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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Commission Regulation

on the application of Articles 107 and 108 TFEU to de minimis aid in the agricultural sector

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1. PROBLEM DEFINITION

The agricultural de minimis Regulation expires on 31 December 2013.

Due to the links between the general and the agricultural de minimis Regulation, they should be revised in parallel as part of the State Aid Modernisation (hereafter "SAM") initiative. Both regulations have similar provisions on cumulation, transparency, monitoring and transitional measures but the wording of the texts are not always similar. This creates confusion and legal uncertainty. For example, the demarcation between primary production and processing/marketing of agricultural products (and thus the demarcation between the general and the agricultural de minimis Regulation) needs to be clarified. For example, in the current de minimis Regulation for primary production, no definition is provided for processing and marketing of agricultural products, which makes it difficult for the reader/user (both MS and aid beneficiaries) to understand which de minimis Regulation (and which ceiling(s)) is(are) applicable. There is a need to bring these horizontal aspects of the two de minimis Regulations into line with each other. This alignment ensures more legal certainty and less administrative burden for public authorities and beneficiaries.

In order to focus on the most distortive aid measures and to reduce the administrative burden, it is necessary to establish for the sector of agricultural production up to which individual ceiling and national cap aid measures are deemed not to have effect on trade and on competition and are therefore not subject to State aid rules.

Setting the individual ceiling and national cap too low would lead to unnecessary administrative burden for the public authorities granting the aid. Aid measures with an amount exceeding the ceilings would have to be notified for approval or designed so that they can be covered by a block exemption Regulation.

Setting the individual ceiling and national cap too high would lead to an increased risk of the aid measure distorting competition and having an effect on trade in the internal market.

The individual ceiling and national cap should therefore be set at such a level that they can ensure that an aid measure that falls under the de minimis Regulation, can be deemed not to have effect on trade or competition in the internal market.

Even though the public consultation results showed that the individual ceiling and national cap are not always reached, MS ask for an increase to be able to react quickly in case of serious problems (e.g. in emergency situations brought about by natural disasters or adverse weather conditions), thus being able to avoid for example immediate bankruptcies thus, supporting growth and job creation taking into account the developments concerning the (net-decrease) of EU-funds that will be available under the MFF 2014-2020.

MS also ask for an increase of the individual ceiling and national cap in order to reduce the administrative burden.

2. ANALYSIS OF SUBSIDIARITY

Pursuant to Article 3 TFEU the Union shall have exclusive competence in the establishing of the competition rules necessary for the functioning of the internal market. Articles 107 and

108 TFEU establish the State aid rules. Therefore the present action is not subject to a subsidiarity test.

3. OBJECTIVES

Guarantee that an agricultural aid measure does not distort or threaten to distort the competition on the internal market and that State aid policy is focused on the most distortive cases

The focus on the most distortive aid measures is in fact an administrative simplification objective as for de minimis aid there is no notification obligation and no State aid control.

Both objectives (no distortion of competition and focus on most distortive) have the same importance. In order to focus on the most distortive aid measures, it is necessary to establish as of which level the Commission would consider a risk for distortion of competition, i.e. up to which individual ceiling and national cap aid measures are not likely to have an effect on trade and on competition and may therefore ab initio be excluded from the application of State aid rules.

Align with the general de minimis Regulation

Bring the current agricultural de minimis Regulation into line with the new general de minimis Regulation, streamlining the provisions as much as possible.

4. POLICY OPTIONS

Not to prolong or change the current agricultural de minimis Regulation after expiry, so not to have an agricultural de minimis Regulation anymore, which means that MS cannot grant de minimis aid for agricultural measures from 2014 on is not a realistic option as there is a need to enforce State aid control on the most distortive aid measures and to reduce administrative burdens. Without agricultural de minimis Regulation, there would be a legal gap, i.e. MS would not be able to grant any minimum aids which would be considered as non-aid, thus not falling under State aid control mechanisms and so a focus on the most distortive aid measures and administrative burden reduction is not enforced. On top, many of such aids would not be compatible with State aid rules and would therefore have to be interrupted until a new Regulation enters into force.

To merge the agricultural de minimis Regulation with the general de minimis Regulation and not having a separate de minimis Regulation for agriculture is not a realistic option either as the specific characteristics of the more volatile agricultural sector create a need for a separate agricultural de minimis Regulation. State aid in the agricultural sector is linked with developments in the volatile agricultural markets and must be aligned at any time with the CAP and with the RD policy. These policies can cause more regular changes to the agricultural de minimis Regulation than this is the case for the general de minimis Regulation. There is also a need for a much lower individual ceiling and a national cap for agricultural de minimis aid as applying the (much higher) aid ceiling and no national cap of the general de minimis Regulation to the agricultural sector, would almost double the financial support already granted under the CAP itself and would, therefore, put the objectives of that policy at risk. On top, agricultural de minimis aid is being dealt with by different ministries in the MS than the ministries dealing with general de minimis aid.

Subsequently, a separate de minimis Regulation ensures more legal certainty, more transparency and more clarity for the beneficiaries.

Option A) The baseline scenario is to prolong, without any change, the current agricultural de minimis Regulation and to maintain the current scope (excluding companies in difficulty), the individual ceiling of maximum € 7500 over any period of three fiscal years and national cap of 0.75% MS envelope, the conditions (de minimis aid only for transparent aid instruments as currently defined and exclusion of cumulation with other State aid) and the monitoring (choice between central de minimis register or system of declarations).

Option B) To change the current agricultural de minimis Regulation.

We assess the impact of the agricultural individual ceiling and cap for de minimis aid measures. An individual ceiling of €10 000 and €15 000 is modelled. For safety reasons, a maximum individual ceiling of €15000 is analysed. Under the Temporary Framework €15 000 was the limit of State aid being compatible and for which no complaints about distortion of competition were received. There is no practical experience on individual ceilings above €15 000.

Suboptions are:

> B1) modelling of €10 000 individual ceiling for different national caps (0.75% - 1%, 1.5%)
>
> B2) modelling of €15 000 individual ceiling for different national caps (0.75% - 1%, 1.5%)

5. ASSESSMENT OF IMPACTS

In the assessment the impact of different ceilings and national caps of de minimis aid on trade flows between MS and the disturbance on agricultural markets is being tested by comparing them with the current situation (option A, baseline scenario) and with the scenario of absence of de minimis aid.

MS competitive position without de minimis aid is indicated in all main agricultural sectors. Then subsequent amounts of aid are gradually added up to see if the competitive position of MS is changed in consequence. Finally, where significant changes (= when the performance indicators change from originally being smaller or not much higher (max. 10%) than in other MS, into being higher by more than 20%) take place we conclude if they have a potential to disrupt the markets. Relative importance, distance and links between the markets, as well as complementary or competitive character of the sector's products are considered.

In order to capture the full range of possible effects, extreme scenarios are studied with concentration of maximum aid (up to full national cap) on one affected sector at a time and this for the main agricultural sectors. An additional scenario with the aid distributed among all farms in a MS is assessed.

<u>Administrative burden reduction</u>

The de minimis Regulation does in principle not impose any administrative burden on undertakings, including SME's and micro-enterprises, but only on public authorities.

Due to the small amounts covered, the de minimis Regulation is particularly favourable for SMEs and micro-enterprises (confirmed by the public consultation). It will lead to simplification because an aid measure under de minimis is considered not to be State aid. Therefore, Member States may grant de minimis aid very fast because there is no need to go through a notification procedure and not even a procedure of registering the aid under block-exemption rules.

6. COMPARISON OF OPTIONS

Option A: The agricultural de minimis Regulation would not be aligned with the new general de minimis Regulation. Conditions mentioned in the problem definition would not be clarified and/or reviewed. The wording of the agricultural and general de minimis Regulation will not be similar and as the general de minimis Regulation is being modernized as part of the SAM initiative, the horizontal aspects of the two de minimis Regulations (scope, cumulation, transparent aid, monitoring) will no longer be into line with each other. This would lead to more legal uncertainty for beneficiaries and public authorities. For example, the demarcation between primary production and processing/marketing of agricultural products (and thus the demarcation between the general and the agricultural de minimis Regulation) will not be clarified. For example, in the current de minimis Regulation for primary production, no definition is provided for processing and marketing of agricultural products, which makes it difficult for the reader/user (both MS and aid beneficiaries) to understand which de minimis Regulation (and which ceiling(s)) is(are) applicable. It will create a lot of confusion for the stakeholders as the general provisions for de minimis aid will differ between the agricultural sector and the other sectors.

The individual ceiling and national cap would not be increased as requested by MS to reflect the economic developments in the internal agricultural market, so enforcement on the most distortive aid measures would not be optimized and administrative burdens will not be reduced. MS will be less able to react quickly in case of serious problems (e.g. in emergency situations brought about by natural disasters or adverse weather conditions), thus being able to avoid for example immediate bankruptcies thus, supporting growth and job creation taking into account the developments concerning the (net-decrease) of EU-funds that will be available under the MFF 2014-2020.

The monitoring system would also not be simplified. For agricultural de minimis aid, MS still will be able to choose to set up a central register of de minimis aid containing complete information on all de minimis aid or to ask a declaration from each beneficiary demonstrating that the amount of aid received by it does not exceed the individual ceiling, while the new general de minimis Regulation may enforce a central register. Subsequently, administrative monitoring burdens will not be reduced for beneficiaries of agricultural de minimis aid as the public consultation showed that not all MS use a central register yet. Beneficiaries in some MS will still be asked to send declarations.

The lack of quantitative comprehensive and comparable data on agricultural de minimis aid will remain, which makes a future evaluation of the agricultural de minimis Regulation very difficult.

All respondents to the public consultation consider the de minimis Regulation as a useful non-burdensome aid instrument for a public authority to react quickly in case of serious problems (e.g. in emergency situations brought about by natural disasters or adverse weather conditions). In general most of the contributors indicate no negative impact and no impact on trade of the de minimis Regulation. A negative impact, when mentioned, is considered limited because of the low ceiling which underlines the assumption of limited size of de minimis envelope.

So the preferred option is to change the current agricultural de minimis Regulation (option B).

Suboption B1)

In the case when the de minimis country envelope is not concentrated on one sector, but spread to all farms, the least impact is observed and none significant. By contrast, if the aid is focused on a single sector and applied to the limit, even with the current de minimis amounts in numerous instances it can lead to significant increases in the relative profitability in sectors in MS applying the aid. Raising the current maximum levels would further increase competitive advantage of those MS's sectors and create similar advantages in several other cases. So the analysed options for aid limits differ not so much qualitatively but rather in a quantitative manner.

Significant effects of concentrated application of de minimis aid seem to occur more in some agricultural sectors and some MS than in others. Three sectors stand out as more sensitive to significant profitability changes with application of de minimis aid. These are cattle rearing farms, orchard fruit farms and sheep-and-goats farms.

Most of the effect on cattle production profitability comes from Romanian farms, with production in Lithuania also clearly prone to significant changes in profitability. In the orchard fruit production Bulgaria stands out, with Polish and Portuguese production also susceptible. In the sheep and goats sector, farms in Latvia dominate the result. Overall, production profitability in Romania seems to be by far most easily affected by de minimis aid, with that in Portugal and Latvia, and to a lesser extent in Bulgaria and Slovenia, following.

The three new de minimis scenarios differ in their potential effect on changing relative profitability of production. The limits of 0.75% and € 10000 seem to have an effect very similar to that of the current limits 0.75% and € 7500. The option with doubled envelope (1.50%, € 10000) has about a double effect of the two above mentioned options. Potential effect of the intermediate option 1.00% envelope and € 10000 farm limit rests in the middle as well. This may suggest that, while the farm limit matters for some sectors, it is the amount of the country envelope which steers the overall effect.

Suboption B2)

The assessment is based on farm level data concerning potential changes in profitability of farming that may influence competitive advantage of particular types of agricultural production. The increase in profitability, or the costs decrease, of de minimis beneficiaries is expected to have some effect on trade only if and when the aid is awarded systematically to the same beneficiaries over extended period of time. One-off payment is highly unlikely to make any trade distortions.

The analysed new scenarios of de minimis aid do not seem to allow for market disturbance by application of de minimis aid. The main reasons for that are:

- likely "sharing" of the aid envelope among sectors in a MS,
- small impact on larger producers or traders, and
- a limited size of the de minimis envelope.

Option B1 is the preferred option.

The analyses for both options show that if the aid is focused on a single sector and applied to the limit it can lead to significant increases in the relative profitability in some sectors in MS applying the aid. Raising the current maximum amounts would further increase competitive advantage of those MS's sectors and create similar advantages in several other cases. Significant effects of concentrated application of de minimis aid would occur more in some agricultural sectors and in some MS than in others.

We conclude however that the analysed scenarios of de minimis aid would pose very little risks to distort or threaten to distort competition on the basis the assumptions mentioned. However, there is a risk that these assumptions are not in place and in that case the risk for distortion of competition is higher for option B2 than for option B1. Judging by the number of cases of new competitive advantage, which in certain circumstances could lead to distortions; option B2 is potentially about 40% more risky than option B1. The difference is even higher for the sheep & goats and cattle sectors where option B2 triggers about 50% more cases than option B1.

The analysis also showed that increasing the national cap has generally more potential for creating higher risk of significant changes in relative competitiveness of production than increasing the individual ceiling.

The Commission should take an approach of prudence in this context. If a relatively high ceiling was fixed, this would enable MS to concentrate a part of their de minimis ceilings on the sectors that are at risk whilst using the remaining part for granting "normal" de minimis aid, i.e. the higher the ceilings, the more flexibility and thus risk there is that distortive aid would be granted. De minimis ceilings should therefore be allowed at the most up to a level for which the Commission can be reasonably assured that the risk of distortion will be low. Therefore, for safety reasons a national cap of 1% instead of 1.5% and a maximum individual ceiling of € 10000 instead of € 15000 is preferred as the practical experience with de minimis aid measures with an individual ceiling of €15 000 concerned State aid in an extraordinary crisis situation (the Temporary Framework).

Overview of impacts assessed:

	Option A (baseline)	Option B1	Option B2
Individual ceiling	€7 500	€10 000	€15 000
Risk of distortion of internal market	0	++	+
Focus State aid control on most distortive cases	0	+	++
Legal certainty	0	+	+
Alignment with general de minimis Regulation	0	+	+
Administrative burden reduction	0	+	+

0: no significant positive or negative impact

--: Very negative impact

-: Negative impact

+: positive impact

++: Very positive impact

7. MONITORING AND EVALUATION

The agricultural de minimis Regulation will apply from 1 January 2014 until 31 December 2020

For the monitoring and evaluation requirements reference is made to the Impact Assessment of the general de minimis Regulation. Considering the application of the de minimis regulations for 7 years, an evaluation takes place previous to a prolongation or amendment.