

EUROPEAN COMMISSION  
Competition DG

Deputy Director General State aids

Brussels, 4 October 2012  
COMP/A-3/JW-jc (HT-368) 2012/102323

Mr J. Pūce  
State Secretary  
Ministry of Economics of the  
Republic of Latvia  
**By e-mail**

**Subject: Application of the *de minimis* Regulation (Regulation 1998/2006) to firms in difficulty**

**Reply to your letter dated 06.08.2012 (No.3334-1 – 7974)**

Dear Mr. Pūce,

Thank you very much for your letter with your questions on the application of the *de minimis* Regulation (Regulation 1998/2006) to firms in difficulty.

We understand your objective to reduce administrative burden for *de minimis* aid. At the same time, the *de minimis* Regulation has to be interpreted in way that ensures that its scope is sufficiently limited in order not to include any measure that distorts competition and affects trade between Member States. In its Communication of 8 May 2012 on EU State Aid Modernization (SAM), the Commission has laid out an ambitious project to overhaul EU State aid rules. As explained in the Communication, the initiative aims at fostering growth, focusing the enforcement on cases with the biggest impact on the internal market and on streamlining the rules and taking faster decisions. In the context of this initiative, the Commission has launched a large number of public consultations, including a specific consultation on the revision of the *de minimis* Regulation. This consultation remains open until 18 October 2012.

As regards the currently applicable rules, we can provide the following clarification:

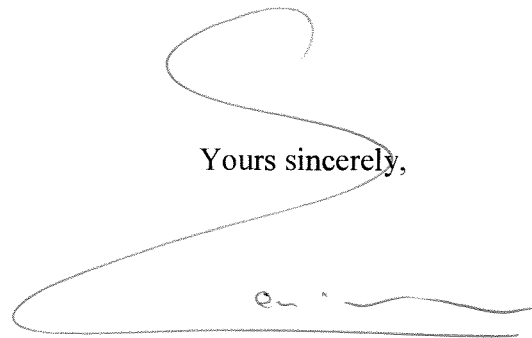
I. Article 1(1)(h) of the *de minimis* Regulation excludes "undertakings in difficulty" from the scope of application of this Regulation. Recital 7 specifies this exclusion further by explaining that it "should not apply to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty". The wording of the Regulation therefore makes clear that the notion of "undertaking in difficulty" under the *de minimis* Regulation is identical with the same notion in the Rescue and Restructuring Guidelines. Therefore, the *de minimis* Regulation does not

apply if any of the criteria to determine an undertaking in difficulty set out in the Rescue and Restructuring Guidelines is fulfilled. The exclusion is not limited to only a subset of criteria. The proposed methodology is therefore not sufficient.

II. If the entity can be subject to insolvency proceedings, para. 10(c) of the Rescue and Restructuring Guidelines applies. In any event, the criteria set out in para. 11 of the Rescue and Restructuring Guidelines should be checked in order to verify whether this entity "is unable (...) to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term" (see para. 9 of the Rescue and Restructuring Guidelines). In cases where due to specific legal characteristics of an entity, the notion of "going out of business" is not applicable or appropriate, we consider that in principle it should be checked whether a classic private company in the same financial situation carrying out the same economic activity would be considered as being in difficulty.

We hope this information is helpful for you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gert-Jan Koopman', written over a horizontal line.

Gert-Jan KOOPMAN