



EUROPEAN COMMISSION  
Impact Assessment Board

Brussels,  
D(2013)

## Opinion

**Title**                    **DG AGRI – Commission Regulation on the application of Articles 107 and 108 TFEU to de minimis aid in the agricultural sector**

(draft version of 18 June 2013)\*

### **(A) Context**

So called “de minimis” regulations define limits under which aid measures are not regarded as State aid and thus are not subject to the notification obligation under Article 108(3) TFEU because they are considered not to have an impact on competition and/or affect trade in the internal market. De minimis regulations are meant to focus state aid control on the most distortive cases and to reduce administrative burden. Due to its specific characteristics, aid to the agriculture sector has been subject to a separate de minimis Regulation which sets an individual ceiling (€ 500 over any period of three fiscal years) and a national cap (the cumulative amount of de minimis aid granted over any period of three fiscal years cannot exceed 0.75% of the annual agricultural output in the aid-granting Member State). The agricultural de minimis Regulation expires on 31 December 2013. Since it has similar provisions to the general de minimis Regulation on cumulation, transparency, monitoring and transitional measures, it is being revised in parallel as part of the State Aid Modernisation initiative.

### **(B) Overall opinion: POSITIVE**

**The report should be improved in a number of respects. First, it should explain what the problems posed by current thresholds are, given the specificities of the agricultural sector and taking into account that such thresholds are not reached in practice. Second, it should clarify the relative importance of each objective and explain how the criteria for comparing the options are linked to different objectives. Third, the report should better assess the impacts. In particular it should explain why a 20% difference in farm net value added between countries is considered the right proxy (and level) to identify a significant change in competitive positions. It should better present the factors justifying the choice of the preferred option (B1). Finally, the report should better present the main concerns voiced by different stakeholder groups and explain how they have been addressed.**

**In their written communication with the Board DG AGRI accepted to amend the report along the lines of these recommendations.**

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\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

### **(C) Main recommendations for improvements**

**(1) Clarify the policy context and problem definition.** The report should clarify the policy context of the initiative by better explaining why there are separate de minimis rules for the agriculture sector (i.e. issues related to seasonable aspect and high volatility of agriculture production, and price fixing) and why the issues related to the scope of beneficiaries, cumulation, guarantees and loans are of a general nature and therefore will be covered under the reform of the general de minimis regulation and its impact assessment. The report should also better explain the current de minimis rules and practices, including the method used for setting current thresholds, the rules regarding cumulation and the transparency conditions, as well as the provisions of the temporary framework. Finally, it should explain the relationship with the Common Agricultural and Rural Development Policy. Against this background, the report should explain why the individual ceiling and the national cap should be increased if in practice they are not reached. It should also describe the specific problems associated with legal uncertainty and explain their consequences for Member States and individual farmers. Finally, a more complete baseline scenario describing how the identified problems would evolve given unchanged rules should be developed.

**(2) Clarify the objectives and elaborate monitoring and evaluation arrangements.** The report should discuss the relative importance, and any trade-off, between different objectives, notably those of avoiding distortions of competition and ensuring administrative simplicity. The different criteria to assess the effectiveness of options, and their relative weighting, should reflect this discussion. The report should also describe the timing, focus and purpose of future evaluations and outline the core indicators to assess success (i.e. in avoiding distortions to internal market and focussing action on the most distortive cases). Any new reporting obligation should be flagged, justified and quantified whenever significant (or indicated if they will be assessed in the impact assessment for the general de minimis regulation).

**(3) Improve the presentation, assessment and comparison of options.** The report should explain why the options of abolishing national caps and/or setting individual ceilings above €15,000 were not analysed in detail. It should better distinguish between the impacts of options B1 and B2 in each sub-sector. It should also better explain the factors determining a risk of competitive distortion and their threshold level: What distance between two markets is considered significant? Why does a 20% difference in farm net value added between countries indicate significant changes in competitive positions (even if, when this threshold is reached, the analysis rules out distortions in the internal market)? What would using different thresholds imply for the analysis? What are the hypotheses and the analytical framework (i.e. model used) to assess impacts on trade flows and possible gains in competitive positions? Against this background, the report should clarify whether, under option B2, impacts on the cattle, sheep/goats and orchard fruit sectors are significant enough to cause a risk of competitive distortions. In addition, the report should better substantiate the expected reduction in administrative burdens, taking into explicit consideration the possible setting up of a central register. Finally, the report should better link the comparison of options to the rest of analysis, explaining what the risks posed by the most beneficial option (B2) are and why these justify preferring option B1 for "safety reasons".

**(4) Better present stakeholder views.** The report should be more specific when presenting stakeholder views, for example, clarifying suggestions on reviewing scope, cumulation rules, transparency conditions, individual ceilings and national caps.

Different views should be better reflected throughout the report, in particular regarding the impacts and comparison of options.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

**(D) Procedure and presentation**

The main text should consistently refer to the annexes. It should have a clearer structure highlighting the link between different sub-sections, especially in the problem definition chapter. The report should include glossary of key terms (transparent aid instruments, undertakings in difficulty, etc.) and a list of abbreviations (including those in tables/graphs). Duplications should be avoided, e.g. description of de minimis aid in the policy context and methodology chapters, stakeholder positions in the main text and annex.

**(E) IAB scrutiny process**

Reference number	2013/AGRI/004
External expertise used	No
Date of IAB meeting	Written procedure (17 July 2013)