

## The Connection between De Minimis Rule and the Effect on Trade

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**Abstract :** The novelties introduced by the last Notice on agreements of minor importance tighten the application of the 'De minimis' safe harbour in the European Union. However, the undetermined legal concept of effect on trade between the Member States becomes importance at the same time. Therefore, the current analysis that the jurist should carry out in the European Union to determine if an agreement appreciably restrict competition under Article 101 of the Treaty on the Functioning of the European Union is double. Hence, it is necessary to know how to balance the significance in competition and the significance in effect on trade between the Member States. It is a crucial issue due to the negative delimitation of restriction of competition affects the positive one. The methodology of this research is rather simple. Beginning with a historical approach to the 'De Minimis Rule', their main problems and uncertainties will be found. So, after the analysis of normative documents and the jurisprudence of the Court of Justice of the European Union some proposals of 'Lege ferenda' will be offered. These proposals try to overcome the contradictions and questions that currently exist in the European Union as a consequence of the current legal regime of agreements of minor importance. The main findings of this research are the followings: Firstly, the effect on trade is another way to analyze the importance of an agreement different from the 'De minimis rule'. In point of fact, this concept is singularly adapted to go through agreements that have as object the prevention, restriction or distortion of competition, as it is observed in the most famous European Union case-law. Thanks to the effect on trade, as long as the proper requirements are met there is no a restriction of competition under article 101 of the Treaty on the Functioning of the European Union, even if the agreement had an anti-competitive object. These requirements are an aggregate market share lower than 5% on any of the relevant markets affected by the agreement and turnover lower than 40 million of Euros. Secondly, as the Notice itself says 'it is also intended to give guidance to the courts and competition authorities of the Member States in their application of Article 101 of the Treaty, but it has no binding force for them'. This reality makes possible the existence of different statements among the different Member States and a confusing perception of what a restriction of competition is. Ultimately, damage on trade between the Member States could be observed for this reason. The main conclusion is that the significant effect on trade between Member States is irrelevant in agreements that restrict competition because of their effects but crucial in agreements that restrict competition because of their object. Thus, the Member States should propose the incorporation of a similar concept in their legal orders in order to apply the content of the Notice. Otherwise, the significance of the restrictive agreement on competition would not be properly assessed.

**Keywords :** De minimis rule, effect on trade, minor importance agreements, safe harbour

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