

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

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

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<sup>(1)</sup>, and in particular points (a)(i) and (b) of Article 1(1) thereof,

Having published a draft of this Regulation<sup>(2)</sup>,

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<sup>(3)</sup> and in the guidelines on national regional aid<sup>(4)</sup>. 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

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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<sup>(5)</sup>. That definition was also used in the Community guidelines on State aid for small and medium-sized enterprises<sup>(6)</sup>.
- (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

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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<sup>(7)</sup>, 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.

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- (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:

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- (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.

**Changes to legislation:**

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