

How to use the De Minimis Regulation – Desk Instructions

These desk instructions provide:

- An overview of the de minimis Regulation.
- When the de minimis regulation should be used.
- Practical tips for awarding support in line with the de minimis Regulation where:
 - support is provided directly to an organisation
 - support is provided to a third party to administer a de minimis scheme.

In addition these desk instructions include templates for:

- Collecting information about previous de minimis received.
- Informing the beneficiary of the amount of de minimis provided.
- Other de minimis guidance available: De minimis Regulation Summary, de minimis factsheet (factsheet 9) and de minimis checklist (Checklists 8 & 8 (A)).

Following the UK's departure from the UK, the EU State aid regulations only apply in certain circumstances:

1. For aid that is granted within scope of the Northern Ireland Protocol;
2. For the disbursement of outstanding Structural Funds payments.

In all other instances, support must be provided in line with the UK subsidy control regime. For more information on the UK subsidy control regime, please visit the UK Government website here [\[add hyperlink\]](#).

Overview of the de minimis Regulation

This section provides a brief overview of the de minimis Regulation. A more detailed summary of the Regulation is attached at Appendix 1 and full details can be found in Commission Regulation (EC) No 1407/2013 on the application of Articles 87 and 88 (now 107 & 108) of the Treaty to de minimis aid.

In the de minimis Regulation, the European Commission (EC) sets out the basis under which small amounts of public aid given to an undertaking would not count as State aid in the sense of Articles 107 and 108 of the treaty.

The Commission considers the amount of de minimis aid, that can be awarded to be so low it has a negligible impact on trade and competition. Where the support is being provided in line with the UK subsidy regime, the de minimis Regulation has been succeeded by the 'Small Amounts of Funding Exemption' (SAFE), which allows a maximum of 325,000 Special Drawing Rights to be awarded to a single undertaking over the current and previous two fiscal years.

Restrictions

- De minimis aid cannot be given where the total de minimis aid and SAFE support awarded to the undertaking over the last three fiscal years would breach the ceiling of €200,000 (€100,000 for undertakings in the road freight transport sector).
- De minimis aid may not be cumulated with other State aid in respect of the same eligible costs (this means that the practice of 'topping up' other aid with de minimis aid is prohibited).

When the De Minimis Regulation should be used

De minimis should only be applied as a last option 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 be in receipt of de minimis funding from a number of sources and the threshold may quickly become exhausted, and so the amount of de minimis aid available to the organisation would be limited.
- De minimis aid can be difficult to administer, particularly when determining the previous levels of de minimis funding received by organisations.

Examples of the type of situation where de minimis may be applied include:

- normal operating costs, where cover is not available under any other State aid rules; for example, support for operating costs;
- schemes, where it is deemed appropriate from a policy perspective to provide higher intensity levels of support than would be allowable under any relate State aid rules;
- for example, schemes that provide over 50% support for participation in trade fairs.

Administrative Requirements

The administrative requirements you will need to follow will vary, depending on the particular circumstances involved:

- if you are directly awarding aid to an organisation, either under a scheme or as an individual award of aid, you will need to follow option A; or
- if you are providing funding to a third party organisation to administer a de minimis scheme on your behalf, you will need to follow option B.

Option A: Award of de minimis aid directly to an Organisation

BEFORE GRANTING DE MINIMIS AID YOU WILL NEED TO:

1. Ensure that the beneficiary is eligible to receive De Minimis aid

The following are NOT eligible for support:

- aid to the fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000;
- aid linked to the primary production of agricultural products as listed in Annex 11 to the Treaty;
- aid linked to the processing and marketing of agricultural product where the following applies:
 - when the amount of 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;
 - when the aid is conditional on being partly or entirely passed on to primary producers.
- aid for export related activities including financing the establishment of distribution networks in other member states or third countries;
- 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;
- support provided to firms in difficulty in the form of loans or guarantees.

2. Ensure that the aid to be granted by you does not take the total level of de minimis aid granted to the undertaking being funded over the de minimis threshold

The maximum amount of aid awarded to an undertaking must not exceed €200,000 over any period of three fiscal years i.e. the current and previous two fiscal years. This includes any SAFE support received over the same period. The fiscal year in question should be that of the company in the member state.

Example 1

If an application for de minimis is approved in February 2014 and the company fiscal year runs in line with the UK fiscal year (6th April to 5th April), any de minimis funding the company has received from 6th April 2011 to January 2014 (i.e. fiscal years 11-12, 12-13, 13-14) would need to be considered.

Example 2

A company's fiscal year runs from 1 January to 31 December. If an application for de minimis is approved on 1 February 2014, any de minimis funding the company has received from 1 January 2012 to 31 January 2014 (i.e. fiscal years 12, 13, 14) would need to be considered.

In order to calculate whether the award of aid would breach the threshold you will need to obtain details from the recipient about other de minimis aid and SAFE support received during the current and last two fiscal years. This will need to be confirmed in writing.

Appendix 2 sets out a template letter that may be used for collection of the relevant data from recipients and to inform them of the value of the de minimis being awarded.

Calculate the value of the de minimis support

It may not always be possible to determine the exact level of support to be provided at the outset (for example where the client has identified a need for 5 days consultancy, but in practice may use less). Appendix 2 includes a template aimed at confirming the actual level of aid provided at the end of a project.

In some instances, it may be appropriate to build the request for this information into application forms so that aid administrators can assess the appropriate cover without having to separately contact the applicants.

For the purposes of the calculation you will need to take account of the following:

- The ceiling applies to the total amount of de minimis aid to a single recipient (i.e. each separate legal entity) from all source – aid awarded under any other State aid cover (block exemption, notified scheme, or no aid) does not need to be taken into account as long as they were awarded for different eligible costs.
- If the undertaking is classed as a linked enterprise (as defined under the criteria given in the definition of small- or medium-sized enterprises (SMEs) in Commission Recommendation 2003/361/EC) then the group of linked enterprises should be considered as one single undertaking for the application of the de minimis rule, and all the de minimis aid received by the linked enterprises taken into account when calculating the ceiling.
- If two or more undertakings have merged, the total amount of de minimis received by each of the merged enterprises during the reference period should be taken into consideration, the new enterprise does not receive a 'clean slate'.
- The ceiling applies irrespective of the form of aid (e.g. direct grant/subsidised services) or the objective pursued and whether the aid is financed entirely or in part by EC resources (e.g. structural funds).
- 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).
- De minimis aid should be expressed as a cash grant and all figures need to be expressed as a gross amount i.e. before deduction of tax or other charge.
- 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 General Block Exemption Regulation (GBER) or decision adopted by the Commission in relation to that State aid.
- Where de minimis aid is payable in several amounts, it must be discounted back to the written date of the offer.
- The interest rate to be used for discounting purposes is published on the European Commission website: www.ec.europa.eu/competition/state_aid/legislation/reference_rates.html
- Where the aid is awarded in a form other than a grant (such as subsidised services) the aid amount will need to be calculated and expressed as a cash grant equivalent value.
- The sterling equivalent of the de minimis threshold at any point in time is calculated using the Commission exchange rate applicable on the written date of offer of the de minimis funding: www.ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/index_en.cfm

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 de minimis aid that could be awarded as at 15 January 2014 if their fiscal year is 5-6 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 de minimis threshold @ Jan 14 £167,280.

Previous de minimis awarded in last 3 fiscal years (£25,000).

Unutilised de minimis threshold £142,280.

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

3. The organisation receiving de minimis support must be notified in writing

- that they are in receipt of de minimis aid;
- of the prospective amount of aid expressed as gross equivalent i.e. before deduction of tax or other charge;
- express reference should be made to the 'De Minimis Regulation 1407/2013 as published in the Official Journal of the European Journal dated 24 December 2013'.

An example of a letter to be used to inform an organisation that it is in receipt of de minimis aid is set out in Appendix 2.

Any grant offer letter/contract issued should also make reference to the amount of aid awarded under the De minimis Regulation 1407/2013.

AFTER DE MINIMIS AID HAS BEEN AWARDED YOU WILL NEED TO:

4. Ensure that the monitoring requirements are complied with

You are required to ensure that you have a system in place to monitor support awarded in line with the de minimis Regulation.

Detailed records of aid provided in line with the de minimis Regulation 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 and the UK within a period of 20 working days, sufficient information to demonstrate compliance with the de Minimis Regulation.

Option B: Funding to a third party to administer a de minimis scheme

In providing funding to a third party organisation to operate a de minimis scheme on your behalf, you will need to ensure that the organisation has the necessary systems and procedures in place to comply with the De Minimis Regulation.(i.e. sufficient procedures to comply with the administrative requirements set out under Option A).

The third party organisation should therefore be required to submit details of the system they have put in place to monitor support provided in line with the de minimis Regulation.

It is suggested that the following terms and conditions are included in the approval letter/contract:

Of this grant xx has been awarded on the basis that the applicant will operate a de minimis scheme. Any assistance provided to the end beneficiaries must comply with Commission Regulation (EC) No 1407/2013 of 24 December 2013 on the application of Articles 107 and 108 of the Treaty to de minimis aid <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1407&from=EN>

In particular:

- **Applicant name** must ensure that where de minimis support is to be offered that, prior to making an offer of assistance, the de minimis threshold will not be breached.
- **Applicant name** must inform any organisation receiving a service/grant (delete as appropriate) under the scheme that they are in receipt of de minimis aid in compliance with Commission Regulation (EC) No 1407/2013 of 24 December 2013 on the application of Articles 107 and 108 of the Treaty to de minimis aid.
- **Applicant name** must ensure that any organisation receiving de minimis aid must keep a record of the de minimis aid and declare the amount to any aid awarding body who requests information on how much de minimis they have received.
- **Applicant name** is required to submit details of the system in place to monitor de minimis aid within 1 month of the date of this letter.
- Detailed records of aid provided under de minimis must be retained by **Applicant name** for 10 years.

Appendix 1

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) this includes any SAFE support that they may have received over the same period. 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 and SAFE support (€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 and SAFE support 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 relevant 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.

Appendix 2

Form 1: Eligibility to receive de minimis aid

This form can be used to determine the Value of any De Minimis aid and SAFE support 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, this support is provided as de minimis aid. There is a ceiling of €200,000 (€100,000 for undertakings in the road freight transport sector) for all de minimis aid provided to any one organisation over a three fiscal year period (i.e. your current fiscal year and previous two fiscal years). 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 or Small Amounts of Funding Exemption (SAFE) support 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 and 'Small Amounts of Funding Exemption' (SAFE) support received

I confirm that I have received the following de minimis aid and SAFE support 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: _____

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

_____ (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: _____