insufficient in as far as it does not allow to provide an overview of all *de minimis* aid granted.

It should be noted that an important element of administrative costs are linked to lack of clarity and legal certainty on the interpretation of certain concepts like in particular the notion of undertaking, the definition of undertaking in difficulty and the interpretation of the cumulation rules (see section 5.2 above). The analysis of these concepts is therefore currently lengthy and cumbersome for the granting authority and may require frequent contacts with the undertaking. Clarifying those concepts can simplify and facilitate the tasks of granting authorities and thereby reduce the administrative costs. This applies irrespective of the monitoring system as completing the register in a correct way also requires some checks (e.g. on the notion of undertaking and the exclusion of undertakings in difficulty), so that the ultimate burden for the granting authority is not so different under both systems. However, it is not possible to quantify the impact of these clarifications and simplifications on the administrative burden as the positive and negative effects on administrative burden differ very much between MS and depend inter alia on the structure (federal, central) and the aid granting practice (e.g. number of aid granting authorities involved) and whether these are situated on the national, regional or local level.

5.4.1. *SMEs and micro-enterprises*

Given the fact that the *de minimis* Regulation is based on a rather low ceiling per undertaking, it is particularly favourable for SMEs and micro-enterprises, which benefit indirectly as MS do not have to notify such measures to the Commission and can grant the aid directly and quickly. It has been confirmed by the public consultation from those MS which have a register or statistical data that 90% of the beneficiaries are micro and small undertakings and more than 95% are SMEs (see section 2.1.3 above).

The *de minimis* Regulation does not in principle impose direct administrative burdens on undertakings, including SMEs and micro-enterprises, but only on public authorities. In practice, it appears, however, that there are some burdens for undertakings, depending on the granting procedure the public administration chooses, in particular in the declaration system. In this system the undertaking has to keep all granting documents for the last three fiscal years and to make a declaration on *de minimis* aid received during the past three years to the administration, this seems particularly burdensome for SMEs and micro-enterprises which usually have less capacity for administrative tasks. The burden to make a correct declaration can only be complied with if the granting authorities always inform the beneficiaries – as they are obliged to do – (i) of the fact that the amount received constitutes *de minimis* aid, (ii) of its exact grant equivalent and (iii) of the date of granting. Some beneficiaries complain, however, that this is not always the case so that they find it difficult to make a correct declaration. This is, however, not a result of the system of declarations as such, but of the way it is handled by certain granting authorities who not always fully comply with their obligations under the Regulation. When authorities fully inform beneficiaries the declaration system only creates a minimal burden for them as they receive all the information needed for the declaration from

⁹⁹ See summary of the replies to the public consultation on the second draft of the Regulation, Annex 6, p. 2-3.

the authorities that granted past *de minimis* aid. The granting process could be simplified for undertakings and in particular SMEs through the introduction of a mandatory central register, since it would shift the burden to the granting authority (see section 5.3.3 above) or by better administrative practices by the granting authorities.

The burdens mentioned above apply also to micro-enterprises if the MS has chosen the declaration system as the Regulation has to ensure for all undertakings including micro-enterprises that the ceiling is respected. It is legally not possible to exempt micro-enterprises from compliance with the ceiling since Art. 107(1) TFEU applies to all undertakings. Furthermore, the important objective of preventing distortions of competition and trade justifies this as there are risks of aggregate effects of *de minimis* aid in sectors with many smaller undertakings.

Several simplifications in the proposed options would also reduce the already minimal burden for SMEs and micro-enterprises and could accelerate the procedure: in particular the new safe harbour for loans and easier definitions of undertaking and undertaking in difficulty.

5.5. Environmental and social impact

The environmental impacts are minimal, first because *de minimis* aid must remain low (EUR 200 000 over three years) and secondly because *de minimis* aid is generally used in a very wide range of sectors, with no particular pattern. Moreover, it can have a broad range of objectives, including no specific objective at all. In most cases, there are no specific eligible costs or objectives attached to the granting decision. Therefore, no particular environmental impact can be measured and changes to the *de minimis* Regulation are not expected to cause such impacts. The same applies for the transport sector although a higher ceiling in the passenger road transport sector is favoured. However the ceiling is still rather low and therefore it seems rather unlikely that the higher amount would favour the acquisition of an important number of new vehicles and even less likely that this would affect the share of road passenger transport as compared to other modes of passenger transport. As *de minimis* measures are not required to be linked to specific objectives or eligible costs it would however not be possible to quantify this in the future.

Social impacts are also minimal or not measurable for the same reasons. Furthermore, the general lack of data also implies that it is not possible to determine a specific social impact. *De minimis* aid can be granted for a wide range of objectives which may or may not be social, therefore it is not the right instrument for promoting employment and social protection (Art. 9 TFEU). Further it is not possible to measure any possible impacts on employment of the rather small amount of *de minimis* aid. With respect to undertakings active in the so-called 'social economy', it should be noted that they often fall under the SGEI rules, for which a higher *de minimis* ceiling applies. They are therefore not particularly affected by the general *de minimis* rule.

It shall be noted though that any aid to companies in difficulties is excluded (see Section 5.2.2 above) as in particular it is not appropriate to grant operating aid to firms in difficulty outside a restructuring context.

As the initiative has no significant environmental or social impact, these factors will not be further addressed in this report.

6. COMPARING THE OPTIONS

Having presented the impacts of each option for the different topics that are subject to discussion in the context of the revision of the Regulation, the policy options can be compared by assessing how effective they are likely to be in achieving the objectives of (a) simplification, (b) legal certainty, (c) not distorting competition and (d) ensuring compliance.

The impact of the options against the baseline scenario (no policy change) is summarised in the tables below using the following scoring system:

++ / -- very positive / negative impact

+ / - positive / negative impact

+/- both positive and negative impact, neutral

0 no impact.

Nota bene with State aid instruments, it is impossible to quantify impact and to aggregate scores, as neither the distance between the scores nor the weightings of the objectives are equal. As *de minimis* measures are deemed not to constitute State aid, prevention of competition distortions must be ensured while offering a simple tool to MS and thereby providing legal certainty and ensuring compliance. Simplification and prevention of distortions are therefore the main objectives.

Most of the problems identified in this report (see section 2.2 above) are found not to be causally related and have therefore been treated independently. The issues do not fit within a global trade-off between simplification and competition as the level of the ceiling determines in principle whether a measure can be deemed not to have an effect on competition and trade between MS while the simplification and clarification issues relate to the objective to reduce administrative burden and ensure compliance. The report has therefore rather analysed the impacts of each different factor on its merits.

As the initiative has no significant environmental or social impact, these factors will not be further addressed in this IA report. The tables below contain the assessment of the different policy options on the basis of the specific objectives described in Section 3.2.

6.1. The ceiling

In respect of the ceilings the following objectives are most relevant: (a) prevention of competition distortions (b) simplification, (c) legal certainty. The objective to ensure compliance would normally not be affected by the level of the ceiling. As regards the general ceiling, five options are analysed in the report:

Table 7: General Ceiling: comparison of the options

Options	Simplification	legal certainty	Prevention of distortions	Ensuring compliance
1. No policy change	0	0	0	0
2. Adjusting the ceiling to take into account future inflation	+/-	0	0	0
3. Substantial increase of the current ceiling	+	--	--	0
4. Further differentiated change of the current ceiling	--	--	+/-	0
5. Introduction of a cap or other mechanisms	--	--	+/-	0

Comparing the second option with the baseline scenario it would have only a small positive impact on the simplification objective as such a low increase would not enable significantly higher amounts to be granted under the simple *de minimis* conditions. Calculations would become slightly more cumbersome, because in addition to the change to a new ceiling itself, a ceiling including the ten thousands digit might in itself also slightly increase the administrative burden for both granting authorities and undertakings. Furthermore, any increase of the ceiling would require adaptations at the national level (information dissemination, adaptation of existing schemes, ...) which may not be worthwhile for a very small increase. Therefore it would also have a small negative impact on simplification. Concerning prevention of competition distortion it does not seem possible to measure an impact on competition for such a limited increase and there is no impact on legal certainty either.

A substantial increase of the current ceiling would entail simplifications in terms of administrative burden for granting authorities and beneficiaries but probably limited since most potential cases between 200 000 and 500 000 are currently block exempted or covered by aid schemes. For the Commission the burden would not change much as there were very low numbers of notifications or complaints between EUR 200 000 and 500 000 in the recent years. For the important objective of prevention of competition distortions the impact would be very negative as it could not be ensured that such a high amount would have no impact on competition. Given this risk, the impact on legal certainty would also be very negative.

A further differentiation of the ceiling is preferred only for the road transport sector to apply the general ceiling to passenger transport. An application to other sectors would make the rules significantly more complex and would therefore run counter to the objectives of simplification and legal certainty. It would also increase administrative burdens. While this option would in theory be more adapted to prevent distortions of competition in certain sectors and thus have a positive impact, in reality, the competition impact seems neutral compared to the baseline scenario since so far no particular competition concerns have been raised for other sectors.

The introduction of a cap or other mechanisms would also have a very negative impact on simplification and legal certainty and increase administrative burdens. The impact on prevention of competition distortion would in theory be positive, but in practice neutral

compared to the baseline scenario, since the Commission has currently no indication that such a mechanism would be necessary to prevent distortions.

In conclusion, the preferred option is not to propose a policy change on the general ceiling, as the Commission sees no convincing reason for raising the ceiling and only risks in doing so.

As regards the ceiling for the road transport sector, three options are analysed in the report:

Table 8: Ceiling for the road transport sector: comparison of the options

Options	Simplification	legal certainty	Prevention of distortions	Ensuring compliance
1. No policy change	0	0	0	0
2. Differentiate between passenger and freight road transport	+	+	+	0
3. Applying the general ceiling to all road transport	+	--	--	0

Comparing the differentiated approach to the baseline scenario the situation would only change for road passenger transport where a higher ceiling would apply. This would still enable to prevent competition distortions as statistical evidence has shown that a lower ceiling no longer seems necessary for undertakings in road passenger transport. The rules would also be simplified and administrative burdens reduced for the latter sector. Legal certainty would also be ensured by applying the same rules for SGEI and the general *de minimis* Regulation.

In the third option it could not be ensured that the important objective to prevent competition distortions can be attained. As statistical evidence has shown that the sector of road freight transport is still characterised by the very small average size of undertakings a higher *de minimis* ceiling bears considerable risks for distortions on competition and trade. Although this option would entail simplifications for this sector and reduce administrative burden it would not ensure legal certainty because, as a result of the risk of distortions in that sector, the legal presumption that all *de minimis* measures have no effect on trade and competition would be at risk.

In conclusion the second option is preferred, as it means that the ceiling for road passenger transport can be aligned with the general ceiling to meet the simplification objective as there is no longer a reason to deviate from the general ceiling in this sector. This option further allows maintaining the lower ceiling for freight transport which is still characterised by the very small average size of undertakings.

6.2. Further clarifications and simplifications of the rules in different provisions

Further options are envisaged regarding the other simplification and clarification issues.

Table 9: Notion of undertaking

Options	Simplification	legal certainty	Prevention of distortions	Ensuring compliance
1. No policy change	0	0	0	0
2. Replace ‘undertaking’ by ‘legal entity’	++	--	--	-
3. Clarification and simplification	++	+	++	++

Using only the legal entity definition would be very easy to apply, but would be neither legally possible nor economically justified. It would allow very high amounts to be made available to groups with many subsidiaries, thereby creating significant distortions of competition. It would be in direct conflict with the case law of the CJEU.

Simplification, legal certainty and better compliance can be ensured by using a simplified definition based on the main criteria of the existing definition of linked enterprises in the SME communication. Comparing the option of introducing this clarification and simplification with the baseline scenario, this option would increase legal certainty and therefore reduce administrative burden. It could also ensure better compliance with the rules and therefore also have a very positive effect on the objective of preventing distortions of competition and trade. In conclusion this option is therefore preferred.

Table 10: Exclusion of ‘undertakings in difficulty’

Options	Simplification	legal certainty	Prevention of distortions	Ensuring compliance
1. No policy change	0	0	0	0
2. Clarification and simplification	+	+	+	+
3. Remove the exclusion	++	+/-	-	+

It still seems necessary to exclude undertakings in difficulty as aid to such undertakings shall be granted in accordance with the R&R Guidelines. Furthermore, the safe harbours are calculated for undertakings not in difficulty. Clarification and simplification can be best achieved by using only the ‘hard’ criteria of the current definition, as in the current General Block Exemption Regulation because these are easy to apply. By clarifying and simplifying these rules this option would also reduce administrative burdens and ensure better compliance. This option would therefore create legal certainty while continuing to have regard to preventing distortions of competition.

The third option could introduce further simplifications. It however could no longer ensure prevention of competition distortions as it might help to keep artificially alive undertakings which are economically not viable, possibly even subject to insolvency proceedings, and this without a rescue or restructuring plan. As regards the impact on legal certainty, on the one hand the simplification may increase legal certainty, on the other hand there is a negative impact as a result of the inconsistency with other State aid instruments, including the SGEI *de minimis* Regulation, which differentiate between aid to firms in difficulty and to other undertakings. The possible impact on ensuring compliance would be positive as a result of the simplification.

In conclusion the second option is preferred concerning undertakings in difficulty.

Table 11: cumulation rules

Options	Simplification	legal certainty	Prevention of distortions	Ensuring compliance
1. No policy change	0	0	0	0
2. Clarification and simplification	+	+	+/-	+
3. Free cumulation	++	+	-	-

In comparison to the baseline scenario further clarification would simplify the rules and may therefore increase legal certainty and also reduce administrative burdens. This would also have a positive impact on the objectives of ensuring compliance and preventing distortions of competition since clearer and simpler rules can be better applied.

The third option could introduce further simplification and thereby may further reduce administrative burdens and increase legal certainty. However it would entail some risks as regards the prevention of competition distortions as it may lead to circumvention of other aid intensities or aid amounts fixed in other State aid instruments. Therefore it would not contribute to the objective of ensuring compliance with the State aid rules.

The preferred option is to introduce further clarification while retaining the principles of the cumulation rule to limit the risk of other State aid instruments being circumvented.

Table 12: Provisions on transparent aid

Options	Simplification	legal certainty	Prevention of distortions	Ensuring compliance
1. No policy change	0	0	0	0
2. Adapt the rules for loans and guarantees	+	+	+	+
3. Widen the range of aid instruments	-	-	-	-

The option to adapt the rules for loans and guarantees would certainly introduce further simplifications in comparison to the baseline scenario as a new safe harbour would be introduced. This may reduce administrative burdens and ensure legal certainty while also ensuring compliance. As the safe harbour rules are based on the gross grant equivalent, prevention of competition distortions can be ensured.

The third option does not seem well adapted to a *de minimis* Regulation which should only contain straightforward rules which are easy to apply. Covering more complex instruments would require the definition of very specific rules or calculation methods, or additional conditions, that are more difficult to apply. Therefore this option would have a negative effect as regards the objectives of simplification and legal certainty. Given the difficulties in determining the grant equivalent of more complex aid instruments, there is also a potential negative impact on the objectives of preventing distortions of competition and ensuring compliance.

In conclusion the second option is preferred. It will mainly involve introducing a safe harbour for loans, while maintaining and clarifying that for guarantees.

6.3. Enhancing compliance through monitoring

Finally, three options were discussed as regards monitoring:

Table 13: Monitoring

Options	Simplification	legal certainty	Prevention of distortions	Ensuring compliance
1. No policy change	0	0	0	0
2. Current system but stricter systematic monitoring and enforcement	--	0	+	+
3. Mandatory <i>de minimis</i> register	--	++	++	++

Comparing the second option with the baseline scenario it would not introduce simplifications but create an additional administrative burden for MS without a central register since they would have to collect data from all granting authorities in order to provide the Commission with adequate data for monitoring. Regarding legal certainty the impact can be considered neutral.

A mandatory *de minimis* register could ensure better compliance with the rules and therefore have a positive effect as regards legal certainty and preventing competition distortions. It would however entail a significant administrative burden during the set-up of the register. Once the register is set up administrative checks could be simplified, but a certain cost of maintenance and training would remain. Furthermore, practical problems to identify linked undertakings through the register and changes in the structure of group companies would remain and may still require a system of individual declarations by undertakings in order to ensure the correct application of the rule. Because of these considerable administrative burdens and complexities, the objective of simplification would not be reached. In view of the concerns and comments from MS, and in particular the concerns on proportionality of this burden for *de minimis* aid, it is considered more prudent and justified to study the feasibility and practical implementing modalities more in detail before imposing such a mechanism.

Considering the high administrative burden of a central register and a reporting obligation, the preferred option is 'no policy change' concerning monitoring.

7. MONITORING AND EVALUATION

Currently for *de minimis* aid, MS are only obliged to record and compile all information relating to *de minimis* aid and need not send reports to the Commission. These records, which are to be kept for ten years, enable them to send information to the Commission on request.

Monitoring and evaluation have been covered in this impact assessment and options have been considered for improving the relevant provisions in the new Regulation. However, on balance it is preferred that the monitoring system not be changed at this stage, mainly for reasons of proportionality, in view of the considerable administrative burden this would entail for very small amounts of aid.

Rather, it is suggested that monitoring within the current system be enhanced by more detailed checks where reference is made to the *de minimis* Regulation in cases or where there are doubts.

The Commission publishes important data on State aid in its yearly "Scoreboard" on State aid. *De minimis* aid is not included in the scoreboard as no reporting obligation applies.

The *de minimis* Regulation will apply for a period of 7 years (2014-2020). A study will be carried out during the Regulation's period of application (2014-20) to prepare the ground for the next policy review. The study is intended to include data and analysis on the feasibility of, and practical modalities, introducing a mandatory register at MS or EU level for the next policy review. It could also look at further data collection, in particular for MS without a central register. A detailed evaluation of the rules will be started about two years before the end of its application. It is envisaged that the evaluation will begin with a public consultation based on a detailed questionnaire to receive data and information on the application of the various rules of this Regulation.

8. CONCLUSION

In conclusion, on the basis of its impact assessment, the Commission would prefer the option to maintain the current ceiling, except in the case of road passenger transport where the general ceiling would apply. It would favour the option to maintain the current monitoring system which foresees a choice between a central register and a system of declarations. In addition the Commission favours the option of introducing further simplifications and clarifications concerning the notion of undertaking and 'undertakings in difficulty' as well as further clarifying the cumulation rules. Concerning the transparent aid instruments it favours the adaptation of the rules for loans and guarantees so as *inter alia* to introduce an additional safe harbour for loans.

9. ANNEXES

1. List of Abbreviations
2. Glossary of key terms
3. Chronology of the project
4. Summary of first public consultation on the basis of a questionnaire
5. Summary of the public consultation on the first draft of the *de minimis* Regulation
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8. Average amount per undertaking
9. Dimension of recipients (SME, LE)
10. Type of aid
11. NACE code of aid
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14. Road transport enterprises 2008-2010
15. Road passenger transport Enterprises pre 2008
16. Definitions of undertaking in difficulty

ANNEX 1 - LIST OF ABBREVIATIONS

Art.	Article
CJEU	Court of Justice of the European Union
DG	Directorate General
DG COMP	Directorate General for Competition
EC	European Commission (Commission)
EIF	European Investment Fund
EU	European Union
Fn.	footnote
GBER	General Block Exemption Regulation
IA	Impact Assessment
IASG	Impact Assessment Steering Group
LE	Large Enterprise
MS	Member State of the European Union
na	not applicable
nF	No figure
OECD	Organisation for Economic Co-operation and Development
p.	page
PA	Public Authority
para	paragraph
PermRep	Permanent Representation
Q	Question
rec.	recital
SAM	State Aid Modernisation
SGEI	Services of General Economic Interest
SME	Small and Medium Sized Enterprise

TEU	Treaty on the European Union
TF	Temporary Framework
TFEU	Treaty on the Functioning of the European Union

List of Member States

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LV	Latvia
LU	Luxembourg
MT	Malta
NL	The Netherlands
PL	Poland
PT	Portugal

RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom

ANNEX 2 - GLOSSARY OF KEY TERMS

Aid (State aid): measure fulfilling the criteria laid down in Article 107(1) of the TFEU

Aid beneficiary: undertaking that receives State aid

Aid measure: aid scheme or individual aid

Aid scheme: act on the basis of which, without further implementing measures, individual aid may be granted to certain companies defined in the act in a general and abstract manner

Ad-hoc guarantees: individual guarantees not awarded on the basis of an aid scheme

De minimis ceiling: amount up to which a measure is deemed not to meet all the criteria laid down in Article 107(1) of the Treaty and is therefore not subject to the notification procedure.

500k measure: within the Temporary Framework grant of EUR 500 000 per undertaking to cover investments and/or working capital over a period of two years

Gross grant equivalent: For aid measures which are not grants the gross grant equivalent has to be calculated on the basis of safe harbours or the reference rate communication.

Individual aid/ individual measures: aid granted to a given company on the basis of an aid scheme or as ad hoc aid

Notification threshold: aid amount above which the individual aid must be notified to the Commission

Operating aid: aid intended to reduce a company's current expenditure

Reference rate communication: Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p.6)

R&R Guidelines: Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2)

Safe harbours: Provisions simplifying the calculation of the gross grant equivalent for loans and guarantees in the draft *de minimis* Regulation.

SAM: State aid modernisation: Communication adopted on 8 May 2012 setting out the objectives of an ambitious reform of State aid control, which aims at contributing to the broader EU agenda to foster growth. In this context, State aid policy should focus on facilitating well-designed aid targeted at market failures and objectives of common European interest. The Commission also aims at focusing its enforcement on cases with the biggest impact on the internal market, as well as at streamlining rules and taking faster decisions.

Scheme: act on the basis of which, without further implementing measures, individual aid may be granted to certain companies defined in the act in a general and abstract manner

Scoreboard: Yearly publication by DG COMP on State Aid data

Structural Funds: in 2007-2013: European Regional Development Fund (ERDF) and European Social Fund (ESF)

SME: small and medium enterprises: enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million, or an annual balance sheet total not exceeding EUR 43 million

Transparent aid: Aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without need to undertake a risk assessment"

TF: Temporary Framework: Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 16, 22.1.2009, p. 1 and OJ C 6, 11.1.2011, p.5)

ANNEX 3. CHRONOLOGY OF THE PROJECT

	Preparation of proposal for revised Regulation	Impact Assessment (IA)
2012		
July 2012		26 July: Launch of public consultation on questionnaire (12 weeks)
Aug 2012		Public consultation on-going
Sept 2012		Public consultation on-going 11.Sept.: First IA Steering group (IASG) meeting
Oct 2012		18 Oct: End of public consultation
Nov 2012		22 Nov.: Options paper discussed in IASG
Dec 2012	NCOM on proposed changes to the Regulation	
2013		
Jan 2013	Meeting with VP Almunia First draft for 1 st Advisory Committee (AC)	
Feb 2013	20 Feb.: Launch ISC on first draft	
March 2013	5 March: End of first ISC Translation 20 March: Invitations for 1 st AC sent 20 March: launch of consultation on web-site on first draft	
April 2013	Consultation on-going	First draft of IAR
May 2013	15 May: End of consultation 23 May: 1st AC meeting ¹⁰⁰ Internal report on AC meeting and comments from stakeholders	29 May: IASG meeting on first draft
June 2013	20 June: Launch ISC on 2 nd draft Translation	
July 2013	4 July: end of ISC 17 July: Adoption of draft by College and invitations for 2nd AC sent 17 July: launch of consultation on web-site on 2 nd draft Transmission of draft to EP, EESC,	

¹⁰⁰

Written submissions received after the first AC have also been taken into account.

	CoR	
Aug 2013	8 Aug.: Publication of draft in OJ On-going consultation on 2 nd draft	Finalize IA report
Sept 2013	9 Sept.: end of consultation 20. Sept.: 2nd AC meeting	
Oct 2013	Internal report on Advisory Committee meeting, comments from stakeholders and final proposals for text	Final meeting of IASG 7 October Submission of IA Report to IA Board on 8 October
Nov 2013	Final ISC Translation	8 Nov.: Positive IA Board opinion in written procedure 11 Nov. Launch of final ISC. 21 Nov.: End of final ISC
Dec 2013	Adoption for 10 Dec. Publication in OJ Expiration of current <i>de minimis</i> Regulation (31 Dec) / Entry into force of new Regulation (1 Jan. 2014)	

SAM: REFORM OF *DE MINIMIS* REGULATION

Please find below a summary of the replies to the public consultation received. We have received:

- **24** replies with the views of **16 Member States** (AT, BG, CY, CZ, DE, EL, ES, ET, FI, FR, HU, LT, LV, PT, PL, SV). Please note that some Member States sent several replies from different ministries (see [Annex 1](#))
- **47 replies** from other public authorities (**10** Regions, **23** local authorities) and **14** other granting bodies (see [Annex 2](#));
- **30 replies** from other stakeholders: **6** non-profit organisations and NGOs, **4** confederation of enterprises, **4** associations of producers, **3** individuals, **2** companies, **2** associations of banks and financial institutions, **1** local partnership of enterprises, **1** European network for cooperation and development of mountain areas, **1** business organisation at EU level, **1** association of consumers, **1** bank, **1** research foundation, **1** chamber of commerce, **1** association of municipal undertakings, and **1** trade union (see [Annex 3](#)).

I. PRELIMINARY REMARKS

In general, all the respondents agree on the positive effects of the support granted under the *de minimis* Regulation, with specific reference to positive effects on SMEs (in particular, access to finance). The *de minimis* Regulation is easy to apply, it is very flexible, quick and efficient, and entails low administrative burden. The majority of the answers also underline the essential role played by this instrument during the recent economic and financial crisis, combined with the temporary measure introduced with the Temporary Framework. Almost everyone agrees that *de minimis* Regulation has not led, in practice, to effects on competition and/or trade between Member States¹⁰¹.

II. QUANTITATIVE AND QUALITATIVE DATA

Some information on *de minimis* aid granted since the entry into force of the Regulation in 2007 has been provided. We also received data from four of the Member States which have set up a central register for *de minimis* aid (CY, CZ, LT and SL).

¹⁰¹ Only the **Confederation of Danish Industries** highlights the high risk of *de minimis* having a negative impact on competition because of the lack of transparency (also underlined by the **Confederation of Swedish enterprises**) and the fact that *de minimis* is not limited to clearly identified market failures: in particular, distortion of competition may occur in sectors with overcapacity

Data provided by some of the Member States with a central register

Cyprus kept a central register until 2009¹⁰², and granted *de minimis* aid of around 18-26 mil/EUR in total in the period 2007/2009. Czech Republic introduced a central register in 2010 and since then granted 805 mil/EUR. In Slovenia, the total amount of aid varied between 24,7 and 84,5 mil/EUR per year, and in Lithuania varied between 27 mil and 101 mil/EUR per year (with the peak in 2009). The average amount per undertaking is largely below 50.000 EUR in all the three countries and less than 5% of the beneficiaries normally receive more than 100.000 EUR. In all three countries, grants are the preferred instrument, but also loans and State guarantees (increasing percentage of guarantees can be seen in Lithuania - up to 25%).

No information on the no. of beneficiaries is available from both CY and LT, whereas in Slovenia the no of beneficiaries doubled in 2009 (from 5.000 to 10.000), and on average 94% of them are micro enterprises).

We also received data on the total amount of *de minimis* aid spent for certain countries which are in the process of introducing a central register (Estonia: on average EUR 14 million/year; Poland: on average EUR 667 million/year) or have a central register which has only approximate data due to problems in the system (Bulgaria: on average EUR 75 million/year and Hungary: on average EUR €68 million/year). The average amount per undertaking is largely below 50.000 EUR.

Other Member States and granting authorities

Until now, we do not have data on the total amount of aid granted in one of the Member States without a central register. However, we have estimates from some Regions which granted *de minimis* aid from 5 to 15 mil/EUR per year.¹⁰³ In general, the average amount per undertaking is largely below 50.000 EUR, and in the majority of cases it is below 10.000 EUR. Some authorities grant higher amount per undertaking (close to 100.000) to a very little no. of undertakings (Auvergne, Boulonnais). Grants are largely the preferred instrument, but also loans and guarantees are mentioned.

On average, small and micro enterprises appear to be the main beneficiaries of *de minimis* aid (percentages normally above 90%: in quite a few cases, micro enterprises percentages are close to 90%), whereas the number of large undertakings receiving *de minimis* aid is much lower.¹⁰⁴

The main objectives pursued by granting authorities appear to be regional and economic development, employment and support to SMEs, but also environment, energy and innovation.

In the absence of the *de minimis* Regulation, the preferred choice of the granting authorities would be, in general, to redesign the measure in order to comply with the GBER. Notification is less preferred as too burdensome (France, in particular defines it as a pure hypothetical alternative). However, the majority of the respondents points out that the GBER is not a real alternative, being too complicated and not flexible enough (in particular, Germany).

¹⁰² The central register has been replaced by a system of declaration: the main problem with the register was the difficulty to design a system based on "undertakings" considering the difficulty to update it in case of modifications to the structure of the beneficiaries.

¹⁰³ Provincia Autonoma di Trento (IT), Region Midi-Pyrénées (FR), Enterprise Ireland (EI), Regione Umbria (IT) in increasing order. In Andalucia, the sole Agencia de Innovacion y Desarrollo granted on average 15 mil EUR per year

¹⁰⁴ It has, of course, to be taken into account that the number of small and micro-enterprises is also much higher than the number of large enterprises.

Almost all submissions agree that there are no significant regional differences as regards the use of the *de minimis* Regulation within the territory of one granting authority. Nobody was able to report any negative effects of *de minimis* aid even if some stakeholders suggest this may be due to the lack of transparency and available data.

III. THE CEILING

Member States

Some Member States (CZ, DE, FR, PT, one Ministry in ES and one Ministry in LT) suggest an increase of the ceiling to 500.000 EUR, while the other Member States which replied to the consultation consider the provision on the ceiling clear and adequate. SV and DK, IT and NL¹⁰⁵ oppose an increase of the ceiling.

Germany and Finland also suggest the use of calendar years instead of fiscal years and Germany proposes to increase the ceiling also for SGEI *de minimis* to 800.000 EUR¹⁰⁶. Finally, Germany suggests to reduce the period from 3 to 2 years, which has the result of an additional increase.

Other granting bodies

The majority of the public authorities and other granting bodies are in favour of an increase of the ceiling to 500.000 EUR. Some concerns on the possible distortive effect are raised by Regione Umbria (IT), which also proposes to set additional national caps. One Polish authority suggests setting a lower ceiling.

Other Stakeholders

Many stakeholders are in favour of an increase of the ceiling to 500.000 EUR (even higher amounts are suggested for non-profit organisations, mountain areas, islands and outermost regions). On the other hand, Business Europe and two Confederations of enterprises (FI and SV) strongly oppose any increase of the ceiling and one bank expresses concerns (Intesa Sanpaolo). One stakeholder suggests having different ceilings according to the size of the company (VLAB).

Finally, the EESC affirmed in a recent opinion that it will support an increase of the ceiling¹⁰⁷.

IV. OTHER ISSUES

- many stakeholders request a clarification of the **notion of undertaking** especially as regards groups of undertakings and in case of mergers and acquisitions (CY, CZ, FI, PL, PT and SV). This uncertainty may indicate potential non-compliance with the rules on the ceiling;

- **cumulation**: (i) many stakeholders, including one Member State (DE), suggest that *de minimis* aid should be freely cumulated with State aid (as it is non-aid) and underline the considerable administrative burden deriving from cumulation rules; (ii) many stakeholders note that cumulation rules should be clarified

¹⁰⁵ The three latter clearly stated this in the High Level Meeting with Member States on SAM on 9 Nov 2012.

¹⁰⁶ The same view is shared by other German authorities and private stakeholders

¹⁰⁷ European Economic and Social Committee, INT/647, 5 November 2012, "*Opinion of the Section for the Single Market, Production and Consumption on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU State Aid Modernisation (SAM) COM(2012) 209 final*"

- ceiling for the **road transport sector**: we received a fewer number of replies on this point and of various content: some respondents suggest to better define the concept of "road transport" (AT, CZ, FI) and/or to remove the specific threshold (in particular, DE and PT) at least for outermost Regions (Conférence des Présidents des Régions Ultrapériphériques, Madeira, Outer Hebrides of Scotland);

- provision on the **exclusion from the scope of application** (Article 1): many stakeholders request to clarify the scope of the exclusion, especially in the areas of agriculture and fisheries, as regards "undertaking in difficulty" (in particular DE, FI, LV, PL and SV), and as regards aid to export, and well as the request to delete certain of the exclusions;

- distinction between **transparent and non-transparent** aid: in general, it is considered clear and adequate. However, Finland and a considerable number of German stakeholders highlight that the distinction between guarantees based on schemes and ad-hoc guarantees is not justified. Others note that the rules are too complicated or suggest including other forms of financing (in particular, DE).

- **monitoring**: in general, the consultation confirms that a system of declarations is used much more widely than a central register (only 4 Member States explain their central register and CY abandoned it in 2009 – see footnote 2). However, Poland is gradually introducing a central register for all State aid that will be ready in 2014 and also Estonia is in the process of establishing a central register. Bulgaria has a central register which works together with a system of declaration due to technical problems in keeping the database constantly up to date. Moreover, three Regions highlight the inadequacy of the current system of declaration and two of them (Provincia Autonoma di Trento – IT and Conseil régional d'Auvergne – FR) are planning to introduce a central register for their area of competence. Moreover, both authorities and stakeholders find difficulties in applying the provisions on monitoring (e.g. the requirement to keep records for 10 years is too onerous, the absence of a central database, the burden is shifted to the recipient who often does not have the necessary legal and technical resources to ensure compliance).

VI. CONCLUSIONS

The public consultation showed that stakeholders in general consider the *de minimis* Regulation a very successful instrument, but also highlights the necessity for technical improvements. In general, the data shows that *de minimis* measures granted are mostly rather small in amount and go to a very high percentage to SME. Some Member States and many stakeholders are in favour of an increase to 500.000 EUR, but other Member States and some stakeholders also consider the current ceiling adequate or expressly oppose an increase.

ANNEX 5 - SUMMARY OF THE REPLIES TO THE SECOND PUBLIC CONSULTATION ON THE FIRST DRAFT OF THE REGULATION (MARCH TO MAY 2013)

Please find below a summary of the replies to the public consultation. We have received (see Annex):

- **20 replies** from Member States (AT, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LV, NL, PL, PT, SE, SK and UK).

- **32 replies** from other public authorities (the EIF, the Norwegian Government, **2** submissions from national SME Envoys (one from 3, the other from one MS); **2** association of regions, **12** regional governments, **9** associations involving several local authorities, **2** local authorities, **1** community development agency, **1** joint technical secretariat of a transnational programme involving eight Member States and the Ukraine and **1** education council (BE)).

- **79 replies** from other stakeholders: 11 chambers of trade and associations of enterprises across industries (including one with focus on SMEs), 48 sector-specific organisations and manufacturers (representing the following industries: 4 energy, 4 transport, 2 airport, 1 waterways, 1 car manufacturing, 31 footwear and leather goods, 2 life style and horology, 2 farmers, 1 forest owners), 1 association for workers and consumers, 5 NGOs for social economy, volunteering and workers with disabilities, 5 association of banks and financial institutions, 1 regional development agency, 1 representation of remote regions, 1 research agency, 1 educational institution, 1 platform for European Territorial Cooperation (ETC) projects, 2 consulting firms and 2 individuals.

I. PRELIMINARY REMARKS

In general, all the respondents agree on the positive effects of the support granted under the *de minimis* Regulation, with specific reference to positive effects on SMEs (in particular, access to finance). The *de minimis* Regulation is easy to apply, it is very flexible, quick and efficient, and entails low administrative burden. The majority of the answers also underline the essential role played by this instrument during the recent economic and financial crisis, combined with the temporary measure introduced with the Temporary Framework.

II. THE GENERAL CEILING

Member States

The feedback of the Member States is mixed. Some Member States advocate for an increase of the ceiling to EUR 500.000 (CZ, DE, EL, ES, FR, HU, SK) or at least to EUR 300.000 or 400.000 (IE, LT, PT), a differentiation of ceilings in favour of outermost regions (PT) or an increase to take account of inflation and changes to GDP (LV). One MS (AT) is of the opinion that without an increase the review of the Regulation is of no use and counsels for a simple prolongation. Others consider the ceiling of EUR 200.000 adequate (DK, FI, IT, PL, SE, UK). Two Member States did not comment in their submissions on the ceiling (EE, NL).

Other public authorities

The majority of other public authorities are clearly in favour of an increase of the ceiling. Most of them propose EUR 500.000 or EUR 600.000 (AT, BE, DE, ES, FI, FR, HU, IT, SI, UK) and others proposes an increase taking into account inflation or at least to EUR 300.000 (AT, BE, DE, ES, IT, UK, EIF). Some of them advocate for a higher ceiling especially when certain conditions are met (e.g. assisted or remote regions, social enterprises, ETC projects); one proposes a progressive increase to adapt the amount to inflation until

2020. Norway agrees with the Commission's initial assessment that, at the current stage, it does not appear to be justified to raise the ceiling, however appreciates that the Commission analyses this question further. Only two public authorities – Junta de Andalucía (ES) and Liverpool City Region (UK) – welcome the unaltered ceiling of EUR 200.000. This shows that **sometimes opinions differ even among public authorities of the same Member State.**

Other Stakeholders

The majority of other stakeholders are clearly in favour of an increase of the ceiling but some also express concerns. Most stakeholders propose EUR 500.000 or more (BE, AT, DE, FR, IT, PT, SK, UK), two of them – the European Network for Social Enterprises (BE) and Eurotempus (FR) – even consider EUR 1 million to be the appropriate ceiling. An additional number propose an increase taking into account inflation or at least to EUR 300.000 (AT, BE, CZ, DE, UK). Some point out that for specific types of aid or under certain conditions a higher ceiling is essential (e.g. environmental aid, safeguarding of jobs, undertakings in assisted regions or regions with severe and permanent handicaps, aid for R&D&I). Two NGOs – the European Network for Social Enterprises (BE) and Workability Europe (BE) – propose a ceiling relative to the number of workers of the undertaking to encourage job creation. **Among the stakeholders that advocate against a higher ceiling, there are three chambers of trade and associations of enterprises across industries – BusinessEurope (BE), Confindustria (IT) and the Confederation of Danish Industry (DK) – as well as one association of banks (IT) and one individual (PL).**

II. THE REGISTER and the reporting obligation

Member States

The feedback of the Member States is mixed. Some Member States are explicitly opposing a central register (AT, DE, DK, ES, FR, HU, IE, NL, SE, UK), while others have a register, support the introduction of one or showed openness subject to the clarification of technical questions (CZ, EE, EL, IT, LT, LV, PL, PT, SK, FI). Two of the latter would prefer a European register and propose an integration into the SARI database for State Aid reporting (LV, IT). Also one of the MS opposed to a national register would favour a European one (UK). **Many of the Member States which are against a central register are also strongly opposing the new obligation to report to the Commission on a yearly basis** (AT, DE, EE, ES, FR, HU, NL, SE).

Other public authorities

The majority of other public authorities are strongly opposing a central register or expressing at least deepest concerns about their administrative autonomy, among them Norway, regional governments (BE, ES, FI, FR) and large organisations bundling feedback from municipalities such as the Bundesvereinigung der Kommunalen Spitzenverbände (DE) or the Local Government Association (UK). Several public authorities from Austria highlight the difficulties with respect to the monitoring and reporting of ETC projects, among them INTERACT Point Vienna and the Joint Technical Secretariat of the Central Europe Transnational Programme. Public authorities from Italy – including the Conferenza delle regioni e delle province autonome – propose a European register, also addressing the specific situation of ETC projects in this context. One UK authority – the Wakefield Council – welcomes a central register, even though most UK authorities are against it.

Other Stakeholders

The feedback of other stakeholders is mixed, some of them – like BusinessEurope (BE) – are unsure whether or not the increase in transparency outweighs the additional administrative burdens. Some opinions mirror those of the respective Member States, e.g. when the Associazione Bancaria Italiana (IT) proposes a European register, but often they do not coincide, e.g. statements from Austria, Germany and Belgium cover a whole range of different positions with some major chambers of trade and associations of enterprises across industries – like the Wirtschaftskammer Österreich (AT) and the Bundesverband der Deutschen Industrie (DE) – welcoming the Commission proposal. Some stakeholders request open access to data, while others point out the importance of data protection.

IV. OTHER ISSUES

- Exclusion of undertakings in difficulty:

A clear majority of stakeholders welcome the simplification by introducing hard criteria for the definition of firms in difficulty – among them Member States (DE, EE, EL, HU, LT, LV), public authorities (UK) and some trade and banking organisations such as the Deutsche Industrie- und Handelskammertag (DE), Confindustria (IT) and the European Association of Public Banks (BE). Only two Member States (ES, FR) and one consulting firm (PL) wish to include soft criteria as well. Some Member States (DE, LV, PL), public authorities (IT) and stakeholders (BE, DE) propose not to consider start-ups within the first three years as undertakings in difficulty, in particular not if they cannot be subject to insolvency procedures according to national law. One Member State (PT), two public authorities (IT) and the Bundesarbeitskammer (AT) request a temporary or partly suspension or deletion to help undertakings in difficulty.

- Scope:

Several Member States (DE, PL), public authorities (UK) and stakeholders (BE, DE, UK) request to limit the application of state aid and the *de minimis* regulation, most of them **propose to allow measures up to a certain ceiling without any preconditions ("minimum *de minimis*" or "trivial aid")**, some propose exemptions for micro and small enterprises or local services. In addition, several Member States (HU, IT, FI, PL, PT), public authorities (ES, FR) and stakeholders (AT, BE, DE, PT) ask to **clarify the exemptions for aid towards export-related activities and/or aid contingent upon the use of domestic over imported goods**; some question whether these provisions are still adequate in times of internationalisation, an internal market and/or economic crisis. Further comments were made on agricultural and fishery products and the difficulties concerning the separation of accounts.

- Road transport sector:

Many advocates for an increase of the general ceiling also suggest an increase of the ceiling for road transport accordingly. One Member State (PL), one representation of remote regions (FR), one chamber of commerce (CZ), one association of financial institutions (BE) and several stakeholders from the transport sector (BE, DE, ES, PL) request to apply the general ceiling to the road transport sector, some highlight the importance for outermost regions (PT), others the discrimination between road and passenger transport. One Member State (IT) and several stakeholders – among them transport and car manufacturing associations (BE, CZ, IT, PL) – propose to allow the acquisition of vehicles to promote investments into higher environmental and security standards. One stakeholder – the Bundesarbeitskammer (federal chamber of employment - AT) – requests to abolish aid to the road transport sector completely.

- General conditions:

Several Member States (FR, PL), public authorities (IT, FR) and stakeholders (AT, DE) **propose to clarify fiscal years or refer to calendar years instead.**

Some Member States (CZ, HU, SK) request an exception or clarification in Article 3(7) for small amounts in excess of EUR 200 000 (e.g. 5%) due to not foreseeable reason (e.g. change in the currency conversion rate).

- Definition of undertaking and provisions on mergers and acquisition:

Several Member States (CZ, PT, EE, EL, FR, IT, LT, LV, PL, PT), public authorities (BE, IT, PL) and stakeholders (AT, BE, DE, DK, IT) – among them many trade and banking organisations such as BusinessEurope (BE) and the European Association of Public Banks (BE) – **request clarification of the definition of undertaking or point out difficulties with its application in practice.** Many of them highlight the fact that a register can only be effective if company structures and changes are recorded well. Some Member States (DE, CZ, FR), public authorities (BE, FR, IT) and stakeholders (AT, BE, DE) also **criticise the provisions on mergers and acquisition** because they may lead to recovery claims, increase administrative burden or discourage take-overs of profitable product segments in case of insolvency. Other Member States (AT, EE, HU, LT, LV, SK) request clarifications. Some Member States (HU, IT, LV, PL, PT), public authorities (FR, IT) and stakeholders (BE, DE, DK, IT) also **criticise the multiplication of amounts when an undertaking is split into two or more undertakings.**

- Transparent forms of aid:

Several Member States (DE, CZ, FR), public authorities (DE, FR) and stakeholders (AT, BE, DE, IT) – among them many trade and banking organisations such as the Deutsche Industrie- und Handelskammertag (DE) and the European Association of Public Banks (BE) – **propose to redefine and/or include mezzanine financing, capital injections and/or risk finance to better reflect market realities.**

- Loans and guarantees:

The majority of stakeholders welcome the safe-harbour provisions for loans and guarantees but **the majority of them also criticize the limitation of the duration to five years** in light of the importance of long-term financing, among them seven Member States (AT, CZ, DE, ES, HU, LT, LV), some public authorities (BE, EIF) and many trade and banking organisations. Many advocates for an increase of the general ceiling also suggest an increase in the safe-harbour provisions for loans and guarantees accordingly. Further comments were made regarding the calculation of the gross grant equivalent and distinction between guarantees based on schemes and ad-hoc guarantees.

- Cumulation:

Several stakeholders – including one Member State (DE), one public authority (ES) and several trade and banking organisations (BE, DE, IT) – suggest that ***de minimis* aid should be freely cumulated with state aid** as it is no State aid.

- Transitional provisions:

One Member State (DE) proposes to include transitional provisions until 2015 to facilitate the continuation of ESF, EFRE and ELER programmes; one other Member State (HU) requests a transitional period of 9 months.

VI. CONCLUSIONS

The public consultation shows that stakeholders in general consider the *de minimis* Regulation a very successful instrument. The feedback of Member States on the two most important Commission proposals – the maintenance of the general ceiling and the introduction of a central register – is mixed. The majority of other public authorities advocate for a higher ceiling and against a central register under consideration of the administrative burdens. Most other stakeholders are clearly in favour of an increase of the general ceiling but some trade organisations such as BusinessEurope (BE), Confindustria (IT) and the Confederation of Danish Industry (DK) welcome the current amount in fear of distortive effects on competition. With respect to the central register, the other stakeholders seem to be divided on the question whether or not an increase in transparency justifies efforts and costs taking into account the low amount of *de minimis* aid.

ANNEX 6 - SUMMARY OF THE REPLIES TO THE PUBLIC CONSULTATION ON THE SECOND DRAFT OF THE REGULATION (JULY TO SEPTEMBER 2013)

Please find below a summary of the replies to the public consultation. We have received 68 replies from the following stakeholders:

- **23 replies** from Member States (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, HU, HR, IT, LT, LV, MT, PL, PT, SE, SI, SK, UK);

- **7 replies** from other public authorities (Vlaamse Overheid, the French Association of Regions, Bundesvereinigung der kommunale Spitzenverbände, Europabüro der Bayerischen Kommunen, Generalitat de Catalunya, the Provincial Government of Åland and Service Public de Wallonie);

- **38 replies** from other stakeholders (ANITA/ANFIA, The National Trust, Highlands and Islands Enterprise, UEAPME, Business Angels Europe, BusinessEurope, VÖB/Bundesverband Öffentlicher Banken Deutschland, Impresa LAB s.r.l., The Confederation of Danish Industry, European Road Haulers Association, META Group, ARAMIS, Confindustria, APCMA/Assemblée Permanente des Chambres de Métiers et de l'Artisanat, AGFW, Staatssteun, NCVO/National Council for Voluntary Organisations Championing Volunteering and Civil Society, Network of European Financial Institutions for SMEs, ENSIE, Nysingh, VDB/ Verband Deutscher Bürgschaftsbanken, BDI/Bundesverband der Deutschen Industrie, BGL/ Bundesverband Güterkraftverkehr Logistik und Entsorgung, ZDH/Zentralverband des Deutschen Handwerks, WKO/Wirtschaftskammer Österreich, FGW/Fachverband der Gas- und Wärmeversorgungsunternehmen, AECM/European Association of Mutual Guarantee Societies, Creditreform Rating Agentur, Deutscher Industrie- und Handelskammertag, Slovene Enterprise Fund, ANFAC/Asociación Española de Fabricantes de Automóviles y Camiones, Western Pomerania, SKEE/Hellenic Clothing Industry Association, The Polish Organisation for Employers of Disabled People, Deutsche Kreditwirtschaft, DBV/ Deutscher Bauernverband, Business Europe).

I. PRELIMINARY REMARKS

In general, the majority of the respondents regret that their comments to the public consultation on the first draft of the *de minimis* Regulation have not been taken into account. Although they do acknowledge the efforts which have been made since the first publication, they nevertheless feel that the second draft further complicates the granting of *de minimis* aid and that it runs counter the objectives of simplifying and clarifying State aid. This particularly holds true for the introduction of the central register and the newly introduced criteria for the definition of an undertaking in difficulty.

II. THE GENERAL CEILING

Member States

The feedback of the Member States is mixed. A few Member States advocate for an increase of the ceiling to EUR 500.000 (EE, FR, HU, MT) or at least to EUR 300.000 (AT, BE), others are in favour of raising the ceiling without mentioning a specific amount (DE, NL). Of these, four Member States (AT, DE, EE, NL) argued raising the ceiling to at least take into account inflation. Four Member States (DK, FI, SE, UK) support the EUR 200.000

ceiling as it is proposed in the second draft, while four Member States (BG, CY, HR, IT, LT, PL, CZ) do not mention the ceiling at all.

Other public authorities

The feedback of other public authorities covers the whole range of arguments. The Provincial Government of Åland, Europabüro der Bayerischen Kommunen and Bundesvereinigung der kommunale Spitzenverbände advocate for increasing the ceiling to EUR 500.000, Vlaamse Overheid disagrees with the proposed ceiling as well, however without mentioning a specific **amount**, **Generalitat de Catalunya suggests increasing the ceiling to EUR 300.000**, while Service Public de Wallonie supports to maintain the current threshold of EUR 200.000.

Other Stakeholders

The majority of stakeholders are clearly in favour of increasing the ceiling but some also express concerns. Four stakeholders propose an increase to EUR 300.000-350.000 (VÖB, Business Angels Europe, META Group, DBV) and further 9 stakeholders – of which the majority is German - propose an increase to EUR 500.000 (APCMA, NCVO, VDB, BDKS, ZDH, WKO, FGW, Slovene Enterprise Fund, AECM). Another – the National Trust (UK) even suggests EUR 1 million to be the appropriate ceiling for not-for-profit organisations. Five stakeholders strongly recommend increasing the ceiling without mentioning a specific amount (ANFAC, UEAPME, Polish Organisation for Employers of Disabled People, Deutscher Industrie- und Handelskammertag, Deutsche Kreditwirtschaft). Of the above, 10 stakeholders argued to raise the ceiling to at least take into account inflation (Business Angels Europe, UEAPME, Confindustria, VDB, WKO, Slovene Enterprise Fund, AECM, Industrie- und Handelskammertag, DBV, Deutsche Kreditwirtschaft, Business Europe). Some others point out that for specific types of aid or under certain conditions a higher ceiling is essential (e.g. AGFW: aid targeted at energy efficiency technologies such as DHC and CHP or Highlands and Islands Enterprises: for social enterprises with a remit for local community development). One other stakeholder (ENSIE) suggests that the amount of *de minimis* aid should be proportional to the size of the company with EUR 200.000 as a minimum and EUR 1 million as a maximum. Lastly, three stakeholders (ANITA, Confindustria, the Confederation of Danish Industry, ARAMIS) agree with the proposed ceiling of EUR 200.000. Finally, Business Europe appreciates that threshold applies per MS, however, there remains a risk of 'aid-shopping', i.e. companies may receive up EUR 200.000 from each MS.

II. THE REGISTER and the reporting obligation

Member States

The majority of the Member States which have replied are explicitly opposed to the introduction a central register (AT, BE, CY, DE, DK, ES, FR, HU, LT, MT, NL, SE, UK). Two of these (CY, UK) express concerns on how such a register would operate in practice (e.g. definition and structure of an undertaking, tax confidentiality issues). One Member State (DK) argues that it should be left to the Member State to decide whether to introduce a register and two Member States consider the current system of beneficiary declarations as sufficient (DK, SE). Two Member States would prefer a European register (FR, IT). EE, who has a register commented concerning the definition of undertaking, that when the undertaking is giving all the relevant information itself there will be no need for a state aid register any more, as it will be impossible to include all relevant information in one register. Two Member States (HR, PL) have not commented on this issue. One other Member State (SK) suggests adding specific information to the register. CZ has already established a central register but the proposed changes regarding the concept of single undertaking will damage the monitoring function of the register. Three Member States (FI, LV, PT) however, support the introduction of a central register. **Many of the Member States which are against a central register are equally strongly opposed to the new obligation to report to the Commission on a yearly basis** (AT, BE, BG, DE, EE, SE).

Other public authorities

The other public authorities all express their opposition against a central register or at least their deepest concerns about their administrative autonomy (Vlaamse Overheid, the Provincial Government of Åland, Service Public de Wallonie, Europabüro der Bayerischen Kommunen, Bundesvereinigung der kommunale Spitzenverbände, Generalitat de Catalunya).

Other Stakeholders

The feedback of other stakeholders is fairly mixed, however the majority is opposed the introduction of a central register. Ten stakeholders (VÖB, APCMA, Staatssteun, NCVO, VDB, BDKS, ZDH, AECM, DBV, Deutsche Kreditwirtschaft) are explicitly against the introduction of a central register. Whereas six stakeholders (Business Angels Europe, UEAPME, META Group, ARAMIS, Confindustria, BGL and Business Europe) support the introduction of a central register as it ensures transparency, allows monitoring, reduces the administrative burden for SMEs and increases legal certainty for both providers as beneficiaries of *de minimis* aid. Another stakeholder (ENSIE) acknowledges the objective of effective monitoring, however expresses concerns on the increase of red tape and excessive costs for enterprises and national authorities. One stakeholder (Confederation of Danish Industry) notes that Member States should be free to decide whether they want to introduce a register and three stakeholders consider the current declaration system as sufficient (VDB, ZDH, Deutsche Kreditwirtschaft). Two stakeholders request further clarification on how the register would operate in practice (Staatssteun, Deutscher Industrie- und Handelskammertag), while another stakeholder (ARAMIS) expresses concerns on publishing the data of the register. Lastly, one stakeholder suggests introducing a uniform register across the EU (Western Pomerania).

III. DEFINITION OF "a single undertaking"

Member States

All the MS express concerns on the definition of "single undertaking". The application of this provision would be very complicated and would create excessive administrative burden (IT). Bulgarian Ministry for Finance (BG) and CZ suggest to define clearer criteria as concerning *de minimis* aid rules for "linked undertaking", in particular for groups of undertakings with head offices in different MS. Besides, EE voices the concern that it does not possess all of the data requested at point (d)(ii-iv).

Other public authorities

Association des Regions de France (FR) **requests to specify the definition of undertaking**, while for Vlaamse Overheid (BE) the definition is too strict: it will make impossible to grant undertakings aid which are connected to another undertaking solely on paper, while in practice there is no influence on each other's policy. Europabüro der Bayerischen Kommunen mentions that it could be difficult to assess undertakings which are legally independent but economically dependent.

Other Stakeholders

Aside from the Confederation of Danish Industry (DK), and Business Europe (BE) (that appreciate the introduction of clear criteria to establish when entities should be considered as a single undertaking, since makes the regulation more workable in practice) all the other stakeholders request a modification of the definition of "undertaking". The Polish Organisation for Employers of Disabled People (PL) and Hellenic Clothing Industry Association (SKEE) (EL) would welcome a simplification, since this notion is too strict and would increase the administrative burden for both the donors and the beneficiaries. Besides, the aid is essentially awarded by local government bodies which have difficulty interpreting EU and national legislation on this subject. For ARAMIS (FR), the implementation of this Article may result to be too difficult, especially for parts of a group of enterprises within different Member States. For the Network of European Financial Institutions for SMEs the main issue of "single undertaking" approach is its feasibility because of the change of links among entities. European Association of Mutual Guarantee Societies (BE) highlights that the difference among "undertaking" and "entity" is not clear. For Staatssteun (NL), an undertaking should be considered single, regardless of the form of organisation, and the entities which are affiliated are classified as having direct or indirect dominant influence as determined by the criteria of 'associated company' as is included in the SME communication.

IV. DEFINITION OF 'an undertaking in difficulty'

Member States

All Member States do not support the definition of "undertaking in difficulty". All of them reject criteria (iv)-(vi), as they are considered disproportionate and impractical. CY, DE, FR, HU and MT highlight that the application of the criteria with no distinction among undertakings may be discriminatory for SMEs: with those criteria many SMEs (35% of SME in Germany) will be considered in difficulty. For this reason AT, DE and FR suggest to use only the criteria of the current R&R Guidelines or the GBER. IT proposes to derogate the exclusion of State aid to undertaking in difficulties due to the financial crisis.

Other public authorities

For Vlaamse Overheid (BE) and Association des Regions de France (FR) the criteria (iv)-(vi) are too strict. For Association des Regions de France (FR) the definition is not aligned with the one of the Commission Communication n°2004/C 244/02 of the 1 October 2004, while for Vlaamse Overheid (BE) this notion should be defined in another instrument.

Other Stakeholders

Most of the stakeholders do not see any simplification provided by the new definition and do not support criteria (iv)-(vi). They are considered too restrictive and unsuitable for determining whether an undertaking is in difficulty (e.g.: a debt ratio of more than 7.5 does not say much about whether an undertaking can meet its financial obligations.) UEAPME (BE), Highlands and Islands Enterprise (UK), VDB (DE), European Association of Mutual Guarantee Societies (BE), Creditreform Rating Agentur (DE), Deutscher Industrie- und Handelskammertag (DE), Deutsche Kreditwirtschaft (DE) strongly advocate dropping hard numerical indicators, since LEs are more likely to fulfil such indicators than SME (in Germany 35% of SMEs would be considered in difficulty). It is suggested to only consider criteria (i)-(iii). For The Confederation of Danish Industry (DK), Confindustria (IT), Staatssteun (NL), Network of European Financial Institutions for SMEs (BE), BGL/Bundesverband Güterkraftverkehr Logistik und Entsorgung (DE), Deutscher Industrie- und Handelskammertag (DE) and Business Europe (BE) the *de minimis* Regulation is not the right document to define the notion: they suggest using the definition reported in R&R Guidelines. Nysingh (NL) does not see the rationale behind the idea that aid to undertakings in difficulty should be deemed to affect interstate trade and the same amount of aid to an undertaking not in difficulty would not.

V. OTHER ISSUES

Provision on mergers and acquisitions

Some Member States (BE, DE, EE) and other stakeholders (VÖB, DBV) **criticise the provision on mergers and acquisition under Art. 3(8)** because it may lead to recovery of claims, a significant increase of the administrative burden or discourage take-overs of profitable product segments in case of insolvency and suggest deleting this provision, as it is hardly possible to carry out in practice. Other Member States (DE, EE, IT) and stakeholders (ARAMIS, Confindustria, WKO, FGW, Deutscher Industrie- und Handelskammertag, DBV, Deutsche Kreditwirtschaft) also criticise the multiplication of amounts when an undertaking is split into two or more undertakings and would welcome adding that aid lawfully granted before the merger or acquisition is not questioned or suggest deleting this provision entirely.

Loans and guarantees

The majority of stakeholders express concerns on the proposed duration limit and collateral covering. Four Member States (BE, DE, HU, NL), three other public authorities (Vlaamse Overheid, Service Public de Wallonie, Europabüro der Bayerischen Kommunen) and a further 13 stakeholders (UEAPME, APCMA, Network of European Financial Institutions for SMEs, NCVO, VDB, BDI, BDKS, ZDH, Slovene Enterprise Fund, AECM, Deutscher Industrie- und Handelskammertag, Deutsche Kreditwirtschaft and Business Europe) are explicitly opposed to the duration limit of 5-10 years. They consider it too short and suggest abolishing this limit. HU and MT suggest increasing the threshold of loans and guarantees. Two Member States (DE, EE) and five stakeholders (VÖB, Network of European Financial Institutions for SMEs, NCVO, Nysingh, DBV) do not support the requirement that a loan should be secured by collateral covering of at least 50% and suggest deleting this

requirement. One Member State (BE) requests clarification on this provision. One Member State (DE) and 3 stakeholders (VÖB, Deutscher Industrie- und Handelskammertag, DBV) suggest that subordinate loans should also be considered transparent and therefore be included in the scope. One Member State (DE) and three stakeholders (Staatssteun, Network of European Financial Institutions for SMEs, NCVO) request clarification on the calculation of the gross grant equivalent. While another Member State (BE), three other public authorities (Vlaamse Overheid, Service Public de Wallonie, Europabüro der Bayerischen Kommunen) and two stakeholders (Network of European Financial Institutions for SMEs, AECM) suggest keeping the current calculation percentage of 13.33% as the newly proposed method is too complicated. Further comments were made regarding the distinction between transparent and non-transparent aid as two stakeholders (VDB, BDKS) regret to see this distinction still being maintained.

Cumulation

The majority of stakeholders do not support the current cumulation method, since it leads to complicated calculations and requires a lot of information from the beneficiaries which might be difficult to obtain. Two Member States (DE, EE) wish to see the cumulation requirements of *de minimis* aid with other exempted aid repealed, in particular on the basis of GBER. They do not see any justification on cumulating all *de minimis* aid granted to one company acting in different sectors and verifying this information will significantly increase administrative burden. Other Member States and public authorities have not commented on this issue. Nine stakeholders agree with this line of reasoning (VÖB, NCVO, VDB, ZDH, AECM, Deutscher Industrie- und Handelskammertag, DBV, Deutsche Kreditwirtschaft, Confindustria) and suggest eliminating this provision.

ANNEX 7

Total amount of *de minimis* aid from those MS and Public Authorities which responded to the consultation on a questionnaire in 2012

		Total amount of aid							
MS	Authority	years/amount	yearly average	2007	2008	2009	2010	2011	
<u>With central register</u>									
CY (until 2009)	National State Aid Authority	2007/2009	€69,102,894	€23,034,298	€23,271,395	€18,867,532	€26,963,967 (until 29/10/2009)	/	/
	Ministry of Education and Culture	2009/2012	€3,781,960			/			€579,162
	Human Resources Development Authority	2007/2012	€3,620,202			€679,528			€948,800
	Research Promotion Foundation	2010/2012	€145,587			/			€27,290
CZ (from 2010)	Office for the Protection of Competition	Jan 2010-Sept 2012	€805,000,000		/	/	/	/	/
EE	Ministry of Finance (coordination of SA issues)	2007/2011	€70,340,000	€14,068,000	€9,950,000	€12,450,000	€16,270,000	€14,220,000	€17,450,000
	Enterprise Estonia (50% of <i>de minimis</i> aid in Estonia)	2008/2011			/				
LT	Lithuanian Agency for Support in Competition and State Aid	2007/2011	973,408,912 LTL / €281,918,707	€1,603,532,176	€23,116,049	€27,377,036	€101,137,478	€56,222,701	€74,065,444
	Ministry of Agriculture:								

MS	Authority	years/amount		yearly average	2007	2008	2009	2010	2011
	1) 'Support for the encouragement of the production, popularisation and sale of quality agricultural and food products'	2008/2011	LTL 946,400 / €274,096			LTL 667,800 / €193,408			LTL 48,300 / €13,988
	2) 'Financing of national heritage activities'	2009/2012	LTL 895,200 / €259,267						
	National Paying Agency under the Ministry of Agriculture	2007/2011	65,440,186.45 LTL / € 18,952,788			2,990,575.00 LTL / € 866,130			32,206,632.3 7 LTL / € 9,327,685
	Agricultural Loan Guarantee Fund	2007/2011	LTL 2,794,400 / €809,314						
	Visaginas Municipal Administration	2007/2011	€133,123						
	Vilnius District Municipality	2007/2012	below €50.000 per year						
	Vilnius City Municipality Administration	2007/2012	LTL 1,579,000 / €457,310			LTL 455,000 / €131,777			LTL 253,000 / €73,273
PL	Office of Competition and Consumer Protection (142 authorities)	2007/2011	€ 3,336,200,000	€670,000,000	€260,000,000	€330,000,000	€770,000,000	€1,160,000,000	€830,000,000
PT	Register Report	2008/2012	€ 1,916,472,922	€394,220,092	€68,288,864	€1,036,702,249.88 (2008+2009)		€659,796,767	€206,312,579
	Região Autónoma da Madeira	2007/2012	€44,000,000						

MS	Authority	years/amount		yearly average	2007	2008	2009	2010	2011
	1) Investment (incentive schemes and credit lines)		€11,000,000 and €1,000,000						
	2) Vocational Training		€2,000,000						
	3) Employment		€10,000,000						
SI	Ministry of Finance	2007/2011	€252,579,407	€50,507,037	€24,798,502	€28,646,331	€84,534,445.8 2	€61,815,591	€52,740,314

**With central
register +
declarations**

BG	Republic of Bulgaria	2008/2012	688,253,000 BGN/ € 351,506,068	€63,169,642	/	106,444,000 BGN / € 54,365,419	40,846,000 BGN / € 20,879,900	97095000 BGN / € 49,633,500	250,240,000 BGN / € 127,799,749
HU	State Aid Monitoring Office	2007/2012	€376,671,996	€35,328,030	€853,772	€14,973,159	€35,996,975	€40,658,652	€84,157,591
SK*	no data available								

**Without
central
register**

LV									
	Ministry for Agriculture	2007/2011	LVL 2,914,000 / €1,183,091			LVL 702,000 / €1,007,839			LVL 673,000 / €966,205

MS	Authority	years/amount		yearly average	2007	2008	2009	2010	2011
	Ministry of Education and Science	2011/2012	LVL 2,519,348.73 / €3,616,672						
	Ministry of Welfare (3 aid measures: info on 2 of them)	2008/2012	LVL 6,956,031.36 / €9,989,168			LVL 67,800 / €97,371			LVL 2,453,775.35 / €3,523,967
	1)	2010/2012							
	2)	2008/2012							
DE	Permanent Representation	no data because of federal structure							
FR	Permanent Representation	no data							
	Communauté d'Agglomération du Boulonnais (once to only one beneficiary)	2007/2012	€ 60,000						
	Conseil régional d'Auvergne (only 5 beneficiaries)	2007/2012	€493,928						
	Région Midi-Pyrénées	2007/2011	€21,303,554			€581,000			€9,268,000
FI	Ministry of Employment and Economy	2007/2011	€ 1,000,035,465	€ 200,007,093	€32,535,081	€ 197,508,429	€ 245,635,833	€ 284,507,559	€ 239,848,563
	(under the Temporary Framework: few authorities only used this measure instead of the <i>de minimis</i> Regulation)	2009/2010	€124,372,732						

MS	Authority	years/amount		yearly average	2007	2008	2009	2010	2011
SV	Please note: since there is no central register, the information presented below is not exhaustive, but it does cover the majority of <i>de minimis</i> aid								
	Ministry of Industry (data from various authorities, especially Tillväxtverket)								
	A1) Product development in small companies (since 2005)	2007/2011	335,000,000 SEK / €39,044,530			73,400,000 SEK / €8,555,740			88,700,000 SEK / €10,339,428
	A2) Program to support competitiveness of suppliers in the automotive sector (since 2006)	2007/2011	101,000,000 SEK / €11,769,437			21,000,000 SEK / €2,446,933			27,500,000 SEK / €3,204,313
	A3) Support SMEs in environmentally driven markets	2009/2010	40,100,000 SEK / €4,672,597						
	A4) Increase growth and innovation of small companies in the health care sector	2011	18,200,000 SEK / €2,120,787						18,200,000 SEK / €2,120,787
	A5) Promote sustainable regional growth	2007/2011	1,167,000,000 SEK / €135,982,569			267,500,000 SEK / €31,168,990			209,600,000 SEK / €24,421,098
	B) Support for start-ups	2007/2011	2,038,000,000 SEK / €237,428,560			317,000,000 SEK / €36,928,111			398,000,000 SEK / €46,350,648

MS	Authority	years/amount		yearly average	2007	2008	2009	2010	2011
	C) Statens jordbruksverk (?)	2006/2011	7,600,000 SEK (5,000,000 in 2006) / €885,155			400,000 SEK / €46,586			400,000 SEK / €46,586
	D) Forestry	2011	2,100,000 SEK / €244,549						
	E) Almi (?) - 3,500 loans per year	/	2,000,000,000 SEK / €232,884,873 per year						
	F) Culture: translations into/from Swedish (150 beneficiaries per year)	2010/2011	18,000,000 SEK / €2,095,181						
	G) Film institute	2011/2012	13,300,000 SEK / €1,548,384						
	H) Swedish Innovation agency	2011	54,000,000 SEK / €6,286,793						
	I) Swedish ESF Council	training projects: no data							
IT									
	Regione Umbria	2008/2011	€46,785,024						
	Provincia Autonoma di Trento *								
	A) Agriculture								
	A1) Agriturismo	2007/2011	€3,180,779			€930,453			€2,840,346

MS	Authority	years/amount		yearly average	2007	2008	2009	2010	2011
	A2) Photovoltaic and biogas	2010/2011	€3,238,652			/			€2,078,267
	A3) Land improvement	2008/2011	€2,294,663			€410,110			€562,513
	A4) Natural disasters	2011	€238,791			/			€238,791
	A5) Bioproducts	2007/2012	€312,264			€51,734			€55,223
	A6) Wine and taste	2011/2012	€295,120			/			€ 144,885
	B) Employment agency	2007/2012	€1,400,417			€682,824			€4,718,062
BE									
	Waterwegen en Zeekanaal, W&Z								
	1) Support for low emission engines		€475,399			€ 424,597			
	2) Support for small ships		€ 812,198			€345,145			
	3) Support for AIS transponder		€778,740 + 837,540 still to be paid						
DK									
	Danish Transport Authority								
AT	Federal Ministry of Agriculture, Forestry, Environment and Water (AT)	2007/2011	€ 172,536,589						
	1) Business Agency of the City of Vienna;	2007/2011	€ 47,000,000						
	2) WAFF - Vienna Employment Promotion Fund (detail per programmes);	2007/2012	€20,547,703			€ 3,007,788			€3,747,056

MS	Authority	years/amount		yearly average	2007	2008	2009	2010	2011
	3) Office of the Government of Lower Austria, NE LR - Dept. economy, tourism and technology;								
	4) Office of the Government of Upper Austria, Upper Austria LR, Department of Environmental Protection;		€12,873,820						
EL									
	Ministry of Education & Religious Affairs		€5,000,000						
ES									
	Ministry of Industry, Energy and Tourism	2008/2011	€25,670,000						
	Generalitat de Catalunya:								
	1) Rural development	2009/2012	€5,591,164						
	2) Agriculture	2008/2012	€ 1,772,186						
	3) Food	2008/2011	€10,789,737						
	4) Industry	2008/2010	€7,505,579						
	Agencia de Innovación y Desarrollo de Andalucía	2007/2012	€71,238,603						
	Junta de Andalucía (<i>no data, suggest to see central register</i>)								
IR	Enterprise Ireland	2009/2011					€6,250,000	€6,250,000	€ 6,250,000

* = in the process of introducing a central register

** = in three-year period

ANNEX 8

Average amount per undertaking and average distribution per no of beneficiaries % from those MS and Public Authorities which responded to the consultation on a questionnaire in 2012

MS	Authority	No of beneficiaries (per year - average)	Average amount per undertaking (per year)						Average distribution per no of beneficiaries % (per year)			
		total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
<u>With</u> central register												
CY (until 2009)	National State Aid Authority	5,358	€13,220	€14,985	€9,097	€ 15,577 (until 29/10/2009)	/	/	69.0%	23,7%	5.0%	0,9%
	Ministry of Education and Culture	327	€ 39,305		/			€ 54,959				
	Human Resources Development Authority	1,184	€4,345		€2.740			€2.040	97.8%	2.4%	0.2%	0.1%
	Research Promotion Foundation	38	below €10,000									

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
CZ (from 2010)	Office for the Protection of Competition	68,944	€12,000		/			/	81.0%	11.0%	4.0%	4% (0.8% more than €190,000)
EE	Ministry of Finance (coordination of SA issues)	3,955		/	€3,029	€2,461	€8,361	€2,504				
	Enterprise Estonia (50% of <i>de minimis</i> aid in Estonia)		€4,088		€3,029			€2,504				
LT	Lithuanian Agency for Support in Competition and State Aid	43,541	22,276 LTL / €6,451	9,806 LTL / €2,830	11,538 LTL / €3,341	41,527 LTL / €11,985	25,876 LTL / €7,494	22,633 LTL / €6,555	87.7%	9.4%	1.8%	1.1%
	Ministry of Agriculture:											
	1) 'Support for the encouragement of the production, popularisation and sale of quality agricultural and food products'											

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
	2) 'Financing of national heritage activities'	446										
	National Paying Agency under the Ministry of Agriculture	17,818							97.0%	2.0%	0.5%	0.5%
	Agricultural Loan Guarantee Fund		LTL 26,900 / €7,791									
	Visaginas Municipal Administration	51										
	Vilnius District Municipality											
	Vilnius City Municipality Administration	254	LTL 7,600 / €2,201		LTL 5,000 / €1,448			LTL 8,000 / €2,317				
PL	Office of Competition and Consumer Protection (142 authorities)	619,000	€5,491		€4,653		€ 6,444	€6,258	/	/	/	/
PT	Register Report	20,935	€22,899						64.0%	27.0%	0.0%	3.4%

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
	Região Autónoma da Madeira		€29,000									
	1) Investment (incentive schemes and credit lines)		€ 56,000 and € 27,000									
	2) Vocational Training		€18,000									
	3) Employment		€15,000									
SI	Ministry of Finance	10,693							76.4%	5.4%	0.7%	0.5%
									91.6% **	6.7% **	1% **	0.7% **
With central register + declarations												
BG	Republic of Bulgaria	24860	24,000 BGN / €12,258	/	7,000 BGN / €3,576	9,000 BGN / €4,601	30,000 BGN / €15,336	31,000 BGN / €15,835	88.9%	6.2%	1.6%	3.3%
HU	State Aid Monitoring Office	14413	€20,003		€12,313			€27,060	35.0%	51.0%	11.0%	2.0%
SK*	no data available											

Without central register												
MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
LV												
	Ministry for Agriculture	408	between € 14,355 and €71,772									
	Ministry of Education and Science	22	LVL 221,764/ € 318,403 (in 2 years)						0.0%	31.8%	63.6%	4.5%
	Ministry of Welfare (3 aid measures: info on 2 of them)	779										
	1)		LVL 8,836 / €12,690					LVL 7,419 / €10,655				
	2)		LVL 3,884 / €5,579		LVL 4,520 / €6,492			LVL 3,182 / €4,571				
DE	Permanent Representation											

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
FR	Permanent Representation											
	Communauté d'Agglomération du Boulonnais (once to only one beneficiary)	1	€60,000								100.0%	
	Conseil Régional d'Auvergne (only 5 beneficiaries)	5	€98,785						0.0%	20.0%	40.0%	40.0%
	Région Midi-Pyrénées		€48,775		€42,720			€65,267				
FI	Ministry of Employment and Economy	€37574	€23,575	€29,206	€42,649	€19,923	€13,765	€12,330	82.0%	15.0%	2.0%	1.0%
	(under the Temporary Framework: few authorities only used this measure instead of the <i>de minimis</i> Regulation)		€4,860									

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
SV	Please note: since there is no central register, the information presented below is not exhaustive, but it does cover the majority of <i>de minimis</i> aid											
	A1) Product development in small companies (since 2005)		232,000 SEK / €27,043									
	A2) Program to support competitiveness of suppliers in the automotive sector (since 2006)		910,000 SEK / €106,036							x	x	x
	A3) Support SMEs in environmentally driven markets		35,000 SEK / €4,078									

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
	A4) Increase growth and innovation of small companies in the health care sector		105,000 SEK / €12,235						x	x		
	A5) Promote sustainable regional growth		/					150,000 SEK / € 17,477				
	B) Support for start-ups											
	C) Statens jordbruksverk (?)											
	D) Forestry		38,000 SEK / €4,425									
	E) Almi (?) - 3,500 loans per year		571,428.57 SEK / €66,537									
	F) Culture: translations into/from Swedish (150 beneficiaries per year)		€60,000						90.0%	10.0%		

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
	G) Film institute		360,000 SEK / €11,914									
	H) Swedish Innovation agency		380,000 SEK / €44,245									
	I) Swedish ESF Council											
IT												
	Regione Umbria		€35,000									
	Provincia autonoma di Trento *											
	A) Agriculture											
	A1) Agriturismo	126	€104,609		€ 103,384			€118,348				
	A2) Photovoltaic and biogas	71	€55,642		/			€86,594				
	A3) Land improvement	300	€ 7,633		€7,738			€8,789				
	A4) Natural disasters	5	€47,758		/			€47,758				
	A5) Bioproducts	193	€1,683		€ 1,990			€ 1,347				
	A6) Wine and taste	14	€ 21,080		/			€20,697				

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
	B) Employment agency	835	€13,653		€10,838				74.0%	21.9%	2.2%	1.9%
BE												
	Waterwegen en Zeekanaal, W&Z											
	1) Support for low emission engines								x	x		
	2) Support for small ships									x		
	3) Support for AIS transponder								x			
DK												
	Danish Transport Authority	6	max €10,000						x			
AT	Federal Ministry of Agriculture, Forestry, Environment and Water (AT)	12781	€13,499						63.0%	32.0%	3.0%	1.0%
	1) Business Agency of the City of Vienna;	2390	€19,665						8.0%	31.0%	27.0%	34.0%

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
	2) WAFF - Vienna Employment Promotion Fund (detail per programmes);		€ 7,927		€ 8,173			€ 7,206				
	3) Office of the Government of Lower Austria, NE LR - Dept. economy, tourism and technology;								94.5%	4.7%	0.5%	0.3%
	4) Office of the Government of Upper Austria, Upper Austria LR, Department of Environmental Protection;	2472	€5,208									
EL												
	Ministry of Education & Religious Affairs	50	€100,000									
ES												

MS	Authority	total	entire period	2007	2008	2009	2010	2011	below 10.000	10.000 / 50.000	50.000 / 100.000	100.000/ 200.000
	Ministry of Industry, Energy and Tourism											
	Generalitat de Catalunya:											
	1) Rural development		€40,287									
	2) Agriculture		€22,720						69%	17%	5%	9%
	3) Food		€ 62,010						14%	36%	22%	28%
	4) Industry		€ 63,569						76%	24%		
	Agencia de Innovación y Desarrollo de Andalucía		€ 10,227						85.1%	13.0%	0.4%	1.4%
	Junta de Andalucía (<i>no data, suggest to see central register</i>)											
IR	Enterprise Ireland	467						€12,833	51%	48%	1% (50.000-200.000)	

italics= approximate data

* = in the process of introducing a central register

** = in three-year period

ANNEX 9

Data on the dimension of the recipient undertaking from those MS and Public Authorities which responded to the consultation on a questionnaire in 2012

MS	Authority	% dimension of the recipients (based on amounts)			
		micro	small	medium	large
With central register					
CY (until 2009)	National State Aid Authority	/	/	/	/
	Ministry of Education and Culture				
	Human Resources Development Authority				
	Research Promotion Foundation				
CZ (from 2010)	Office for the Protection of Competition	/	/	/	/
EE	Ministry of Finance (coordination of SA issues)				
	Enterprise Estonia (50% of <i>de minimis</i> aid in Estonia)	55.1%	22.1%	16.4%	6.4%
LT	Lithuanian Agency for Support in Competition and State Aid	/	/	/	/
	Ministry of Agriculture	83% natural persons			
	National Paying Agency under the Ministry of Agriculture				
	Agricultural Loan Guarantee Fund	/	31%	69.2%	/
	Visaginas Municipal Administration				

MS	Authority	% dimension of the recipients (based on amounts)			
	Vilnius District Municipality	farmers and small businesses			
		micro	small	medium	large
	Vilnius City Municipality Administration		x		
PL	Office of Competition and Consumer Protection (142 authorities)	83.0%	11.0%	3.0%	4.0%
PT					
	Região Autónoma da Madeira	75.4%	19.3%	3.8%	1.5%
	1) Investment (incentive schemes and credit lines)	72.08% and 64.8%	18.8% and 29.6%	0% and 5.6%	9.1% and 0%
	2) Vocational Training	5.8%	29.6%	5.6%	0.4%
	3) Employment	93.5%	3.8%	2.2%	0.5%
SI	Ministry of Finance by measure	74.1%	9.8%	5.2%	3.6%
		93.8%	2.7%	1.1%	0.8%

With central register + declarations					
BG	Republic of Bulgaria	78.3%	14.5%	5.5%	1.7%
HU	State Aid Monitoring Office	60.0%	35.0%		2.0%
SK	no data available				

Without central register					
LV					
	Ministry for Agriculture				
	Ministry of Education and Science				
	Ministry of Welfare (3 aid measures: info on 2 of them)				

MS	Authority	% dimension of the recipients (based on amounts)			
		micro	small	medium	large
	2)				
DE	Permanent Representation				
FR	Permanent Representation				
	Communauté d'Agglomération du Boulonnais				100% (only one beneficiary)
	Conseil Régional d'Auvergne (only 5 beneficiaries)		80.0%		20.0%
	Région Midi-Pyrénées				
FI	Ministry of Employment and Economics (including Temporary Framework)	86.0%	10.0%	3.0%	1.0%
SV	Ministry of Industry				
	A1) Product development in small companies (since 2005)		mainly		
	A2) Program to support competitiveness of suppliers in the automotive sector (since 2006)				mainly
	A3) Support SMEs in environmentally driven markets		mainly		
	A4) Increase growth and innovation of small companies in the health care sector		mainly		
	A5) Promote sustainable regional growth				only if in combination with SMEs
	B) Support for start-ups	100.0%			
	C) Statens jordbruksverk				
	D) Forestry				

MS	Authority	% dimension of the recipients (based on amounts)			
		micro	small	medium	large
	E) Almi - 3,500 loans per year	86.0%	13.0%	1.0%	/
	F) Culture: translations into/from Swedish (150 beneficiaries per year)		mainly		
	G) Film institute				
	H) Swedish Innovation agency	81.0%	13.0%	6.0%	
	I) Swedish ESF Council				
IT					
	Regione Umbria	33.0%	32.5%	35.8%	
	Provincia Autonoma di Trento *				
	A) Agriculture:				
	A1) Agriturismo		x		
	A2) Photovoltaic and biogas		x	x	
	A3) Land improvement		x		
	A4) Natural disasters			x	
	A5) Bioproducts		x	x	
	A6) Wine and taste		x		
	B) Employment agency	76.4%	15.4%	6.0%	2.2%
BE					
	Waterwegen en Zeekanaal, W&Z				
DK					
	Danish Transport Authority (only 6 beneficiaries)		66.7%		33.3%
AT	Federal Ministry of Agriculture, Forestry, Environment and Water (AT)		71.0%	13.0%	14,5%
	1) Business Agency of the City of Vienna;	85.0%	12.5%	2.0%	0.5%

MS	Authority	% dimension of the recipients (based on amounts)			
		micro	small	medium	large
	2) WAFF - Vienna Employment Promotion Fund (detail per programmes);		x	x	
	3) Office of the Government of Lower Austria, NE LR - Dept. economy, tourism and technology;	91.4%	6.6%	1.1%	0.8%
	4) Office of the Government of Upper Austria, Upper Austria LR, Department of Environmental Protection;				
EL					
	Ministry of Education & Religious Affairs				
ES					
	Ministry of Industry, Energy and Tourism				
	Generalitat de Catalunya:				
	1) Rural development				
	2) Agriculture				
	3) Food				
	4) Industry				
	Agencia de Innovación y Desarrollo de Andalucía	99.2%		0.1%	0.7%
	Junta de Andalucía (no data, suggest to see central register)				

italics= approximate data

Type of *de minimis* aid granted from those MS and Public Authorities which responded to the consultation on a questionnaire in 2012

MS	Authority	Type of Aid	
		average per instrument (amount in EUR)	average per no of recipients
With central register			
CY (until 2009)	National State Aid Authority	/	
	Ministry of Education and Culture		
	Human Resources Development Authority		
	Research Promotion Foundation		
CZ (from 2010)	Office for the Protection of Competition	<u>Grants:</u> 87%; <u>Guarantees:</u> 4%; <u>Waived penalties:</u> less than 2% <u>Loans or</u> <u>credits:</u> very little use (0%)	<u>Grants:</u> 60%; <u>Guarantees:</u> 1,8%; <u>Waived penalties:</u> 27% of aid; <u>Loans or credits:</u> very little use (0%)
EE	Ministry of Finance (coordination of SA issues)	Grants: 90.73%; Guarantees: 7.62%	Grants: 96.45%; Guarantees: 2.91%
	Enterprise Estonia (50% of <i>de minimis</i> aid in Estonia)		
LT	Lithuanian Agency for Support in Competition and State Aid	Grants: 80%; Coverage of losses incurred as a result of providing a guarantee: 12%; tax deferrals: less than 1%	Grants: 70%; Tax deferrals: 16%
	Ministry of Agriculture		
	National Paying Agency under the Ministry of Agriculture	Grants	

MS	Authority	Type of Aid	
		average per instrument (amount in EUR)	average per no of recipients
	Agricultural Loan Guarantee Fund	Subsidy to compensate for a guarantee payment and part of the interest on credit for investment projects for the financing of which credit was granted before 1 May 2007 to economic operators investing in rural areas and for activities other than the primary production of agricultural products	
	Visaginas Municipal Administration	Grants (72%), interest-free loans (27%), irrecoverable financial support (6%), real estate tax advantage (5%)	
	Vilnius District Municipality	Tax exemption/reduction; 93%; tax deferrals: 0%; grants: 8%	
	Vilnius City Municipality Administration	Grants only	
PL	Office of Competition and Consumer Protection (142 authorities)	Grants: 83%; Tax grants 12% (?); Preferential loans: 2%	Grants: 76%; tax grants 12%; Preferential loans 9%;
PT			
	Região Autónoma da Madeira	1) incentive schemes (non-reimbursable grant and an interest-free reimbursable grant) and 2) credit lines for financing aid (loans with preferential interest rates and guarantee commissions)	
	1) Investment (incentive schemes and credit lines)		
	2) Vocational Training		
	3) Employment		
SI	Ministry of Finance by measure	<u>Grants:</u> 87.8%; <u>Guarantees:</u> 8.6%; Soft loans: 1.8%	<u>Grants:</u> 94%; <u>Guarantees:</u> 2.4%

With central register + declarations			
BG	Republic of Bulgaria	Grants, Soft loans, Guarantees, Rescheduling and Deferral of public debts, and Tax relief	
HU	State Aid monitoring office	mainly grants, (also loans and guarantees)	
SK	no data available		

<u>Without central register</u>			
MS	Authority	Type of Aid	
		average per instrument (amount in EUR)	average per no of recipients
LV			
	Ministry for Agriculture	Mainly Grants (also guarantees, loans and investments in share capital / risk capital investments).	
	Ministry of Education and Science		
	Ministry of Welfare (3 aid measures: info on 2 of them)		
	1)		
	2)		
DE	Permanent Representation	probably mostly grants, loans and guarantees	
FR	Permanent Representation		
	Communauté d'Agglomération du Boulonnais	one grant	
	Conseil Régional d'Auvergne (only 5 beneficiaries)	mainly subsidies: common instrument programme FEDER (instrument of financial engineering JEREMIE excluded)	
	Région Midi-Pyrénées		
FI	Ministry of Employment and Economics (including Temporary Framework)	Loans: 8.7%, Grants: 89.2%, guarantees and capital injections: less than 2%	
SV	Ministry of Industry		
	A1) Product development in small companies (since 2005)	Grants only	

MS	Authority	Type of Aid	
		average per instrument (amount in EUR)	average per no of recipients
	A2) Program to support competitiveness of suppliers in the automotive sector (since 2006)	Grants only	
	A3) Support SMEs in environmentally driven markets	Grants only	
	A4) Increase growth and innovation of small companies in the health care sector	Grants only	
	A5) Promote sustainable regional growth	Grants only	
	B) Support for start-ups	Grants only	
	C) Statens jordbruksverk (?)	Grants only	
	D) Forestry	Grants only	
	E) Almi (?) - 3,500 loans per year	Loans	
	F) Culture: translations into/from Swedish (150 beneficiaries per year)	Grants only	
	G) Film institute	Grants only	
	H) Swedish Innovation agency	Grants only	
	I) Swedish ESF Council	Grants only	
IT			
	Regione Umbria	Grants only	
	Provincia Autonoma di Trento *		
	A) Agriculture:		
	A1) Agriturismo		
	A2) Photovoltaic and biogas		
	A3) Land improvement		

MS	Authority	Type of Aid	
		average per instrument (amount in EUR)	average per no of recipients
	A4) Natural disasters		
	A5) Bioproducts		
	A6) Wine and taste		
	B) Employment agency	Grants only	
BE			
	Waterwegen Zeekanaal, W&Z en	Grants only	
DK			
	Danish Transport Authority (only 6 beneficiaries)	Grants only	
AT	Federal Ministry of Agriculture, Forestry, Environment and Water (AT)		
	1) Business Agency of the City of Vienna;	Grants only	
	2) WAFF - Vienna Employment Promotion Fund (detail per programmes);	Grants only	
	3) Office of the Government of Lower Austria, NE LR - Dept. economy, tourism and technology;		
	4) Office of the Government of Upper Austria, Upper Austria LR, Department of Environmental Protection;		
EL			
	Ministry of Education & Religious Affairs		
ES			
	Ministry of industry, energy and tourism		

MS	Authority	Type of Aid	
		average per instrument (amount in EUR)	average per no of recipients
	Generalitat de Catalunya:		
	1) Rural development	Grants	
	2) Agriculture	Grants	
	3) Food	Loans	
	4) Industry	Loans, grants and guarantees	
	Agencia de Innovación y Desarrollo de Andalucía	Grants, interest rate subsidies and loans	
	Junta de Andalucía (no data, suggest to see central register)		

italics= approximate data

Economic Sectors in which *de minimis* aid has been granted (NACE code) from those MS and Public Authorities which responded to the consultation on a questionnaire in 2012

MS	Authority	NACE
With central register		
CY (until 2009)	National State Aid Authority	/
	Ministry of Education and Culture	Film, music and literary events, individual or group exhibitions abroad, exhibitions and publications album art photography
	Human Resources Development Authority	Research
	Research Promotion Foundation	
CZ (from 2010)	Office for the Protection of Competition	A - Agriculture, forestry, fisheries C - Manufacturing industry E - Water supply; activities relating to sewerage, waste management and remediation F - Construction industry G - Wholesale and retail; repair and maintenance of motor vehicles H - Transport and storage I - Accommodation, catering and food service activities J - Information and communication L - Real estate activities M - Professional, scientific and technical activities N - Administrative and support service activities O - Public administration and defence, compulsory social security P – Education Q - Health and social care R - Arts, entertainment and recreation S - Other activities
EE	Ministry of Finance (coordination of SA issues)	
	Enterprise Estonia (50% of <i>de minimis</i> aid in Estonia)	Manufacturing (around 30%, of whom manufacture of fabricated metal products, except machinery and equipment 7%), professional, scientific and technical activities (12%), information and communication (9%), construction (8%)
LT	Lithuanian Agency for Support in Competition and State Aid	/

MS	Authority	NACE
	Ministry of Agriculture	The Rural Development Programme is designed for activities does not belong to the agriculture, forestry or fisheries sector
	National Paying Agency under the Ministry of Agriculture	Support to 'Beekeepers for additional feeding of bees' (97%) , Support for 'The payment of claims by the producers of primary agricultural products for primary agricultural products purchased for processing by bankrupt enterprises', encouragement of the production, popularisation and sale of quality agricultural and food products', business creation and development', 'Diversification into non-agricultural activities', forest infrastructure, Renewable energy sources, rural tourism activities
	Agricultural Loan Guarantee Fund	a. Sector A, NACE code 02.20 – logging; Sector C, NACE code 10 - processing of agricultural products; sector I, NACE code 55 – accommodation and food service activities; sector G, NACE code 45 – repair of motor vehicles.
	Visaginas Municipal Administration	
	Vilnius District Municipality	
	Vilnius City Municipality Administration	
PL	Office of Competition and Consumer Protection (142 authorities)	
PT		
	Região Autónoma da Madeira	Investment (Incentive schemes and credit lines), vocational training and employment. <u>SECTORS</u> : the majority in trade, services and tourism, but also construction, transport and industry. Very low environment, energy and health
	1) Investment (incentive schemes and credit lines)	<u>Incentive schemes</u> : Services 40%, Tourism 23%, Trade 21%; <u>Credit lines</u> : Trade 44%, Tourism 17%, Service 15%
	2) Vocational training	Tourism 33%, Trade 20%, Services 17%, Construction 15%

MS	Authority	NACE
	3) Employment	Trade:42%, Services 42%, Health 5%, Construction 4%
SI	Ministry of Finance	Various sectors (the highest amounts concern "crop and animal production", "construction activities", "motor vehicles")
	by measure	

With central register + declarations		
BG	Republic of Bulgaria	Almost all economic sectors
HU	State Aid Monitoring Office	
SK	no data available	
Without central register		
LV		
	Ministry for Agriculture	Services, rural tourism and cultural historical heritage
	Ministry of Education and Science	NACE code: 72 Scientific research and development
	Ministry of Welfare (3 aid measures: info on 2 of them)	
	1)	
	2)	
DE	Permanent Representation	All sectors
FR	Permanent Representation	
	Communauté d'Agglomération du Boulonnais	Manufacturing industry
	Conseil Régional d'Auvergne (only 5 beneficiaries)	Plastic, tourism, food farming

MS	Authority	NACE
	Région Midi-Pyrénées	Trade and crafts, creation of business, tourism and real estate
FI	Ministry of Employment and Economics (including Temporary Framework)	Very long list of different sectors
SV	Ministry of Industry	
	A1) Product development in small companies (since 2005)	
	A2) Program to support competitiveness of suppliers in the automotive sector (since 2006)	
	A3) Support SMEs in environmentally driven markets	
	A4) Increase growth and innovation of small companies in the health care sector	
	A5) Promote sustainable regional growth	
	B) Support for start-ups	
	C) Statens jordbruksverk (?)	
	D) Forestry	
	E) Almi (?) - 3,500 loans per year	
	F) Culture: translations into/from Swedish (150 beneficiaries per year)	
	G) Film institute	
	H) Swedish Innovation agency	
	I) Swedish ESF Council	

MS	Authority	NACE
IT		
	Regione Umbria	More than 70% of aid concerned undertakings in the sectors of commerce and industry, which received on average nearly 40.000 EUR per undertakings, then 13% concerned undertakings in the services sector (around 25.000 EUR per undertaking), 11% in handicraft (around 36.000 per undertaking), 3% social economy (around 11.000 EUR per undertaking), and 1% tourism (around 6.000 EUR per undertaking)
	Provincia Autonoma di Trento *	
	A) Agriculture:	
	A1) Agriturismo	Tourism in the countryside (A00112, A00121, A00122, A0013)
	A2) Photovoltaic and biogas	Photovoltaic and biomass (A01.6, A01.61, A01.62)
	A3) Land improvement	Consortia for the improvement of land (no NACE)
	A4) Natural disasters	Natural disasters (A01.25)
	A5) Bioproducts	Certified bio products (A01.21, A01.6, C10, C10.1, C10.3, C10.4, C10.5, C10.7, C11)
	A6) Wine and taste	Promotion of the territory (wine and taste associations)
	B) Employment agency	Agriculture, industry, commerce and buildings
BE		
	Waterwegen en Zeekanaal, W&Z	61.2 Transport inland waterways
DK		
	Danish Transport Authority (only 6 beneficiaries)	502020, 602200, 730000, 602410
AT	Federal Ministry of Agriculture, Forestry, Environment and Water (AT)	Hotel & restaurant (30%), manufacturing (19%), trade (11%), real estate (10%) but also construction, energy and water supplies, other services (below 10%)
	1) Business Agency of the City of Vienna;	

MS	Authority	NACE
	2) WAFF - Vienna Employment Promotion Fund (detail per programmes);	
	3) Office of the Government of Lower Austria, NE LR - Dept. economy, tourism and technology;	
	4) Office of the Government of Upper Austria, Upper Austria LR, Department of Environmental Protection;	Manufacturing (11.2%) and Services (88.8%)
EL		
	Ministry of Education & Religious Affairs	All sectors
ES		
	Ministry of Industry, Energy and Tourism	
	Generalitat de Catalunya:	Agri-food sector, Industrial activities, Automotive sector (cars, motorbikes and transport elements), distribution of goods and services to other sectors of the economy, knowledge-intensive business services, operational services and the management of production facilities, Activities relating to the sale, hire, maintenance and repair of machinery, transport equipment and other tangible goods
	1) Rural development	
	2) Agriculture	
	3) Food	
	4) Industry	
	Agencia de Innovación y Desarrollo de Andalucía	NACE categories M (professional and scientific activity) and C (manufactures) received above 10 mil/EUR, followed by G (Commerce) and J (Communication) between 5 and 10 mil/EUR; the lowest are B (extractions) and D (supply of electricity and gas) which received less than 60.000EUR
	Junta de Andalucía (no data, suggest to see central register)	

italics= approximate data

Annex 12

Real GDP growth rate - volume Percentage change on previous yearGDP and main components - volumes
[nama_gdp_k]

f - forecast

Last update 01.10.13

estimated for Latvia 2012

Extracted on 03.10.13

provisional for Croatia 2011 and 2012

Source of data Eurostat

UNIT Percentage change on previous period

INDIC_NA Gross domestic product at market prices

GEO/TIME	2005	2006	2007	2008	2009	2010	2011	2012	2013 f	2014 f
European Union (28 countries)	2.2	3.4	3.2	0.4	-4.5	2.1	1.6	-0.4	:	:
European Union (27 countries)	2.2	3.4	3.2	0.4	-4.5	2.1	1.6	-0.4	-0.1	1.4
Percentage Growth Rate		3.40%	3.20%	0.40%	-4.50%	2.10%	1.60%	-0.40%	-0.10%	1.40%
Volume		100.0	103.4000	106.7088	107.1356	102.3145	104.4631	106.1345	105.7100	
Multiplier		1.034	1.032	1.004	0.955	1.021	1.016	0.996	0.999	1.014
2006-2012	6.13%									
2006-2013 (f)	5.71%									
Belgium	1.8	2.7	2.9	1.0	-2.8	2.4	1.8	-0.1	0.0	1.2
Bulgaria	6.4	6.5	6.4	6.2	-5.5	0.4	1.8	0.8	0.9	1.7
Czech Republic	6.8	7.0	5.7	3.1	-4.5	2.5	1.9	-1.0	-0.4	1.6
Denmark	2.4	3.4	1.6	-0.8	-5.7	1.6	1.1	-0.4	0.7	1.7
Germany (until 1990 former territory of the	0.7	3.7	3.3	1.1	-5.1	4.2	3.0	0.7	0.4	1.8

FRG)										
Estonia	8.9	10.1	7.5	-4.2	-14.1	3.3	8.3	3.9	3.0	4.0
Ireland	5.9	5.4	5.4	-2.1	-5.5	-0.8	1.4	0.2	1.1	2.2
Greece	2.3	5.5	3.5	-0.2	-3.1	-4.9	-7.1	-6.4	-4.2	0.6
Spain	3.6	4.1	3.5	0.9	-3.7	-0.3	0.4	-1.6	-1.5	0.9
France	1.8	2.5	2.3	-0.1	-3.1	1.7	2.0	0.0	-0.1	1.1
Croatia	4.3	4.9	5.1	2.1	-6.9	-2.3	0.0	-2.0	-1.0	0.2
Italy	0.9	2.2	1.7	-1.2	-5.5	1.7	0.4	-2.4	-1.3	0.7
Cyprus	3.9	4.1	5.1	3.6	-1.9	1.3	0.5	-2.4	-8.7	-3.9
Latvia	10.1	11.2	9.6	-3.3	-17.7	-0.9	5.5	11.4	3.8	4.1
Lithuania	7.8	7.8	9.8	2.9	-14.8	1.5	5.9	3.7	3.1	3.6
Luxembourg	5.3	4.9	6.6	-0.7	-4.1	2.9	1.7	0.2	0.8	1.6
Hungary	4.0	3.9	0.1	0.9	-6.8	1.3	1.6	-1.7	0.2	1.4
Malta	3.6	2.6	4.1	3.9	-2.8	3.2	1.8	0.8	1.4	1.8
Netherlands	2.0	3.4	3.9	1.8	-3.7	1.5	0.9	-1.2	-0.8	0.9
Austria	2.4	3.7	3.7	1.4	-3.8	1.8	2.8	0.9	0.6	1.8
Poland	3.6	6.2	6.8	5.1	1.6	3.9	4.5	1.9	1.1	2.2
Portugal	0.8	1.4	2.4	0.0	-2.9	1.9	-1.6	-3.2	-2.3	0.6
Romania	4.2	7.9	6.3	7.3	-6.6	-1.1	2.2	0.7	1.6	2.2
Slovenia	4.0	5.8	7.0	3.4	-7.8	1.2	0.6	-2.5	-2.0	-0.1
Slovakia	6.7	8.3	10.5	5.8	-4.9	4.4	3.2	2.0	1.0	2.8
Finland	2.9	4.4	5.3	0.3	-8.5	3.4	2.7	-0.8	0.3	1.0
Sweden	3.2	4.3	3.3	-0.6	-5.0	6.6	3.7	1.0	1.5	2.5
United Kingdom	3.2	2.8	3.4	-0.8	-5.2	1.7	1.1	0.1	0.6	1.7

ANNEX 13

HICP (2005 = 100) - annual data (average index and rate of change) [prc_hicp_aind]

Last update

26/09/2013

Extracted on

03/10/2013

Source of data

Eurostat

INFOTYPE

Annual
index average

COICOP

All-items HICP

GEO/TIME	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
European Union (EU6-1972, EU9-1980, EU10-1985, EU12-1994, EU15-2004, EU25-2006, EU27-2013, EU28)	95.95	97.88	100.00	102.20	104.59	108.42	109.49	111.77	115.23	118.28
European Union (27 countries)	95.59	97.77	100.00	102.31	104.73	108.56	109.63	111.91	115.38	118.43
Euro area (EA11-2000, EA12-2006, EA13-2007, EA15-2008, EA16-2010, EA17)	95.81	97.86	100.00	102.18	104.36	107.78	108.09	109.84	112.83	115.64
Euro area (17 countries)	95.78	97.87	100.00	102.20	104.39	107.83	108.15	109.90	112.89	115.70
Belgium	95.75	97.53	100.00	102.33	104.19	108.87	108.86	111.40	115.14	118.16
Bulgaria	88.84	94.30	100.00	107.42	115.55	129.36	132.56	136.58	141.21	144.58
Czech Republic	96.00	98.40	100.00	102.10	105.10	111.70	112.40	113.70	116.20	120.30

GEO/TIME	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Denmark	97.50	98.30	100.00	101.80	103.50	107.30	108.40	110.80	113.80	116.50
Germany (until 1990 former territory of the FRG)	96.40	98.10	100.00	101.80	104.10	107.00	107.20	108.40	111.10	113.50
Estonia	93.22	96.05	100.00	104.45	111.49	123.31	123.56	126.95	133.40	139.02
Ireland	95.70	97.90	100.00	102.70	105.60	108.90	107.10	105.40	106.60	108.70
Greece	93.79	96.63	100.00	103.31	106.40	110.90	112.40	117.68	121.35	122.61
Spain	93.86	96.73	100.00	103.56	106.51	110.91	110.64	112.90	116.35	119.18
France	95.89	98.14	100.00	101.91	103.55	106.82	106.93	108.79	111.28	113.75
Croatia	95.06	97.09	100.00	103.29	106.04	112.19	114.68	115.93	118.49	122.46
Italy	95.70	97.80	100.00	102.20	104.30	108.00	108.80	110.60	113.80	117.50
Cyprus	96.18	98.00	100.00	102.25	104.46	109.03	109.22	112.02	115.93	119.52
Latvia	88.10	93.55	100.00	106.57	117.32	135.21	139.62	137.91	143.73	147.02
Lithuania	96.29	97.41	100.00	103.79	109.83	122.01	127.09	128.60	133.90	138.14
Luxembourg	93.36	96.37	100.00	102.96	105.69	110.01	110.02	113.10	117.32	120.72
Hungary	90.50	96.63	100.00	104.03	112.28	119.05	123.85	129.70	134.79	142.42
Malta	94.95	97.53	100.00	102.58	103.29	108.13	110.12	112.37	115.19	118.91
Netherlands	97.18	98.52	100.00	101.65	103.26	105.54	106.57	107.56	110.23	113.34
Austria	96.06	97.94	100.00	101.69	103.93	107.28	107.71	109.53	113.42	116.34
Poland	94.50	97.90	100.00	101.30	103.90	108.30	112.60	115.60	120.10	124.50
Portugal	95.52	97.92	100.00	103.04	105.54	108.34	107.36	108.85	112.72	115.85
Romania	81.94	91.68	100.00	106.60	111.84	120.69	127.43	135.17	143.04	147.88
Slovenia	94.16	97.60	100.00	102.54	106.39	112.28	113.25	115.62	118.03	121.35
Slovakia	90.52	97.28	100.00	104.26	106.23	110.41	111.43	112.21	116.79	121.16
Finland	99.10	99.24	100.00	101.28	102.88	106.91	108.66	110.49	114.16	117.77

GEO/TIME	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Sweden	98.18	99.18	100.00	101.50	103.20	106.65	108.72	110.80	112.31	113.36
United Kingdom	96.70	98.00	100.00	102.30	104.70	108.50	110.80	114.50	119.60	123.00
European Economic Area (EEA18-2004, EEA28- 2006, EEA30-2013, EEA31)	95.97	97.89	100.00	102.21	104.58	108.41	109.51	111.80	115.24	118.26

Harmonized Indices of Consumer Prices: The HICPs are economic indicators constructed to measure the changes over time in the prices of consumer goods and services acquired by households. The HICPs give comparable measures of inflation in the euro-zone, the EU, the European Economic Area and for other countries including accession and candidate countries. They are calculated according to a harmonised approach and a single set of definitions. They provide the official measure of consumer price inflation in the euro-zone for the purposes of monetary policy in the euro area and assessing inflation convergence as required under the Maastricht criteria.

ANNEX 14

ANNEX 14

Annual detailed enterprise statistics for services (NACE Rev.2 H-N and Annual detailed enterprise statistics for services (NACE Rev. Annual detailed enterprise statistics for services (NACE Rev.2 H-N and S95) [sbs_na_1a_se_r2]

Last update 07.01.13
Extracted on 07.01.13
Source of Data Eurostat

Last update 07.01.13
Extracted on 07.01.13
Source of Data Eurostat

Last update 07.01.13
Extracted on 07.01.13
Source of Data Eurostat

INDIC_SB **Number of enterprises**
NACE_R2 **H493 - Other passenger land transport**

GEO/TIME	2008	2009	2010
EU27	325,728	332,358	372,404
BE	2,259	:	:
BG	6,719	7,811	7,587
CZ	6,119	6,048	5,813
DK	3,724	3,527	3,382
DE	:	25,000	25,317
EE	293	320	367
IE	:	:	:
EL	:	34,787	:
ES	:	:	62,063
FR	37,599	36,686	38,033
IT	27,402	28,194	:
CY	1,455	1,520	1,222
LV	832	796	798
LT	1,202	1,159	1,044
LU	173	180	175
HU	9,291	9,077	8,950
NL	4,257	4,434	5,169
AT	4,948	4,983	5,174
PL	50,769	45,784	48,433
PT	11,600	11,317	11,524
RO	9,774	9,130	8,526
SI	1,018	1,061	1,079
SK	163	100	4,108
FI	9,490	9,538	9,409
SE	9,067	8,883	8,877
UK	12,873	12,027	11,600
NO	6,685	6,671	6,635
CH	:	1,046	1,028
HR	1,618	1,692	1,650
TR	:	242,418	:

INDIC_SB **Number of persons employed**
NACE_R2 **H493 - Other passenger land transport**

GEO/TIME	2008	2009	2010
EU27	21,379	19,411	19,734
BE	36,641	:	:
BG	35,793	37,441	35,915
CZ	42,448	42,442	40,448
DK	:	26,511	26,344
DE	:	323,147	331,587
EE	5,717	5,769	5,824
IE	:	:	:
EL	:	75,871	:
ES	:	:	179,392
FR	:	:	243,707
IT	165,891	171,264	:
CY	2,831	3,101	3,596
LV	14,743	13,244	12,460
LT	17,317	16,358	15,307
LU	:	:	:
HU	50,594	49,369	48,607
NL	:	:	:
AT	51,054	52,315	53,397
PL	155,500	149,805	148,486
PT	37,006	36,293	35,498
RO	86,578	80,189	76,084
SI	:	:	:
SK	14,136	13,527	18,357
FI	28,124	:	:
SE	62,262	64,947	65,049
UK	233,935	:	:
NO	33,980	34,185	33,901
CH	:	35,353	41,770
HR	10,831	10,422	10,164
TR	:	369,788	:

INDIC_SB **Number of persons employed per enterprise**
NACE_R2 **H493 - Other passenger land transport**

GEO/TIME	2008	2009	2010
EU27	6.56	5.84	5.30
BE	16.20	:	:
BG	5.30	4.80	4.70
CZ	6.90	7.00	7.00
DK	:	7.50	7.80
DE	:	12.90	13.10
EE	19.50	18.00	15.90
IE	:	:	:
EL	:	2.20	:
ES	:	:	2.90
FR	:	:	6.40
IT	6.10	6.10	:
CY	1.90	2.00	2.90
LV	17.70	16.60	15.60
LT	14.40	14.10	14.70
LU	:	:	:
HU	5.40	5.40	5.40
NL	:	:	:
AT	10.30	10.50	10.30
PL	3.10	3.30	3.10
PT	3.20	3.20	3.10
RO	8.90	8.80	8.90
SI	:	:	:
SK	86.70	135.30	4.50
FI	3.00	:	:
SE	6.90	7.30	7.30
UK	18.20	:	:
NO	5.10	5.10	5.10
CH	:	33.80	40.60
HR	6.70	6.20	6.20
TR	:	1.50	:

calculated average number			
	2008	2009	2010
EU27	6.34	5.85	5.56

INDIC_SB Number of enterprises

NACE_R2 H4931 - Urban and suburban passenger land

GEO/TIME	2008	2009	2010
EU27	:	12,354	12,000
BE	177	195	226
BG	703	716	733
CZ	:	:	:
DK	91	83	78
DE	:	2,444	2,410
EE	17	18	20
IE	:	:	:
EL	:	45	:
ES	346	280	336
FR	2,290	562	345
IT	1,625	1,619	:
CY	173	188	138
LV	133	120	119
LT	431	431	418
LU	1	1	1
HU	75	78	82
NL	3	2	3
AT	102	91	89
PL	897	1,419	1,699
PT	62	82	89
RO	2,119	1,284	1,091
SI	17	16	19
SK	27	:	26
FI	115	111	109
SE	400	388	402
UK	1,731	1,714	1,729
NO	38	37	34
CH	:	:	:
HR	44	46	50
TR	:	76,959	:

INDIC_SB Number of persons employed

NACE_R2 H4931 - Urban and suburban passenger land

GEO/TIME	2008	2009	2010
EU27	8,822	8,435	8,232
BE	21,883	21,572	3,830
BG	16,362	17,518	16,708
CZ	:	:	:
DK	:	10,360	10,473
DE	:	133,875	142,925
EE	2,420	2,604	2,757
IE	:	:	:
EL	:	16,547	:
ES	44,976	45,591	46,759
FR	:	:	91,619
IT	95,406	98,418	:
CY	979	1,062	1,868
LV	10,425	9,401	8,866
LT	11,438	11,102	10,155
LU	:	:	:
HU	28,270	26,961	25,352
NL	:	:	:
AT	18,279	18,303	18,573
PL	47,476	50,842	51,303
PT	10,032	9,398	8,591
RO	46,872	43,158	39,940
SI	1,031	984	918
SK	11,918	:	11,782
FI	7,998	6,868	8,429
SE	32,413	35,334	33,974
UK	136,261	:	:
NO	9,265	11,090	11,018
CH	:	:	:
HR	2,931	2,919	2,772
TR	:	115,943	:

INDIC_SB Number of persons employed per enterprise

NACE_R2 H4931 - Urban and suburban passenger land transport

GEO/TIME	2008	2009	2010
EU27	:	68.27	:
BE	123.60	110.60	16.90
BG	23.30	24.50	22.80
CZ	:	:	:
DK	:	124.80	134.30
DE	:	54.80	59.30
EE	142.40	144.70	137.90
IE	:	:	:
EL	:	367.70	:
ES	130.00	162.80	139.20
FR	:	:	265.60
IT	58.70	60.80	:
CY	5.70	5.60	13.50
LV	78.40	78.30	74.50
LT	26.50	25.80	24.30
LU	:	:	:
HU	376.90	345.70	309.20
NL	:	:	:
AT	179.20	201.10	208.70
PL	52.90	35.80	30.20
PT	161.80	114.60	96.50
RO	22.10	33.60	36.60
SI	60.60	61.50	48.30
SK	441.40	:	453.20
FI	69.50	61.90	77.30
SE	81.00	91.10	84.50
UK	78.70	:	:
NO	243.80	299.70	324.10
CH	:	:	:
HR	66.60	63.50	55.40
TR	:	1.50	:

calculated average number

	2008	2009	2010
EU27	59.50	58.27	63.45

INDIC_SB Number of enterprises
NACE_R2 H4932 - Taxi operation

GEO/TIME	2008	2009	2010
EU27	257,081	275,577	281,404
BE	1,522	:	:
BG	4,628	5,512	5,395
CZ	:	:	:
DK	3,119	2,957	2,801
DE	18,646	18,970	19,107
EE	84	86	88
IE	:	:	:
EL	:	33,595	:
ES	:	:	57,796
FR	21,022	29,991	32,692
IT	21,931	22,888	:
CY	1,097	1,166	940
LV	402	385	395
LT	577	538	445
LU	123	129	126
HU	7,471	7,430	7,289
NL	3,838	3,999	4,699
AT	3,866	3,942	4,135
PL	41,422	36,830	39,751
PT	11,013	10,688	10,858
RO	4,701	4,798	4,719
SI	567	582	589
SK	32	:	2,517
FI	8,863	8,893	8,764
SE	8,065	7,893	7,856
UK	7,626	7,017	6,730
NO	6,030	6,028	6,000
CH	:	:	:
HR	1,076	1,112	1,002
TR	:	61,008	:

INDIC_SB Number of persons employed
NACE_R2 H4932 - Taxi operation

GEO/TIME	2008	2009	2010
EU27	7,090	5,569	5,925
BE	6,348	:	:
BG	8,878	9,478	8,943
CZ	:	:	:
DK	173,998	11,074	10,514
DE	111,401	114,441	117,082
EE	427	:	:
IE	:	:	:
EL	:	48,823	:
ES	:	:	78,607
FR	:	:	47,215
IT	31,690	34,195	:
CY	1,469	1,588	1,292
LV	2,584	2,287	2,108
LT	4,292	3,777	3,645
LU	568	:	:
HU	9,132	8,733	8,506
NL	36,884	38,745	39,800
AT	17,625	18,611	19,267
PL	43,080	38,125	41,163
PT	15,731	15,600	15,711
RO	20,456	18,228	17,294
SI	:	:	:
SK	199	:	2,864
FI	14,734	15,111	15,211
SE	25,393	25,104	26,251
UK	45,106	:	:
NO	15,622	15,675	15,437
CH	:	:	:
HR	1,287	1,340	1,257
TR	:	76,397	:

INDIC_SB Number of persons employed per enterprise
NACE_R2 H4932 - Taxi operation

GEO/TIME	2008	2009	2010
EU27	2.76	2.02	2.11
BE	4.20	:	:
BG	1.90	1.70	1.70
CZ	:	:	:
DK	55.80	3.70	3.80
DE	6.00	6.00	6.10
EE	5.10	:	:
IE	:	:	:
EL	:	1.50	:
ES	:	:	1.40
FR	:	:	1.40
IT	1.40	1.50	:
CY	1.30	1.40	1.40
LV	6.40	5.90	5.30
LT	7.40	7.00	8.20
LU	4.60	:	:
HU	1.20	1.20	1.20
NL	9.60	9.70	8.50
AT	4.60	4.70	4.70
PL	1.00	1.00	1.00
PT	1.40	1.50	1.40
RO	4.40	3.80	3.70
SI	:	:	:
SK	6.20	:	1.10
FI	1.70	1.70	1.70
SE	3.10	3.20	3.30
UK	5.90	:	:
NO	2.60	2.60	2.60
CH	:	:	:
HR	1.20	1.20	1.30
TR	:	1.30	:

calculated average number			
	2008	2009	2010
EU27	3.82	2.37	2.17

INDIC_SB Number of enterprises

NACE_R2 H4939 - Other passenger land transport n.e.c.

GEO/TIME	2008	2009	2010
EU27	:	44,428	:
BE	560	603	712
BG	1,388	1,583	1,459
CZ	:	:	:
DK	514	487	503
DE	3,599	3,586	3,800
EE	192	216	259
IE	:	:	:
EL	:	1,147	:
ES	3,887	3,918	3,932
FR	:	6,132	4,996
IT	3,846	3,687	:
CY	185	166	144
LV	297	291	284
LT	194	190	181
LU	49	50	48
HU	1,745	1,569	1,579
NL	416	433	467
AT	980	950	950
PL	8,450	7,535	6,983
PT	525	547	577
RO	2,954	3,048	2,716
SI	434	463	471
SK	104	76	1,565
FI	512	534	536
SE	602	602	619
UK	3,516	3,296	3,141
NO	617	606	601
CH	:	:	:
HR	498	534	598
TR	:	104,451	:

INDIC_SB Number of persons employed

NACE_R2 H4939 - Other passenger land transport n.e.c.

GEO/TIME	2008	2009	2010
EU27	5,467	5,407	5,577
BE	8,409	8,174	6,531
BG	10,553	10,445	10,264
CZ	:	:	:
DK	6,910	5,077	5,357
DE	73,859	74,831	71,579
EE	2,871	2,761	2,404
IE	:	:	:
EL	:	10,501	:
ES	55,479	53,553	54,026
FR	:	:	104,873
IT	38,795	38,651	:
CY	383	451	436
LV	1,734	1,556	1,486
LT	1,587	1,479	1,507
LU	2,323	2,493	2,597
HU	13,192	13,675	14,749
NL	30,369	29,150	29,074
AT	15,150	15,401	15,557
PL	64,944	60,838	56,020
PT	11,243	11,295	11,196
RO	19,250	18,803	18,850
SI	3,173	3,308	3,252
SK	2,019	1,626	3,711
FI	5,393	:	:
SE	4,456	4,508	4,823
UK	52,567	:	:
NO	9,093	7,420	7,446
CH	:	:	:
HR	6,613	6,163	6,135
TR	:	177,448	:

INDIC_SB Number of persons employed per enterprise

NACE_R2 H4939 - Other passenger land transport n.e.c.

GEO/TIME	2008	2009	2010
EU27	10.00	12.17	:
BE	15.00	13.60	9.20
BG	7.60	6.60	7.00
CZ	:	:	:
DK	13.40	10.40	10.70
DE	20.50	20.90	18.80
EE	15.00	12.80	9.30
IE	:	:	:
EL	:	9.20	:
ES	14.30	13.70	13.70
FR	:	:	21.00
IT	10.10	10.50	:
CY	2.10	2.70	3.00
LV	5.80	5.30	5.20
LT	8.20	7.80	8.30
LU	47.40	49.90	54.10
HU	7.60	8.70	9.30
NL	73.00	67.30	62.30
AT	15.50	16.20	16.40
PL	7.70	8.10	8.00
PT	21.40	20.60	19.40
RO	6.50	6.20	6.90
SI	7.30	7.10	6.90
SK	19.40	21.40	2.40
FI	10.50	:	:
SE	7.40	7.50	7.80
UK	15.00	:	:
NO	14.70	12.20	12.40
CH	:	:	:
HR	13.30	11.50	10.30
TR	:	1.70	:

calculated average number

	2008	2009	2010
EU27	12.15	11.83	12.97

The data are given according to the NACE Rev.2 classification which distinguishes between

49.3 Other passenger land transport

This group includes all land-based passenger transport activities other than rail transport. However, rail transport as part of urban or suburban transport systems is included there.

49.31 Urban and suburban passenger land transport

This class includes:

- land transport of passengers by urban or suburban transport systems. This may include different modes of land transport, such as by motor bus, tramway, streetcar, trolley bus, underground and elevated railways etc.

The transport is carried out on scheduled routes normally following a fixed time schedule, entailing the picking up and setting down of passengers at normally fixed stops.

This class also includes:

- town-to-airport or town-to-station lines
- operation of funicular railways, aerial cableways etc. if part of urban or suburban transit systems

This class excludes:

- passenger transport by interurban railways, see 49.10

49.32 Taxi operation

This class also includes:

- other renting of private cars with driver

49.39 Other passenger land transport n.e.c.

This class includes:

- other passenger road transport:

n scheduled long-distance bus services

n charters, excursions and other occasional coach services

n airport shuttles

- operation of teleferics, funiculars, ski and cable lifts if not part of urban or suburban transit systems

This class also includes:

- operation of school buses and buses for transport of employees
- passenger transport by man- or animal-drawn vehicles

This class excludes:

- ambulance transport, see 86.90

ANNEX 15

ANNEX 15

Annual detailed enterprise statistics on services (NACE Rev. 1.1 H-K) [sbs_na_1a_se]

Last update 22.08.12

Extracted on 03.10.13

Source of data Eurostat

NACE_R1 Other scheduled passenger land transport; taxi operation; other land passenger transport
INDIC_SB Number of enterprises

GEO/TIME	2004	2005	2006	2007	2008
European U	326,088	:	:	:	:
European U	:	:	:	:	:
Belgium	2,145	2,126	2,069	2,261	:
Bulgaria	7,985	7,847	7,051	6,527	6,719
Czech Repu	9,195	8,874	9,258	:	:
Denmark	3,845	3,767	3,719	3,710	3,586
Germany (u	24,052	23,995	24,227	24,550	24,017
Estonia	228	234	233	248	293
Ireland	:	332	341	:	:
Greece	34,965	34,953	35,063	:	34,774
Spain	65,579	66,178	65,600	65,833	65,851
France	36,240	36,473	36,319	37,637	17,668
Italy	22,327	22,525	22,997	23,379	:
Cyprus	1,370	1,403	1,427	1,436	1,455
Latvia	423	418	696	770	832
Lithuania	1,577	1,280	1,247	1,255	1,202
Luxembourg	168	165	172	170	173
Hungary	9,684	9,517	9,232	8,979	9,263
Malta	842	823	:	842	:
Netherlands	4,560	4,420	4,470	4,135	4,267
Austria	4,628	4,694	4,918	4,984	4,948
Poland	47,141	49,149	47,789	51,531	49,485
Portugal	:	11,828	11,765	11,799	11,657
Romania	6,986	8,194	8,841	9,416	:
Slovenia	823	814	888	935	1,000
Slovakia	91	67	128	139	207
Finland	8,851	8,807	9,158	9,298	9,456
Sweden	9,348	9,231	9,122	9,192	9,041
United King	10,826	11,586	12,045	12,391	12,872
Norway	:	6,383	6,427	6,710	6,685
Switzerland	:	:	:	:	:

Special value:

: not available

NACE_R1 Other scheduled passenger land transport; taxi operation; other land passenger transport
INDIC_SB Number of persons employed

GEO/TIME	2004	2005	2006	2007	2008
European U	18,551	:	:	:	:
European U	:	:	:	:	:
Belgium	32,849	34,861	33,306	34,145	:
Bulgaria	46,788	:	:	35,944	35,793
Czech Repu	47,732	47,868	46,848	:	:
Denmark	:	:	30,973	30,503	:
Germany (u	288,945	284,869	292,406	302,845	305,547
Estonia	:	6,130	6,131	5,886	5,717
Ireland	:	8,935	8,493	:	:
Greece	82,321	80,485	76,675	:	77,263
Spain	164,787	166,449	171,274	179,213	183,546
France	214,329	215,428	219,964	291,063	:
Italy	144,522	146,197	150,820	150,949	:
Cyprus	2,415	2,426	2,415	2,351	2,406
Latvia	15,213	14,432	14,842	14,527	14,748
Lithuania	19,384	18,832	18,632	17,972	17,317
Luxembourg	2,284	2,381	2,688	2,831	:
Hungary	55,038	53,688	53,026	51,447	50,301
Malta	1,248	1,268	:	1,359	:
Netherlands	:	:	:	:	:
Austria	44,013	45,644	47,271	47,118	51,054
Poland	149,811	150,696	148,702	154,582	153,896
Portugal	:	37,104	37,034	37,334	36,951
Romania	77,815	83,616	85,053	87,137	:
Slovenia	4,890	:	:	:	5,057
Slovakia	16,410	15,015	14,827	14,314	14,422
Finland	24,137	24,134	25,460	25,943	27,840
Sweden	57,227	57,843	58,826	61,654	62,145
United King	213,535	217,009	221,996	224,717	:
Norway	:	33,630	33,274	34,213	33,980
Switzerland	:	:	:	:	:

NACE_R1 Other scheduled passenger land transport; taxi operation; other land passenger transport
INDIC_SB Number of persons employed per enterprise

GEO/TIME	2004	2005	2006	2007	2008
European U	5.69	5.65	:	:	6
European U	:	:	:	:	:
Belgium	15.3	16.4	16.1	15.1	:
Bulgaria	6	:	:	6	5
Czech Repu	5	5	5	:	:
Denmark	:	:	8.3	8.2	:
Germany (u	12.0	11.9	12.1	12.3	12.7
Estonia	:	26	26	24	20
Ireland	:	26.9	24.9	:	:
Greece	2.4	2.3	2.2	:	2.2
Spain	2.5	2.5	2.6	2.7	2.8
France	5.9	5.9	6.1	7.7	:
Italy	6.5	6.5	6.6	6.5	:
Cyprus	2	2	2	2	2
Latvia	36	35	21	19	18
Lithuania	12	15	15	14	14
Luxembourg	13.6	14.4	15.6	16.7	:
Hungary	6	6	6	6	5
Malta	1	2	:	2	:
Netherlands	:	14.7	:	:	:
Austria	9.5	9.7	9.6	9.5	10.3
Poland	3	3	3	3	3
Portugal	:	3.1	3.1	3.2	:
Romania	11	10	10	9	:
Slovenia	6	:	:	:	5
Slovakia	180	224	116	103	70
Finland	2.7	2.7	2.8	2.8	2.9
Sweden	6.1	6.3	6.4	6.7	6.9
United King	19.7	18.7	18.4	18.1	:
Norway	:	5.3	5.2	5.1	5.1
Switzerland	:	:	:	:	:

NACE_R1 Other scheduled passenger land transport
INDIC_SB Number of enterprises

GEO/TIME	2004	2005	2006	2007	2008
European U :	:	:	:	:	:
European U :	:	:	:	:	:
Belgium :	:	:	:	:	:
Bulgaria :	:	:	:	:	:
Czech Repu :	:	:	:	:	:
Denmark :	:	:	:	:	:
Germany (u :	3,251	3,280	3,225	3,045	:
Estonia :	:	:	:	:	:
Ireland :	:	:	:	:	:
Greece :	:	:	:	:	:
Spain :	:	:	:	:	:
France :	:	:	:	:	:
Italy :	2,589	2,603	2,609	2,609	2,532
Cyprus :	:	:	:	:	:
Latvia :	:	:	:	:	:
Lithuania :	:	:	:	:	:
Luxembourg :	:	:	:	:	:
Hungary :	:	:	:	:	:
Malta :	:	:	:	:	:
Netherlands :	:	:	:	:	:
Austria :	:	:	:	:	:
Poland :	:	:	:	:	:
Portugal :	:	:	:	:	:
Romania :	:	:	:	:	:
Slovenia :	:	:	:	:	:
Slovakia :	:	:	:	:	:
Finland :	:	:	:	:	:
Sweden :	:	:	:	:	:
United King :	:	:	:	:	:
Norway :	:	:	:	:	:
Switzerland :	:	:	:	:	:

NACE_R1 Other scheduled passenger land transport
INDIC_SB Number of persons employed

GEO/TIME	2004	2005	2006	2007	2008
European U :	:	:	:	:	:
European U :	:	:	:	:	:
Belgium :	:	:	:	:	:
Bulgaria :	:	:	:	:	:
Czech Repu :	:	:	:	:	:
Denmark :	:	:	:	:	:
Germany (u :	160,119	153,757	156,940	155,304	:
Estonia :	:	:	:	:	:
Ireland :	:	:	:	:	:
Greece :	:	:	:	:	:
Spain :	:	:	:	:	:
France :	:	:	:	:	:
Italy :	108,247	108,720	111,585	111,442	115,148
Cyprus :	:	:	:	:	:
Latvia :	:	:	:	:	:
Lithuania :	:	:	:	:	:
Luxembourg :	:	:	:	:	:
Hungary :	:	:	:	:	:
Malta :	:	:	:	:	:
Netherlands :	:	:	:	:	:
Austria :	:	:	:	:	:
Poland :	:	:	:	:	:
Portugal :	:	:	:	:	:
Romania :	:	:	:	:	:
Slovenia :	:	:	:	:	:
Slovakia :	:	:	:	:	:
Finland :	:	:	:	:	:
Sweden :	:	:	:	:	:
United King :	:	:	:	:	:
Norway :	:	:	:	:	:
Switzerland :	:	:	:	:	:

NACE_R1 Other scheduled passenger land transport
INDIC_SB Number of persons employed per enterprise

GEO/TIME	2004	2005	2006	2007	2008
European U :	:	:	:	:	:
European U :	:	:	:	:	:
Belgium :	:	:	:	:	:
Bulgaria :	:	:	:	:	:
Czech Repu :	:	:	:	:	:
Denmark :	:	:	:	:	:
Germany (u :	49.3	46.9	48.7	51.0	:
Estonia :	:	:	:	:	:
Ireland :	:	:	:	:	:
Greece :	:	:	:	:	:
Spain :	:	:	:	:	:
France :	:	:	:	:	:
Italy :	41.8	41.8	42.8	42.7	45.5
Cyprus :	:	:	:	:	:
Latvia :	:	:	:	:	:
Lithuania :	:	:	:	:	:
Luxembourg :	:	:	:	:	:
Hungary :	:	:	:	:	:
Malta :	:	:	:	:	:
Netherlands :	:	:	:	:	:
Austria :	:	:	:	:	:
Poland :	:	:	:	:	:
Portugal :	:	:	:	:	:
Romania :	:	:	:	:	:
Slovenia :	:	:	:	:	:
Slovakia :	:	:	:	:	:
Finland :	:	:	:	:	:
Sweden :	:	:	:	:	:
United King :	:	:	:	:	:
Norway :	:	:	:	:	:
Switzerland :	:	:	:	:	:

NACE_R1 Taxi operation
INDIC_SB Number of enterprises

GEO/TIME	2004	2005	2006	2007	2008
European U	:	:	:	:	:
European U	:	:	:	:	:
Belgium	:	:	:	:	:
Bulgaria	:	:	:	:	:
Czech Repu	:	:	:	:	:
Denmark	:	:	:	:	:
Germany (u	18,338	18,093	18,638	18,964	:
Estonia	:	:	:	:	:
Ireland	:	:	:	:	:
Greece	:	:	:	:	:
Spain	:	:	:	:	:
France	:	:	:	:	:
Italy	15,838	16,155	16,646	17,105	19,461
Cyprus	:	:	:	:	:
Latvia	:	:	:	:	:
Lithuania	:	:	:	:	:
Luxembourg	:	:	:	:	:
Hungary	:	:	:	:	:
Malta	:	:	:	:	:
Netherlands	:	:	:	:	:
Austria	:	:	:	:	:
Poland	:	:	:	:	:
Portugal	:	:	:	:	:
Romania	:	:	:	:	:
Slovenia	:	:	:	:	:
Slovakia	:	:	:	:	:
Finland	:	:	:	:	:
Sweden	:	:	:	:	:
United King	:	:	:	:	:
Norway	:	:	:	:	:
Switzerland	:	:	:	:	:

NACE_R1 Taxi operation
INDIC_SB Number of persons employed

GEO/TIME	2004	2005	2006	2007	2008
European U	:	:	:	:	:
European U	:	:	:	:	:
Belgium	:	:	:	:	:
Bulgaria	:	:	:	:	:
Czech Repu	:	:	:	:	:
Denmark	:	:	:	:	:
Germany (u	96,521	96,102	99,734	107,520	:
Estonia	:	:	:	:	:
Ireland	:	:	:	:	:
Greece	:	:	:	:	:
Spain	:	:	:	:	:
France	:	:	:	:	:
Italy	23,279	24,334	25,710	25,788	28,276
Cyprus	:	:	:	:	:
Latvia	:	:	:	:	:
Lithuania	:	:	:	:	:
Luxembourg	:	:	:	:	:
Hungary	:	:	:	:	:
Malta	:	:	:	:	:
Netherlands	:	:	:	:	:
Austria	:	:	:	:	:
Poland	:	:	:	:	:
Portugal	:	:	:	:	:
Romania	:	:	:	:	:
Slovenia	:	:	:	:	:
Slovakia	:	:	:	:	:
Finland	:	:	:	:	:
Sweden	:	:	:	:	:
United King	:	:	:	:	:
Norway	:	:	:	:	:
Switzerland	:	:	:	:	:

NACE_R1 Taxi operation
INDIC_SB Number of persons employed per enterprise

GEO/TIME	2004	2005	2006	2007	2008
European U	:	:	:	:	:
European U	:	:	:	:	:
Belgium	:	:	:	:	:
Bulgaria	:	:	:	:	:
Czech Repu	:	:	:	:	:
Denmark	:	:	:	:	:
Germany (u	5.3	5.3	5.4	5.7	:
Estonia	:	:	:	:	:
Ireland	:	:	:	:	:
Greece	:	:	:	:	:
Spain	:	:	:	:	:
France	:	:	:	:	:
Italy	1.5	1.5	1.5	1.5	1.5
Cyprus	:	:	:	:	:
Latvia	:	:	:	:	:
Lithuania	:	:	:	:	:
Luxembourg	:	:	:	:	:
Hungary	:	:	:	:	:
Malta	:	:	:	:	:
Netherlands	:	:	:	:	:
Austria	:	:	:	:	:
Poland	:	:	:	:	:
Portugal	:	:	:	:	:
Romania	:	:	:	:	:
Slovenia	:	:	:	:	:
Slovakia	:	:	:	:	:
Finland	:	:	:	:	:
Sweden	:	:	:	:	:
United King	:	:	:	:	:
Norway	:	:	:	:	:
Switzerland	:	:	:	:	:

NACE_R1 Other land passenger transport
INDIC_SB Number of enterprises

GEO/TIME	2004	2005	2006	2007	2008
European U:	:	:	:	:	:
European U:	:	:	:	:	:
Belgium	:	:	:	:	:
Bulgaria	:	:	:	:	:
Czech Repu:	:	:	:	:	:
Denmark	:	:	:	:	:
Germany (u	2,463	2,622	2,364	2,541	:
Estonia	:	:	:	:	:
Ireland	210	:	:	:	:
Greece	:	:	:	:	:
Spain	:	:	:	:	:
France	:	:	:	:	:
Italy	3,900	3,767	3,742	3,665	3,951
Cyprus	:	:	:	:	:
Latvia	:	:	:	:	:
Lithuania	:	:	:	:	:
Luxembourg	:	:	:	:	:
Hungary	:	:	:	:	:
Malta	:	:	:	:	:
Netherlands	:	:	:	:	:
Austria	:	:	:	:	:
Poland	:	:	:	:	:
Portugal	:	:	:	:	:
Romania	:	:	:	:	:
Slovenia	:	:	:	:	:
Slovakia	:	:	:	:	:
Finland	:	:	:	:	:
Sweden	:	:	:	:	:
United King:	:	:	:	:	:
Norway	:	:	:	:	:
Switzerland:	:	:	:	:	:

NACE_R1 Other land passenger transport
INDIC_SB Number of persons employed

GEO/TIME	2004	2005	2006	2007	2008
European U:	:	:	:	:	:
European U:	:	:	:	:	:
Belgium	:	:	:	:	:
Bulgaria	:	:	:	:	:
Czech Repu:	:	:	:	:	:
Denmark	:	:	:	:	:
Germany (u	32,305	35,010	35,732	40,021	:
Estonia	:	:	:	:	:
Ireland	1,886	:	:	:	:
Greece	:	:	:	:	:
Spain	:	:	:	:	:
France	:	:	:	:	:
Italy	12,996	13,143	13,525	13,719	14,103
Cyprus	:	:	:	:	:
Latvia	:	:	:	:	:
Lithuania	:	:	:	:	:
Luxembourg	:	:	:	:	:
Hungary	:	:	:	:	:
Malta	:	:	:	:	:
Netherlands	:	:	:	:	:
Austria	:	:	:	:	:
Poland	:	:	:	:	:
Portugal	:	:	:	:	:
Romania	:	:	:	:	:
Slovenia	:	:	:	:	:
Slovakia	:	:	:	:	:
Finland	:	:	:	:	:
Sweden	:	:	:	:	:
United King:	:	:	:	:	:
Norway	:	:	:	:	:
Switzerland:	:	:	:	:	:

NACE_R1 Other land passenger transport
INDIC_SB Number of persons employed per enterprise

GEO/TIME	2004	2005	2006	2007	2008
European U:	:	:	:	:	:
European U:	:	:	:	:	:
Belgium	:	:	:	:	:
Bulgaria	:	:	:	:	:
Czech Repu:	:	:	:	:	:
Denmark	:	:	:	:	:
Germany (u	13.1	13.4	15.1	15.8	:
Estonia	:	:	:	:	:
Ireland	9.0	:	:	:	:
Greece	:	:	:	:	:
Spain	:	:	:	:	:
France	:	:	:	:	:
Italy	3.3	3.5	3.6	3.7	3.6
Cyprus	:	:	:	:	:
Latvia	:	:	:	:	:
Lithuania	:	:	:	:	:
Luxembourg	:	:	:	:	:
Hungary	:	:	:	:	:
Malta	:	:	:	:	:
Netherlands	:	:	:	:	:
Austria	:	:	:	:	:
Poland	:	:	:	:	:
Portugal	:	:	:	:	:
Romania	:	:	:	:	:
Slovenia	:	:	:	:	:
Slovakia	:	:	:	:	:
Finland	:	:	:	:	:
Sweden	:	:	:	:	:
United King:	:	:	:	:	:
Norway	:	:	:	:	:
Switzerland:	:	:	:	:	:

Annex 16

Overview on current and proposed definitions of undertakings in difficulty

Definition in the 2004 R&R Guidelines¹⁰⁸

"9...the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.

10. In particular, a firm is, in principle and irrespective of its size, regarded as being in difficulty for the purposes of these Guidelines in the following circumstances:

- (a) in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;
- (b) in the case of a company where at least some members have unlimited liability for the debt of the company (3), where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;
- (c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

11. Even when none of the circumstances set out in point 10 are present, a firm may still be considered to be in difficulties, in particular where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value. In acute cases the firm may already have become insolvent or may be the subject of collective insolvency proceedings brought under domestic law. In the latter case, these Guidelines apply to any aid granted in the context of such proceedings which leads to the firm's continuing in business. In any event, a firm in difficulty is eligible only where, demonstrably, it cannot recover through its own resources or with the funds it obtains from its owners/shareholders or from market sources."

Definition in the second draft of the *de minimis* Regulation¹⁰⁹

Article 2 *Definitions*

For the purposes of this Regulation:

‘undertaking in difficulty’ means an undertaking that fulfils at least one of the following conditions:

- (i) in the case of a limited liability company, more than half of its subscribed share capital has disappeared due to accumulated losses; this is the case when deducting accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative result that exceeds half of the subscribed share capital;
- (ii) in the case of a company in which at least some members have unlimited liability for the debt of the company, more than half of its capital as shown in the company accounts has disappeared due to accumulated losses;

¹⁰⁸ Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, p. 2–17.

¹⁰⁹ OJ C 229/1 of 8 August 2013.

(iii) the undertaking is in collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors;

(iv) the undertaking's book debt to equity ratio is greater than 7.5;

(v) the undertaking's earnings before interest and taxes (EBIT) to interest coverage ratio has been below 1.0 for the past two years;

(vi) the undertaking is rated the equivalent of CCC+ ('payment capacity is dependent upon sustained favourable conditions') or below by at least one credit rating agency registered in accordance with Regulation (EC) No 1060/2009¹¹⁰.

For the purposes of point (e) of the first subparagraph, a SME which has been in existence for less than three years shall not be considered to be in difficulty unless it meets the condition set out in point (iii) of that point.

¹¹⁰ Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).