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Welsh Government

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# Summary

## De Minimis Aid

This is a summary of the Commission Regulation (EC) No. 1407/2013. Full Text of the Regulation can be found [here](#).

The Regulation covers small amounts of aid (“de minimis” aid) within a predetermined threshold which do not count as State aid in the sense of Article 107(1) and are therefore exempt from the notification requirements of the competition rules.

Other guidance available includes: de minimis desk instructions, de minimis factsheet (factsheet 9) and de minimis checklists (Checklists 8 & 8 (a)).

### Scope of the Regulation

The de minimis rule applies to aid granted to undertakings in all sectors, with the exception of the following:

- aid granted to undertakings active in the primary production of agricultural products and fishery and aquaculture sectors;
- aid granted to undertakings active in the sector of processing and marketing of agricultural products, in the following cases:
  - where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;
  - where the aid is conditional on being partly or entirely passed on to primary producers;
- aid to export related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- aid contingent upon the use of domestic over imported goods;
- aid for the acquisition of road freight transport vehicles granted to undertakings performing road freight transport for hire or reward.

Aid granted to undertakings for activities in the processing and marketing of Annex 1 products is allowed under certain circumstances.

## Criteria

The total de minimis aid granted to any single enterprise (see definitions section) must not exceed €200,000 over any period of three fiscal years (i.e. for each new grant of de minimis aid, the total amount of de minimis aid received by the beneficiary during the current and previous two fiscal years needs to be determined). For undertakings active in the road freight transport sector, the de minimis threshold is set at €100,000.

The ceiling applies to transparent forms of aid, irrespective of the purpose for which it is awarded.

If an application is received which breaches the ceiling, de minimis aid cannot be awarded either in whole or in part (even if a partial award would not result in a breach of the ceiling).

In the case of mergers or acquisitions, all prior de minimis aid granted to any of the merging undertakings shall be taken into account in determining whether any new de minimis aid granted to the new or the acquiring undertaking exceeds the relevant ceiling. De minimis aid lawfully granted before the merger or acquisition will remain lawful, even if it exceeds the de minimis threshold of €200,000

If one undertaking splits into two or more separate undertakings, de minimis aid granted prior to the split should be allocated to the undertaking that benefited from it, which is in principle the undertaking taking over the activities for which the de minimis aid was used. If such an allocation is not possible, the de minimis aid should be allocated proportionately on the basis of the book value of the equity capital of the new undertakings at the effective date of the split.

The €200,000 ceiling shall be expressed as a cash grant. The figures should be gross, before any deduction for direct taxation. Where the aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent. Aid payable in several instalments must be discounted to its value at the time of the aid offer. In determining the value of a de minimis award, the official Commission exchange rate applicable at the time of grant (i.e. date of written offer) should be used.

The de minimis aid should be considered to be granted at the moment that the legal right to receive the aid is conferred to the beneficiary under the applicable national legal regime, this is the date of award.

## Transparent aid

The Regulation only applies to aid which is transparent i.e. where it is possible to calculate precisely the gross grant equivalent before granting the aid without the need to undertake a risk assessment ("transparent aid"). The following aid schemes are considered transparent:

- grants;
- interest rate subsidies;
- capped tax exemption;
- aid for loans where the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time of the grant;
- loans that are secured by collateral covering at least 50 % of the loan and that do not exceed either EUR 1 000 000 and a duration of five years or EUR 500 000 and a duration of 10 years can be considered as having a gross grant equivalent not exceeding the de minimis ceiling;

- aid for capital injections provided the total amount of the public injection does not exceed the de minimis ceiling;
- aid for risk capital measures provided the risk capital scheme concerned provides capital only up to the de minimis ceiling to each target undertaking;
- aid provided under a guarantee scheme where the guaranteed part of the underlying loan provided under such scheme is not greater than EUR 1 500 000 per beneficiary undertaking and the guarantee does not exceed 80% of the loan (EUR 750,000 for undertakings in the road freight transport sector).

**Aid to firms in difficulty in the form of a loan or guarantee is not considered to be transparent aid.**

## Cumulation

De minimis aid may not be cumulated with other State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that fixed by the Block Exemption or Decision adopted by the Commission in relation to that State aid.

The €200,000 ceiling applies to the total amount of de minimis aid to a single undertaking (i.e. each separate legal entity) from all sources of de minimis aid (€100,000 for undertakings in the road freight transport sector).

## Monitoring Requirements of the Regulation

Where an aid provider grants de minimis aid, it must:

- inform the recipient about the de minimis character of the aid and the level of aid, making express reference to the de minimis regulation;
- obtain from the recipient a declaration about other de minimis aid received during the current and previous two fiscal years;
- only grant new de minimis aid after having checked that this will not raise the total amount of de minimis aid received during the relevant period of three fiscal years to a level that exceeds the €200,000 limit (€100,000 for undertakings in the road freight transport sector).

## Records

Records regarding individual de minimis aid shall be maintained for 10 years from the date on which it was granted. Records regarding a de minimis aid scheme shall be maintained for 10 years from the date on which the last individual aid was granted under such scheme.

## Definitions

**“Agricultural products”** means products listed in Annex I to the EC Treaty, with the exception of fishery products covered by Regulation (EC) No 104/2000;

**“Processing of agricultural products”** means any operation on an agricultural product resulting in a product which is also an agricultural product, except on farm activities necessary for preparing an animal or plant product for the first sale;

**“Marketing of agricultural products”** means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose.

**“Single Undertaking”** means all enterprises having at least one of the following relationships with each other:

- (a) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;
- (b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
- (d) one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.

Enterprises having any of the relationships referred to in points (a) to (d) of the first subparagraph through one or more other enterprises shall also be considered to be a single undertaking.