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THE UGLY SISTER OR THE CINDERELLA: REMARKS ON THE NEW *DE MINIMIS* AID REGIME

Abstract

This article examines the recently modernised *de minimis* aid regime in EU State aid law, with some reference to Polish law. It highlights how the regime enables swift, decentralised public support for undertakings, particularly SMEs, while maintaining safeguards against competitive distortions. Against this background, the modernised framework introduces several notable changes, including increased financial ceilings and strengthened transparency obligations, which enhance its practical applicability. At the same time, despite its relative complexity, *de minimis* aid remains widely used and valued by Member States for preserving regulatory autonomy and facilitating small-scale public support. The analysis shows that the regime, often overlooked in broader State aid debates, functions as a relatively important tool, effectively balancing administrative efficiency with competition control. Nevertheless, its practical simplicity and broad application coexist with certain limitations and regulatory trade-offs, reflecting the ambivalent position of *de minimis* aid within EU State aid governance.

KEYWORDS

de minimis aid, State aid, public aid, State aid law

SŁOWA KLUCZOWE

pomoc *de minimis*, pomoc państwa, pomoc publiczna, prawo pomocy państwa

I. INTRODUCTION

When studying the extensive literature on EU State aid law, one occasionally encounters the view that the legal regime of *de minimis* aid (aid of negligible value) is the ‘ugly sister’ of State aid law.¹ This metaphor suggests that the issue of *de minimis* aid has received comparatively little attention in doctrinal analyses and, at times, may even be considered neglected. While this opinion may appear somewhat sceptical, it is worth examining the extent to which it reflects the relative complexity and practical significance of *de minimis* aid as a distinct instrument of State aid law. A further impetus for addressing this topic is the recent entry into force of new regulations governing *de minimis* aid, which underscores the relevance of this specific form of State intervention in the economy. Accordingly, this article aims to explain the key provisions of the new legal regime for *de minimis* aid, with some reference to relevant Polish law, and to assess the assumption that the *de minimis* aid instrument is both relatively complex and practically significant. The discussion focuses on the general (horizontal) rules for *de minimis* aid. Given the scope of the study, this article does not examine the specific rules applicable to the agricultural and fisheries sectors, nor to undertakings providing services of general economic interest. The primary methods employed to achieve these objectives are the formal-dogmatic method – analysis of legal acts – alongside the study of case law and scholarly literature on State aid law.

II. LEGAL FRAMEWORK FOR *DE MINIMIS* AID

The concept of *de minimis* aid is an emanation of the *de minimis* rule, which is universal in certain areas of law and derives from Roman law, where it was regarded as an expression of justice and fairness. Historically, the rule has been understood in two senses: a procedural one, expressed by the Latin proverb *minima non curat praetor* (the praetor does not concern himself with trifles), and a substantive one, derived from the maxim *de minimis non curat lex* (the law is not concerned with minor matters). The same idea is conveyed by the proverb *aquila non captat muscas* (an eagle does not catch flies).²

¹ See Anna Nowak-Salles, ‘Book Review: De Minimis Aid Under EU Law, by Ricardo Pedro (The Hague: T.M.C. Asser Press, 2022)’ (2023) 60(5) CMLR 1486.

² Janja Hojnik, ‘De Minimis Rule within the EU Internal Market Freedoms: Towards a More Mature and Legitimate Market?’ (2013) 6(1) EJLS 25, 26–27; Leopold Czapiński, *Księga przysłów, sentencji i wyrazów używanych przez pisarzy polskich* (Druk S. Orgelbranda Synów 1892) 288.

Prior to the adoption of Commission Regulation (EC) 69/2001,³ it was unclear whether this principle applied in the field of State aid. Article 107(1) of the Treaty on the Functioning of the European Union (hereinafter TFEU) does not provide an explicit legal basis for the *de minimis* rule, and the Court of Justice of the European Union (hereinafter the Court or CJ) initially adopted a sceptical stance towards its applicability.⁴ The European Commission (hereinafter the Commission or EC) formally recognised the *de minimis* rule in State aid law for the first time in 1992, albeit through a soft law instrument, namely the Guidelines on State aid for small and medium-sized enterprises (SMEs).⁵ The revised version of those Guidelines adopted in 1996,⁶ as well as the Commission Notice on the *de minimis* rule for State aid issued in the same year⁷ – which, unlike the earlier Guidelines, was not confined to SMEs – rested on an equally fragile legal basis. The legally binding status of the *de minimis* rule in State aid law was established by Regulation (EC) 69/2001. That regulation was subsequently replaced by Commission Regulations (EC) 1998/2006⁸ and (EU) 1407/2013.⁹ Following the expiry of the latter, it was replaced by the currently applicable Commission Regulation (EU) 2023/2831¹⁰ (hereinafter GDMR). Under Article 1(1) of the GDMR, this Regulation constitutes the basic legal framework for *de minimis* aid and has a broad scope of application extending, in principle, beyond individual sectors. In practice, it forms the basis for the majority of *de minimis* aid granted. The GDMR applies to aid granted to undertakings in all sectors, subject to a number of expressly enumerated exclusions. These derogations include, inter alia, aid in the agricultural and fishery sectors, ‘export aid’ granted for activities related to exports to third countries or Member States, and aid contingent upon the preferential use of domestic goods or services.

³ Commission Regulation (EC) 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid [2001] OJ L 10/30.

⁴ Hojnik (n 2) 29; Conor Quigley, *European State Aid Law and Policy (and UK Subsidy Control)* (4th edn, Hart Publishing 2022) 117ff.

⁵ Community guidelines on State aid for small and medium-sized enterprises (SMEs) [1992] OJ C 213/2.

⁶ Community guidelines on State aid for small and medium-sized enterprises [1996] OJ EC C 213/4.

⁷ Commission notice on the *de minimis* rule for State aid [1996] OJ C 68/9.

⁸ Commission Regulation (EC) 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid [2006] OJ L 379/5.

⁹ Commission Regulation (EU) 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid [2013] OJ L 352/1.

¹⁰ 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 [2023] OJ L 2023/2831/1.

Special rules on *de minimis* aid are laid down in three Commission regulations, which operate as *lex specialis* in relation to the GDMR. Two of these are sector-specific, namely Regulation (EU) 1408/2013¹¹ and Regulation (EU) 717/2014.¹² The third is Regulation (EU) 2023/2832,¹³ which governs *de minimis* aid granted in the context of services of general economic interest. This plural system of *de minimis* regimes offers certain advantages, most notably enhanced flexibility in addressing sector-specific market structures and risks, as well as the possibility of calibrating aid thresholds to sectors that are particularly sensitive to competitive distortions. At the same time, the coexistence of multiple regimes entails significant disadvantages. In particular, it increases legal and administrative complexity and may lead to inconsistencies in the treatment of comparable situations across sectors. Overall, while the plural model allows for greater regulatory nuance, it does so at the expense of clarity, simplicity and uniformity within the internal market.

The *ratio legis* underpinning the incorporation of the *de minimis* rule into State aid law was to reduce the administrative burden on undertakings, Member States and the Commission itself associated with the handling of State aid cases, while enabling the Commission to concentrate its enforcement efforts on measures that are genuinely significant from an EU perspective.¹⁴ The decision to transpose the rule – originally introduced through Commission guidelines – into a regulation, that is, a hard law instrument, was also intended to endow it with a more secure legal basis.¹⁵ Although such regulations are binding and directly applicable, they do not constitute legislative or delegated acts, but rather implementing acts.

The treaty basis for Commission regulations giving effect to the *de minimis* rule in State aid law is Article 108(4) TFEU, which authorises the Commission to

¹¹ Commission Regulation 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agricultural sector [2013] OJ L 352/9 as amended.

¹² Commission Regulation 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector [2014] OJ L 190/45 as amended.

¹³ Commission Regulation (EU) 2023/2832 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 granted to undertakings providing services of general economic interest [2023] OJ L 2023/2832/1 as amended.

¹⁴ Michael Berghofer, ‘The New De Minimis Regulation: Enlarging the Sword of Damocles?’ (2007) 6(1) EStAL 11, 12 and the explanatory memoranda cited therein contained in the individual acts on *de minimis* aid; see also the judgment of the CJ of 28 October 2020 in Case C-608/19 *Istituto nazionale per l’assicurazione contro gli infortuni sul lavoro (INAIL) v Zennaro Giuseppe Legnami Sas di Zennaro Mauro & C.*, ECLI:EU:C:2020:865, para 41, and the judgment of the CJ of 7 March 2002 in Case C-310/99 *Italian Republic v Commission of the European Communities*, ECLI:EU:C:2002:143, para 94.

¹⁵ Berghofer (n 14) 12.

adopt regulations concerning categories of State aid that the Council, pursuant to Article 109 TFEU, has determined may be exempted from the notification obligation. By Regulation (EU) 2015/1588,¹⁶ the Council decided that *de minimis* aid – understood as aid granted to the same undertaking over a defined period which does not exceed a specified ceiling – could constitute such a category. On that basis, *de minimis* aid is presumed not to satisfy all the criteria laid down in Article 107(1) TFEU and is therefore exempt from the notification procedure. Nonetheless, some uncertainty persists as to the legitimacy of the *de minimis* regulations insofar as they appear to allow the Commission to delineate the concept of State aid under Article 107(1) TFEU, a task traditionally regarded as falling within the remit of the Court. The Court, however, appears to have accepted that the structure and operation of the *de minimis* regulations are compatible with the Treaties.¹⁷

The rules governing the granting of *de minimis* aid are not confined to the EU level, but are complemented by national legislation. In Polish law, a central role is played by the Act of 30 April 2004 on Proceedings in State Aid Matters¹⁸ (hereinafter APSAM). It should be emphasised that the applicable Commission regulations on *de minimis* aid do not, in themselves, constitute a legal basis for granting such aid at the national level.¹⁹ Rather, they merely define the conditions under which aid may qualify as *de minimis*. The granting of aid pursuant to the *de minimis* rule, therefore, always requires the adoption of a national legal instrument specifying, inter alia, the purpose of the aid, the eligible beneficiaries and the applicable procedures. Illustrative examples include the Regulation of the Minister of Development Funds and Regional Policy of 17 April 2024 on the granting of *de minimis* aid under regional programmes for the years 2021–2027,²⁰ and the Regulation of the Minister of Digital Affairs of 18 December 2024 laying down detailed conditions and procedures for granting *de minimis* aid under the ‘Digital Europe’ programme.²¹

¹⁶ Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (codification) [2015] OJ L 248/1.

¹⁷ Christopher McMahon, ‘Economic Effects and EU State Aid Control: Recalibrating the Impact Standards for the Identification of Aid in Article 107(1) TFEU’ (2025) 21(4) JCLE 477, 498–499; the judgment of the CJ of 26 April 2002 in Case C-351/98 *Kingdom of Spain v Commission of the European Communities*, ECLI:EU:C:2002:530, paras 51–52.

¹⁸ Consolidated text: [2023] JoL 702 as amended.

¹⁹ Andrzej Kaznowski, Mikołaj Stasiak, Komentarz do rozporządzenia nr 1998/2006 z dnia 15 grudnia 2006 r. w sprawie stosowania art. 87 i 88 Traktatu do pomocy *de minimis* (2013) LEX/el.

²⁰ [2024] JoL 598.

²¹ [2024] JoL 1910.

III. THE CONCEPT AND DETERMINATIVE CRITERIA OF *DE MINIMIS* AID

The GDMR, like other EU State aid regulations, does not provide a formal legal definition of *de minimis* aid. Examples of such definitions are provided by Polish law in Article 2(10) and (10a) of the APSAM, covering both general aid and aid in the agricultural and fishery sectors. However, these definitions are not autonomous, as they rely on the concept established under EU law. Recital 1 of the GDMR clarifies that aid granted to the same undertaking over a defined period, provided it does not exceed a fixed threshold, qualifies as *de minimis* aid. It is considered not to meet the criteria of Article 107(1) TFEU and is therefore exempt from the notification procedure under EU State aid rules. In turn, Article 3 of the GDMR specifies the conditions under which aid may be treated as *de minimis*. Point 1 confirms that measures fulfilling these conditions ‘shall be deemed not to meet all the criteria set out in Article 107(1) of the Treaty and shall therefore not be subject to the notification requirement in Article 108(3) of the Treaty’.

1. FINANCIAL THRESHOLD

The quantitative ceiling constitutes the principal criterion distinguishing *de minimis* aid from State aid under Article 107(1) TFEU, highlighting the hallmark of the former: its negligible financial impact. By setting this ceiling, the GDMR delineates the boundary between negligible support and aid that could potentially influence competitive conditions. In this context, the ceiling serves as a proxy for the likelihood of appreciable distortion of competition. It also provides Member States with administrative certainty and flexibility in designing small-scale aid measures. Under Article 3(2) of the GDMR, the total amount of *de minimis* aid granted per Member State to a single undertaking shall not exceed EUR 300,000 over any period of 3 years. Previously set at EUR 200,000, the threshold was ultimately raised beyond the level envisaged in the draft GDMR, namely EUR 275,000. From a legal-theoretical perspective, this adjustment reflects a normative recalibration of the threshold defining ‘negligible distortion of competition’. While formally a technical (neutral) update which reflects inflation and economic conditions, the shift 50% increase appears to be more than merely arithmetic, signalling an expanded tolerance for small-scale aid interventions. The absence of an accompanying economic assessment leaves open the question of whether the expanded ceiling is grounded in empirical evidence or driven mainly by political priorities, such as facilitating Member States’ liquidity support in post-crisis and green transition contexts. In any event, such an elevation expands the universe of

measures that may be granted without State aid scrutiny, thus widening the regulatory space available to Member States. However, it may also normalise more frequent public support without scrutiny, potentially conferring disproportionate advantages on those with more generous fiscal capacities. Conversely, raising this threshold may contribute to accelerating economic growth and job creation across the EU, as well as strengthening innovation in businesses, thereby generating tangible benefits for the internal market.

In addition to a much-needed indexation of *de minimis* aid, the separate aid limit previously applicable to the road freight transport sector, amounting to EUR 100,000 (which is now EUR 300,000), was removed, as was the previous prohibition on the use of *de minimis* aid for the purchase of vehicles intended for the road freight transport. This shift indicates a conceptual consolidation of the *de minimis* aid category, grounded in the principle that the distortion potential of small-scale support should be assessed uniformly unless compelling empirical evidence necessitates differentiation. By removing this special ceiling, the Commission confirms its commitment to regulatory coherence and equal treatment under the principle of sector neutrality, concluding that structural changes in the road transport sector and evolving competitive conditions no longer justify separate treatment.

2. TEMPORAL REFERENCE PERIOD

One of the most consequential conceptual shifts in the GDMR is the abandonment of the ‘any period of three fiscal years’ formula, under which cumulative aid was measured against the current and the two preceding fiscal years.²² While administratively convenient, this method introduced disparities based on national accounting systems and created opportunities for strategic timing (e.g., granting aid right after the fiscal year change). The new rule requires calculating aid over ‘any period of 3 years’, effectively creating a rolling 36-month reference period, measured backwards from the moment at which the beneficiary becomes legally entitled to the aid (this moment being, for example, the date of signing the contract or issuing the administrative decision), regardless of the payment date.²³ This refinement makes the calculation of cumulative *de minimis* aid clearer and more predictable, improving transparency and fairness, but it also increases administrative complexity (authorities must now compute dynamically, not by fixed fiscal blocks), producing a paradox: the system is economically more

²² See Recital 10 and Article 3(2) of the Regulation (EU) 1407/2013.

²³ See Recital 11 and Article 3(2) of the GDMR.

coherent, yet administratively more fragile, at least in the short term (until the central registry for this aid is fully functional).

3. CUMULATION AND AGGREGATION RULES

The GDMR explicitly reaffirms the per-Member-State cumulation rule, meaning that aid granted by one Member State is cumulated separately from aid granted by another Member State, not across the EU. As a result, the same beneficiary may, for example, receive EUR 300,000 of *de minimis* aid from one Member State and an additional EUR 300,000 of such aid from another Member State over a period of 3 years. In addition, several entities within the same undertaking that are registered in different Member States may also receive EUR 300,000 of *de minimis* aid, regardless of the amounts granted to other parts of the group registered in another Member State.²⁴ The rule adopted spares Member States the administrative burden of verifying *de minimis* aid granted elsewhere. At the same time, this nationally limited approach fragments oversight and may allow cross-border undertakings to accumulate higher overall support, creating potential distortions vis-à-vis competitors operating only domestically.

Article 5 of the GDMR bars cumulation of *de minimis* aid with ‘real’ State aid for the same eligible costs if such cumulation would exceed the highest aid intensity under relevant block exemptions or decisions. However, it allows cumulation with other *de minimis* instruments as long as the ceilings are respected. This rule aims to preserve the integrity of State aid ceilings within the broader EU State aid frameworks and to prevent double funding. Although conceptually sound, it poses practical challenges, including administrative coordination across different aid schemes and authorities. It also involves the complexity of identifying costs that qualify as ‘the same’. These challenges may reduce some of the intended efficiencies of the *de minimis* regime.

In turn, Articles 3(8) and 3(9) of the GDMR establish an aid aggregation mechanism for mergers, acquisitions, and company divisions, ensuring the *de minimis* aid ceiling is respected. In practice, firms may face challenges such as determining how to allocate previously received aid when a business splits into multiple successor entities, which can create administrative complexity and potential disputes over entitlement.

²⁴ Similarly Péter Staviczky, ‘Cumulation of State Aid’ (2015) 14(1) EStAL 117, 127.

4. TRANSPARENCY REQUIREMENT

The transparency principle in Article 4 of the GDMR ensures that only clearly quantifiable State support can benefit from the *de minimis* exemption by requiring a precise calculation of gross grant equivalent before aid is granted. For example, a below-market-rate loan is transparent because the interest advantage can be calculated *ex ante*. This principle fosters legal clarity and comparability, safeguards the integrity of cumulation rules, and streamlines administrative oversight – but at the cost of excluding complex or hard-to-value aid measures (e.g., equity investments in risk finance frameworks) from the *de minimis* regime. Critics may argue that this could limit the usefulness of *de minimis* provisions for innovative financing structures. Compared with the previous legal regime, the new rules retain the core principle but provide clearer and slightly broader criteria for treating non-grant instruments as transparent.

5. BENEFICIARIES

The GDMR refines the regulatory framework applicable to beneficiaries of *de minimis* aid by grounding the notion of an undertaking in economic substance through Recitals 4 and 5, together with Article 2(2), building upon rules present in the Regulation (EU) 1407/2013. Recital 4 establishes that any entity engaged in an economic activity constitutes an undertaking and that entities under common control form a single economic unit,²⁵ while Recital 5 and Article 2(2) codify exhaustive linking criteria – majority voting rights, managerial control, contractual dominance, and coordinated voting agreements – designating the ‘single undertaking’ as the relevant beneficiary. This construct constitutes an autonomous (*sui generis*) regulatory tool designed to prevent the fragmentation of economic activity in order to circumvent the *de minimis* ceiling. Although this approach enhances coherence with Article 107 TFEU and strengthens internal consistency, it inevitably increases complexity, particularly in cases involving indirect or informal links. The explicit codification of the single undertaking concept also appears to generate practical difficulties, especially in high-risk capital investment structures, where maintaining investor oversight without triggering aggregation may restrict access to *de minimis* aid, notably for start-ups. More

²⁵ See also the judgment of the CJ of 10 January 2006 in Case C-222/04 *Ministero dell’Economia e delle Finanze v Cassa di Risparmio di Firenze SpA et al.*, ECLI:EU:C:2006:8, paras 107–108, and the judgment of the CJ of 13 June 2002 in Case C-382/99 *Kingdom of the Netherlands v Commission of the European Communities*, ECLI:EU:C:2002:363, paras 38 and 60–66.

generally, the application of this concept under the *de minimis* rules may impose a disproportionate administrative burden relative to the small amounts of aid involved, affecting both granting authorities and beneficiaries, and giving rise to legal uncertainty – particularly in cases involving natural persons or hybrid investment structures.²⁶

IV. MONITORING OF *DE MINIMIS* AID

A pivotal innovation of the GDMR is the introduction of a monitoring framework for *de minimis* aid, based on a central register maintained either at national or EU level, which becomes mandatory as of 1 January 2026.²⁷ By contrast, under the previous legal framework, monitoring of *de minimis* aid relied primarily on beneficiary self-declarations and *ex post* verification by granting authorities, without the support of a comprehensive central register.

In the case of Poland, no single central register exists within the meaning of the GDMR to date. Both applicants and granting authorities may, however, make use of the SUDOP system, which does not meet the requirements of the central register under the GDMR. Monitoring pursuant to the APSAM at this stage relies on certificates issued by granting authorities and declarations submitted by aid applicants.²⁸ The draft amendment to the APSAM provides for the establishment of a central register of conventional *de minimis* aid based on SUDOP, which will comply with the requirements of the GDMR. Data will be entered directly by the granting authority, allowing verification of aid history without requiring undertakings to submit certificates or declarations. Transitional provisions provide for the gradual completion of data from 2024–2026, with full removal of the declaration requirement expected from 1 January 2027.²⁹

²⁶ See Phedon Nicolaides, ‘Single Undertakings and De Minimis Aid: A Pessimistic Assessment’ (2025) 24(3) EStAL 200; Comments from Member States to the Presidency discussion paper on the points of interest of Member States in the State aid field, WK 3234/2025 REV 1, 2 <<https://data.consilium.europa.eu/doc/document/WK-3234-2025-REV-1/en/pdf>> accessed 4 January 2026.

²⁷ See Recitals 24–27 and Article 6 of the GDMR.

²⁸ Agata Nodżak, ‘Rola i znaczenie monitorowania pomocy publicznej w sprawach dotyczących udzielania pomocy publicznej’ (2025) 21(1) Przedsiębiorczość – Edukacja 59, 68–71; Aleksandra Paczkowska-Tomaszewska, Krzysztof Jaros, Krzysztof Winiarski, ‘Monitoring State Aid in Poland’ (2006) 5(4) EStAL 669, 675.

²⁹ See Draft Act amending the APSAM (first published 2 December 2025, Government Legislative Centre – RCL), available via RCL (gov.pl).

The new *de minimis* aid framework aims to enhance legal certainty, reduce information asymmetry, increase transparency, and streamline administrative compliance, particularly for SMEs. At the same time, challenges remain: the system depends on accurate and timely reporting, may impose significant administrative costs, and while it ensures formal compliance, it cannot fully prevent potential economic distortions arising from widely dispersed small grants. Despite these limitations, the central register represents a robust, data-driven approach that strengthens governance of *de minimis* aid and facilitates oversight by both national authorities and the Commission. Overall, the register-based monitoring model constitutes a significant reconfiguration of the existing *de minimis* aid regime.

V. IDIOSYNCRASIES OF *DE MINIMIS* AID

De minimis aid displays several peculiarities and is therefore sometimes described in the literature as a ‘strange animal’.³⁰ It is characterised by multiple paradoxes, affecting both its conceptual foundations and its practical operation. The most significant of these concerns is its ambiguous legal status. Views in the doctrine and practice diverge to such an extent that *de minimis* aid appears (to use another metaphor drawn from nature) to be a legal chameleon. It is sometimes regarded as not constituting State aid at all and, at other times, as specific State support which is, or at least may be in certain circumstances, such aid. An approach that deliberately avoids taking a clear position on this issue is also encountered.³¹ Nevertheless, Article 3(1) of the GDMR expressly provides that aid measures fulfilling the conditions laid down in that Regulation ‘shall be deemed’ (*ex lege*) ‘not to meet all the criteria set out in Article 107(1) of the Treaty and shall therefore not be subject to the notification requirement in Article 108(3) of the Treaty’. Recital 3 of the GDMR further states that such measures are to be ‘deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition’. According to Commission guidelines and the established case law of the Court of Justice, a measure that does not satisfy all the conditions laid down in Article 107(1) TFEU does not constitute State aid within the meaning of

³⁰ Adinda Sinnaeve, ‘The Complexity of Simplification: The Commission’s Review of the *de minimis* Regulation’ (2014) 13(2) EStAL 261.

³¹ An overview of doctrinal views on the matter is presented by Rafał Blicharz, Krzysztof Horubski, Mirosław Pawełczyk, ‘Prawo konkurencji w systemie publicznego prawa gospodarczego’ in Jan Grabowski, Leon Kieres, Anna Walaszek-Pyziół (eds), *Publiczne prawo gospodarcze. System Prawa Administracyjnego* (Vol 8B, 2nd edn, CH Beck 2018) 852.

that provision.³² It therefore follows that *de minimis* aid does not constitute State aid within the meaning of Article 107(1) TFEU. This understanding, reflected in the Commission's practice, has been confirmed by the case law of the Court of Justice.³³ At the same time, the definition of State aid does not require that the distortion of competition or the effect on trade be significant or substantial.³⁴ EU courts have consistently held that a low amount of aid or the small size of the beneficiary undertaking does not, in itself, preclude an effect on trade between Member States or a distortion of competition, or the threat thereof, provided that such effects are not merely hypothetical.³⁵ The concept of *de minimis* aid nevertheless rests on a purely quantitative assumption: that below a certain threshold, determined, *nota bene*, on a discretionary basis and irrespective of market size, market structure, or the beneficiary's market position, an aid measure does not satisfy all the conditions of Article 107(1) TFEU. This assumption is difficult to reconcile with the Commission's declared more economic approach to State aid law. It reflects the intuition that small amounts of aid usually produce only minor distortions of competition. Yet this intuition may not hold in small or highly concentrated markets, where support meeting the *de minimis* criteria may already cause significant distortions. Conversely, aid exceeding the *de minimis* ceiling may, where it effectively addresses specific market failures, strengthen rather than distort competition.³⁶

These considerations support treating Article 3(1) of the GDMR as establishing a normative assumption based on the Commission's assessment and experience.³⁷ That assumption arguably remains rebuttable and may be displaced where, in a specific case, it can be shown that *de minimis aid* in fact constitutes State aid

³² See point 185 of Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union [2016] OJ C 262/1 (hereinafter Notice on the notion of State aid), and the judgment of the CJ of 24 July 2003 in Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, and Oberbundesanwalt beim Bundesverwaltungsgericht*, ECLI:EU:C:2003:415, paras 74–75 (hereinafter the *Altmark* judgment).

³³ See the judgment of the CJ of 26 September 2002 in Case C-351/98 *Kingdom of Spain v Commission of the European Communities*, ECLI:EU:C:2002:530, para 52; the judgment of the CJ of 13 February 2003 in Case C-409/00 *Kingdom of Spain v Commission of the European Communities*, ECLI:EU:C:2003:92, para 69.

³⁴ Point 189 of the Notice on the notion of State aid.

³⁵ See the judgment of the CJ of 3 March 2005 in Case C-172/03 *Wolfgang Heiser v Finanzamt Innsbruck*, ECLI:EU:C:2005:130, para 32; the *Altmark* judgment, para 81; the judgment of the Court of 29 September 2000 in Case T-55/99 *Confederación Española de Transporte de Mercancías (CETM) v Commission of the European Communities*, ECLI:EU:T:2000:223, para 89.

³⁶ Rainer Nitsche, Paul Heidhues, 'Study on methods to analyse the impact of State aid on competition' (2006) 244 *European Economy. Economic Papers* 108–109 <https://ec.europa.eu/economy_finance/publications/pages/publication804_en.pdf> accessed 9 June 2025.

³⁷ As rightly pointed out by Sinnaeve (n 30) 262.

within the meaning of Article 107(1) TFEU, because it affects trade or distorts competition.³⁸ This conclusion is reinforced by the principle of the hierarchy of norms and the conflict-of-law rule *lex superior derogat legi inferiori*. A secondary legal act, such as the GDMR, cannot limit the scope or direct application of a primary norm of EU law, such as Article 107(1) TFEU, and must therefore be interpreted in conformity with it.³⁹ Accordingly, the legal certainty afforded by Article 3(1) of the GDMR extends only to the Commission, which is bound by its own interpretation and will not treat *de minimis* aid as State aid. Courts, however, are not bound by that interpretation and may reach a different conclusion in an individual case.⁴⁰ To date, EU courts have not questioned the validity of Commission regulations on *de minimis* aid, and the assumption that such aid does not constitute State aid has not been displaced in practice.

The ambiguity surrounding the legal classification of *de minimis* aid is also reflected in national law. Under Article 1 of the APSAM and Article 67b § 1(2) and (3) of the Act of 29 August 1997 – Tax Ordinance⁴¹ (hereinafter TO), *de minimis* aid does not constitute State aid within the meaning of Article 107(1) TFEU. Article 1 of the APSAM limits its scope to procedural rules concerning aid that meets the conditions of Article 107(1) TFEU, defined there as ‘State aid’, while Article 67b § 1(2) and (3) of the TO clearly distinguishes between tax relief constituting *de minimis* aid and State aid. By contrast, Article 20c of the Act of 12 January 1991 on Local Taxes and Fees⁴² treats *de minimis* aid as a form of State aid, providing that where a municipal council resolution differentiates local tax and fee rates and allows for the granting of State aid, such aid is to be granted as *de minimis* aid.⁴³

The *de minimis* rule is often portrayed as a mechanism for reducing the administrative burden on undertakings, Member States and the Commission. In reality, however, it applies to measures that would not have been subject to notification *ab initio*. Unlike block exemptions, it does not remove an existing notification obligation but merely clarifies its scope. At most, it may indirectly reduce administrative burdens by preventing notifications submitted solely for reasons of legal certainty.⁴⁴

It has further been argued in the doctrine that the concept of *de minimis* aid, which does not constitute State aid, sits uneasily with the principles of cumulation and

³⁸ Ibid 262.

³⁹ See opinion of Advocate General Kokott of 13 October 2022 in Case C-449/21 *Towercast*, ECLI:EU:C:2022:777, para 30.

⁴⁰ Sinnaeve (n 30) 262; Berghofer (n 14) 20.

⁴¹ Consolidated text: [2025] JoL 111.

⁴² Consolidated text: [2023] JoL 70 as amended.

⁴³ For more on this subject see Rafał Dowgier, *Wpływ regulacji dotyczących pomocy publicznej na stanowienie i stosowanie lokalnego prawa podatkowego* (Temida 2 2015) 84–85.

⁴⁴ Sinnaeve (n 30) 261–262.

monitoring laid down in the GDMR.⁴⁵ If *de minimis* aid is not State aid, combining it with other aid measures and subjecting it to monitoring under State aid rules may appear conceptually inconsistent. Nonetheless, the rules on cumulation and monitoring are economically justified, as they prevent circumvention of aid-intensity limits and the overall ceiling for *de minimis* aid.⁴⁶ They have, however, attracted criticism because of the practical difficulties and administrative burdens associated with their enforcement. In practice, the issue of cumulation is largely theoretical, since most *de minimis* aid takes the form of ‘free money’ and is not linked to specific eligible costs.⁴⁷

VI. CLOSING REMARKS

The foregoing analysis demonstrates that the *de minimis* aid regime constitutes a distinct legal concept within EU State aid law, operating under a relatively complex, yet pragmatically designed regulatory framework.⁴⁸ *De minimis* aid plays an important role as an instrument of public support for undertakings. In Poland alone, in 2024, the total value of *de minimis* aid exceeded EUR 2.8 billion, representing more than 0.3 per cent of GDP, with almost 97 per cent of the support directed to SMEs, including nearly 64 per cent to micro-enterprises.⁴⁹ *De minimis* aid also accounts for a significant share of support granted by municipalities.⁵⁰ Anecdotal evidence suggests that similar patterns may exist across Member States, where public authorities at all levels routinely rely on the *de minimis* framework to provide limited public support to undertakings.⁵¹

From a competition perspective, even relatively small amounts of aid may distort competition in certain markets, which justifies the existence of a regulatory mechanism that balances a reduced administrative burden with minimum safeguards against competitive distortions. The recent modernisation of the *de min-*

⁴⁵ See, e.g., Berghofer (n 14) 17–18; Sinnaeve (n 30) 271–274.

⁴⁶ Staviczky (n 24) 122.

⁴⁷ Sinnaeve (n 30) 271.

⁴⁸ See Ricardo Pedro, *De Minimis Aid Under EU Law* (Springer 2022) 143.

⁴⁹ Raport o pomocy *de minimis* w Polsce udzielonej przedsiębiorcom w 2024 roku (UOKiK 2025) 7–8, 26; see also Magdalena Kogut-Jaworska, ‘Pomoc *de minimis* i jej szczególna rola w systemie pomocy publicznej w Polsce’ (2016) 437 *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu*, 208.

⁵⁰ Dowgier (n 43) 100.

⁵¹ Best Practices in Investment Promotion: An Overview of Regional State Aid and Special Economic Zones in Europe, OECD Business and Finance Policy Papers (OECD Publishing 2023) 45 <<https://doi.org/10.1787/0c8e6ca3-en>> accessed 20 January 2026.

imis regime, notably through the increase of financial ceilings and strengthened transparency obligations, confirms its role as a primary instrument for delivering small-scale public support in everyday economic practice. By enabling swift and decentralised granting of aid, while at the same time ensuring basic protection against cumulative effects, the regime reconciles administrative efficiency with a minimum level of competition control. In this sense, the *de minimis* framework functions as a pragmatic bridge between economic policy needs and State aid discipline, rather than as a merely technical derogation. At the same time, despite repeated amendments aimed at enhancing transparency, legal certainty and predictability, the *de minimis* regime remains relatively complex, which paradoxically underscores its practical significance. It continues to be welcomed by Member States, as it restores a certain degree of regulatory autonomy in national policies supporting undertakings. During consultations on the draft GDMR, most Member States supported expanding its scope and increasing the applicable thresholds, although some – notably Denmark and Finland – expressed concerns regarding potential competitive risks. By contrast, the Commission remains cautious towards *de minimis* aid, viewing it as a relatively ‘blind’ instrument, which does not allow support to be targeted at specific policy objectives and, therefore, is not well suited to addressing particular market failures or promoting defined Union priorities. For this reason, the Commission tends to favour block exemptions under Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty⁵² (hereinafter GBER). In practice, however, the application of the GBER is considerably more complex and time-consuming for beneficiaries, who often regard the *de minimis* regime as a regulatory safe harbour. This tension illustrates a structural trade-off between regulatory precision and administrative simplicity. *De lege ferenda*, a further improvement could consist in clarifying and further harmonising the interpretation of the concept of a ‘single undertaking’ and the attribution of aid within corporate groups, in order to reduce legal uncertainty, prevent circumvention of thresholds and ensure more consistent application across Member States.

In sum, while the *de minimis* aid regime is not free from limitations, its practical benefits, relative ease of implementation and strategic importance for SMEs render it an effective and indispensable component of EU State aid governance. It balances administrative efficiency with the need to monitor potential competitive effects and ensures that small-scale public support can foster entrepreneurial activity without materially distorting the internal market. Viewed from this perspective, the *de minimis* regime may indeed appear as the ‘not so ugly sister’ – or

⁵² [2014] OJ L 187/1 as amended.

even the Cinderella – of State aid law. Yet, its simplicity should not be understood as a regulatory deficiency, but rather as a deliberate and functional design choice responding to the realities of decentralised public support in the EU.

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