

State aid: Proposal to extend scope of ‘*de minimis*’ rule– frequently asked questions

(see also [IP/06/283](#))

What is the “*de minimis*” rule?

The “*de minimis*” policy was initiated by the Commission in 1992, with special focus on small and medium sized enterprises (SMEs). The current “*de minimis*” rule, laid down in Commission Regulation No 69/2001, provides that subsidies of an amount smaller than €100,000 granted to an undertaking over a period of 3 years do not constitute “State Aid” within the meaning of the EC Treaty’s ban on aid liable to distort competition (Article 87). Subsidies below that ceiling are presumed to have only negligible effects on competition and trade between Member States. Therefore such measures do not need to be notified to the Commission for approval. Regulation 69/2001 does not apply to a number of sectors of the industry, including most prominently, the agricultural sector and the transport sector.

In the State Aid Action Plan (see [IP/05/680](#)), the Commission announced that it would adapt the “*de minimis*” ceiling to the “evolution of the economy”. This adaptation will be realised within the confines of the case-law of the European Court of Justice and the Court of First Instance, which allow the Commission only a limited margin of discretion with regard to determining which support measures are to be regarded as prohibited “state aid”.

What will change under the new Commission proposal?

The main purpose of the Commission proposal is to increase the ceiling from €100,000 to €150,000, to take account of inflation and GDP growth in the EU since the ceiling was last increased. The proposal also extends the scope of the “*de minimis*” rule, under certain conditions, to the marketing and processing of agricultural products. The Commission is currently considering, in the light of views expressed in the context of earlier consultations, whether to include the transport sector into the scope of the general *de minimis* rule as well.

In line with earlier Commission proposals and, more particularly, the new draft for a block exemption covering certain types of regional aid (see [IP/05/1653](#)), the scope of the *de minimis* rule will be limited to transparent types of aid for which it is possible to determine in advance the precise aid amount they include. In the case of loans, guarantees, risk capital measures or capital injections, it is often difficult to determine the precise aid amount in advance, since this depends on the risk associated with the transaction. Such types of state aid would therefore only be covered by the *de minimis* rule if the overall value of the transaction concerned does not exceed the new ceiling.

The proposal also clarifies the extent to which Member States may invoke the benefit of “*de minimis*” when confronted with an order of the Commission to recover illegally granted state aid.

Finally, the Commission proposal also clarifies the applicable monitoring requirements. For instance, in order to facilitate monitoring by Member States, the three year period will no longer be determined by reference to calendar years, but on the basis of the fiscal years applicable in each Member State.

What can state aid policy do in favour of SMEs?

State aid policy has traditionally been very favourable towards SMEs. Under the existing block exemptions and guidelines, SMEs generally benefit from higher aid intensities than large firms. After full implementation of the State Aid Action Plan, state aid policy will become even more favourable for SMEs.

A new aid possibility was introduced for the creation of small enterprises in the context of the recently published Guidelines on Regional Aid, to apply as from 2007 (see [IP/05/1653](#)). The new rules on Research & Development & Innovation (R&D&I), currently being developed by the Commission, are also due to include a series of measures specifically targeted at SMEs: aid for R&D&I projects, aid for patenting costs, aid for young innovative enterprises, aid for innovation support services, aid for the loan of highly qualified personnel. In addition, the risk capital guidelines are in the process of being revised in order to stimulate investment in innovative SMEs through more flexible assessment rules. Finally and most importantly, the Commission is working on the consolidation and extension of all existing block exemptions – including the current block exemption on SMEs and the block exemption on R&D aid for SMEs – into a single general block exemption. This wide-ranging block exemption will, in particular, include a simplified overview of the different possibilities for supporting SMEs.

The current proposal to update the “*de minimis*” ceiling should be seen in this context. As “*de minimis*” support constitutes a “blind” instrument, which does not allow the subsidies concerned to be targeted at any particular objective, it is not appropriate for promoting specific Lisbon objectives or to tackle particular market failures affecting SMEs. The Commission’s intention is therefore not to use “*de minimis*”, but rather the block exemptions and guidelines to promote the development of SMEs.

Will the Commission relax state aid discipline?

No - the aim of the State Aid Action Plan is to improve the state aid rules, not to relax them. As repeatedly called for by the European Council, the objective of state aid reform is “less and better targeted aid”. This objective remains valid for all kinds of state aid, including “*de minimis*” support. The State Aid Action Plan does not aim to increase state aid, but rather to reduce overall aid levels, while facilitating a better targeting of state aid towards measures that really contribute to the Lisbon objectives of boosting economic growth and creating jobs. This is also one of the reasons for not increasing the “*de minimis*” ceiling significantly, since such an increase could lead to random spending by Member States, rather than to targeted subsidising of crucial activities. Contrary to block exemptions, the *de minimis* aid does not distinguish between small and large companies. Large companies could therefore benefit from windfall aid, the amount of which is unlikely to give them an incentive to resolve market failures they are confronted with. Moreover, allowing substantial amounts of subsidies to be granted without any Commission control is likely to have severe consequences for the Commission’s cohesion policy, as the richest Member States could support their companies much more generously than the others.

What are the basic rules of state aid policy?

State aid policy is an important part of EU competition policy. State aid control comes from the need to maintain a level playing field for all undertakings active in the Single European Market, irrespective of the Member State in which they are established, and to avoid Member States getting locked into a contest where they try to outbid each other to attract investment. Preserving competitive markets is the best way for European citizens to get the products they want at low prices, and to foster innovation and growth in the EU.

The EC Treaty (Article 87) prohibits any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain firms or the production of certain goods in so far as this affects trade between Member States. A number of exceptions are however allowed. The Commission has the exclusive power to declare state aid compatible with the Treaty, provided it fulfils clearly defined objectives of common interest and does not distort intra-EU competition and trade to an extent contrary to the common interest.

What are *ex-ante* rules in the field of state aid?

State aid policy is based on the EC Treaty (notably Articles 87 and 88). The Commission can authorise state aid on the basis of notifications from Member States. In recent years, the Commission has also developed a series of *ex-ante* rules (guidelines, frameworks, block exemptions) to clarify its practice. Aid granted in conformity with the conditions set out in these rules is automatically considered to be compatible with the EC Treaty rules.

The Commission has adopted a number of "block exemption" regulations, which authorise state aid without requiring formal notification, in the following areas:

- small and medium-sized enterprises, including R&D aid for SMEs,
- aid for training
- aid for employment
- services of general economic interest for limited amounts of aid.

The Commission has also adopted a number of "guidelines" or "frameworks" in the following areas:

- regional aid
- Research & Development
- protection of the environment
- risk capital
- rescue and restructuring of firms in difficulty
- shipbuilding
- services of general economic interest.

In the context of implementing the State Aid Action Plan, these documents will be reviewed in the course of 2006-2007 (except the Regional Aid Guidelines and Services of General Economic Interest, already adopted in 2005: see respectively [IP/05/1653](#) and [IP/05/937](#)).

What is the calendar for changing the *de minimis* rule?

The Commission will, in line with Council Regulation (EC) n° 994/98, convene an Advisory Committee two months after the date of adoption of this proposal, to give Member States the opportunity to make their views known. In light of these comments, the Commission can decide to adapt its proposal. This revised proposal will then be published in the Official Journal of the European Union for comments by all interested parties. An accordingly revised proposal will be discussed again with the Member States in a second Advisory Committee, following which the Regulation will be adopted by the Commission. This is expected to happen before the end of the year (the current Regulation (Commission Regulation n° 69/2001) expires end of December 2006).

The current Commission proposal will also be published on the website of the Commission at:

http://europa.eu.int/comm/competition/state_aid/others/action_plan/