

VADEMECUM COMMUNITY RULES ON STATE AID

Note of caution:

The factsheets attached give a concise, and sometimes simplified, summary of State aid legislation applicable to areas that are considered most relevant for Structural Fund operations. Obviously, no rights can be derived from the summaries presented in these factsheets. For a more authoritative version of the rules applying in each field, the reader is referred to the relevant full-length legislative texts the exact references of which are specified in each factsheet.

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1. INTRODUCTION

The European Commission has launched in June 2005 a comprehensive reform of state aid rules and procedures under the title of State Aid Action Plan¹ (hereinafter only the “Plan”). The Commission announced that it would aim in particular to ensure that EC Treaty’s state aid rules are better suited to encourage Member States to contribute to the Lisbon Strategy by focussing aid on improving the competitiveness of EU industry and creating sustainable jobs (for example aid for R & D, innovation and risk capital for small firms), on ensuring social and regional cohesion and improving public services. Since the adoption of the Plan, a number of new regulatory texts have been adopted (such as the new regional aid guidelines) and others are currently under revision. The process should largely be completed by 2009.

The Commission encourages Member States and regions to prioritize action to strengthen the competitiveness of the regional economy. Measures providing State aid to individual companies obviously play an important part in this respect. However, such measures also distort competition as they discriminate between companies that receive assistance and others that do not. As such, they could present a threat to the operation of the internal market.

The authors of the Treaty establishing the European Community (hereinafter only the “Treaty”) had recognized this risk. Still, they did not impose a total ban on State aid. Instead, they set up a system which while it is centered on the principle that State aid is incompatible with the common market, nevertheless accepts that the granting of such aid can be justified in exceptional circumstances.

The basic rules of the system are outlined in Articles 87-88 of the Treaty. These rules have been amplified over the years by secondary legislation and court rulings.

This *Vademecum* intends to provide a concise overview of the basic EU rules regarding State aid. It does not aim to provide an exhaustive description of these rules. Instead, it focuses on the issues that are most relevant for people involved in Structural Fund programmes.

The *Vademecum* considers the following subjects:

- Types of measures that are covered by EU State aid rules;
- State aid measures that are acceptable under European legislation;
- Notification and authorisation procedures;
- State aid in Structural Fund programmes;
- Fact-sheets on State aid issues that are most relevant for the Structural Funds.

2. MEASURES COVERED BY STATE AID RULES

The point of departure of EU State aid policy is laid down in Article 87(1) of the Treaty. This article provides that State aid is, in principle, incompatible with the common market. Under Article 88 of the Treaty, the Commission is given the task to control State aid. This article also requires Member States to inform the Commission in advance of any plan to grant State aid (“*notification requirement*”).

¹ SEC(2005) 795- COM(2005) 107 final.

The authors of the Treaty did not suggest that the Commission should try to monitor and control all types of measures that could affect companies.

State aid rules apply only to measures that satisfy all of the criteria listed in Article 87(1) of the Treaty, and more in particular:

(a) Transfer of State resources:

State aid rules cover only measures involving a transfer of State resources (including national, regional or local authorities, public banks and foundations, etc.).

Furthermore, the aid does not necessarily need to be granted by the State itself. It may also be granted by a private or public intermediate body appointed by the State. The latter could apply in cases where a private bank is given the responsibility to manage a state funded SME aid scheme.

Financial transfers that constitute aid can take many forms: not just grants or interest rate rebates, but also loan guarantees, accelerated depreciation allowances, capital injections etc.

(b) Economic advantage:

The aid should constitute an economic advantage that the undertaking would not have received in the normal course of business. Less obvious examples of transactions satisfying this condition are given below:

- A firm buys/rents publicly owned land at less than the market price;
- A company sells land to the State at higher than market price;
- A company enjoys privileged access to infrastructure without paying a fee;
- An enterprise obtains risk capital from the State on terms, which are more favourable than it would obtain from a private investor.

(c) Selectivity:

State aid must be selective and thus affect the balance between certain firms and their competitors. “Selectivity” is what differentiates State aid from so-called “general measures” (namely measures which apply without distinction across the board to all firms in all economic sectors in a Member State (e.g. most nation-wide fiscal measures)).

A scheme is considered “selective”, if the authorities administering the scheme enjoy a degree of discretionary power. The selectivity criterion is also satisfied if the scheme applies to only part of the territory of a Member State (this is the case for all regional and sectoral aid schemes).

(d) Effect on competition and trade:

Aid must have a potential effect on competition and trade between Member States. It is sufficient if it can be shown that the beneficiary is involved in an economic activity and that he operates in a market in which there is trade between Member States. The nature of the beneficiary is not relevant in this context (even a non-profit organisation can engage in economic activities).

The Commission has taken the view that small amounts of aid (*de minimis* aid²) do not have a potential effect on competition and trade between Member States. It therefore considers that such aid falls outside the scope of Article 87(1) of the Treaty.

This brief description of the criteria defining State aid shows that the scope of Community State aid rules is wide (but not open-ended).

3. EXEMPTIONS FROM THE BAN ON STATE AID

According to Article 87(1) of the Treaty, aid measures that satisfy all the criteria outlined above are, in principle, incompatible with the common market. However, the principle of incompatibility does not amount to a full-scale prohibition. Articles 87(2) and 87(3) of the Treaty specify a number of cases in which State aid could be considered acceptable (the so-called “*exemptions*”). The existence of these exemptions also justifies the vetting of planned State aid measures by the Commission, as foreseen in Article 88 of the Treaty. This article provides that Member States must notify to the Commission any plan to grant State aid before putting such plan into effect. It also gives the Commission the power to decide whether the proposed aid measure qualifies for exemption or whether the “*State concerned shall abolish or alter such aid*”.

In the context of Structural Funds operations, the most relevant exemption clauses are those of Article 87(3)(a) and 87(3)(c) of the Treaty:

- Article 87(3)(a) covers “aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment”;
- Article 87(3)(c) refers to “aid to facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions contrary to the common interest”.

In exercising its powers, the Commission has developed specific approaches depending on the size of the firm, its location, the industry concerned, the purpose of the aid, etc. In order to ensure transparency, predictability and legal certainty the Commission has made public the criteria it uses when deciding whether aid measures notified to it qualify for exemption. These publications have taken the form of regulations, “communications”, “notices”, “frameworks”, “guidelines”, and letters to Member States³.

We can distinguish three main aid categories under Articles 87(3)(a) and 87(3)(c) of the Treaty:

(a) Regional aid:

Articles 87(3)(a) and 87(3)(c) of the Treaty both provide a basis for the acceptance of State aid measures aimed at tackling regional problems:

- Article 87(3)(a) of the Treaty applies to State aid to promote the development of “*areas where the standard of living is abnormally low or where there is serious*

² See annex: factsheet on the *de minimis* rule.

³ All relevant regulations, communications, notices, frameworks and guidelines are available on the DG Competition web site: http://ec.europa.eu/comm/competition/state_aid/legislation/.

underemployment". This is why Article 87(3)(a) status is granted on the basis of an EU criterion (NUTS II regions with a GDP/cap. (PPS) lower than 75% of the EU-25 average⁴). For the period 2007-2010, regions with less than 75% of the EU-15 average GDP/cap (PPS)⁵ are also eligible under Article 87(3)(a).

- Article 87(3)(c) of the Treaty covers aid to other types of (national) problem regions "*aid to facilitate the development of ... certain economic areas*". This article gives Member States the possibility to assist regions which are disadvantaged *compared to the national average*. The list of regions qualifying for this exemption is also decided by the Commission, but on a proposal by Member States. Member States can use *national* criteria to justify their proposal.

The criteria used for the assessment of regional aid are brought together in the "Guidelines on national regional aid for 2007-2013". The content of this document is summarized in the factsheet on regional aid in annex.

(b) Other Horizontal rules:

Cross-industry or "horizontal" rules set out the Commission's position on particular categories of aid which are aimed at tackling problems which may arise in any industry and region.

To date, the Commission has adopted "frameworks", "guidelines" or "block exemption regulations" setting out the criteria that are to be applied to the following categories of aid:

- Aid for small and medium-sized enterprises;
- Aid for research and development and innovation;
- Aid for environmental protection;
- Aid for risk capital;
- Aid for services of general economic interest;
- Aid for the rescue and restructuring of firms in difficulty;
- Aid to employment; and
- Training aid.

A summary of the "regulations", "frameworks" and "guidelines" relating to each of the above categories of aid is also presented in the factsheets in annex.

(c) Sectoral rules:

The Commission has also adopted industry-specific or "sectoral" rules defining its approach to State aid in particular industries. The most relevant in this context are the following:

- General sectors:

Over the years, special rules have been adopted for a number of sectors featuring specific types of problems or conditions to be addressed by a specific set of rules. These currently include the sectors of audiovisual production, broadcasting, coal, electricity (stranded costs), postal

⁴ To ensure consistency, EU-25 data is used for the whole of the period 2007-2013.

⁵ Equivalent to 82.2% of the average EU-25 DGP/cap.

services, and shipbuilding. There are also specific restrictions on granting aid to the steel and synthetic fibers industry.

- Agriculture, forestry, fisheries and aquaculture:

The general State aid rules described in this vademecum do not apply, or apply only to a limited extent in the sectors involved in the production and marketing of products of agriculture and fisheries⁶. The rules applying to these sectors are laid down in the Community Guidelines State aid in the Agriculture and Forestry Sector for 2007-2013⁷ and in the Community Guidelines for the Examination of State Aid to Fisheries and Aquaculture⁸.

Further information on the rules applying in these sectors can be obtained from the State aid units of DG Agriculture and DG Fisheries.

- Transport:

In the road transport sector, most general State aid rules apply (including the *de minimis* regulation, although there are a number of exceptions (e.g. transport equipment is in general not eligible for aid, aid for the acquisition of road freight transport vehicles is excluded from the *de minimis* regulation and the *de minimis* ceiling is decreased to EUR 100 000 for the road transport sector).

Sector- specific State aid rules apply in the other transport sectors (rail, air, inland waterways and maritime transport). Information on State aid rules in these sectors can be obtained in the State aid unit of DG Energy and Transport⁹.

DG Energy and Transport is also competent for the application of State aid rules to the coal sector¹⁰.

(d) Specific aid instruments:

For the use of specific aid instruments such as guarantees, fiscal aid, capital injections, or for the calculation of the aid content of a measure, guidance has been provided through the publication of a number of notices which are available at DG COMP internet site.

⁶ The list of products concerned is specified in Annex I of the EC Treaty (Internet address: <http://eur-lex.europa.eu/en/treaties/index.htm>).

⁷ Official Journal C 319, 27.12.2006, p. 1.

⁸ Official Journal C 229 of 14.9.2004.

⁹ Please look at http://ec.europa.eu/dgs/energy_transport/state_aid/transport_en.htm

¹⁰ Specifically, DG Transport and Energy is responsible for hard coal which falls within the definition of the Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry, meaning high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal laid down by the United Nations Economic Commission for Europe.

Summarising:

Apart from the DG Agriculture, DG Fisheries and DG Energy and Transport competences mentioned above, DG Competition is competent for aid in all other sectors.

Table 1 overleaf provides an overview of the main categories of aid covered by “guidelines”, “frameworks” or “block exemption regulations” adopted by the Commission to date. The table also indicates for each of these categories whether exemption can be given across the entire EU territory or whether it is restricted to assisted regions. The last column in the table gives the title of the factsheet (see annex) in which the aid is treated.

4. NOTIFICATION AND AUTHORISATION PROCEDURES

Community supervision of State aid is based on a system of *ex ante* authorisation. Under this system, Member States are required to inform (“*ex ante notification*”) the Commission of any plan to grant or alter State aid and they are not allowed to put such aid into effect before it has been authorised by the Commission (“*Standstill-principle*”). Under the Treaty, the Commission is given the competence to determine whether or not the notified aid measure constitutes State aid in the sense of Article 87(1) of the Treaty, and if it does, whether or not it qualifies for exemption under Article 87(2) or (3) of the Treaty. Member States can not grant any State aid unless it has been notified *and* authorised by the Commission. Any aid, which is granted in absence of Commission approval, is automatically classified as “*unlawful aid*”. Under the present procedural rules, the Commission is under the obligation to order the recovery from the beneficiaries of any unlawful aid that is found to be incompatible with the common market. Moreover, the European Courts have recognized that national judges are competent to decide whether the notification procedures have been complied with and if not, to order recovery of the aid.

In recent years, the Commission has started a process of modernisation and simplification of State aid procedures. To this end, the Council adopted Regulation (EC) No 994/98 of 7 May 1998, which enables the Commission to adopt so-called “*block exemption regulations*” for State aid. With these Regulations, the Commission can declare certain categories of State aid compatible with the Treaty if they fulfill certain conditions, thus exempting them from the requirement of prior notification and Commission approval. At present, the Commission has adopted five block exemption regulations. Three of these regulations create exemptions for aid to small and medium-sized enterprises, employment aid and training aid (all of which have been prolonged until 30 June 2008). As a result, Member States are able to grant aid that meets the conditions laid down in these three regulations without the need for giving prior notification to and securing the agreement of the Commission. A fourth regulation exempts transparent regional investment aid schemes, and some ad hoc aid. This regulation applies from 2007 until the end of 2013. A fifth regulation codifies the application of the *de minimis* rule. That regulation clearly establishes that aid to an enterprise that is below the threshold of € 200,000 over a period of three fiscal years and that respects certain conditions, does not constitute State aid in the sense of Article 87(1) of the Treaty, since it is deemed not to affect trade or distort competition. Such aid does therefore not need to be notified.

Table 1: Main horizontal and regional aid categories allowed under EU guidelines, frameworks or regulations

Aid for:	Regional aid areas		Other areas	Relevant fact-sheet (see Annex)
	87(3)(a) areas	87(3)(c) areas		
Initial investment (large firms)	Yes	Yes	No	Regional aid
Initial investment (SMEs)	Yes	Yes	Yes	Regional +SME aid
Job creation (large firms)	Yes	Yes	No	Employment aid + Regional aid
Job creation (SMEs)	Yes	Yes	Yes	Employment aid + Regional +SME aid
Maintenance of jobs	Yes	No	No	Regional operating aid
Environmental expenditure	Yes	Yes	Yes	Environmental aid
R&D&I expenditure	Yes	Yes	Yes	R&D&I aid
Operating aid	Yes	No	No	Regional aid
Transport aid(°)	Yes°	Yes°	No	Regional aid
Soft aid (SMEs)	Yes	Yes	Yes	SME aid
Risk capital aid	Yes	Yes	Yes	Risk capital aid
Services of general economic interest	Yes	Yes	Yes	Services of general economic interest
Training aid	Yes	Yes	Yes	Training aid
Rescue and Restructuring aid	Yes	Yes	Yes	Rescue and Restructuring aid

° Aid to compensate additional transport costs incurred by enterprises located in the outermost regions or in regions of low population density.

As a result of the modernisation process, a distinction needs to be made between two types of aid measures:

- Aid measures that are exempted from the notification requirement

Individual aid measures or aid schemes that satisfy all the conditions laid down in one of the block exemption regulations adopted by the Commission do not need to be notified to the Commission. In the case of an aid measure that satisfies all the conditions of the SME-aid, training aid, employment or regional aid Regulations, the Member State is instead required to submit to the Commission a summary description of the aid measure within 20 working days *following* the implementation of the measure. Where the aid measure satisfies all the conditions laid down in the *de minimis* Regulation (see fact-sheet 1), there is not even a requirement to submit such summary information (though Member States are obliged to monitor such aid in line with the Regulation).

- Aid measures that are subject to the notification requirement

On 22.03.1999, the Council adopted Regulation (EC) 659/1999 (as later amended)¹¹, which sets out the procedural rules to be followed in the area of State aid. The Commission Regulation (EC) No 794/2004¹² followed, implementing the above mentioned Council Regulation. Below, a brief overview will be given of the rules applying to a normal notification case:

- Notification:

It is the Member State concerned (central authorities), which must notify planned aid measures, through their Permanent Representation. In order to speed up treatment, the Commission has drawn up standard notification forms for most types of aid. A dedicated software ("SANI") has been made available to Member States to facilitate and accelerate the notification process.

Certain minor alterations to existing aid are subject to simplified system of notification and a faster decision making procedure. Such simplified arrangements can only be accepted if the Commission has been regularly informed on the implementation of the existing aid concerned.

- Request for additional information:

If the notification is incomplete, the Commission will request further information. The Member State concerned is usually given 20 days to supply this information.

- Examination and decision:

The Commission has two months within which to examine the proposed aid. The two-month period runs from the date that the Commission has received all the information it needs to assess the case and the notification can be considered as complete. This examination will normally be concluded either by a "decision not to raise objections" or by a "decision to

¹¹ Official Journal L83, 27.03.1999, p.1.

¹² Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Official Journal L 140, 30.04.2004, p. 1-134.

initiate Article 88(2) proceedings”:

If the Commission decides not to raise any objection, the aid measure concerned can be implemented.

The Commission initiates Article 88(2) proceedings if it has doubts about the compatibility of the notified aid measure with the common market. In such cases, the Commission opens a “formal investigation”. It publishes a description of the aid in the OJ and on its website and invites the Member State concerned and interested parties to comment. At the end of the enquiry, the Commission adopts a final decision. This may be either positive (aid can be implemented), negative (aid can not be implemented) or positive, but subject to stated conditions (aid can be implemented if certain conditions are met). The indicative maximum time-limit foreseen for such an enquiry is 18 months.

All decisions are subject to *review by the European Court of Justice under Article 230 of the EC Treaty*. National courts also play a role with respect to enforcement of Commission recovery decisions.

5. STATE AID IN STRUCTURAL FUND PROGRAMMES

The operational programs under the structural funds for 2007-2013 will contain a standard form clause indicating “any public support under this programme must comply with the procedural and material State aid rules applicable at the point of time when the public support is granted”. It is the responsibility of the managing authorities to ensure that this condition is fulfilled.

ANNEX STATE AID FICHES

Attached are 11 fiches each of them relating to a State aid topic, which may be relevant in the context of the Structural Funds.

Each fiche presents a concise summary of the main provisions applying to the topic concerned. It also gives the precise reference of the relevant Commission Regulation, Guideline, Framework, Communication or Notice. A full-length version of the legal texts referred to in the fiches is also available on the DG Competition web-site (http://ec.europa.eu/comm/competition/state_aid/legislation/legislation.html).

The following fiches are attached:

Fiche 1	The <i>De Minimis</i> rule
Fiche 2	Regional aid
Fiche 3	SME aid
Fiche 4	R&D&I aid
Fiche 5	Aid for environmental protection
Fiche 6	Aid for the rescue and restructuring of firms in difficulty
Fiche 7	Employment aid
Fiche 8	Training aid
Fiche 9	State aid elements in sale of land and buildings by public authorities
Fiche 10	Risk capital measures
Fiche 11	Services of general economic interest

Note of caution:

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This version of the Vademecum was completed on 15/02/2007.

FICHE 1 THE ‘DE MINIMIS’ RULE

Reference

This fiche summarizes the “Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid” (Official Journal No L 379, 28.12.2006, p. 5) (hereinafter in this fiche the “Regulation”).

Scope

The Regulation covers small amounts of State aid (“*de minimis* aid”) which do not constitute State aid in the sense of Article 87(1) of the Treaty and which are therefore not subject to the notification requirement.

The *de minimis* rule does not apply to the undertakings active in the fishery and aquaculture sectors, in the coal sector, and in the primary production of agricultural products listed in Annex I to the Treaty. It applies, with a certain number of additional conditions, to undertakings active in processing or marketing of agricultural products. In the transport sector, *de minimis* aid cannot be used for the acquisition of road freight transport vehicles. Finally, undertakings in difficulty are not covered by this Regulation.

Concept

The *de minimis* rule sets a threshold figure for aid below which Article 87(1) of the Treaty can be said not to apply, so that the measure need no longer be notified in advance to the Commission. The rule is based on the assumption that, in the vast majority of cases, small amounts of aid do not have an effect on trade and competition between Member States.

Criteria

To benefit from the *de minimis* rule, aid has to satisfy the following criteria:

- The ceiling for the aid covered by the *de minimis* rule is in general EUR 200 000 (cash grant equivalent) over any three fiscal year period. The relevant period of three years has a mobile character, so that for each new grant of *de minimis*, the total amount of *de minimis* aid granted during three consecutive fiscal years (including the then current fiscal year) needs to be determined.
- The ceiling will apply to the total of all public assistance considered to be *de minimis* aid. It will not affect the possibility of the recipient obtaining other State aid under schemes approved by the Commission, without prejudice to the cumulation rule described below.
- The ceiling applies to aid of all kinds, irrespective of the form it takes or the objective pursued. The only type of aid which is excluded from the benefit of the *de minimis* rule is export aid.
- The regulation only applies to “transparent“ forms of aid which means aid for which it is possible to determine in advance the gross grant equivalent without needing to undertake a risk assessment. This implies a certain number of restrictions on certain forms of aid like, for example, guarantees. Only guarantees lower than EUR 1.5 million can be covered by the Regulation¹³.

¹³ Without prejudice to the possibility of Member States to notify methodologies, as provided by Article 2.4(d) of the Regulation.

Cumulation

The above ceiling (EUR 200 000 of *de minimis* aid over a three fiscal year period) applies to the total amount of *de minimis* aid granted to a single company. The amount is lowered to EUR 100 000 in the road transport sector.

When granting a *de minimis* aid to a particular undertaking, the Member State concerned must check whether the new aid will not raise the total amount of *de minimis* aid received by that undertaking during the relevant three year period above the EUR 200 000 (or EUR 100 000, as applicable) ceiling.

The Member State is responsible for establishing the instruments needed to ensure an effective control of the respect of the *de minimis* cumulation ceiling. This can be done in two ways:

- Either the Member State sets up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within the Member State.
- Alternatively, the Member State explicitly informs the enterprise about the *de minimis* character of the aid and obtains from the enterprise concerned full information about other *de minimis* aid received during the two previous fiscal years and the current fiscal year. Under all conditions, the Member State remains responsible for ensuring the respect of the cumulation ceiling.

FICHE 2 REGIONAL AID

References

This fiche summarizes:

- the Guidelines on National Regional Aid for 2007-2013 (Official Journal C 54, 4.3.2006, p.13) (hereinafter in this fiche the “Guidelines”).
- Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (Official Journal L 302, 1.11.2006, p.29) (hereinafter in this fiche the “Regulation”).

Aim

To promote the development of the less-favoured regions:

- mainly by supporting initial investment (covered by both the Regulation and the Guidelines) or
- in exceptional cases, by providing operating aid (covered by the Guidelines only).

Scope

The Guidelines cover investment and operating aid to establishments located in regions eligible for regional aid (see below).

The Guidelines do not apply to the primary production of agricultural products, to the production, processing and marketing of fisheries products listed in Annex I of the Treaty, nor to the coal industry. Special rules apply to:

- transport and shipbuilding;
- no regional aid is allowed to the steel or synthetic fibers industry;
- large investment projects (see “concepts”).

Concepts

Two categories of eligible regions can be distinguished:

- *Article 87(3)(a) regions:* These are regions where the standard of living is abnormally low or where there is serious underemployment (NUTS II regions with a GDP/cap lower than 75% of the EU average).
- *Article 87(3)(c) areas:* These are problem areas defined on the basis of (national) indicators proposed by the Member States, subject to a maximum population coverage and some minimal conditions to prevent abuse.

Initial investment: investment in material and immaterial assets relating to the setting up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products, or a fundamental change in the overall production process of an existing establishment;

Operating aid: Aid aimed at reducing a firm’s current expenditure (e.g. salary costs, transport costs, rents).

Large investment projects are initial investment projects with eligible investment costs that are at least EUR 50 million (eligible investment costs are defined below).

Gross grant equivalent (GGE): the nominal value of the aid granted discounted to its value at the date of granting the aid.

Aid intensity: GGE expressed as a percentage of the total eligible project cost.

AID FOR INITIAL INVESTMENT:

Eligible costs: Aid for initial investment can be calculated as a percentage of the investment's value or as a percentage of the wage-cost of the jobs linked to the initial investment

- *Investment:* material investment (land, buildings, plant/machinery) and a limited amount of immaterial investment (expenditure entailed by technology transfer). Expenditure on transport equipment in the transport sector is not eligible.
- *Wage-cost:* Gross wage-cost, calculated over a period of two years multiplied by the number of jobs created (net job creation in the establishment concerned).

Maximum aid intensities

Regional GDP as % of EU-25 GDP	Maximum aid rates for large companies	Aid rates in the outermost regions
> 75%	15% - 10%	40%
<75%	30%	50%
<60%	40%	60%
<45%	50%	n/a

So-called 'statistical effect regions' – which have less than 75% of EU-15 GDP but more than 75% of EU-25 GDP (3.6% of EU-25 population) - will benefit from transitional status and qualify for the lowest rates of aid under Article 87(3)(a) of the Treaty, with a 30% aid rate for large companies until 31.12.2010. The situation of these regions will be reviewed in 2010. If their situation has declined, they will continue to benefit from Article 87(3)(a) of the Treaty. Otherwise, they will be eligible under Article 87(3)(c) of the Treaty with an aid rate of 20%, as from 1.1.2011.

The eligible areas are identified in the regional aid maps for each Member State published on the website of DG COMP.

Transitional arrangements are foreseen until 2010 for regions suffering the biggest reductions in aid intensities and, until 2008, for regions losing eligibility under the new Guidelines. These areas are also identified in the maps.

For large investments the regional aid intensity ceiling is reduced as follows:

- For the part of the eligible cost between EUR 50 million – EUR 100 million, the intensity is reduced to 50% of the regional aid ceiling.
- For the part of the eligible cost exceeding EUR 100 million, the intensity is reduced to 34% of the regional aid ceiling.

With the exception of large investment projects, Aid intensities can be increased in all assisted areas by 20% where aid is given to small enterprises and 10% where it is given to medium-sized enterprises. No SME bonus is permitted for large investment projects with eligible expenses over EUR 50 million.

Cumulation

Aid intensity ceilings specified in the table above apply to total aid:

- Where assistance is granted under several regional aid schemes;
- Whether the aid comes from local, regional, national or Community sources.

Where expenditure eligible for regional aid is eligible for aid for other purposes (e.g. R&D&I), it will be subject to the most favourable ceiling under the schemes in question.

Notification requirements

The Regulation exempts transparent regional investment aid schemes which respect the rules on eligible expenses and the maximum aid intensities defined in the Regional aid Map for the Member State concerned from notification to the Commission. Transparent ad hoc aid granted to an individual company is also exempt from notification provided it is used to top-up aid granted under schemes and the ad hoc component does not exceed 50% of the total amount of aid.

The material rules for investment aid are the same in both the Regulation and the Guidelines, so that there is no advantage to be gained in notifying an aid measure which is exempt.

Transparent aids are aid measures in which it is possible to calculate precisely the gross grant equivalent as a percentage of eligible expenditure ex ante without a need to undertake a risk assessment (for example grants, interest rate subsidies and capped fiscal measures). Public loans are considered to be transparent provided that they are backed by normal security and do not involve abnormal risk. In principle, aid schemes involving state guarantees or public loans with a state guarantee element are not considered as transparent. However, such aid schemes can be considered as transparent if, before the implementation of the scheme, the methodology used to calculate the aid intensity of the state guarantee has been accepted by the Commission following notification to the Commission after adoption of the Regulation.

Individual notification of large investment projects is required where the aid exceeds the maximum amount of aid an investment with eligible costs of EUR 100 million can receive in the region concerned.

OPERATING AID

General provisions

Operating aid may be granted in Article 87(3)(a) regions, but only if all of the following conditions are satisfied:

- It is justified in terms of its contribution to regional development;
- Its level is proportional to the handicaps it seeks to alleviate;
- It is limited in time and progressively reduced

Member States must demonstrate the existence and importance of these handicaps.

Transport aid: Aid to offset additional transport costs can be provided only in the outermost regions and in low population density areas qualifying for regional aid.

Aid to offset depopulation: Aid to offset depopulation may be granted on a permanent basis in the least populated regions with a population density below 8 inhabitants/km².

Aid to compensate the handicaps of the outermost regions: Aid may be granted on a permanent basis to offset the handicaps of the outermost regions (remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products).

Aid for newly established small enterprises:

- maximum EUR 3 million per enterprise in Article 87(3)(a) regions and EUR 2 million per enterprise in Article 87(3)(c) regions;
- 5% bonus for Article 87(3)(a) regions < 60% EU-GDP, low population density regions and small islands;
- intensities:

	Years 1-3	Years 4-5
Article 87(3)(a) regions	35%	25%
Article 87(3)(c) regions	25%	15%

FICHE 3 AID FOR SMALL AND MEDIUM-SIZED ENTERPRISES

Reference

This fiche summarizes the “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” as later amended¹⁴ (Official Journal No L 10, 13.1.2001, p.33) (hereinafter in this fiche the “Regulation”).

Scope

The Regulation covers State aid measures to support tangible and intangible investment and soft aid in SMEs.

Special rules apply to coal, shipbuilding, and fisheries products.

Concepts

Definition of SMEs

- A *medium-sized enterprise* is an enterprise satisfying all of the following criteria:
 - has fewer than 250 employees and
 - has either an annual turnover not exceeding EUR 50 million, or a balance-sheet total not exceeding EUR 43 million.

- A *small enterprise* is an enterprise that satisfies all of the following criteria:
 - has fewer than 50 employees and
 - has either an annual turnover or a balance-sheet total not exceeding EUR 10 million.

The criteria must be applied to the company as a whole (including subsidiaries located in other Member States and outside the EU). The Regulation provides definitions of an autonomous enterprise, partner enterprise and linked enterprise in order to assess the real economic position of the SME in question.

Eligible cost

Aid can be provided in relation to the following categories of expenditure:

- Investment in tangible assets (land, buildings, plant/machinery) and in intangible assets (expenditure entailed by technology transfer);
- The costs of services provided by outside consultants and the costs of the first participation of an enterprise in a particular fair or exhibition.

¹⁴ The scope of the Regulation was further extended by Commission Regulation No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development, Official Journal L 63, 28.02.2004, pages 22-29 and Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001, Official Journal L 358, 16.12.2006, p. 3–21.

Maximum aid intensities

	Non-assisted regions	Article 87(3)(a)	Article 87(3)(c)
Investment <ul style="list-style-type: none">■ Small firms■ Medium-sized firms	15.0% 7.5%	Regional aid ceiling +15%	Regional aid ceiling +10%
Services by outside consultants and participation in fairs	50%	50%	50%

Notification

Aid measures satisfying the conditions laid down in the Regulation are exempted from the ex ante notification requirement. However, large projects satisfying the following thresholds are *not exempted* from individual notification:

- The total eligible costs of the whole project are at least EUR 25,000,000 and the gross aid intensity is at least ½ of the applicable aid intensity ceiling; or
- The total gross aid amount is at least EUR 15,000,000.

Other conditions

Within 20 working days following the implementation of the exempted aid scheme or the granting of the exempted individual aid, the Member State must submit to the Commission a summary description of the aid measure.

FICHE 4 AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION

Reference

This fiche summarizes the “Community Framework for State aid for Research and Development and Innovation” (Official Journal C 323 of 30.12.2006, p. 1) (hereinafter in this fiche “Framework”).

Scope

The Framework covers all measures under which State aid is provided for company research and development and innovation.

R&D&I support not considered to constitute State aid:

- Public financing of non-economic R&D&I activities by research organizations;
- R&D commissioned from firms by public authorities according to market conditions (open tender procedure).

Sectors for which special rules apply:

- Transport by rail, road and inland waterway
- Agriculture and fisheries: maximum aid intensity of 100% in all cases (subject to conditions)

Concepts

Fundamental research: Experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view;

Industrial research: Planned research or critical investigation aimed at the acquisition of new knowledge or skills for developing new products, processes or services or bringing about a significant improvement in existing products, processes or services;

Experimental development: The acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services (including the creation of a commercially usable prototype or pilot projects under certain conditions).

Aid measures

The following measures are recognized under the Framework as eligible for compatibility under Article 87(3)(c) of the Treaty:

- Aid for R&D projects;
- Aid for technical feasibility studies;
- Aid for industrial property rights costs for SMEs;
- Aid for young innovative enterprises;
- Aid for process and organizational innovation in services;
- Aid for innovation advisory services and for innovation support services;

- Aid for the loan of highly qualified personnel; and
- Aid for innovation clusters.

Eligible costs

The eligible costs depend on the type of the proposed measure and are laid down in the relevant Sections of the Framework. By way of an example, the following types qualify as eligible costs for *Aid for R&D projects* (i.e. the first category of aid mentioned above):

- Personnel costs of staff to the extent employed on the research activity);
- Costs of instruments, equipment and land and premises to the extent and for the period used for the research project (subject to depreciation as applicable);
- Cost of contractual research, technical knowledge and patents brought or licensed from outside sources at a market price;
- Cost of external consulting and equivalent services used exclusively for the project;
- Additional overheads incurred directly as a result of the research;
- Other operating expenses incurred directly as a result of the research activity.

Aid intensities

Similarly as with the eligible costs, the aid intensities differ depending on the measure in question. By way of an example, the following table features aid intensities applying to the first type of the aid measure- *aid for R&D projects*:

TABLE ILLUSTRATING THE AID INTENSITIES FOR R&D PROJECT AID

	Small enterprise	Medium-sized enterprise	Large enterprise
<i>Fundamental research</i>	100%	100%	100%
<i>Industrial research</i>	70%	60%	50%
<i>Industrial research subject to:</i> - collaboration between undertakings; for large undertakings: cross-border or with at least one SME or - collaboration of an undertaking with a research organization or - dissemination of results	80%	75%	65%
<i>Experimental development</i>	45%	35%	25%
<i>Experimental development subject to:</i> - collaboration between undertakings; for large undertakings: cross-border or with at least one SME or - collaboration of an undertaking with a research organization	60%	50%	40%

Special conditions

The Framework provides for three types of assessment on the basis of a balancing test of the positive and negative effects of the aid:

(i) *standard assessment* – if project satisfies conditions set out in Chapter 5 of the Framework, it is assumed that the balancing test would be positive. The following measures fall within this category (provided aid is granted only upon application to national authorities):

- project aid and feasibility studies if aid beneficiary is SME and aid amount is below EUR 7,5 million per SME for a project;
- aid for industrial property rights costs for SMEs;
- aid for young innovative enterprises;
- aid for innovation advisory services;
- aid for innovation support services; and
- aid for the loan of highly qualified personnel.

(ii) *standard assessment plus demonstration of incentive effect and necessity*- in accordance with Chapters 5 and 6 of the Framework: for all notified aid falling **below** the thresholds for the detailed assessment (mentioned below) **and** not falling within one of the categories of the standard assessment just under Chapter 5 (mentioned above).

(iii) *detailed assessment* – due to a higher risk of distortion of competition, Commission will carry out a detailed assessment for measures where the amount exceeds:

- > for project aid and feasibility studies:
 - if project is predominantly fundamental research, EUR 20 million;
 - if the project is predominantly industrial research, EUR 10 million;
 - for all other projects: EUR 7,5 million;
- > for process or organisational innovation in services activities, EUR 5 million.
- > for innovation clusters, EUR 5 million.

For each aid scheme, an annual report on implementation is required.

FICHE 5 AID FOR ENVIRONMENTAL PROTECTION MEASURES

Reference

This fiche summarizes the “Community Guidelines on State aid for Environmental Protection” (Official Journal No C 37, 3.2.2001, p.3) (hereinafter in this fiche the “Guidelines”). The Guidelines are currently under review.

Scope

The Guidelines cover aid for actions designed to remedy or prevent damage to our physical surroundings or natural resources or to encourage the efficient use of these resources.

The Guidelines do not apply to:

- Aid for R&D and training in the environmental field (R&D framework and training aid regulation apply).
- the production, processing and marketing of agricultural products listed in Annex I of the EC Treaty (Community guidelines for State aid in the agricultural sector apply).

INVESTMENT AID & AID FOR ADVISORY SERVICES

Eligible activities & costs

Aid for investment to adapt to new compulsory EU environmental standards or to improve on such standards

- Eligible costs: Strictly limited to the extra costs of the investments in land, buildings, equipment and intangible assets necessary to achieve the compulsory standards and/or to meet the environmental objectives. In all cases, the eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period.
- Aid for investment to adapt to new compulsory EU standards can be granted to SMEs only and can be made available only during a period of three years from the adoption of these new standards.

Aid for investment in energy saving, in renewable sources of energy and in combined heat and power installations (CHP)

- Eligible costs: Strictly limited to the extra costs of the investments in land, buildings, equipment and intangible assets necessary to achieve the environmental objectives. In all cases, the eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period.
- In the case of renewables or CHP, the extra costs are defined as the extra cost compared to the cost of a comparable conventional power plant.

Aid for the rehabilitation of polluted industrial sites

- If the person responsible for the pollution is not identified or cannot be made to bear the cost, the person responsible for the rehabilitation of the land may receive aid.
- The eligible costs are equal to the cost of the work to repair the environmental damage

less the increase in the value of the land.

Aid for the relocation of firms

- Aid for the relocation of companies can be granted only if the change of location is dictated on environmental protection grounds and if it is ordered by administrative or judicial decision. In addition, the company relocating must comply with the strictest environmental standards applicable in its new location.
- The eligible costs should be limited to the net costs of the relocation.

Aid for advisory services: Conditions of the SME Regulation apply.

Maximum aid

Maximum aid intensities as a percentage of eligible costs	Outside assisted areas (GGE)	In assisted areas (GGE)
(a) Investment to adapt to compulsory EU standards (SMEs only)	15%	15%
(b) Investment to improve on compulsory EU standards and relocation of firms	30%	40% or Regional aid ceiling + 10%
(c) Investment in energy saving and in CHP	40%	40% or Regional aid ceiling + 10%
(d) Investment in renewable sources of energy	40%	40% or Regional aid ceiling + 10%
(e) Rehabilitation of polluted industrial sites	100% of eligible costs + 15% of the cost of the work	
<p>(^o) Where it is shown to be necessary, aid can be granted up to 100% of eligible costs Where in the case of (b), (c) and (d), the investments are carried out by SMEs, the aid intensities may be increased by a further 10% GGE. The bonuses for assisted regions and SMEs may be combined, but the maximum rate of aid should never exceed 100% GGE of the eligible costs All aid intensities are expressed in gross grant equivalents</p>		

OPERATING AID

Eligible activities

Under the Community Guidelines on State aid for environmental protection, Member States can also provide operating aid in cases where such aid is shown to make a significant contribution to protecting the environment.

The following types of operating aid may be authorised under the Guidelines:

- Operating aid to promote environmentally-friendly forms of waste management and to promote energy saving
- Operating aid in the form of reductions of or exemptions from taxes levied on certain activities for reasons of environmental protection (e.g. CO² levy)
- Operating aid to promote renewable energy sources

- Operating aid for the combined production of electric power and heat

Specific conditions to be respected when granting operating aid in the environmental field are set out in detail in points 42 to 67 of the Community Guidelines on State aid for environmental protection.

The eligible costs are strictly limited to the extra production costs by comparison with the market prices of the relevant products or services.

Maximum aid

Operating aid is in principle limited to a duration of 5 years. Where the aid is “degressive”, its intensity may amount to 100% of the eligible costs. Where the aid is “non-degressive” the intensity must be limited to 50% of the eligible costs.

For operating aid in the form of tax reductions or exemptions, specific criteria apply for new taxes and existing taxes.

Finally, on operating aid for renewable energy sources and Combined Heat and Power, the environmental guidelines offer four options for Member States to grant aid.

Important: please note that the Guidelines are currently under review and new guidelines are expected to be adopted at the end of 2007.

FICHE 6 AID FOR THE RESCUE & RESTRUCTURING OF FIRMS IN DIFFICULTY

References

This fiche summarizes the “Community Guidelines on State aid for rescuing and restructuring firms in difficulty” (Official Journal No 244, 01.10.2004, p. 2) (hereinafter in this fiche the “Guidelines”).

Scope

The Guidelines covers aid for the rescuing and/or restructuring of individual companies in difficulty.

They do not apply to steel and coal mining. With some exceptions, they apply to fisheries and aquaculture sector. Specific additional rules apply for restructuring in the agricultural sector.

Concepts

A **company in difficulty** is a company that is unable, whether through its own resources or with the funds it is able to obtain from its owner/ shareholders or creditors, to stem losses which without outside intervention by public authorities will almost certainly condemn it to go out of business in the short or medium term.

Rescue aid is temporary and reversible assistance. It should make it possible to keep a company in difficulty afloat for the time needed to work out a restructuring or liquidation plan and/or for the length of time needed by the Commission or the competent national authorities to reach a decision on that plan.

Restructuring aid is based on a feasible, coherent and far-reaching plan to restore a firm’s long-term viability.

Conditions

Rescue aid has to meet the following conditions:

- A firm must qualify as a firm in difficulty;
- Consists of reversible liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates (and at least comparable to the reference rates adopted by the Commission);
- Restricted to the amount needed to keep the firm in business;
- only for the time needed (max. 6 months) to devise the recovery plan;
- be warranted on the grounds of social difficulties and have no adverse effects on the industrial situation in other Member States
- be accompanied, on notification, by an undertaking by the MS to communicate to the Commission a restructuring or liquidation plan or proof that the loans has been reimbursed or guarantee terminated, not later than within 6 months after granting the aid;
- should be a one-off operation (the “one time, last time” principle).

The Guidelines provide for a simplified procedure if the aid is based on past operating results according to a formula set in the Guidelines and does not exceed EUR 10 million.

Restructuring aid can be granted only if the following criteria are met:

- A firm must qualify as a firm in difficulty;
- A restructuring/recovery programme is submitted to the Commission to restore viability in a reasonable time period;
- Compensatory measures are taken to avoid undue distortions of competition (e.g. appropriate reduction of capacity);
- Aid is limited to the minimum needed for the implementation of the restructuring measures. Beneficiaries have to make a significant own contribution, free of aid.
- The company has to implement the restructuring plan in full and observe all attached conditions.
- Restructuring aid can be granted once only (“one time, last time principle”).
- Strict monitoring and annual reporting is required.
- SMEs and firms in assisted regions: the capacity reduction/ own contribution criteria can be applied with a greater degree of flexibility.
- The Commission takes a favourable view of State aid to cover the social costs of restructuring.

For large firms, individual notification of each award of rescue and restructuring aid is required.

For SMEs, rescue and restructuring aid (up to EUR 10 million per undertaking) can be granted on the basis of notified and approved aid schemes.

FICHE 7 EMPLOYMENT AID

Reference

This fiche summarizes the “Commission Regulation (EC) No 2204/2002 of 5 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment” (Official Journal No L 337, 13.12.2002, p.3) (hereinafter in this fiche the “Regulation”).

Scope

The Regulation covers only aid schemes that are selective (limited to certain regions or sectors) and under which aid is granted for the following purposes:

- the creation of jobs;
- the recruitment of disadvantaged or disabled people;
- to cover the additional cost of employing disabled people.

The Regulation covers all sectors, with the exception of coal mining, shipbuilding and transport.

Concepts

Disadvantaged people: Young persons below 25 years or within 2 years from completing full-time education; migrant workers moving within the EU; members of ethnic minorities and requiring development of linguistic, vocational training or working experience; persons absent from working life and education for 2 years due to family reasons; single adults looking after children; unemployed persons without secondary qualification; unemployed persons above 50 years; long-term unemployed persons; people convicted and imprisoned for criminal charges.

Disabled people: handicapped due to serious physical, mental, or psychological impediment.

Conditions

Conditions to be satisfied in the case of job creation aid:

- Employment must represent a net increase in the number of jobs;
- Employment must be maintained for at least 3 years (2 years for SMEs);
- New employees must never had a job or must have lost their previous job;
- Higher aid intensities in assisted regions can be applied only if the beneficiary’s contribution to financing new employment is at least 25% and if the employment is maintained in the qualifying region;
- Application for aid has to be submitted before the jobs are created.

Eligible cost

Job creation aid: wage cost over a period of two years

Aid for recruitment of disabled/disadvantaged people: wage cost over a period of one year
Aid for additional costs of employing disabled people: additional costs directly linked to the employment of disabled people, including the costs of adapting premises, of employing staff to assist the disabled worker(s), and of adapting or acquiring equipment for disabled worker(s).

Maximum aid

	Outside assisted areas	Article 87(3)(c) regions	Article 87(3)(a) regions
Aid for net job creation: ■ Small enterprises ■ Medium-sized enterprises ■ Large enterprises	15.0% GGE 7.5% GGE	Regional aid ceiling + 10% GGE (max. 30% NGE)	Regional aid ceiling + 15% GGE (max. 75% NGE)
Aid for recruitment of disadvantaged people	50%		
Aid for recruitment of disabled people	60%		
Aid for additional costs of employing disabled people	100%		

Notification

Not exempted from the notification requirement:

- Aid to a single enterprise exceeding EUR 15 million over three years;
- Individual aid awards that are not granted under an aid scheme must still be notified;
- Aid schemes that are targeted at specific sectors;
- Aid for other types of employment related measures that do not fall under any of the exempted categories (e.g. aid for job sharing, aid for other types of disadvantaged workers).

FICHE 8 TRAINING AID

Reference

This fiche summarizes the “Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid” as later amended (Official Journal No L 10, 13.1.2001, p.20) (hereinafter in this fiche the “Regulation”).

Scope

The regulation covers all public support for training which favours one or more firms or sectors of industry by reducing costs they should normally have to bear when they want their employees to acquire new skills. The regulation applies to training aid whether the training is provided by companies themselves or by public or private training centres. Examples of training measures which do not constitute State aid:

- schooling and initial training (incl. apprenticeships and day release schemes);
- training of unemployed people, including traineeships in enterprises The regulation applies to all sectors.

Concepts

Specific training: Training involving tuition directly and principally applicable to the employee’s present or future position in the assisted firm and providing qualifications which are not or only to a limited extent transferable to other firms or fields of work.

General training: Training involving tuition which is not applicable only or principally to the employee’s present or future position in the assisted firm, but which provides qualifications which are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee. Training is considered ‘general’ if, e.g. it is jointly organised by different independent enterprises, or if employees of different enterprises may avail themselves of the training. It is also considered ‘general’ if it is recognised, certified or validated by public authorities or bodies on which the Member State or the Community conferred the necessary powers.

Eligible cost

- trainers’ personnel costs;
- trainers’ and trainees’ travel expenses;
- other current expenses (materials, supplies, etc.);
- depreciation of tools and equipment, to the extent that they are used exclusively for the training scheme in question;
- cost of guidance and counseling services with regard to the training project;
- trainees’ personnel costs up to the amount of the total of the above eligible costs.

Maximum aid

Gross percentages	Specific training	General training
Standard rate (large firms outside assisted areas)	25%	50%
Increases of standard rate:		
■ SME	+10%	+20%
■ Article 87(3)(a) region	+10%	+10%
■ Article 87(3) region	+5%	+5%
■ Beneficiaries: categories of disadvantaged workers	+10%	+10%

Notification

Aid measures satisfying the conditions laid down in the Regulation are exempted from the ex ante notification requirement. However, large training projects (aid granted to a single company exceeding EUR 1,000,000) are *not exempted* from individual notification.

Other conditions

Within 20 working days following the implementation of the exempted aid scheme or the granting of the exempted individual aid, the Member State must submit to the Commission a summary description of the aid measure.

FICHE 9 AID ELEMENTS IN THE SALE OF LAND AND BUILDINGS BY PUBLIC AUTHORITIES

References

This fiche summarizes the “Commission Communication on State aid elements in sale of land and buildings by public authorities” (Official Journal No C 209, 10.7.1997, p.3) (hereinafter in this fiche the “Communication”).

Aim

The aim of the Communication is:

- to outline a simple procedure that allows Member States to handle the sale of land and buildings in a way that automatically precludes the existence of State aid
- to specify cases of sales of land and buildings that should be notified to the Commission.

Principle

The Commission presumes that the sale of land or buildings by a public authority does not contain aid if either one of the two procedures below has been followed:

- The sale was concluded on the basis of a sufficiently well-publicized, open and unconditional bidding procedure, accepting the best or only bid.
- The sale is conducted at the market value as established by independent valuers.

The price at which the land or buildings concerned are sold should conform **at least** to the price indicated by an independent “asset valuer” in his expert evaluation.

If after a reasonable effort to sell at the value indicated in the expertise it is clear that the land/building cannot be sold at that price, a divergence of up to 5% from the original value can be deemed to be in line with market conditions.

Member States should notify to the Commission, without prejudice to the *de minimis* rule (see Fiche 1) any sale which was not concluded in conformity with either one of the procedures described above.

FICHE 10 RISK CAPITAL MEASURES

References

This fiche summarizes the “Community Guidelines on State Aid to Promote Risk Capital Investments in Small and Medium-sized Enterprises” (Official Journal C 194, 18.08.2006, p. 2) (hereinafter in this fiche the “Guidelines”).

Aim

The aim of the Guidelines is to set out the criteria the Commission will apply in the compatibility assessment of the risk capital measures in accordance with Article 87 (3)(c) of the Treaty.

Scope

Application to risk capital schemes targeting only SMEs. Measures designed to provide or promote risk equity and/or quasi-equity financing to enterprises in their start-up and expansion phases.

Risk capital measures must exclude the provision of aid to enterprises in difficulties and companies in the shipbuilding, coal and steel industry. The Guidelines do not apply to aid to export-related activities.

The Commission will pay particular attention to the need to prevent the use of these guidelines to circumvent the principles laid down in existing frameworks, guidelines and regulations.

Presence of State aid

When assessing risk capital measures, the Commission will examine whether State aid is present at each of the following levels:

- *Aid to the investors:* Where a measure allows investors to participate in a risk capital fund on terms more favourable than if they had undertaken this investment in absence of the measure, then those investors may receive State aid. The same applies where the private investors participate in a fund on terms more favourable than public investors.
- *Aid to an investment vehicle or fund and/or its manager:* Normally, the fund is merely an intermediary vehicle for the transfer of aid, rather than being an aid beneficiary itself. However, in certain cases (e.g. regarding fiscal measures or other measures involving direct transfers in favour of an investment vehicle or fund with the character of an independent enterprise) aid may be present unless the investment is made on terms which would be acceptable to a normal economic operator.
- *Aid to the enterprises invested in:* Enterprises will not be considered as aid recipients if the investment is made on terms which would be acceptable to a private investor in a market economy in the absence of any State intervention. For this purpose, the Commission will examine, inter alia, whether investment decisions are profit-driven, linked to a reasonable business plan, and subject to a realistic exit strategy.

Criteria for assessing risk capital measures

The Commission will assess the compatibility of risk capital measures taking into account the incentive effect, necessity of aid, existence of market failure and proportionality of aid.

The Guidelines set out a set of conditions under which the Commission will consider that aid in the form of risk capital is compatible with Article 87(3)(c) of the Treaty. For measures fulfilling these criteria it will be assumed that incentive effect, the necessity and proportionality of aid are met and that the overall balance of the aid measure is positive. These criteria include:

- Maximum level of investment tranches of EUR 1.5 million per target SME over each period of twelve months;
- Restriction to seed, start-up and expansion financing or to start-up phase for medium enterprises outside of assisted areas;
- Prevalence of equity and quasi-equity investment instruments (at least 70% of the budget of the measure);
- Obligatory participation by private investors (at least 50% of the funding, or 30% in assisted areas);
- Profit-driven character of the investment decisions;
- Commercial management.

Risk capital measures which do not satisfy all the conditions laid down above are subject to a *detailed compatibility assessment* based on a balancing test, in order to verify the targeting of the relevant market failure, the higher risks of potential crowding-out of private investors, and distortion of competition.

The Commission will regard the following characteristics as positive elements in its balancing test evaluation:

- Existence and evidence of market failure;
- Appropriateness of the instrument;
- Incentive effect and necessity of aid:
 - Commercial management;
 - Presence of an investment committee;
 - Size of the measure/ fund;
 - Presence of business angels;
- Proportionality (including open tender for managers, call for tender or public invitation to investors).

The Commission will balance these positive elements against the following potential negative effects of the aid:

- Crowding-out of private investment;
- Other distortions of competition, as it cannot be excluded that risk capital measures might have the effect of keeping inefficient firms or sectors afloat or of artificially increasing their valuation and thus, distorting the market for risk capital. Sector specific aid may also maintain production in non-competitive sectors, whereas region-specific aid may build up an inefficient allocation of production factors across regions.

FICHE 11 SERVICES OF GENERAL ECONOMIC INTEREST

References

This fiche summarizes the “Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest” (2005/842/EC) (Official Journal L 312, 29.11.2005, p. 67-73), the “Community Framework for State aid in the form of public service compensation” (2005/C 297/04) (Official Journal C 297, 29.11.2005, p. 4-7), and the Commission Directive 2006/111/EC of 16 November 2006 on transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version) (Official Journal L 318, 17.11.2006, pages 17 – 25) (hereinafter in this fiche the “Decision”, the “Framework”, and the “Transparency Directive” respectively).

Aim

The aim of the Decision and Framework is to provide greater legal certainty for the financing of services of general economic interest. They follow the Court of Justice's *Altmark* ruling¹⁵ and are designed to ensure that companies can receive public support to cover all costs incurred, including a reasonable profit, in carrying out public service tasks as defined and entrusted to them by public authorities, whilst making sure that there is no over-compensation of public service costs and no cross-subsidization in favour of commercial activities which are liable to distort competition.

Scope

By definition, the Decision and Framework only apply to undertakings providing services in the general economic interest as defined in the Treaty, the secondary legislation and the applicable case law. They only apply to undertakings conducting *economic* activities, as financial support granted to entities not conducting economic activities does not constitute state aid.

Concepts

Services of general economic interest (or SGEI) mean economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there was no public intervention. The activity must exhibit special characteristics as compared with the general economic interest of other economic activities.

Altmark criteria mean the conditions set by the landmark Court judgement under which compensation for a SGEI should not be considered as State aid. In brief:

- (i) the activity qualifies as SGEI and its tasks and obligations are clearly defined;
- (ii) the parameters for compensation of the public service's costs are objective, transparent, and are established in advance;
- (iii) compensation does not exceed the net costs of providing the service plus a

¹⁵ C-280/00, 24.7.2003.

reasonable profit (i.e. no over-compensation); and

(iv) the compensation is determined either through *public procurement* or if no public tender has taken place, the company entrusted with the SGEI is compensated on the basis of the costs of a typical well-run company.

Measures

1. Decision

The Decision specifies the conditions under which compensation to companies for the provision of SGEI is compatible with state aid rules and *does not have to be notified* to the Commission in advance.

Conditions:

- a clearly defined public service mandate;
- no over-compensation;
- compensation of less than €30 million per year per undertaking; and
- annual turnover of less than €100 million per undertaking.
- no limits for amount of compensation:
 - hospitals;
 - social housing;
 - air and sea transport to islands;
 - airports and ports below specific thresholds defined in passenger volumes.

2. Framework

The Framework specifies the conditions under which compensation not covered by the Decision is *compatible* with state aid rules. Such compensation will have to be notified to the Commission due to the higher risk of distortion of competition.

The rules are designed to ensure that there is ***no overcompensation*** (compensation that exceeds the net costs of the public service) and ***no cross-subsidizing*** (compensation that is used on other markets open to competition) as such circumstances could not be found compatible with the Treaty.

3. Transparency Directive

The Transparency Directive clarifies that companies receiving compensation and operating on both public service and other markets must have separate accounts for their different activities, so that the absence of over-compensation can be established.