



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
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Opinion

Title **DG COMP – Impact Assessment on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid**

(draft version of 9 October 2013)*

(A) Context

The financial and economic crisis confirmed the importance of State aid control to protect the integrity of the single market and promote recovery. While increasing the risk for anticompetitive reactions, the crisis also increased the demand for greater State involvement, putting strains on Member States' budgets. Given this context, the State Aid Modernisation (SAM) reform project is part of the larger framework of EU policies to overcome the crisis and pave the way to recovery and growth. The SAM Communication of May 2012 sets out the objectives of an ambitious reform of State aid control. State aid policy should focus on facilitating well-designed aid targeted at market failures and objectives of common European interest. Enforcement should focus on cases with the biggest impact on the internal market, and rules should be streamlined and decisions taken faster. The review of the *de minimis* Regulation, according to which state spending below a certain threshold and meeting certain conditions is not considered as state aid is directly linked to the prioritisation objective of the SAM initiative.

(B) Overall opinion: POSITIVE

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 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.

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

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

(C) Main recommendations for improvements

(1) Better focus the problems. The problem definition should explain more clearly that at least as regards the current level of ceilings, there is no real objective evidence that the present situation does in fact pose major problems. As the perceived deficiencies – as pointed out by some Member States - and the need to address SME needs are addressed by other instruments in the State Aid Modernisation package (General Block Exemption Regulation, specific guidelines), and Member states themselves have not been able to provide compelling evidence for the insufficiency of current thresholds, this should be more clearly stated. This would also enable the report to focus more on the areas in which real problems need to be addressed, especially those related to legal uncertainty caused by a flawed and misinterpreted definition of "undertaking". The report should also clarify the different aims of the *de minimis* Regulation and the General Block Exemption Regulation (GBER), and clarify the interaction between the *de minimis* Regulation, the GBER and the Structural Funds, including by better explaining cumulation rules. The baseline scenario should be strengthened by inserting elements from section 5 on impacts of the baseline and by explaining how some problems associated with legal certainty are likely to evolve and what their consequences might be.

(2) Concentrate the impact analysis on the key issues. On the basis of a refocused problem definition, the report should concentrate the impact analysis more explicitly on the legal certainty, monitoring, and simplification issues. More specifically, a more balanced and detailed presentation should be given of the trade-offs between possible positive impacts for beneficiaries associated with the introduction of a compulsory register, and the costs that this would entail for public authorities. The presentation of a quantitative example would be helpful, given the absence of more robust administrative burden calculations. The report should indicate the problems faced when requesting data from Member States on burdens for businesses associated with their declaration based administration of *de minimis* aid. The report should clarify which of the "hard criteria" regarding the notion of "undertaking in difficulty" that were analysed are retained, and which are dropped, as they may be particularly burdensome for SMEs. The arguments for no longer maintaining a separate lower ceiling for the transport sector should be briefly set out in a separate section.

(3) Present clearer arrangements for monitoring and evaluation. The report should explain what information will be collected by Member States to monitor the implementation of the Regulation, how and by whom this information will be subsequently analysed and made available to enable monitoring of the performance of the legislation. The report should further make a clear commitment to evaluate the *de minimis* Regulation, and provide more detail about the way in which this will be done, setting out the timing, clarify the actors involved and the criteria on which the policy will be evaluated.

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 report should be more specific throughout the relevant sections in the references to input received from different relevant categories of stakeholders, especially on the problem definition, the policy options and the expected impacts.

(E) IAB scrutiny process

Reference number	2013/COMP/003
External expertise used	No
Date of IAB meeting	Written procedure