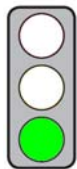


## MAIN ISSUES

**Objective of the Regulation:** The Commission wishes to exempt aid of up to 500,000 Euros for the provision of services of general economic interest (SGEI) from the obligation to obtain approval.

**Parties affected:** Recipients of aid for SGEI; public institutions granting aid for SGEI.



**Pros:** (1) The scope of action, in particular of the communities when providing social services, is to be extended and the administrative burden is to be reduced.

(2) SGEI of up to 500,000 Euros do not generally distort the free movement of services.

(3) The possibility to accumulate aid for SGEI with aid granted in accordance with the *de minimis* Regulation can help facilitate the provision of SGEI.

**Cons:** –

## CONTENT

### Title

**Draft C(2011) 9381** of 20 December 2011 for a Commission **Regulation** on the application of Art. 107 and 108 TFEU on *de minimis* aid granted to undertakings for the provision of services of general economic interest

### Brief Summary

#### ► General

- In principle, state aid is deemed incompatible with the internal market and therefore is prohibited (Art. 107 (1) TFEU). Where Member States wish to grant state aid nevertheless, they must submit it to the Commission for prior approval (Art. 108 (3) TFEU).
- The Council may determine the conditions in which aid is deemed compatible with the internal market and therefore is not subject to the Commission's approval (Art. 109 TFEU).
- The Council has empowered the Commission [Council REG (EC) No. 994/98] to adopt provisions on the application of European aid law to *de minimis* aid (Art. 2 of the REG). The *de minimis* aid Regulation adopted by the Commission by virtue of this delegated power [REG (EC) No. 1998/2006] applies to every type of aid for the provision of public services. Pursuant to that Regulation, aid to the volume of up to 200,000 Euro may be granted over a period of three fiscal years without having to submit it beforehand to the Commission for approval.
- The Regulation now being proposed is to supplement the existing general *de minimis* Regulation and is to apply in particular to aid for the provision of services of general economic interest (SGEI).
- What exactly SGEI are is not specified in this Regulation, but this can be inferred from the general regulatory framework on aid.
  - An economic activity is one in which goods and services are offered on a market.
  - The activity must be carried out in the general interest; the decision as to whether or not this is the case lies with the Member States. However, the Commission reserves the right to review the Member States' appraisal.
- Aid for the provision of SGEI can be granted for up to 500,000 Euro over a period of three fiscal years without having to obtain approval from the Commission beforehand (Art. 2 (1)). For they are regarded as measures which do not correspond to all the defining criteria of Art. 107 (1) TFEU, in particular they do not distort or threaten to distort competition and also do not have a negative effect on trade between Member States.

#### ► Scope

- The Regulation basically applies to all SGEI (Art. 1 (1)).
- Exempted from the Regulation is any aid which is also exempted from the general *de minimis* Regulation. This includes aid (Art. 1 (2)):
  - granted to undertakings active in the fishery, unless they provide SGEI, such as the collection of waste from the sea;

- granted to undertakings active in the production, processing and marketing of certain agricultural products;
- granted for certain export-related activities;
- granted under the condition that beneficiaries give priority to domestic goods over imported goods;
- granted to undertakings active in the coal sector;
- granted to transportation companies for the acquisition of road freight transport vehicles;
- granted to undertakings “in difficulty”.

► **Prerequisites for exemption from the notification requirement for aid granted for the provision of SGEI**

- The undertaking concerned must not have been granted aid exceeding a total of 500,000 Euro for the provision of SGEI in the previous three fiscal years, including the ongoing fiscal year (Art. 2 (2)).
  - Where aid is granted in the form of loans or capital injections, the amount paid out to the undertaking must not exceed said ceiling (Art. 2 (3) sentence 1).
  - Where aid takes the form of a guarantee, the guaranteed part of the underlying loan shall not exceed said ceiling (Art. 2 (3) sentence 2).
- An undertaking may be granted both aid under this Regulation and the general *de minimis* Regulation as long as the ceiling of 500,000 Euro is not exceeded (Art. 2 (6) sentence 1).
- Aid under this Regulation must not be cumulated:
  - with aid granted on the basis of another Regulation for the same service if this exceeds the ceiling defined under the other provision (Art. 2 (5));
  - with other compensation payments for the same service of general economic interest, regardless of whether it constitutes state aid or not (Art. 2 (6) sentence 2).
- Where the overall aid amount granted to an undertaking exceeds the eligible ceiling, the notification requirement also applies to the portion of the aid amount below the ceiling (Art. 2 (4)).

► **Granting and monitoring**

- Aid may not be granted until the competent national authority has checked that the aid granted to the undertaking does not exceed the ceiling and that all cumulation rules have been complied with (Art. 3 (1) sub-para. 2). Member States are to decide whether
  - to oblige undertakings to disclose the aid granted to them for the purpose of monitoring (Art. 3 (1) sub-para. 1 sentence 4), or
  - to establish a register listing all granted *de minimis* aid (Art. 3 (2)).
- The national approval decision must contain the approximate aid amount and the underlying SGEI and clearly state that it constitutes *de minimis* aid in line with this Regulation (Art. 3 (1) sub-para. 1 sentence 1).
- Member States must record all data on the granted aid for a period of ten years (Art. 3 (3) sentences 2, 3 and 4).
- On request, the Commission must be provided with all relevant data for assessing purposes. This also includes data regarding aid granted to an undertaking under the general *de minimis* Regulation. (Art. 3 (3) sentence 5).

► **Transitional provisions**

- The Regulation also applies to aid granted before the Regulation’s entry into force. If such aid does not comply with the requirements set out in the Regulation, the Commission reviews them pursuant to the relevant procedure. (Art. 4 sub-para. 1).
- The Regulation applies until the 31 December 2018. Thereupon, *de minimis* aid for the provision of SGEI can be applied for a period of six months. (Art. 5 sub-para. 2 in conjunction with Art. 4 sub-para. 2).

## Changes to the Status quo

To date, aid for the provision of public services has been limited to 200,000 Euros within three fiscal years. In future, the ceiling for the provision of SGEI is to be raised to 500,000.

## Statement on Subsidiarity by the Commission

The Commission does not address the issue of subsidiarity.

## Legislative Procedure

Open      Adoption by the Commission

## Options for Influencing the Political Process

Leading Directorate General:	DG Competition
Committees of the European Parliament:	The EP is informed only prior to the adoption of the Regulation.
Committees of the German Bundestag:	The German Bundestag has no formal options for influencing a Regulation.
Decision mode in the Council:	The Council is informed only prior to the adoption of the Regulation.

## Formalities

Legal competency:	REG (EC) No. 994/98 of the Council of 7 May 1998
Form of legislative competency:	Exclusive competency (Art. 3 (1) lit. b TFEU)
Legislative procedure:	Procedure sui generis [REG (EC) No. 994/98]

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

**Raising the ceiling for aid granted for the provision of SGEI to 500,000 Euro extends the scope for action, in particular for communities acting as the bodies responsible for social institutions.** For SGEI of this size are normally low-level social services, as is typical at local level. Local authorities can best devise which SGEI are desirable and how to accomplish them best. Moreover, as the Commission is correct to state, **such aid does not as a rule distort the free movement of services** between Member States, on the one hand due to their insignificance and on the other hand due to their limited, normally not transnational but regional relevance. Neither will the extended scope of action lead to any distortion of competition on local markets. For the existing national and European rules for public procurement, in particular the requirements for tendering, continue to be applicable to aid granted for the provision of SGEI.

**The possibility to accumulate *de minimis* aid for the provision of SGEI with the general *de minimis* Regulation** provides undertakings with the option to be granted more than one aid and thus **facilitates the provision of SGEI.**

As the Regulation provides only for exceptional or special rules, which are also included in the *de minimis* Regulation, congruency between the legal acts is ensured.

### Impact on Efficiency and Individual Freedom of Choice

**The administrative burden on national bodies and authorities is reduced,** for aid amounts of between 200,000 and 500,000 Euros are released from the requirement to be approved. Also, the undertakings receiving aid are released of the obligation to submit cost accounts.

This is, however, opposed by the possible obligation to disclose all *de minimis* aid amounts granted to an undertaking – either through a central register headed by a Member State or through a declaration by the undertaking concerned. Hence, a certain effort remains, which is also increased due to the possibility of cumulation.

The option to set up a central register is principally to be preferred. In this way, an overview is provided by the state and undertakings are not burdened. This solution is more transparent and can be monitored more easily, provided the Commission deems it necessary. Nonetheless, it is justifiable that precisely those Member States with deficits in administrative structures have the option to request the provision of information by undertakings.

## Legal Assessment

### Competency

Unproblematic.

### Subsidiarity

The principle of subsidiarity is not applicable, as the Regulation is subject to the exclusive competency of the EU (Art. 3 (1) lit. b TFEU).

### Proportionality

The retroactive effect of the Regulation with regard to aid granted for the provision of SGEI existing prior to the entry into force is unproblematic, for the ceiling of the Regulation lies above the general *de minimis* Regulation; hence, the retroactive effect constitutes an advantage for the beneficiaries.

#### Compatibility with EU Law

The Regulation can be adopted on 12 February at the earliest, for the Commission may not adopt the Regulation until all stakeholders have been given the possibility to comment on the draft. The Commission published the draft on 11 January 2012 in the Official Journal of the European Union and fixed a one-month period for the submission of comments [Art. 6 REG (EC) No. 994/98]. The Regulation is to take legal effect on the day following its publication in the Official Journal of the EU.

#### Compatibility with German Law

Unproblematic.

#### Conclusion

The Regulation extends the scope of action for national institutions and authorities which grant aid for the provision of SGEI and, at the same time, reduces the administrative burden. SGEI of up to 500,000 Euros do not generally distort the free movement of services. The possibility to accumulate aid granted for the provision of SGEI with aid granted on the basis of the *de minimis* Regulation can help facilitate the provision of SGEI.