

## FACTSHEET

# De minimis support

## (INTERREG VI-A) IPA BULGARIA SERBIA PROGRAMME

*Version 2.0 of 1 February 2024*

### INTRODUCTION

An undertaking that receives support from public funding sources, such as (INTERREG VI-A) IPA BULGARIA SERBIA PROGRAMME, may gain an advantage over its competitors through this support. Furthermore, the support can distort competition and affect trade between Member States. If this is the case, State aid is present.

The EU Treaty wants to prevent such effects on the market and therefore generally prohibits State aid. However, in some circumstances such support is necessary for a well-functioning and equitable economy. Therefore, the Treaty leaves room for a number of measures through which State aid can be made compatible with the rules. The Programme uses one of these measures, namely the *de minimis*. The Programme Manual lays down the State approach and procedures of the Programme.

***This factsheet aims to provide additional information about the de minimis Regulation. The annexes to this factsheet support State aid relevant partners of approved projects in deciding whether de minimis is relevant for them and whether they are able to use de minimis.***

## SUMMARY

The de minimis principle allows project partners to receive comparatively small amounts of support without being caught by the State aid rules. This is because the European Commission assumes that small amounts of support do not have a significant impact on competition and trade in the European Economic Area (EEA). In general, a single undertaking can receive de minimis support of up to EUR 300 000 per Member State over any period of 3 years prior to the date of grant.

## LEGAL BASIS

*COMMISSION REGULATION (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid:*

[http://ec.europa.eu/competition/state\\_aid/legislation/de\\_minimis\\_regulation\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf)

### Please note

This factsheet is a summary of the key points of Regulation (EU) 2023/2831 and hereinafter referred to as "the Regulation" but is not a substitute for the full text of the Regulation, to which reference should be made!

## GEOGRAPHICAL COVERAGE

The provisions of this document are applicable to the partner/s legally established on the territory of the Republic of Bulgaria. The Serbian applicants should follow the applicable national regulations and regulations regarding State aid outside EU.

## AMOUNTS OF SUPPORT

*The total **amount** of de minimis aid to a single undertaking is:*

- ✓ EUR 300,000 over any period of three years prior to the date of grant.

*De minimis aid is deemed to be granted when the legal right to receive the aid is conferred, irrespective of the date of payment. In as (INTERREG VI-A) IPA BULGARIA SERBIA PROGRAMME this is understood as the date when the last contracting party signs the subsidy contract.*

*Where the relevant ceiling would be exceeded by the grant of new de minimis aid, none of the new aid may benefit from the de minimis Regulation. This means that if an application is received which would result in the ceiling being exceeded, de minimis support cannot be awarded in whole or in part, even if a partial award would not result in the ceiling being exceeded.*

*The ceiling laid shall apply irrespective of the form of the de minimis aid or the objective pursued by it and irrespective of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin.*

*For the purposes of the ceiling laid 2, aid shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction of tax or other charge. When aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.*

*Aid payable in several instalments shall be discounted to its value at the moment it is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time the aid is granted.*

## **SINGLE UNDERTAKINGS**

The ceiling on de minimis aid is calculated per single undertaking per Member State. Conversely subsidiaries of the same enterprises could not each receive de minimis support from the same Member State.

The de minimis threshold counts per "single undertaking". In case a project partner is part of a group, the entire group is considered as one single undertaking and the de minimis threshold applies to the entire group.

The notion of single undertaking includes all enterprises having at least one of the following relationships with each other, as provided for in Article 2(2) of Regulation (EU) No 2023/2831 on de minimis aid:

- 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 the above points through one or more other enterprises shall also be considered to be a single undertaking.

It is to be noted that in the framework of State aid, an "enterprise" is to be understood as any entity engaged in an economic activity irrespective to its legal status

Although the Regulation refers to 'enterprises', in practice, this encompasses any entity engaged in an economic activity. The above criteria are intended to ensure that a group of linked entities is treated as a single undertaking for the purposes of the de minimis rule. On the other hand, it is intended to ensure that entities which have no relationship with each other except for the fact that each of them has a direct link to the same public body or bodies are not treated as being linked to each other.

In calculating the amount of aid, special care must be taken where the recipient has been the subject of a merger or a split from another organization. In the case of mergers and acquisitions, all prior de minimis aid is considered in determining whether new de minimis support can be paid. De minimis aid lawfully granted before a merger or acquisition shall remain lawful.

If one undertaking splits into two or more separate undertakings, de minimis support granted before the split shall be allocated to the undertaking that benefitted from it. This is in principle the undertaking taking on the activities for which de minimis support was used. If this split is not possible, de minimis support will be allocated proportionately on the basis of the book value of the equity capital of the new undertaking at the date of the split.

Should be considered that De minimis aid granted in accordance with Article 5 para. 1 of Regulation (EU) No 2023/2831 may be cumulated with de minimis aid granted in accordance with Commission Regulation (EU) No 2023/2832. It may be cumulated with de minimis aid granted in accordance with other de minimis regulations up to the relevant ceiling laid down in Article 3, para. 2 of Regulation (EU) No 2023/2831.

In addition, art. 5, para 3 of the Regulation (EU) No 2023/2831 indicates that De minimis aid shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission. De minimis aid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission.

## EXCLUSIONS

*(INTERREG VI-A) IPA BULGARIA SERBIA PROGRAMME is not allowed to grant the following types of aid under the de minimis Regulation:*

- ✓ *Aid to undertakings active in the primary fishery and aquaculture sector, as defined in Article 5, points (a) and (b) Regulation (EU) No 1379/2013;*
- ✓ *Aid granted to undertakings active in the processing and marketing of fishery and aquaculture products, where the amount of the aid is fixed on the basis of price or quantity of products purchased or put on the market*
- ✓ *Aid to undertakings active in the primary agricultural production<sup>1</sup>;*
- ✓ *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 and aid contingent upon the use of domestic over imported*

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<sup>1</sup> 'agricultural products' means products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products covered by Regulation (EC) No 1379/2013 (e.g. animals, vegetables, fruits)

*good cannot be granted under the de minimis rule;*

✓ *Aid contingent upon the use of domestic over imported goods and services*

For the purposes of De minimis Regulation the following definitions shall apply:

**Agricultural products** mean products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000.

**Primary agricultural production means the production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing the nature of such products**

**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.

Primary production of fishery and aquaculture products means all operations relating to the fishing, rearing or cultivation of aquatic organisms, as well as on-farm or on-board activities necessary for preparing an animal or plant for the first sale, including cutting, filleting or freezing, and the first sale to resellers or processors;

Processing and marketing of fishery and aquaculture products means all operations, including handling, treatment and transformation, performed following the time of landing – or harvesting in the case of aquaculture – that result in a processed product, as well as the distribution thereof;

Additionally, the Programme ensures that partners do not receive the other types of aid that are excluded by the de minimis Regulation in addition to the ones listed above.

## **ENSURING COMPLIANCE**

In order to ensure strict observation of the set maximum thresholds, in accordance to Art. 6(1) of Regulation (EU) 2023/2831 the Managing Authority shall request from the Bulgarian partners to declare any de minimis aid received in any period of three years prior to the date of grant. The provided information shall be verified through the public Register of the de minimis aids, available on the webpage of the Bulgarian Ministry of Finance (<http://minimis.minfin.bg/>).

In case with planned project activities a Bulgarian partner exceed the maximum thresholds, the Managing Authority will reduce the requested grant amount before signature of the subsidy contract.

The Programme bodies at all levels (first level controllers, JS and MA) will closely monitor the adherence of the state aid rules not only during the pre-contracting phase, but also during the whole implementation period of the project.

In case with already implemented project activities a Bulgarian partner exceed the maximum thresholds, the Managing Authority will terminate the subsidy contract and to demand repayment of the amounts already paid in accordance with the provisions of the subsidy contract and the applicable state/de minimis aid regime.

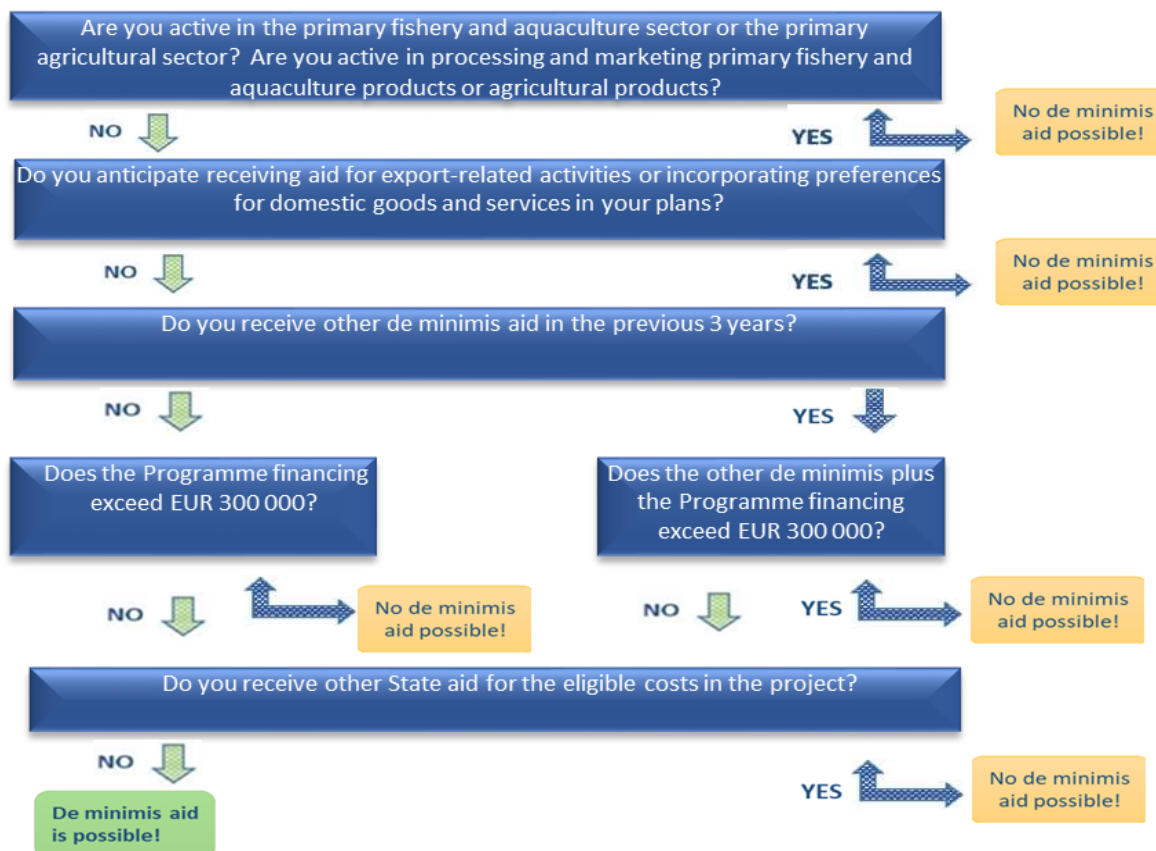
## ADMINISTRATIVE ARRANGEMENTS

In case of a positive plausibility check, the Programme can grant de minimis support.

The Managing Authority ensures compliance with the monitoring and administrative arrangements of the de minimis Regulation. Project partners receiving de minimis aid have to maintain relevant documentation as outlined in the Programme Guidelines. The Lead partner and the project partners have to ensure that all planned activities are set up and implemented in compliance with the national legislation related to competition and state aid. In addition to this they shall ensure publicity and transparency of these activities and project outputs and results, which can create an economic advantage to an economic operator.

In case the Programme bodies find out that the Lead partner or any project partner made false declarations regarding state aid, the MA is entitled to terminate the subsidy contract and to demand repayment of the amounts already paid in accordance with the provisions of the subsidy contract and the applicable state/de minimis aid regime.

### *Am I able to use de minimis?*



***DISCLAIMER: De minimis aid shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission. De minimis aid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission***

*This is a simplified flowchart that shall provide a first overview of the possible use of de minimis. In case of questions, please contact the MA/JS. Further information on definitions and limitations is available in the de minimis factsheet and the de minimis declaration.*