

Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises
(*Official Journal L 010 , 13/01/2001 P. 0033 – 0042*)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid(1), and in particular points (a)(i) and (b) of Article 1(1) thereof, Having published a draft of this Regulation(2), Having consulted the Advisory Committee on State Aid,

Whereas:

(1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty, that under certain conditions aid to small and medium-sized enterprises is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.

(2) Regulation (EC) No 994/98 also empowers the Commission to declare, in accordance with Article 87 of the Treaty, that aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is compatible with the common market and is not subject to the notification requirement of Article 88(3) of the Treaty.

(3) The Commission has applied Articles 87 and 88 of the Treaty to small and medium-sized enterprises in and outside assisted areas in numerous decisions and has also stated its policy, most recently in the Community guidelines on State aid for small and medium-sized enterprises(3) and in the guidelines on national regional aid(4). In the light of the Commission's considerable experience in applying those Articles to small and medium-sized enterprises and in the light of the general texts relating to small and medium-sized enterprises and to regional aid issued by the Commission on the basis of those provisions, it is appropriate, with a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, that the Commission should make use of the powers conferred by Regulation (EC) No 994/98.

(4) This Regulation is without prejudice to the possibility for Member States of notifying aid to small and medium-sized enterprises. Such notifications will be assessed by the Commission in particular in the light of the criteria set out in this Regulation. The guidelines on State aid for small and medium-sized enterprises should be abolished from the date of entry into force of this Regulation, since their contents are replaced by this Regulation.

(5) Small and medium-sized enterprises play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive. However, their development may be limited by market imperfections. They often have difficulties in obtaining capital or credit, given the risk-shy nature of certain financial markets and the limited guarantees that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. Having regard to those considerations, the purpose of the aid exempted by this Regulation should be to facilitate the development of the economic activities of small and medium-sized enterprises, provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(6) This Regulation should exempt any aid that meets all the relevant requirements of this Regulation, and any aid scheme, provided that any aid that could be granted under such scheme meets all the relevant requirements of this Regulation. With a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, aid schemes and individual grants outside any aid scheme should contain an express reference to this Regulation.

(7) This Regulation should apply without prejudice to special rules in regulations and directives concerning State aid in certain sectors, such as currently exist for shipbuilding, and should not apply to agriculture and fisheries and aquaculture.

(8) In order to eliminate differences that might give rise to distortions of competition, in order to facilitate coordination between different Community and national initiatives concerning small and medium-sized enterprises, and for reasons of administrative clarity and legal certainty, the definition of "small and medium-sized enterprises" used in this Regulation should be that laid down in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises⁽⁵⁾. That definition was also used in the Community guidelines on State aid for small and medium-sized enterprises⁽⁶⁾.

(9) In accordance with the established practice of the Commission, and with a view to better ensuring that aid is proportionate and limited to the amount necessary, thresholds should be expressed in terms of aid intensities in relation to a set of eligible costs, rather than in terms of maximum aid amounts.

(10) In order to determine whether or not aid is compatible with the common market pursuant to this Regulation, it is necessary to take into consideration the aid intensity and thus the aid amount expressed as a grant equivalent. The calculation of the grant equivalent of aid payable in several instalments and aid in the form of a soft loan requires the use of market interest rates prevailing at the time of grant. With a view to a uniform, transparent, and simple application of the State aid rules, the market rates for the purposes of this Regulation should be deemed to be the reference rates, provided that, in the case of a soft loan, the loan is backed by normal security and does not involve abnormal risk. The reference rates should be those which are periodically fixed by the Commission on the basis of objective criteria and published in the Official Journal of the European Communities and on the Internet.

(11) Having regard to the differences between small enterprises and medium-sized enterprises, different ceilings of aid intensity should be set for small enterprises and for medium-sized enterprises.

(12) The ceilings of aid intensity should be fixed, in the light of the Commission's experience, at a level that strikes the appropriate balance between minimising distortions of competition in the aided sector and the objective of facilitating the development of the economic activities of small and medium-sized enterprises.

(13) It is appropriate to establish further conditions that should be fulfilled by any aid scheme or individual aid exempted by this Regulation. Having regard to Article 87(3)(c) of the Treaty, such aid should not normally have the sole effect of continuously or periodically reducing the operating costs which the beneficiary would normally have to bear, and should be proportionate to the handicaps that have to be overcome in order to secure the socioeconomic benefits deemed to be in the Community interest. It is therefore appropriate to limit the scope of this Regulation to aid granted in relation to certain tangible and intangible investments, certain services supplied to beneficiaries and certain other activities. In the light of Community overcapacity in the transport sector, with the exception of railway rolling stock, eligible investment costs for enterprises having their main economic activity in the transport sector should not include transport means and equipment.

(14) This Regulation should exempt aid to small and medium-sized enterprises regardless of location. Investment and job creation can contribute to the economic development of less favoured regions in the Community. Small and medium-sized enterprises in those regions suffer from both the structural disadvantage of the location and the difficulties deriving from their size. It is therefore appropriate that small and medium-sized enterprises in assisted regions should benefit from higher ceilings.

(15) In order not to favour the capital factor of an investment over the labour factor, provision should be made for the possibility of measuring aid to investment on the basis of either the costs of the investment or the costs of new employment linked to the carrying-out of the investment project.

(16) In the light of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures⁽⁷⁾, this Regulation should not exempt export aid or aid favouring domestic over imported products. Aid towards the costs of participation in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market does not normally constitute export aid.

(17) Having regard to the need to strike the appropriate balance between minimising distortions of competition in the aided sector and the objectives of this Regulation, it should not exempt individual aid grants which exceed a fixed maximum amount, whether or not made under an aid scheme exempted by this Regulation.

(18) In order to ensure that the aid is necessary and acts as an incentive to develop certain activities, this Regulation should not exempt aid for activities in which the beneficiary would already engage under market conditions alone.

(19) This Regulation should not exempt aid cumulated with other State aid, including aid granted by national, regional or local authorities, or with Community assistance, in relation to the same eligible costs, when such cumulation exceeds the thresholds fixed in this Regulation.

(20) In order to ensure transparency and effective monitoring, in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard format in which Member States should provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme is implemented or an individual aid outside such schemes is granted, with a view to publication in the Official Journal of the European Communities. For the same reasons, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation. For the purposes of the annual report to be submitted to the Commission by Member States, it is appropriate for the Commission to establish its specific requirements, including, in view of the wide availability of the necessary technology, information in computerised form.

(21) Having regard to the Commission's experience in this area, and in particular the frequency with which it is generally necessary to revise State aid policy, it is appropriate to limit the period of application of this Regulation. Should this Regulation expire without being extended, aid schemes already exempted by this Regulation should continue to be exempted for six months,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. Without prejudice to special Community Regulations or Directives under the EC Treaty governing the granting of State aid in specific sectors, whether more or less restrictive than this Regulation, this Regulation applies to aid granted to small and medium-sized enterprises in all sectors.

2. This Regulation shall not apply:

- (a) to activities linked to the production, processing or marketing of products listed in Annex I to the Treaty;
- (b) to aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- (c) to aid contingent upon the use of domestic over imported goods.

Article 2

Definitions

For the purpose of this Regulation:

- (a) "aid" shall mean any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
- (b) "small and medium-sized enterprises" shall mean enterprises as defined in Annex I;
- (c) "investment in tangible assets" shall mean an investment in fixed physical assets relating to the creation of a new establishment, the extension of an existing establishment, or the engagement in an activity involving a

fundamental change in the product or production process of an existing establishment (in particular through rationalisation, diversification or modernisation). An investment in fixed assets undertaken in the form of the takeover of an establishment which has closed or which would have closed had it not been purchased shall also be regarded as tangible investment;

(d) "investment in intangible assets" shall mean investment in transfer of technology by the acquisition of patent rights, licences, know-how or unpatented technical knowledge;

(e) "gross aid intensity" shall mean the aid amount expressed as a percentage of the project's eligible costs. All figures used shall be taken before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid. Aid payable in several instalments shall be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in a soft loan shall be the reference rate applicable at the time of grant;

(f) "net aid intensity" shall mean the aid amount net of tax expressed as a percentage of the project's eligible costs;

(g) "number of employees" shall mean the number of annual labour units (ALU), namely the number of persons employed full time in one year, part-time and seasonal work being ALU fractions.

Article 3

Conditions for exemption

1. Individual aid outside any scheme, fulfilling all the conditions of this Regulation, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that it contains an express reference to this Regulation, by citing its title and publication reference in the Official Journal of the European Communities.

2. Aid schemes fulfilling all the conditions of this Regulation shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

(a) any aid that could be awarded under such scheme fulfils all the conditions of this Regulation;

(b) the scheme contains an express reference to this Regulation, by citing its title and publication reference in the Official Journal of the European Communities.

3. Aid granted under the schemes referred to in paragraph 2 shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the aid granted directly fulfils all the conditions of this Regulation.

Article 4

Investment

1. Aid for investment in tangible and intangible assets inside or outside the Community shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification

requirement of Article 88(3) of the Treaty if it fulfils the conditions of paragraphs 2 to 6.

2. The gross aid intensity shall not exceed:

(a) 15 % in the case of small enterprises;

(b) 7,5 % in the case of medium-sized enterprises.

3. Where the investment takes place in areas which qualify for regional aid, the aid intensity shall not exceed the ceiling of regional investment aid determined in the map approved by the Commission for each Member State by more than:

(a) 10 percentage points gross in areas covered by Article 87(3)(c), provided that the total net aid intensity does not exceed 30 %; or

(b) 15 percentage points gross in areas covered by Article 87(3)(a), provided that the total net aid intensity does not exceed 75 %.

The higher regional aid ceilings shall only apply if the aid is granted under the condition that the investment is maintained in the recipient region for at least five years and that the beneficiary's contribution to its financing is at least 25 %.

4. The ceilings fixed in paragraphs 2 and 3 shall apply to intensity of the aid calculated either as a percentage of the investment's eligible costs or as a percentage of the wage costs of employment created by the carrying-out of an investment (aid to job creation) or a combination thereof, provided the aid does not exceed the most favourable amount resulting from the application of either calculation.

5. In cases where the aid is calculated on the basis of the investment's costs, the eligible costs of tangible investment shall be the costs relating to investment in land, buildings, machinery and equipment. In the transport sector, except for railway rolling stock, transport means and transport equipment shall not be included in the eligible costs. The eligible costs of intangible investment shall be the costs of acquisition of the technology.

6. In cases where the aid is calculated on the basis of jobs created, the amount of the aid shall be expressed as a percentage of the wage costs over a period of two years relating to the employment created under the following conditions:

(a) job creation shall be linked to the carrying-out of a project of investment in tangible or intangible assets. Jobs shall be created within three years of the investment's completion;

(b) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous twelve months; and

(c) the employment created shall be maintained during a minimum period of five years.

Article 5

Consultancy and other services and activities

Aid to small and medium-sized enterprises that fulfil the following conditions shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty:

(a) for services provided by outside consultants, the gross aid shall not exceed 50 % of the costs of such services. The services concerned shall not be a continuous or periodic activity nor relate to the enterprise's usual operating

expenditure, such as routine tax consultancy services, regular legal services, or advertising;

(b) for participation in fairs and exhibitions, the gross aid shall not exceed 50 % of the additional costs incurred for renting, setting up and running the stand. This exemption shall only apply to the first participation of an enterprise in a particular fair or exhibition.

Article 6

Large individual aid grants

This Regulation shall not exempt an individual aid grant where one of the following thresholds is met:

- (a) the total eligible costs of the whole project are at least EUR 25000000 and
- (i) in areas which do not qualify for regional aid, the gross aid intensity is at least 50 % of the ceilings laid down in Article 4(2);
- (ii) in areas which qualify for regional aid, the net aid intensity is at least 50 % of the net aid ceiling as determined in the regional aid map for the area concerned; or
- (b) the total gross aid amount is at least EUR 15000000.

Article 7

Necessity for the aid

This Regulation shall only exempt aid if, before work on the aided project is started:

- either an application for aid has been submitted to the Member State by the beneficiary, or
- the Member State has adopted legal provisions establishing a legal right to aid according to objective criteria and without further exercise of discretion by the Member State.

Article 8

Cumulation

1. The aid ceilings fixed in Articles 4, 5 and 6 shall apply regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community.

2. Aid exempted by this Regulation shall not be cumulated with any other State aid within the meaning of Article 87(1) of the Treaty, or with other Community funding, in relation to the same eligible costs, if such cumulation would result in an aid intensity exceeding that fixed by this Regulation.

Article 9

Transparency and monitoring

1. On implementation of an aid scheme, or grant of individual aid outside any scheme, exempted by this Regulation, Member States shall, within 20 working days, forward to the Commission, with a view to its publication in the Official Journal of the European Communities, a summary of the information regarding such aid scheme or individual aid in the form laid down in Annex II.

2. Member States shall maintain detailed records regarding the aid schemes exempted by this Regulation, the individual aid granted under those schemes, and the individual aid exempted by this Regulation that is granted outside any

existing aid scheme. Such records shall contain all information necessary to establish that the conditions for exemption, as laid down in this Regulation, are fulfilled, including information on the status of the company as an SME. Member States shall keep a record regarding an individual aid for 10 years from the date on which it was granted, and regarding an aid scheme, for 10 years from the date on which the last individual aid was granted under such scheme. On written request, the Member State concerned shall provide the Commission, within a period of 20 working days or such longer period as may be fixed in the request, with all the information which the Commission considers necessary to assess whether the conditions of this Regulation have been complied with.

3. Member States shall compile a report on the application of this Regulation in respect of each whole or part calendar year during which this Regulation applies, in the form laid down in Annex III, also in computerised form. Member States shall provide the Commission with such report no later than three months after the expiry of the period to which the report relates.

Article 10

Entry into force and period of validity

1. This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Communities.

It shall remain in force until 31 December 2006.

2. At the end of the period of validity of this Regulation, aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 January 2001.

For the Commission

Mario Monti

Member of the Commission

(1) OJ L 142, 14.5.1998, p. 1.

(2) OJ C 89, 28.3.2000, p. 15.

(3) OJ C 213, 23.7.1996, p. 4.

(4) OJ C 74, 10.3.1998, p. 9.

(5) OJ L 107, 30.4.1996, p. 4.

(6) See footnote 3.

(7) OJ L 336, 23.12.1994, p. 156.

ANNEX I

Definition of small and medium-sized enterprises (extract from the Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4))

"Article 1

1. Small and medium-sized enterprises, hereinafter referred to as 'SMEs', are defined as enterprises which:

- have fewer than 250 employees, and
- have either,
 - an annual turnover not exceeding EUR 40 million, or
 - an annual balance-sheet total not exceeding EUR 27 million,
- conform to the criterion of independence as defined in paragraph 3.

2. Where it is necessary to distinguish between small and medium-sized enterprises, the 'small enterprise' is defined as an enterprise which:

- has fewer than 50 employees and
- has either,
 - an annual turnover not exceeding EUR 7 million, or
 - an annual balance-sheet total not exceeding EUR 5 million,
- conforms to the criterion of independence as defined in paragraph 3.

3. Independent enterprises are those which are not owned as to 25 % or more of the capital or the voting rights by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply. This threshold may be exceeded in the following two cases:

- if the enterprise is held by public investment corporations, venture capital companies or institutional investors, provided no control is exercised either individually or jointly,
- if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25 % or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.

4. In calculating the thresholds referred to in paragraphs 1 and 2, it is therefore necessary to cumulate the relevant figures for the beneficiary enterprise and for all the enterprises that it directly or indirectly controls through possession of 25 % or more of the capital or of the voting rights.

5. Where it is necessary to distinguish microenterprises from other SMEs, these are defined as enterprises having fewer than 10 employees.

6. Where, at the final balance sheet date, an enterprise exceeds or falls below the employee thresholds or financial ceilings, this is to result in its acquiring or losing the status of 'SME', 'medium-sized enterprise', 'small enterprise' or 'microenterprise' only if the phenomenon is repeated over two consecutive financial years.

7. The number of persons employed corresponds to the number of annual working units (AWU), that is to say, the number of full-time workers employed during one year with part-time and seasonal workers being fractions of AWU. The reference year to be considered is that of the last approved accounting period.

8. The turnover and balance sheet total thresholds are those of the last approved 12-month accounting period. In the case of newly-established enterprises whose accounts have not yet been approved, the thresholds to apply shall be derived from a reliable estimate made in the course of the financial year."

ANNEX II

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ANNEX III

Form of the periodic report to be provided to the Commission Annual reporting format on aid schemes exempted under a group exemption regulation adopted pursuant to Article 1 of Council Regulation (EC) No 994/98

Member States are required to use the format below for their reporting obligations to the Commission under group exemption regulations adopted on the basis of Council Regulation (EC) No 994/98.

The reports should also be provided in computerised form.

Information required for all aid schemes exempted under group exemption regulations adopted pursuant to Article 1 of Council Regulation (EC) No 994/98

1. Title of aid scheme

2. Commission exemption regulation applicable

3. Expenditure

Separate figures have to be provided for each aid instrument within a scheme or individual aid (e.g. grant, soft loans, etc.) The figures have to be expressed in Euro or, if applicable, national currency. In the case of tax expenditure, annual tax losses have to be reported. If precise figures are not available, such losses may be estimated. These expenditure figures should be provided on the following basis. For the year under review indicate separately for each aid instrument within the scheme (e.g. grant, soft loan, guarantee, etc.):

3.1. amounts committed, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new assisted projects. In the case of guarantee schemes, the total amount of new guarantees handed out should be provided;

3.2. actual payments, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new and current projects. In the case of guarantee schemes, the following should be provided: total amount of outstanding guarantees, premium income, recoveries, indemnities paid out, operating result of the scheme under the year under review;

3.3. number of new assisted projects;

3.4. estimated overall number of jobs created or maintained by new projects (if appropriate);

3.5. estimated overall amount of investment aided by new projects;

3.6. Regional breakdown of amounts under point 3.1 either by regions defined at NUTS(1) level 2 or below or by Article 87(3)(a) regions, Article 87(3)(c) regions and non-assisted regions;

3.7. Sectorial breakdown of amounts under point 3.1. by beneficiaries' sectors of activity (if more than one sector is covered, indicate the share of each):

coalmining
manufacturing
of which:
steel
shipbuilding
synthetic fibres
motor vehicles
other manufacturing (please specify)
services
of which:
transport services
financial services
other services (please specify)
other sectors (please specify)
4. Other information and remarks.

(1) NUTS is the nomenclature of territorial units for statistical purposes in the Community.

The final version of this document can be found on the following address:
http://europa.eu.int/comm/competition/state_aid/legislation/