


Art [4, para. 5 and Recital (19) of the Preamble] - [Compliance of measure for equity and quasi-equity investments at all levels with the de minimis Regulation]

1. **Page title:** Please insert the full Article reference (e.g. "Art. 1(4) a)") and a short title (e.g. "Deggendorf principle")
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Article	Art. 4, para. 5 and Recital (19) of the Preamble
Key words	Conditions of the de minimis Regulation for equity and quasi-equity investments
Member State	BG

Question

In section 3.3 “De minimis amounts” of the Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises in force until 30/06/2014 the following provision was included “... if a scheme provides public capital only up to the relevant de minimis threshold to each enterprise over a three-year period, then it is certain that any aid to these enterprises and/or the investors is within the prescribed limits”.

The specified provision is not included in the Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014) but at the same time in accordance with point 16 of the Guidelines “Member States may also choose to design risk finance measures in such a way that the measures do not entail State aid under Article 107(1) of the Treaty, for instance because they comply with the market economy operator test or because they fulfil the conditions of the applicable de minimis Regulation. Such cases do not need to be notified to the Commission”.

In the de minimis Regulation (Commission Regulation (EU) No 1407 /2013) only two conditions related with de minimis aid in the form of equity or quasi-equity are envisaged:

- Art. 4, par. 5 specifying that “Aid comprised in risk finance measures taking the form of equity or quasi-equity investments shall only be considered as transparent de minimis aid if the capital provided to a single undertaking does not exceed the de minimis ceiling” and

- Recital (19) of the Preamble specifying that “Where a de minimis aid scheme is implemented through financial intermediaries, it should be ensured that the latter do not receive any State aid. This can be done, for example, by requiring financial intermediaries that benefit from a State guarantee to pay a market-conform premium or to fully pass on any advantage to the final beneficiaries, or by respecting the de minimis ceiling and other conditions of this Regulation also at the level of the intermediaries”.

In that respect, we would like to kindly ask the Commission a question in relation with the following Structure:

Structure

The potential risk finance measure is in the form of equity and/or quasi-equity investments, implemented by an equity fund, managed by a fund manager which is selected through a transparent, non-discriminatory and objective selection procedure, and providing investments which do not exceed the de minimis ceiling to each single undertaking but which does not leverage additional finance from independent private investors aside from the minimum co-investment by the fund manager usually applied in practice for the alignment with the interests of the public investor.

Considering all of the above may the Commission confirm that the outlined Structure as a risk finance measure fulfils at all levels the conditions of the de minimis Regulation. Namely by excluding aid at the level of the financial intermediary and by establishing market terms; and by means of applying transparent, non-discriminatory and objective selection procedure (recital (19) of the Preamble of the Regulation) and complying with de minimis ceiling for the investment in each single undertaking (Art. 4, par. 5 of the Regulation)?

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COMP Reply	<p>A structure as the one described in your question fulfils the conditions of the de minimis Regulation if, as provided for in Article 4(5) of that Regulation, the de minimis ceiling is respected for all single undertakings, meaning also on the level of co-investors (including fund managers co-investing). If this ceiling is not respected at the level of the co-investors, we would point you to Article 21(8) of the GBER. This Article could provide a legal basis for a block exemption of potential aid on the level of co-investors.</p> <p><i>Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.</i></p>
COMP Reply date	2017.06.23
COMP Responsible	<input checked="" type="checkbox"/> COMPsupport ESTATE-AID-WIKI

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