

Welsh Government State Aid Unit

How to run a de minimis aid scheme

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How to run a *de minimis* aid scheme

This document provides practical guidance on how to run a *de minimis* aid scheme. This guide is not a summary of Commission Regulation 1407/2013 (the *de minimis* Regulation). This guidance will be most relevant to Welsh Government officials, local authorities, the third sector and organisations in receipt of *de minimis* aid.

This guide is not a substitute for legal advice which should be sought in individual cases. The guidance is accurate at the date of publication but please note the law is subject to constant change.

A full version of the *de minimis* Regulation can be found at:

http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf

IMPORTANT – you should use this guide in conjunction with the full version of the *de minimis* Regulation.

Background

The *de minimis* regulation can be used by public authorities to award small amounts of aid for any purpose, including operating aid. This is because the European Commission considers the *de minimis* threshold to be so low it has a negligible impact on trade and competition.

The total *de minimis* aid that can be given to a single undertaking over a 3 fiscal year period is €200,000.

Whilst the *de minimis* Regulation provides a great deal of flexibility for providing State Aid, it should only be used as a last resort where it is not possible to provide cover for the funding under an approved aid scheme or block exemption. This is important because:

- an organisation may have received *de minimis* funding from a number of different sources and the €200,000 threshold can quickly become exhausted;
- *de minimis* aid can be difficult to administer.

If you are administering a *de minimis* scheme you should use the checklists at annex 1 to assist you.

Running a *de minimis* scheme

Step 1 – check eligibility

There are some restrictions in the *de minimis* Regulation which means certain types of companies and certain sectors are unable to get *de minimis* aid. These restrictions can be found in the checklist at annex 1.

Some sectors have a lower *de minimis* threshold. Information about these can be found in the checklists at annex 1.

Checklist A	<i>de minimis</i> Regulation general conditions
Checklist B (you will need to use checklist A and B)	<i>de minimis</i> Regulation extra conditions for loans and guarantees

Step 2 – check how much *de minimis* aid has already been received by the beneficiary

Every undertaking that asks for *de minimis* aid must declare how much other *de minimis* aid they have received during its current and previous two fiscal years. They must do this in writing.

An undertaking for these purposes is any single organisation or two or more organisations deemed to be linked. Linked means:

Two or more enterprises which have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another;
- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another;
- A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other;
- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

A typical example of a linked enterprise is the wholly-owned subsidiary.

As this has to be done before you grant aid you may wish to build the request for information into application forms, depending on the nature of the *de minimis* scheme being operated. You can also request the information separately; there is a template that you can adapt at annex 2.

Step 3 – check the *de minimis* threshold is not breached

Aid can be provided in a variety of forms including grants, subsidised services, loans, guarantees. However they must all be given a gross grant equivalent. This means that you have to calculate the amount of the aid as if it had been provided as a grant.

You will then need to add that to the information you have already collected about the previous *de minimis* aid that the beneficiary has received (see step 2) to make sure that the €200,000 threshold is not breached. If it is breached then you cannot provide the aid.

When calculating the value of the support (and calculating the value of the threshold) you must use the Commission exchange rate applicable on the written date of offer of the *de minimis* funding. The Commission's exchange rate can be found here:

http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm

An example of how to ensure the *de minimis* threshold is not breached can be found below:

Worked example (for ensuring de minimis threshold has not been breached)

Company ABC has received £25,000 in October 2013.

What would be the maximum amount of *de minimis* aid that could be awarded on 15 January 2014 if their fiscal year is 6th – 5th April?

- Calculate the total amount of *de minimis* aid received by the beneficiary during the current and previous two fiscal years i.e. 2011-12, 2012-13, 2013-14; in this case the total amount is £25,000.
- Convert the *de minimis* ceiling into Euros on the relevant date (15/01/2014) using the appropriate [Exchange rate](#) (in this case 0.8364), and deduct the total amount of *de minimis* aid received by the beneficiary during the qualifying period (three fiscal years)

Sterling equivalent of <i>de minimis</i> threshold @ Jan 14	£167,280
Previous <i>de minimis</i> awarded in last 3 fiscal years	(£25,000)
Unutilised <i>de minimis</i> threshold	£142,280

The maximum *de minimis* that may be awarded on 15 January 2014 is £142,280.

For loans and guarantees it is even easier to calculate the value of the aid. This is because if certain conditions are met the level of aid is deemed to be at the *de minimis* threshold automatically.

For **loans** the *de minimis* threshold is automatically where:

- At least 50% is secured by collateral; and
- The loan amount is either €1,000,000 (€500,000 for road freight transport sector) over 5 years; or €500,000 (€250,000 for road freight transport sector) over 10 years; and
- The gross grant equivalent has been calculated using the reference rate at the time of grant.

There are other conditions; these can be found in Annex 1 checklist B

For **guarantees** the *de minimis* threshold is automatically met where:

- The guarantee does not exceed 80% of the loan; and
- The amount guaranteed is €1,500,000 (€750,000 for road freight transport sector) and the duration of the guarantee is 5 years; or the amount guaranteed is €750,000 (€375,000 for road freight transport sector) and the duration of the guarantee is 10 years; and
- The gross grant equivalent is calculated using the European Commission's safe-harbour premiums or a methodology agreed with the Commission prior to granting aid.

Where the loan/guarantee amounts or terms are less than the amounts can be prorated.

Step 4 – inform the recipient of the value of the de minimis aid

Write to the applicant and inform them of the *de minimis* nature of the aid. You must specify the value of the aid and include reference to and a link to the full version of the *de minimis* Regulation. If you are not able to do this at the time of award you can issue a summary of the aid granted as long as at the conclusion of the grant, you write to the beneficiary setting out the value of the aid.

In the letter, you must also inform the beneficiary of their responsibilities. Including the need to declare the value of the *de minimis* aid to any body that requests it (this will usually be done when the beneficiary seeks further *de minimis* funding.)

A template letter can be found at annex 3.

Step 5 – comply with monitoring requirements

The *de minimis* Regulation requires you to have a system in place to monitor *de minimis* aid.

Detailed records of *de minimis* aid provided must be kept for 10 years from the date on which the last individual aid was awarded or, for schemes, the date on which the last individual award was granted under the scheme.

Records should include:

- details of the information collected prior to the aid being awarded (including the amount of *de minimis* the beneficiary has received in the current and prior two fiscal years);
- the name of the beneficiary and the scheme;
- the amount and date of the aid awarded;
- any other information required to evidence that the terms and conditions of the Regulation have been met.

The Commission can request from Member States within a period of 20 working days, sufficient information to demonstrate compliance with the *de minimis* Regulation.

A quick recap

Have you.....

Looked at the checklist and ensured all the terms and conditions are met?	
Checked eligibility?	
Checked how much <i>de minimis</i> aid has been received by the beneficiary in the current and previous two fiscal years?	
Checked the value of the <i>de minimis</i> aid and that the €200,000 (or €100,000) threshold is not breached?	
Informed the recipient of the value of the <i>de minimis</i> aid?	
Collected and retained the records to evidence that the support is compatible with the <i>de minimis</i> Regulation?	

Annex 1 – Checklist A – *de minimis* Regulation general conditions

Information on the enterprise assisted		
Confirm that the enterprise is not in one of the following sectors	<ul style="list-style-type: none"> • fishery and aquaculture sectors; • primary production of agricultural products; • processing and marketing of agricultural products where the amount of aid is fixed upon the basis of the price or quantity of products purchased or put on the market. 	
Confirm that the enterprise assisted is NOT subject to:	An outstanding order for the recovery of aid which has been declared by the Commission to be illegal and incompatible with the Common market.	
Is the recipient organisation a linked enterprise or legally separate?	<p>A linked enterprise is defined as having any of the following relationships:</p> <ul style="list-style-type: none"> • One enterprise holds a majority of the shareholders' or members' voting rights in another; • One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another; • A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other; • One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another. <p>A typical example of a linked enterprise is the wholly-owned subsidiary.</p>	
Is the recipient organisation part of a merger or acquisition?		
In the case of mergers or acquisitions, all prior <i>de minimis</i> aid granted to any of the		

merging undertakings should be taken into account when determining whether any new *de minimis* aid to the new or the acquiring undertaking exceeds the *de minimis* ceiling.

Information about the support

Confirm that support is NOT for any of the following activities:	<ul style="list-style-type: none"> • Export related activities; • Aid contingent upon the use of domestic over imported goods. 	
Confirm type of aid:	<ul style="list-style-type: none"> • Grant; • Interest rate subsidy; • Public loan (complete checklists A&B); • Repayable advance; • Free/Subsidised service; • Guarantee (complete checklists A&B). 	
If support provided is in the form of free/subsidised services – work out cash value.	Cash value should be based on the amount the service would cost on the open market.	
Confirm that no other aid has been given for the same eligible costs.	If this is the case, ensure cumulation of such aid given does not exceed the highest aid intensity or aid amount applicable.	

Information about the calculation

Confirm the applicable reference period (the recipient's current and previous two fiscal years)	
<p>Confirm the date and amounts (in sterling) of <i>de minimis</i> aid that the recipient has received in the reference period:</p> <ul style="list-style-type: none"> • For linked enterprises you must include all <i>de minimis</i> aid granted to the 'group' of undertakings. • For undertakings that have been merged you must include any <i>de minimis</i> received by all companies that have been merged 	Box A
Confirm the date of award	
Confirm the sterling equivalent of the €200,000 (€100,000 for road freight transport sector) using the Commission's exchange rate on the date of award:	Box B

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm	
Confirm the total amount of <i>de minimis</i> aid (in sterling) you are awarding:	Box C
Confirm that when the amounts in Box A and C are added together they are equal to or less than the amount in Box B :	
Information about administration	
Confirm that you have written to the recipient informing them of the value of the aid. Make sure the letter includes a reference to the <i>de minimis</i> Regulation including a link to the full regulation and setting out their responsibilities (see annex 3)	

Annex 1 Checklist B - *de minimis* Regulation extra conditions for loans and guarantees

Information on the enterprise assisted	
Confirm that you have completed Checklist A:	
Confirm that the enterprise is not a firm in difficulty:	
Confirm the size of the undertaking (SME or large):	
For loans	
If the beneficiary is a large undertaking confirm they have a credit rating of at least B-:	
Confirm that the loan amount is secured by at least 50% of the loan and the loan amounts to either €1m (€500,000 for road freight transport) over 5 years or €500,000 (€250,000 for road freight transport) over 10 years – Gross Grant Equivalent is deemed to be €200,000:	
OR	
The gross grant equivalent of the loan has been calculated as a proportion of the €200,000 (€100,000 road freight transport) threshold using the applicable reference rate:	
For Guarantees	
If the beneficiary is a large undertaking confirm they have a credit rating of at least B-:	
Confirm that the guarantee does not exceed 80% of the loan and the amount guaranteed is either €1.5m (€750,000 for road freight transport) and the duration of the guarantee is 5 years or the amount guaranteed is €750,000 (€375,000 for road freight transport) and the duration of the guarantee is 10 years – Gross Grant Equivalent is deemed to be €200,000:	
OR	
The gross grant equivalent of the guarantee has been calculated on the basis of safe-harbour premiums in the Commission notice on guarantees:	

Annex 2 Form 1: Eligibility to receive *de minimis* aid

This form can be used to determine the Value of any *de minimis* aid previously received by a client, in order to ascertain whether there is scope to give further *de minimis* aid.

Aid administrators may also wish to build the relevant information into their application forms, depending on the nature of the *de minimis* scheme being operated.

Dear

[SCHEME TITLE (IF APPLICABLE)] STATE AID: *DE MINIMIS AID*

In order to minimise distortion of competition the European Commission sets limits on how much assistance can be given to organisations operating in a competitive market. This letter sets out what is needed to ensure compliance with those limits. You should note carefully the requirements and the obligations. If you have any queries please discuss them with the aid administrator.

Under EC Regulation 1407/2013 (*de minimis* Aid Regulation) as published in the Official Journal of the European Union 24 December 2013, the support can be provided up to a ceiling of €200,000 (€100,000 for undertakings in the road freight transport sector) to any single undertaking over a three fiscal year period (i.e. your current fiscal year and previous two fiscal years). A full version of the Regulation can be found at:

http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf

In the *de minimis* Regulation a single undertaking is defined as any single organisation or two or more organisations deemed to be linked. Linked means:

Two or more enterprises which have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another;
- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another;
- A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other;
- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

Any *de minimis* aid provided to you under this scheme will be relevant if you wish to apply, or have applied, for any other *de minimis* aid. The value of the aid under this scheme is (or estimated to be) []. You will need to declare this amount to any other aid awarding body who requests information from you on how much *de minimis* aid you have received. For the purposes of the *de minimis* Regulation, you must retain this letter for 3 years from the date on this letter and produce it on any request by the UK

public authorities or the European Commission. (You may need to keep this letter longer than 3 years for other purposes.)

Please advise us now of any other *de minimis* aid which your enterprise and any enterprises linked to it may have received during your current and previous two fiscal years, as we need to check that our support added to that previously received, will not exceed the threshold of €200,000 (€100,000 for undertakings in the road freight transport sector) over the last 3 fiscal years. *de minimis* aid includes not only grant but also assistance such as free or subsidised consultancy services, marketing advice etc. If you are in any doubt about whether previous assistance received classes as *de minimis* assistance please include it. Please sign the attached statement confirming your eligibility for support.

Yours sincerely

Statement of *de minimis* aid received

I confirm that my company (and any company linked to it) have received the following *de minimis* aid during the previous 3 fiscal years (i.e. current fiscal year and the previous two fiscal years):

Body providing the assistance/aid	Value of assistance	Date of assistance

I acknowledge that if I fail to meet the Eligibility Requirements, I/we shall become liable to pay the full price that would otherwise be payable in respect of the services received.

COMPANY

CLIENT NAME

SIGNATURE

DATE

Annex 3 Form 2: Value of *de minimis* aid given

This form can be used to provide the client with the actual Value of *de minimis* aid provided at the end of a project, where it is not possible to quantify the exact level of aid at the outset, for example, in a business support scheme where service can be provided up to a maximum level.

Project

Name _____

de minimis Aid Provided.

I, _____ (sponsor representative), on behalf of
_____ (sponsor), confirm that _____ (the client)
received the following value of *de minimis* aid on the above programme:

Nature of Assistance	Value of Assistance £	Date of Assistance

Signed on behalf of

sponsor _____

Name _____

Signed on behalf of
Client _____

Name _____