

**C. ENABLING REGULATION AND  
GENERAL BLOCK EXEMPTION REGULATION**



## I

*(Acts whose publication is obligatory)*

**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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

After consulting the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

- (1) Whereas, pursuant to Article 94 of the Treaty, the Council may make any appropriate regulations for the application of Articles 92 and 93 and may, in particular, determine the conditions in which Article 93(3) shall apply and the categories of aid exempted from this procedure;
- (2) Whereas, under the Treaty, the assessment of compatibility of aid with the common market essentially rests with the Commission;
- (3) Whereas the proper functioning of the internal market requires strict and efficient application of the rules of competition with regard to State aids;
- (4) Whereas the Commission has applied Articles 92 and 93 of the Treaty in numerous decisions and has also stated its policy in a number of communications; whereas, in the light of the Commission's considerable experience in applying Articles 92 and 93 of the Treaty and the general texts 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 be enabled to declare by means of regulations, in areas where the Commission has sufficient experience to define general compatibility criteria, that certain categories of aid are compatible with the common market pursuant to one or more of the provisions of Article 92(2) and (3) of the Treaty and are exempted from the procedure provided for in Article 93(3) thereof;

- (5) Whereas group exemption regulations will increase transparency and legal certainty; whereas they can be directly applied by national courts, without prejudice to Articles 5 and 177 of the Treaty;
- (6) Whereas it is appropriate that the Commission, when it adopts regulations exempting categories of aid from the obligation to notify provided for in Article 93(3) of the Treaty, specifies the purpose of the aid, the categories of beneficiaries and thresholds limiting the exempted aid, the conditions governing the cumulation of aid and the conditions of monitoring, in order to ensure the compatibility with the common market of aid covered by this Regulation;
- (7) Whereas it is appropriate to enable the Commission, when it adopts regulations exempting certain categories of aid from the obligation to notify in Article 93(3) of the Treaty, to attach further detailed conditions in order to ensure the compatibility with the common market of aid covered by this Regulation;
- (8) Whereas it may be useful to set thresholds of other appropriate conditions requiring the notification of awards of aid in order to allow the Commission to

<sup>(1)</sup> OJ C 262, 28. 8. 1997, p. 6.

<sup>(2)</sup> OJ C 138, 4. 5. 1998.

<sup>(3)</sup> OJ C 129, 27. 4. 1998, p. 70.

examine individually the effect of certain aid on competition and trade between Member States and its compatibility with the common market;

- (9) Whereas the Commission, having regard to the development and the functioning of the common market, should be enabled to establish by means of a regulation that certain aid does not fulfil all the criteria of Article 92(1) of the Treaty and is therefore exempted from the notification procedure laid down in Article 93(3), provided that aid granted to the same undertaking over a given period of time does not exceed a certain fixed amount;
- (10) Whereas in accordance with Article 93(1) of the Treaty the Commission is under an obligation, in cooperation with Member States, to keep under constant review all systems of existing aid; whereas for this purpose and in order to ensure the largest possible degree of transparency and adequate control it is desirable that the Commission ensures the establishment of a reliable system of recording and storing information about the application of the regulations it adopts, to which all Member States have access, and that it receives all necessary information from the Member States on the implementation of aid exempted from notification to fulfil this obligation, which may be examined and evaluated with the Member States within the Advisory Committee; whereas for this purpose it is also desirable that the Commission may require such information to be supplied as is necessary to ensure the efficiency of such review;
- (11) Whereas the control of the granting of aid involves factual, legal and economic issues of a very complex nature and great variety in a constantly evolving environment; whereas the Commission should therefore regularly review the categories of aid which should be exempted from notification; whereas the Commission should be able to repeal or amend regulations it has adopted pursuant to this Regulation where circumstances have changed with respect to any important element which constituted grounds for their adoption or where the progressive development or the functioning of the common market so requires;
- (12) Whereas the Commission, in close and constant liaison with the Member States, should be able to define precisely the scope of these regulations and the conditions attached to them; whereas, in order to provide for cooperation between the Commission and the competent authorities of the Member States, it is appropriate to set up an advisory committee on State aid to be consulted before the Commission adopts regulations pursuant to this Regulation,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Group exemptions**

1. The Commission may, by means of regulations adopted in accordance with the procedures laid down in Article 8 of this Regulation and in accordance with Article 92 of the Treaty, declare that the following categories of aid should be compatible with the common market and shall not be subject to the notification requirements of Article 93(3) of the Treaty:

- (a) aid in favour of:
- (i) small and medium-sized enterprises;
  - (ii) research and development;
  - (iii) environmental protection;
  - (iv) employment and training;
- (b) aid that complies with the map approved by the Commission for each Member State for the grant of regional aid.
2. The Regulations referred to in paragraph 1 shall specify for each category of aid:
- (a) the purpose of the aid;
  - (b) the categories of beneficiaries;
  - (c) thresholds expressed either in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts;
  - (d) the conditions governing the cumulation of aid;
  - (e) the conditions of monitoring as specified in Article 3.
3. In addition, the regulations referred to in paragraph 1 may, in particular:
- (a) set thresholds or other conditions for the notification of awards of individual aid;
  - (b) exclude certain sectors from their scope;
  - (c) attach further conditions for the compatibility of aid exempted under such regulations.

### *Article 2*

#### **De minimis**

1. The Commission may, by means of a Regulation adopted in accordance with the procedure laid down in Article 8 of this Regulation, decide that, having regard to the development and functioning of the common market, certain aids do not meet all the criteria of Article 92(1) and that they are therefore exempted from the notification procedure provided for in Article 93(3), provided that aid granted to the same undertaking over a given period of time does not exceed a certain fixed amount.

2. At the Commission's request, Member States shall, at any time, communicate to it any additional information relating to aid exempted under paragraph 1.

### *Article 3*

#### **Transparency and monitoring**

1. When adopting regulations pursuant to Article 1, the Commission shall impose detailed rules upon Member States to ensure transparency and monitoring of the aid exempted from notification in accordance with those regulations. Such rules shall consist, in particular, of the requirements laid down in paragraphs 2, 3 and 4.

2. On implementation of aid systems or individual aids granted outside any system, which have been exempted pursuant to such regulations, Member States shall forward to the Commission, with a view to publication in the *Official Journal of the European Communities*, summaries of the information regarding such systems of aid or such individual aids as are not covered by exempted aid systems.

3. Member States shall record and compile all the information regarding the application of the group exemptions. If the Commission has information which leads it to doubt that an exemption regulation is being applied properly, the Member States shall forward to it any information it considers necessary to assess whether an aid complies with that regulation.

4. At least once a year, Member States shall supply the Commission with a report on the application of group exemptions, in accordance with the Commission's specific requirements, preferably in computerised form. The Commission shall make access to those reports available to all the Member States. The Advisory Committee referred to in Article 7 shall examine and evaluate those reports once a year.

### *Article 4*

#### **Period of validity and amendment of regulations**

1. Regulations adopted pursuant to Articles 1 and 2 shall apply for a specific period. Aid exempted by a regulation adopted pursuant to Articles 1 and 2 shall be exempted for the period of validity of that regulation and for the adjustment period provided for in paragraphs 2 and 3.

2. Regulations adopted pursuant to Articles 1 and 2 may be repeated or amended where circumstances have changed with respect to any important element that constituted grounds for their adoption or where the progressive development or the functioning of the common market so requires. In that case the new regulation shall set a period of adjustment of six months for the adjustment of aid covered by the previous regulation.

3. Regulations adopted pursuant to Articles 1 and 2 shall provide for a period as referred to in paragraph 2, should their application not be extended when they expire.

### *Article 5*

#### **Evaluation report**

Every five years the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation. It shall submit a draft report for consideration by the Advisory Committee referred to in Article 7.

### *Article 6*

#### **Hearing of interested parties**

Where the Commission intends to adopt a regulation, it shall publish a draft thereof to enable all interested persons and organisations to submit their comments to it within a reasonable time limit to be fixed by the Commission and which may not under any circumstances be less than one month.

### *Article 7*

#### **Advisory committee**

An advisory committee, hereinafter referred to as the Advisory Committee on State Aid, shall be set up. It shall be composed of representatives of the Member States and chaired by the representative of the Commission.

### *Article 8*

#### **Consultation of the Advisory Committee**

1. The Commission shall consult the Advisory Committee on State Aid:

- (a) before publishing any draft regulation;
- (b) before adopting any regulation.

2. Consultation of the Committee shall take place at a meeting called by the Commission. The drafts and documents to be examined shall be annexed to the notification. The meeting shall take place no earlier than two months after notification has been sent.

This period may be reduced in the case of the consultations referred to in paragraph 1(b), when urgent or for simple extension of a regulation.

3. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

4. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes. The Advisory Committee may recommend publication of the opinion in the *Official Journal of the European Communities*.

5. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

*Article 9*

**Final provisions**

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 7 May 1998.

*For the Council*

*The President*

M. BECKETT

## 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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

conditions laid down in Regulation (EC) No 69/2001 and to replace that Regulation.

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 Article 2 thereof,

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

After consulting the Advisory Committee on State aid,

Whereas:

(1) Regulation (EC) No 994/98 empowers the Commission to set out in a Regulation a threshold under which aid measures are deemed not to meet all the criteria of Article 87(1) of the Treaty and therefore do not fall under the notification procedure provided for in Article 88(3) of the Treaty.

(2) The Commission has applied Articles 87 and 88 of the Treaty and has, in particular, clarified in numerous decisions the notion of aid within the meaning of Article 87(1) of the Treaty. The Commission has also stated its policy with regard to a *de minimis* ceiling, below which Article 87(1) can be considered not to apply, initially in its notice on the *de minimis* rule for State aid <sup>(3)</sup> and subsequently in Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid <sup>(4)</sup>. In the light of the experience gained in applying that Regulation and in order to take account of the evolution of inflation and gross domestic product in the Community up to and including 2006 and of the likely developments through the period of validity of this Regulation, it appears appropriate to revise some of the

(3) In view of the special rules which apply in the sectors of primary production of agricultural products, fisheries and aquaculture and of the risk that smaller amounts of aid than those set out in this Regulation could fulfil the criteria of Article 87(1) of the Treaty in those sectors, this Regulation should not apply to those sectors. Given the evolution of the transport sector, in particular the restructuring of many transport activities following their liberalisation, it is no longer appropriate to exclude the transport sector from the scope of the *de minimis* Regulation. The scope of this Regulation should therefore be extended to the whole of the transport sector. The general *de minimis* ceiling should however be adapted in order to take account of the average small size of undertakings active in the road freight and passengers transport sector. For the same reasons, and also in view of the overcapacity of the sector and of the objectives of transport policy as regards road congestion and freight transports, aid for the acquisition of road freight transport vehicles by undertakings performing road freight transport for hire and reward should be excluded. This does not call into question the Commission's favourable approach with regard to State aid for cleaner and more environmentally friendly vehicles in Community instruments other than this Regulation. In view of Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry <sup>(5)</sup>, this Regulation should not apply to the coal sector.

(4) Considering the similarities between the processing and marketing of agricultural products, on the one hand, and of non-agricultural products, on the other hand, this Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met. Neither on-farm activities necessary for preparing a product for the first sale, such as harvesting, cutting and threshing of cereals, packing of eggs etc., nor the first sale to resellers or processors should be considered as processing or marketing in this respect. As from the entry into force of this Regulation, aid granted in favour of undertakings active in the processing or marketing of agricultural products should no longer be subject to Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sector <sup>(6)</sup>. Regulation (EC) No 1860/2004 should therefore be amended accordingly.

<sup>(1)</sup> OJ L 142, 14.5.1998, p. 1.

<sup>(2)</sup> OJ C 137, 10.6.2006, p. 4.

<sup>(3)</sup> OJ C 68, 6.3.1996, p. 9.

<sup>(4)</sup> OJ L 10, 13.1.2001, p. 30.

<sup>(5)</sup> OJ L 205, 2.8.2002, p. 1.

<sup>(6)</sup> OJ L 325, 28.10.2004, p. 4.

- (5) The Court of Justice of the European Communities has established that, once the Community has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. For this reason, this Regulation should not apply to aid, the amount of which is fixed on the basis of price or quantity of products purchased or put on the market. Nor should it apply to *de minimis* support which is linked to an obligation to share the aid with primary producers.
- (6) This Regulation should not apply to *de minimis* export aid or *de minimis* aid favouring domestic over imported products. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating 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.
- (7) This Regulation should not apply to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup> in view of the difficulties linked to determining the gross grant equivalent of aid granted to this type of undertakings.
- (8) In the light of the Commission's experience, it can be established that aid not exceeding a ceiling of EUR 200 000 over any period of three years does not affect trade between Member States and/or does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty. As regards undertakings active in the road transport sector, this ceiling should be set at EUR 100 000.
- (9) The years to take into account for this purpose are the fiscal years as used for fiscal purposes by the undertaking in the Member State concerned. The relevant period of three years should be assessed on a rolling basis so that, for each new grant of *de minimis* aid, the total amount of *de minimis* aid granted in the fiscal year concerned, as well as during the previous two fiscal years, needs to be determined. Aid granted by a Member State should be taken into account for this purpose even when financed entirely or partly by resources of Community origin. It should not be possible for aid measures exceeding the *de minimis* ceiling to be broken down into a number of smaller parts in order to bring such parts within the scope of this Regulation.
- (10) In accordance with the principles governing aid falling within Article 87(1) of the Treaty, *de minimis* aid should be considered to be granted at the moment the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime.
- (11) In order to avoid circumvention of maximum aid intensities provided in different Community instruments, *de minimis* aid should not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that fixed in the specific circumstances of each case by a block exemption Regulation or Decision adopted by the Commission.
- (12) For the purposes of transparency, equal treatment and the correct application of the *de minimis* ceiling, all Member States should apply the same method of calculation. In order to facilitate this calculation and in accordance with the present practice of application of the *de minimis* rule, aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. Calculation of the grant equivalent of transparent types of aid other than grants or of aid payable in several instalments requires the use of market interest rates prevailing at the time of granting such aid. 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 periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Union* or on the Internet. It may, however, be necessary to add additional basis points on top of the floor rate in view of the securities provided or the risk associated with the beneficiary.
- (13) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to *de minimis* aid which is transparent. Transparent aid is aid for which it is possible to calculate precisely the gross grant equivalent *ex ante* without a need to undertake a risk assessment. Such precise calculation can, for instance, be realised as regards grants, interest rate subsidies and capped tax exemptions. Aid comprised in capital injections should not be considered as transparent *de minimis* aid, unless the total amount of the public injection is lower than the *de minimis* ceiling. Aid comprised in risk capital measures as referred to in the

<sup>(1)</sup> OJ C 244, 1.10.2004, p. 2.



Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises<sup>(1)</sup> should not be considered as transparent *de minimis* aid, unless the risk capital scheme concerned provides capital only up to the *de minimis* ceiling to each target undertaking. Aid comprised in loans should be treated as transparent *de minimis* aid when the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time of grant.

(14) This Regulation does not exclude the possibility that a measure, adopted by a Member State, might not be considered as State aid within the meaning of Article 87(1) of the Treaty on the basis of other grounds than those set out in this Regulation, for instance, in the case of capital injections, because such measure has been decided in conformity with the market investor principle.

(15) It is necessary to provide legal certainty for guarantee schemes which do not have the potential to affect trade and distort competition and in respect of which sufficient data is available to assess any potential effects reliably. This Regulation should therefore transpose the general *de minimis* ceiling of EUR 200 000 into a guarantee-specific ceiling based on the guaranteed amount of the individual loan underlying such guarantee. It is appropriate to calculate this specific ceiling using a methodology assessing the State aid amount included in guarantee schemes covering loans in favour of viable undertakings. The methodology and the data used to calculate the guarantee-specific ceiling should exclude undertakings in difficulty as referred to in the Community guidelines on State aid for rescuing and restructuring firms in difficulty. This specific ceiling should therefore not apply to ad hoc individual aid granted outside the scope of a guarantee scheme, to aid granted to undertakings in difficulty, or to guarantees on underlying transactions not constituting a loan, such as guarantees on equity transactions. The specific ceiling should be determined on the basis of the fact that taking account of a cap rate (net default rate) of 13 %, representing a worst case scenario for guarantee schemes in the Community, a guarantee amounting to EUR 1 500 000 can be considered as having a gross grant equivalent identical to the general *de minimis* ceiling. This amount should be reduced to EUR 750 000 as regards undertakings active in the road transport sector. Only guarantees covering up to 80 % of the underlying loan should be covered by these specific ceilings. A methodology accepted by the Commission following notification of such methodology on the basis of a Commission Regulation in the State aid area, like 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<sup>(2)</sup>, may also be used by Member States for the purpose of

assessing the gross grant equivalent contained in a guarantee, if the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake in the context of the application of the present Regulation.

(16) Upon notification by a Member State, the Commission may examine whether an aid measure which does not consist in a grant, loan, guarantee, capital injection or risk capital measure leads to a gross grant equivalent that does not exceed the *de minimis* ceiling and could therefore be covered by the provisions of this Regulation.

(17) The Commission has a duty to ensure that State aid rules are respected and in particular that aid granted under the *de minimis* rules adheres to the conditions thereof. In accordance with the cooperation principle laid down in Article 10 of the Treaty, Member States should facilitate the achievement of this task by establishing the necessary machinery in order to ensure that the total amount of *de minimis* aid, granted to the same undertaking under the *de minimis* rule, does not exceed the ceiling of EUR 200 000 over a period of three fiscal years. To that end, when granting a *de minimis* aid, Member States should inform the undertaking concerned of the amount of the aid and of its *de minimis* character, by referring to this Regulation. Moreover, prior to granting such aid the Member State concerned should obtain from the undertaking a declaration about other *de minimis* aid received during the fiscal year concerned and the two previous fiscal years and carefully check that the *de minimis* ceiling will not be exceeded by the new *de minimis* aid. Alternatively it should be possible to ensure that the ceiling is respected by means of a central register, or, in the case of guarantee schemes set up by the European Investment Fund, the latter may establish itself a list of beneficiaries and require Member States to inform the beneficiaries of the *de minimis* aid received.

(18) Regulation (EC) No 69/2001 expires on 31 December 2006. This Regulation should therefore apply from 1 January 2007. In view of the fact that Regulation (EC) No 69/2001 did not apply to the transport sector, which was not subject to *de minimis* so far; given also the very limited *de minimis* amount applicable in the sector of processing and marketing of agricultural products, and provided that certain conditions are met, this Regulation should apply to aid granted before its entry into force to undertakings active in the transport sector, and in the sector of processing and marketing of agricultural products. Moreover, any individual aid granted in accordance with Regulation (EC) No 69/2001 during the period of application of that Regulation should remain unaffected by this Regulation.

<sup>(1)</sup> OJ C 194, 18.8.2006, p. 2.

<sup>(2)</sup> OJ L 302, 1.11.2006, p. 29.

(19) Having regard to the Commission's experience 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, Member States should have an adjustment period of six months with regard to *de minimis* aid covered by this Regulation,

(h) aid granted to undertakings in difficulty.

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Scope

1. This Regulation applies to aid granted to undertakings in all sectors, with the exception of:

- (a) aid granted to undertakings active in the fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000 <sup>(1)</sup>;
- (b) aid granted to undertakings active in the primary production of agricultural products as listed in Annex I to the Treaty;
- (c) aid granted to undertakings active in the processing and marketing of agricultural products as listed in Annex I to the Treaty, in the following cases:
  - (i) when the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned,
  - (ii) when the aid is conditional on being partly or entirely passed on to primary producers;
- (d) aid to export-related activities towards third countries or Member States, 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;
- (e) aid contingent upon the use of domestic over imported goods;
- (f) aid granted to undertakings active in the coal sector, as defined in Regulation (EC) No 1407/2002;
- (g) aid for the acquisition of road freight transport vehicles granted to undertakings performing road freight transport for hire or reward;

2. For the purposes of this Regulation:

- (a) 'agricultural products' means products listed in Annex I to the EC Treaty, with the exception of fishery products;
- (b) 'processing of agricultural products' means any operation on an agricultural product resulting in a product which is also an agricultural product, except on farm activities necessary for preparing an animal or plant product for the first sale;
- (c) 'marketing of agricultural products' means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose.

#### Article 2

##### *De minimis* aid

1. Aid measures shall be deemed not to meet all the criteria of Article 87(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 88(3) of the Treaty, if they fulfil the conditions laid down in paragraphs 2 to 5 of this Article.

2. The total *de minimis* aid granted to any one undertaking shall not exceed EUR 200 000 over any period of three fiscal years. The total *de minimis* aid granted to any one undertaking active in the road transport sector shall not exceed EUR 100 000 over any period of three fiscal years. These ceilings shall apply irrespective of the form of the *de minimis* aid or the objective pursued and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Community origin. The period shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

When an overall aid amount provided under an aid measure exceeds this ceiling, that aid amount cannot benefit from this Regulation, even for a fraction not exceeding that ceiling. In such a case, the benefit of this Regulation cannot be claimed for this aid measure either at the time the aid is granted or at any subsequent time.

<sup>(1)</sup> OJ L 17, 21.1.2000, p. 22.

3. The ceiling laid down in paragraph 2 shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments shall be discounted to its value at the moment of its being granted. The interest rate to be used for discounting purposes and to calculate the gross grant equivalent shall be the reference rate applicable at the time of grant.

4. This Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without need to undertake a risk assessment ('transparent aid'). In particular:

- (a) Aid comprised in loans shall be treated as transparent *de minimis* aid when the gross grant equivalent has been calculated on the basis of market interest rates prevailing at the time of the grant.
- (b) Aid comprised in capital injections shall not be considered as transparent *de minimis* aid, unless the total amount of the public injection does not exceed the *de minimis* ceiling.
- (c) Aid comprised in risk capital measures shall not be considered as transparent *de minimis* aid, unless the risk capital scheme concerned provides capital only up to the *de minimis* ceiling to each target undertaking.
- (d) Individual aid provided under a guarantee scheme to undertakings which are not undertakings in difficulty shall be treated as transparent *de minimis* aid when the guaranteed part of the underlying loan provided under such scheme does not exceed EUR 1 500 000 per undertaking. Individual aid provided under a guarantee scheme in favour of undertakings active in the road transport sector which are not undertakings in difficulty shall be treated as transparent *de minimis* aid when the guaranteed part of the underlying loan provided under such scheme does not exceed EUR 750 000 per undertaking. If the guaranteed part of the underlying loan only accounts for a given proportion of this ceiling, the gross grant equivalent of that guarantee shall be deemed to correspond to the same proportion of the applicable ceiling laid down in Article 2(2). The guarantee shall not exceed 80 % of the underlying loan. Guarantee schemes shall also be considered as transparent if (i) before the implementation of the scheme, the methodology to calculate the gross grant equivalent of the guarantees has been accepted following notification of this methodology to the Commission under another Regulation adopted by the Commission in the State aid area and (ii) the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake in the context of the application of this Regulation.

5. *De minimis* aid shall not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that fixed in the specific circumstances of each case by a block exemption Regulation or Decision adopted by the Commission.

### Article 3

#### Monitoring

1. Where a Member State intends to grant *de minimis* aid to an undertaking, it shall inform that undertaking in writing of the prospective amount of the aid (expressed as gross grant equivalent) and of its *de minimis* character, making express reference to this Regulation, and citing its title and publication reference in the *Official Journal of the European Union*. Where the *de minimis* aid is granted to different undertakings on the basis of a scheme and different amounts of individual aid are granted to those undertakings under the scheme, the Member State concerned may choose to fulfil this obligation by informing the undertakings of a fixed sum corresponding to the maximum aid amount to be granted under the scheme. In such case, the fixed sum shall be used for determining whether the ceiling laid down in Article 2(2) is met. Prior to granting the aid, the Member State shall also obtain a declaration from the undertaking concerned, in written or electronic form, about any other *de minimis* aid received during the previous two fiscal years and the current fiscal year.

The Member State shall only grant the new *de minimis* aid after having checked that this will not raise the total amount of *de minimis* aid received by the undertaking during the period covering the fiscal year concerned, as well as the previous two fiscal years in that Member State, to a level above the ceiling laid down in Article 2(2).

2. Where a Member State has set up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within that Member State, the first subparagraph of paragraph 1 shall cease to apply from the moment the register covers a period of three years.

Where an aid is provided by a Member State on the basis of a guarantee scheme providing a guarantee which is financed from the EU budget under mandate through the European Investment Fund, the first subparagraph of paragraph 1 of this Article may cease to apply.

In such cases, the following monitoring system shall apply:

- (a) the European Investment Fund shall establish, on a yearly basis, on the basis of information that financial intermediaries must provide to the EIF, a list of beneficiaries of aid and of the gross grant equivalent received by each of them. The European Investment Fund shall send this information to the Member State concerned and to the Commission; and

(b) the Member State concerned shall disseminate that information to the final beneficiaries within three months of receipt of such information from the European Investment Fund; and

(c) the Member State concerned shall obtain a declaration from each beneficiary that the overall *de minimis* aid it has received does not exceed the ceiling laid down in Article 2(2). In case the ceiling is exceeded with respect to one or more beneficiaries, the Member State concerned shall ensure that the aid measure leading to the ceiling being exceeded is either notified to the Commission or recovered from the beneficiary.

3. Member States shall record and compile all the information regarding the application of this Regulation. Such records shall contain all information necessary to demonstrate that the conditions of this Regulation have been complied with. Records regarding individual *de minimis* aid shall be maintained for 10 years from the date on which it was granted. Records regarding a *de minimis* aid scheme shall be maintained 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 that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied with, in particular the total amount of *de minimis* aid received by any undertaking.

#### Article 4

#### Amendment

Article 2 of Regulation (EC) No 1860/2004 is amended as follows:

(a) in point 1, the words 'processing and marketing' are deleted;

(b) point 3 is deleted.

#### Article 5

#### Transitional measures

1. This Regulation shall apply to aid granted before its entry into force to undertakings active in the transport sector and undertakings active in the processing and marketing of agricultural products if the aid fulfils all the conditions laid down in Articles 1 and 2. Any aid which does not fulfil those conditions will be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

2. Any individual *de minimis* aid granted between 2 February 2001 and 30 June 2007, which fulfils the conditions of Regulation (EC) No 69/2001, shall be deemed not to meet all the criteria of Article 87(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 88(3) of the Treaty.

3. At the end of the period of validity of this Regulation, any *de minimis* aid which fulfils the conditions of this Regulation may be validly implemented for a further period of six months.

#### Article 6

#### Entry into force and period of validity

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007 until 31 December 2013.

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

Done at Brussels, 15 December 2006.

For the Commission

Neelie KROES

Member of the Commission

**COMMISSION REGULATION (EC) No 800/2008****of 6 August 2008****declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)****(Text with EEA relevance)**

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 Article 1(1) points (a) and (b) thereof,

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

After consulting 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 ('SMEs'), aid in favour of research and development, aid in favour of environmental protection, employment and training aid, and 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 not subject to the notification requirement of Article 88(3) of the Treaty.

(2) The Commission has applied Articles 87 and 88 of the Treaty in numerous decisions and gained sufficient experience to define general compatibility criteria as

regards aid in favour of SMEs, in the form of investment aid in and outside assisted areas, in the form of risk capital schemes and in the area of research, development and innovation, in particular in the context of the implementation of 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 <sup>(3)</sup>, and as regards the extension of the scope of that Regulation to include aid for research and development, the implementation of Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 <sup>(4)</sup>, the implementation of the Commission communication on State aid and risk capital <sup>(5)</sup> and the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises <sup>(6)</sup>, as well as the implementation of the Community framework for State aid for research and development and innovation <sup>(7)</sup>.

(3) The Commission has also gained sufficient experience in the application of Articles 87 and 88 of the Treaty in the fields of training aid, employment aid, environmental aid, research and development and innovation aid and regional aid with respect to both SMEs and large enterprises, in particular in the context of the implementation of 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 <sup>(8)</sup>, Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment <sup>(9)</sup>, 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 <sup>(10)</sup> the Community framework for State aid for research and development <sup>(11)</sup>, the Community Framework for State aid for research and development and innovation, the 2001 Community guidelines on State aid for environmental protection <sup>(12)</sup>, the 2008 Community guidelines on State aid for environmental protection <sup>(13)</sup> and the Guidelines on national regional aid for 2007-2013 <sup>(14)</sup>.

<sup>(3)</sup> OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1976/2006 (OJ L 368, 23.12.2006, p. 85).

<sup>(4)</sup> OJ L 63, 28.2.2004, p. 22.

<sup>(5)</sup> OJ C 235, 21.8.2001, p. 3.

<sup>(6)</sup> OJ C 194, 18.8.2006, p. 2.

<sup>(7)</sup> OJ C 323, 30.12.2006, p. 1.

<sup>(8)</sup> OJ L 10, 13.1.2001, p. 20. Regulation as last amended by Regulation (EC) No 1976/2006.

<sup>(9)</sup> OJ L 337, 13.12.2002, p. 3. Regulation as last amended by Regulation (EC) No 1976/2006.

<sup>(10)</sup> OJ L 302, 1.11.2006, p. 29.

<sup>(11)</sup> OJ C 45, 17.2.1996, p. 5.

<sup>(12)</sup> OJ C 37, 3.2.2001, p. 3.

<sup>(13)</sup> OJ C 82, 1.4.2008, p. 1.

<sup>(14)</sup> OJ C 54, 4.3.2006, p. 13.

<sup>(1)</sup> OJ L 142, 14.5.1998, p. 1.

<sup>(2)</sup> OJ C 210, 8.9.2007, p. 14.

- (4) In the light of this experience, it is necessary to adapt some of the conditions laid down in Regulations (EC) Nos 68/2001, 70/2001, 2204/2002 and 1628/2006. For reasons of simplification and to ensure more efficient monitoring of aid by the Commission, those Regulations should be replaced by a single Regulation. Simplification should result from, amongst other things, a set of common harmonised definitions and common horizontal provisions laid down in Chapter I of this Regulation. In order to ensure the coherence of State aid legislation, the definitions of aid and aid scheme should be identical to the definitions provided for these concepts in Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(1)</sup>. Such simplification is essential in order to ensure that the Lisbon Strategy for Growth and Jobs yields results, especially for SMEs.
- (5) This Regulation should exempt any aid that fulfils all the relevant conditions of this Regulation, and any aid scheme, provided that any individual aid that could be granted under such scheme fulfils all the relevant conditions of this Regulation. In order to ensure transparency, as well as more efficient monitoring of aid, any individual aid measure granted under this Regulation should contain an express reference to the applicable provision of Chapter II and to the national law on which the individual aid is based.
- (6) In order to monitor the implementation of this Regulation, the Commission should also be in a position to obtain all necessary information from Member States concerning the measures implemented under this Regulation. A failure of the Member State to provide information within a reasonable deadline on these aid measures may therefore be considered to be an indication that the conditions of this Regulation are not being respected. Such failure may therefore lead the Commission to decide that this Regulation, or the relevant part of this Regulation, should be withdrawn, for the future, as regards the Member State concerned and that all subsequent aid measures, including new individual aid measures granted on the basis of aid schemes previously covered by this Regulation, need to be notified to the Commission in accordance with Article 88 of the Treaty. As soon as the Member State has provided correct and complete information, the Commission should allow the Regulation to be fully applicable again.
- (7) State aid within the meaning of Article 87(1) of the Treaty not covered by this Regulation should remain subject to the notification requirement of Article 88(3) of the Treaty. This Regulation should be without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation. Such aid will be assessed by the Commission in particular on the basis of the conditions set out in this Regulation and in accordance with the criteria laid down in specific guidelines or frameworks adopted by the Commission wherever the aid measure at stake falls within the scope of application of such specific instrument.
- (8) This Regulation should not apply to export aid or aid favouring domestic over imported products. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market should not normally constitute export aid.
- (9) This Regulation should apply across virtually all sectors. In the sector of fisheries and aquaculture, this Regulation should exempt only aid in the fields of research and development and innovation, aid in the form of risk capital, training aid and aid for disadvantaged and disabled workers.
- (10) In the agricultural sector, in view of the special rules which apply in the primary production of agricultural products, this Regulation should exempt only aid in the fields of research and development, aid in the form of risk capital, training aid, environmental aid and aid for disadvantaged and disabled workers to the extent that these categories of aid are not covered by 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 <sup>(2)</sup>.
- (11) In view of the similarities between the processing and marketing of agricultural products and of non-agricultural products this Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met.

<sup>(1)</sup> OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

<sup>(2)</sup> OJ L 358, 16.12.2006, p. 3.

- (12) Neither on-farm activities necessary for preparing a product for the first sale, nor the first sale to resellers or processors should be considered processing or marketing for the purposes of this Regulation. The Court of Justice of the European Communities has established that, once the Community has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. This Regulation should therefore not apply to aid, the amount of which is fixed on the basis of price or quantity of products purchased or put on the market, nor should it apply to aid which is linked to an obligation to share it with primary producers.
- (13) In view of Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry <sup>(1)</sup>, this Regulation should not apply to aid favouring activities in the coal sector with the exception of training aid, research and development and innovation aid and environmental aid.
- (14) Where a regional aid scheme purports to realise regional objectives, but is targeted at particular sectors of the economy, the objective and likely effects of the scheme may be sectorial rather than horizontal. Therefore, regional aid schemes targeted at specific sectors of economic activity, as well as regional aid granted for activities in the steel sector, in the shipbuilding sector, as foreseen in the Commission communication concerning the prolongation of the Framework on State aid to shipbuilding <sup>(2)</sup>, and in the synthetic fibres sector, should not be covered by the exemption from notification. However, the tourism sector plays an important role in national economies and in general has a particularly positive effect on regional development. Regional aid schemes aimed at tourism activities should therefore be exempt from the notification requirement.
- (15) Aid granted to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(3)</sup> should be assessed under those Guidelines in order to avoid their circumvention. Aid to such undertakings should therefore be excluded from the scope of this Regulation. In order to reduce the administrative burden for Member States, when granting aid covered by this Regulation to SMEs, the definition of what is to be considered an undertaking in difficulty should be simplified as compared to the definition used in those Guidelines. Moreover, SMEs which have been incorporated for less than three years should not be considered, for the purposes of this Regulation, to be in difficulty with regard to that period, unless they fulfil the criteria under the relevant national law for being the subject of collective insolvency proceedings. That simplification should be without prejudice to the qualification of those SMEs under those Guidelines with regard to aid not covered by this Regulation and without prejudice to the qualification as undertakings in difficulty of large enterprises, under this Regulation, which remain subject to the full definition provided in those Guidelines.
- (16) The Commission has to ensure that authorised aid does not alter trading conditions in a way contrary to the general interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the common market, should be excluded from the scope of this Regulation. As a consequence, any ad hoc aid paid out to such a beneficiary and any aid scheme not containing a provision explicitly excluding such beneficiaries remains subject to the notification requirements of Article 88(3) of the Treaty. That provision should not affect the legitimate expectations of beneficiaries of aid schemes which are not subject to outstanding recovery orders.
- (17) In order to ensure the consistent application of Community State aid rules, as well as for reasons of administrative simplification, the definitions of terms which are relevant to the various categories of aid covered by this Regulation should be harmonised.
- (18) For the purposes of calculating aid intensity, all figures used should be taken before any deduction of tax or other charge. For the purpose of calculating aid intensities, aid payable in several instalments should 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 aid not taking the form of a grant, should be the reference rate applicable at the time of grant, as laid down in the Communication from the Commission on the revision of the method for setting the reference and discount rates <sup>(4)</sup>.

<sup>(1)</sup> OJ L 205, 2.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

<sup>(2)</sup> OJ C 260, 28.10.2006, p. 7.

<sup>(3)</sup> OJ C 244, 1.10.2004, p. 2.

<sup>(4)</sup> OJ C 14, 19.1.2008, p. 6.



- (19) In cases where aid is awarded by means of tax exemptions or reductions on future taxes due, subject to the respect of a certain aid intensity defined in gross grant equivalent, discounting of aid tranches should take place on the basis of the reference rates applicable at the various times the tax advantages become effective. In the case of tax exemptions or reductions on future taxes, the applicable reference rate and the exact amount of the aid tranches may not be known in advance. In such a case, Member States should set in advance a cap on the discounted value of the aid respecting the applicable aid intensity. Subsequently, when the amount of the aid tranche in a given year becomes known, discounting can take place on the basis of the reference rate applicable at that time. The discounted value of each aid tranche should be deducted from the overall amount of the cap.
- (20) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid which is transparent. Transparent aid is aid for which it is possible to calculate precisely the gross grant equivalent *ex ante* without a need to undertake a risk assessment. Aid comprised in loans, in particular, should be considered transparent where the gross grant equivalent has been calculated on the basis of the reference rate as laid down in the Communication from the Commission on the revision of the method for setting the reference and discount rates. Aid comprised in fiscal measures should be considered transparent where the measure provides for a cap ensuring that the applicable threshold is not exceeded. In the case of reductions in environmental taxes, which are not subject to an individual notification threshold under this Regulation, no cap needs to be included for the measure to be considered transparent.
- (21) Aid comprised in guarantee schemes should be considered transparent when the methodology to calculate the gross grant equivalent has been approved following notification of this methodology to the Commission, and, in the case of regional investment aid, also when the Commission has approved such methodology after adoption of Regulation (EC) No 1628/2006. The Commission will examine such notifications on the basis of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees<sup>(1)</sup>. Aid comprised in guarantee schemes should also be considered transparent where the beneficiary is an SME and the gross grant equivalent has been calculated on the basis of the safe-harbour premiums laid down in points 3.3 and 3.5 of that Notice.
- (22) In view of the difficulty in calculating the grant equivalent of aid in the form of repayable advances, such aid should be covered by this Regulation only if the total amount of the repayable advance is inferior to the applicable individual notification threshold and the maximum aid intensities provided under this Regulation.
- (23) Due to the higher risk of distortion of competition, large amounts of aid should continue to be assessed by the Commission on an individual basis. Thresholds should therefore be set for each category of aid within the scope of this Regulation, at a level which takes into account the category of aid concerned and its likely effects on competition. Any aid granted above those thresholds remains subject to the notification requirement of Article 88(3) of the Treaty.
- (24) With a view to ensuring that aid is proportionate and limited to the amount necessary, thresholds should, whenever possible, be expressed in terms of aid intensities in relation to a set of eligible costs. Because it is based on a form of aid for which eligible costs are difficult to identify, the threshold with regard to aid in the form of risk capital should be formulated in terms of maximum aid amounts.
- (25) The thresholds in terms of aid intensity or aid amount 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 tackling the market failure or cohesion issue concerned. With respect to regional investment aid, this threshold should be set at a level taking into account the allowable aid intensities under the regional aid maps.
- (26) In order to determine whether the individual notification thresholds and the maximum aid intensities laid down in this Regulation are respected, the total amount of public support for the aided activity or project should be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.
- (27) Moreover, this Regulation should specify the circumstances under which different categories of aid covered by this Regulation may be cumulated. As regards cumulation of aid covered by this Regulation with State aid not covered by this Regulation, regard should be had to the Decision of the Commission approving the aid not covered by this Regulation, as well as to the State aid rules on which that decision is based. Special provisions should apply in respect of cumulation of aid for disabled workers with other categories of aid, notably with investment aid, which can be calculated on the basis of the wage costs concerned. This Regulation should also make provision for cumulation of aid measures with identifiable eligible costs and aid measures without identifiable eligible costs.

<sup>(1)</sup> OJ C 155, 20.6.2008, p. 10.



- (28) In order to ensure that the aid is necessary and acts as an incentive to develop further activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would already engage under market conditions alone. As regards any aid covered by this Regulation granted to an SME, such incentive should be considered present when, before the activities relating to the implementation of the aided project or activities are initiated, the SME has submitted an application to the Member State. As regards aid in the form of risk capital in favour of SMEs, the conditions laid down in this Regulation, notably with respect to the size of the investment tranches per target enterprise, the degree of involvement of private investors, the size of the company and the business stage financed, ensure that the risk capital measure will have an incentive effect.
- (29) As regards any aid covered by this Regulation granted to a beneficiary which is a large enterprise, the Member State should, in addition to the conditions applying to SMEs, also ensure that the beneficiary has analysed, in an internal document, the viability of the aided project or activity with aid and without aid. The Member State should verify that this internal document confirms a material increase in size or scope of the project/activity, a material increase in the total amount spent by the beneficiary on the subsidised project or activity or a material increase in the speed of completion of the project/activity concerned. As regards regional aid, incentive effect may also be established on the basis of the fact that the investment project would not have been carried out as such in the assisted region concerned in the absence of the aid.
- (30) As regards aid for disadvantaged or disabled workers, an incentive effect should be considered to be present by the fact that the aid measure concerned leads to a net increase in the number of disadvantaged or disabled workers hired by the undertaking concerned or leads to additional costs in favour of facilities or equipment devoted to disabled workers. Where the beneficiary of an aid for the employment of disabled workers in the form of wage subsidies was already benefiting from aid for employing disabled workers, which either fulfilled the conditions of Regulation (EC) No 2204/2002 or had been individually approved by the Commission, it is presumed that the condition of a net increase in the number of disabled workers, which was fulfilled for the pre-existing aid measures, continues to be fulfilled for the purpose of this Regulation.
- (31) Fiscal aid measures should be subject to specific conditions of incentive effect, in view of the fact that they are provided on the basis of different procedures than other categories of aid. Reductions in environmental taxes fulfilling the conditions of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity<sup>(1)</sup> and covered by this Regulation should be presumed to have an incentive effect in view of fact that these reduced rates contribute at least indirectly to an improvement of environmental protection by allowing the adoption or the continuation of the overall tax scheme concerned, thereby incentivising the undertakings subject to the environmental tax to reduce their level of pollution.
- (32) Moreover, as the incentive effect of ad hoc aid granted to large enterprises is considered to be difficult to establish, this form of aid should be excluded from the scope of application of this Regulation. The Commission will examine the existence of such incentive effect in the context of the notification of the aid concerned on the basis of the criteria established in the applicable guidelines, frameworks or other Community instruments.
- (33) 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 form to be used by Member States to provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme or ad hoc aid is implemented. The summary information form should be used for the publication of the measure in the *Official Journal of the European Union* and on the internet. The summary information should be sent to the Commission in electronic format making use of the established IT application. The Member State concerned should publish on the internet the full text of such aid measure. In the case of ad hoc aid measures, business secrets may be deleted. The name of the beneficiary and the amount of aid should however not be considered a business secret. Member States should ensure that such text remains accessible on the internet as long as the aid measure is in force. With the exception of aid taking the form of fiscal measures, the act granting the aid should also contain a reference to the specific provision(s) of Chapter II of this Regulation relevant to such an act.
- (34) In order to ensure transparency and effective monitoring, the Commission should establish specific requirements as regards the form and the content of the annual reports to be submitted to the Commission by Member States. Moreover, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid schemes and individual aid exempted by this Regulation, in view of the provisions of Article 15 of Regulation (EC) No 659/1999.
- (1) OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

- (35) It is necessary to establish further conditions that should be fulfilled by any aid measure exempted by this Regulation. Having regard to Articles 87(3)(a) and 87(3)(c) of the Treaty, such aid should be proportionate to the market failures or handicaps that have to be overcome in order to be in the Community interest. It is therefore appropriate to limit the scope of this Regulation, as far as it concerns investment aid, to aid granted in relation to certain tangible and intangible investments. In the light of Community overcapacity and the specific problems of distortion of competition in the road freight and air transport sectors, so far as undertakings having their main economic activity in those transport sectors are concerned, transport means and equipment should not be regarded as eligible investment costs. Special provisions should apply as regards the definition of tangible assets for the purpose of environmental aid.
- (36) Consistent with the principles governing the aid falling within Article 87(1) of the Treaty, aid should be considered to be granted at the moment the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.
- (37) 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 in favour of SMEs and regional aid on the basis of either the costs of the investment or the costs of employment directly created by an investment project.
- (38) Environmental aid schemes in the form of tax reductions, aid for disadvantaged workers, regional investment aid, aid for newly created small enterprises, aid for enterprises newly created by female entrepreneurs or aid in the form of risk capital granted to a beneficiary on an ad hoc basis may have a major impact on competition in the relevant market because it favours the beneficiary over other undertakings which have not received such aid. Because it is granted only to a single undertaking, ad hoc aid is likely to have only a limited positive structural effect on the environment, the employment of disabled and disadvantaged workers, regional cohesion or the risk capital market failure. For this reason, aid schemes concerning those categories of aid should be exempted under this Regulation, whilst ad hoc aid should be notified to the Commission. This Regulation should however exempt ad hoc regional aid when this ad hoc aid is used to supplement aid granted on the basis of a regional investment aid scheme, with a maximum limit for the ad hoc component of 50 % of the total aid to be granted for the investment.
- (39) The provisions of this Regulation relating to SME investment and employment aid should not provide, as was the case in Regulation (EC) No 70/2001, any possibility for increasing the maximum aid intensities by means of a regional bonus. However, it should be possible for the maximum aid intensities laid down in the provisions concerning regional investment aid to be granted also to SMEs, as long as the conditions for granting regional investment and employment aid are fulfilled. Similarly, the provisions relating to environmental investment aid should not provide any possibility for increasing the maximum aid intensities by means of a regional bonus. It should also be possible for the maximum aid intensities laid down in the provisions concerning regional investment aid to be applied to projects which have a positive impact on the environment, as long as the conditions for granting regional investment aid are fulfilled.
- (40) By addressing the handicaps of the disadvantaged regions, national regional aid promotes the economic, social and territorial cohesion of Member States and the Community as a whole. National regional aid is designed to assist the development of the most disadvantaged regions by supporting investment and job creation in a sustainable context. It promotes the setting-up of new establishments, the extension of existing establishments, the diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment.
- (41) In order to prevent large regional investment projects from being artificially divided into sub-projects, thereby escaping the notification thresholds provided under this Regulation, a large investment project should be considered to be a single investment project if the investment is undertaken within a period of three years by the same undertaking or undertakings and consists of fixed assets combined in an economically indivisible way. To assess whether an investment is economically indivisible, Member States should take into account the technical, functional and strategic links and the immediate geographical proximity. The economic indivisibility should be assessed independently from ownership. This means that to establish whether a large investment project constitutes a single investment project, the assessment should be the same irrespective of whether the project is carried out by one undertaking, by more than one undertaking sharing the investment costs or by more undertakings bearing the costs of separate investments within the same investment project (for example in the case of a joint venture).

- (42) In contrast to regional aid, which should be confined to assisted areas, SME investment and employment aid should be able to be granted both in assisted and in non-assisted areas. The Member States should thus be able to provide, in assisted areas, investment aid as long as they respect either all conditions applying to regional investment and employment aid or all conditions applying to SME investment and employment aid.
- (43) The economic development of the assisted regions is hindered by relatively low levels of entrepreneurial activity and in particular by even lower than average rates of business start-ups. It is therefore necessary to include in this Regulation a category of aid, which can be granted in addition to regional investment aid, in order to provide incentives to support business start-ups and the early stage development of small enterprises in the assisted areas. In order to ensure that this aid for newly created enterprises in assisted regions is effectively targeted, this category of aid should be graduated in accordance with the difficulties faced by each category of region. Furthermore, in order to avoid an unacceptable risk of distortions of competition, including the risk of crowding-out existing enterprises, the aid should be strictly limited to small enterprises, limited in amount and degressive. Granting aid designed exclusively for newly created small enterprises or enterprises newly created by female entrepreneurs may produce perverse incentives for existing small enterprises to close down and re-open in order to receive this category of aid. Member States should be aware of this risk and should design aid schemes in such a way as to avoid this problem, for example by placing limits on applications from owners of recently closed firms.
- (44) The economic development of the Community may be hindered by low levels of entrepreneurial activity by certain categories of the population who suffer certain disadvantages, such as getting access to finance. The Commission has reviewed the possibility of market failure in this respect as regards a variety of categories of persons, and is at this stage in a position to conclude that women, in particular have lower than average rates of business start-ups as compared to men, as is evidenced, amongst others, by statistical data of Eurostat. It is therefore necessary to include in this Regulation a category of aid providing incentives for the creation of enterprises by female entrepreneurs in order to tackle the specific market failures women encounter most notably with respect to access to finance. Women also face particular difficulties linked to bearing caring costs for family members. Such aid should allow the achievement of substantive rather than formal equality between men and women by reducing *de facto* inequalities existing in the area of entrepreneurship, in line with the requirements of the case-law of the Court of Justice of the European Communities. At the expiry of this Regulation the Commission will have to reconsider whether the scope of this exemption and the categories of beneficiaries concerned remain justified.
- (45) Sustainable development is one of the main pillars in the Lisbon Strategy for Growth and Jobs, together with competitiveness and security of energy supplies. Sustainable development is based, amongst other things, on a high level of protection and improvement of the quality of the environment. Promoting environmental sustainability and combating climate change leads as well to increasing security of supply and ensuring the competitiveness of European economies and the availability of affordable energy. The area of environmental protection is often confronted with market failures in the form of negative externalities. Under normal market conditions, undertakings may not necessarily have an incentive to reduce their pollution since such reduction may increase their costs. When undertakings are not obliged to internalise the costs of pollution, society as a whole bears these costs. This internalisation of environmental costs can be ensured by imposing environmental regulation or taxes. The lack of full harmonisation of environmental standards at Community level creates an uneven playing field. Furthermore, an even higher level of environmental protection can be achieved by the initiatives to go beyond the mandatory Community standards, which may harm the competitive position of the undertakings concerned.
- (46) In view of the sufficient experience gathered in the application of the Community guidelines on State aid for environmental protection, investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards, aid for the acquisition of transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards, aid for early adaptation to future Community standards by SMEs, environmental aid for investment in energy saving, environmental aid for investment in high efficiency cogeneration, environmental aid for investments to promote renewable energy sources including investment aid relating to sustainable biofuels, aid for environmental studies and certain aid in the form of reductions in environmental taxes should be exempt from the notification requirement.

- (47) Aid in the form of tax reductions favouring environmental protection covered by this Regulation, should, in line with the Community guidelines on State aid for environmental protection, be limited to a period of 10 years. After this period, Member States should re-evaluate the appropriateness of the tax reductions concerned. This should be without prejudice to the possibility for Member States of re-adopting these measures or similar measures under this Regulation after having realised such re-evaluation.
- (48) A correct calculation of the extra investment or production costs to achieve environmental protection is essential to determine whether or not aid is compatible with Article 87(3) of the Treaty. As outlined in the Community guidelines on State aid for environmental protection, eligible costs should be limited to the extra investment costs necessary to achieve a higher level of environmental protection.
- (49) In view of the difficulties which may arise, in particular, with respect to the deduction of benefits deriving from extra investment, provision should be made for a simplified method of calculation of the extra investment costs. Therefore these costs should, for the purpose of applying this Regulation, be calculated without taking into account operating benefits, cost savings or additional ancillary production and without taking into account operating costs engendered during the life of the investment. The maximum aid intensities provided under this Regulation for the different categories of environmental investment aid concerned have therefore been reduced systematically as compared to the maximum aid intensities provided for by the Community guidelines on State aid for environmental protection.
- (50) As regards environmental aid for investment in energy saving measures it is appropriate to allow Member States to choose either the simplified method of calculation or the full cost calculation, identical to the one provided for in the Community guidelines on State aid for environmental protection. In view of the particular practical difficulties which may arise when applying the full cost calculation method, those cost calculations should be certified by an external auditor.
- (51) As regards environmental aid for investment in cogeneration and environmental aid for investments to promote renewable energy sources, the extra costs should, for the purpose of the application of this Regulation, be calculated without taking into account other support measures granted for the same eligible costs, with the exception of other environmental investment aid.
- (52) With regard to investments related to hydropower installations it should be noted that their environmental impact can be twofold. In terms of low greenhouse gas emissions they certainly provide potential. On the other hand, such installations might also have a negative impact, for example on water systems and biodiversity.
- (53) In order to eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Community and national initiatives concerning SMEs, as well as for reasons of administrative clarity and legal certainty, the definition of SME used for the purpose of this Regulation should be based on the definition in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises <sup>(1)</sup>.
- (54) SMEs 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 failures, leading to these SMEs suffering from typical handicaps. SMEs often have difficulties in obtaining capital, risk capital or loans, given the risk-averse nature of certain financial markets and the limited collateral that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. In order to facilitate the development of the economic activities of SMEs, this Regulation should therefore exempt certain categories of aid when they are granted in favour of SMEs. Consequently, it is justified to exempt such aid from prior notification and to consider that, for the purposes of the application of this Regulation only, when a beneficiary falls within the SME definition provided for in this Regulation, that SME can be presumed, when the aid amount does not exceed the applicable notification threshold, to be limited in its development by the typical SME handicaps prompted by market failures.
- (55) Having regard to the differences between small enterprises and medium-sized enterprises, different basic aid intensities and different bonuses should be set for small enterprises and for medium-sized enterprises. Market failures affecting SMEs in general, including difficulties of access to finance, result in even greater obstacles to the development of small enterprises as compared to medium-sized enterprises.
- <sup>(1)</sup> OJ L 124, 20.5.2003, p. 36.



- (56) On the basis of the experience gained in applying the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises there appear to be a number of specific risk capital market failures in the Community in respect of certain types of investments at certain stages of undertakings' development. These market failures result from an imperfect matching of supply and demand of risk capital. As a result, the level of risk capital provided in the market may be too restricted, and undertakings do not obtain funding despite having a valuable business model and growth prospects. The main source of market failure relevant to risk capital markets, which particularly affects access to capital by SMEs and which may justify public intervention, relates to imperfect or asymmetric information. Consequently, risk capital schemes taking the form of commercially managed investment funds in which a sufficient proportion of the funds are provided by private investors in the form of private equity promoting profit-driven risk capital measures in favour of target enterprises should be exempt from the notification requirement under certain conditions. The conditions that the investment funds should be commercially managed and that the ensuing risk capital measures be profit driven should not prevent the investment funds from targeting their activities and particular market segments, such as enterprises created by female entrepreneurs. This Regulation should not affect the status of the European Investment Fund and the European Investment Bank, as defined in the Community guidelines on risk capital.
- (57) Aid for research, development and innovation can contribute to economic growth, strengthening competitiveness and boosting employment. On the basis of its experience with the application of Regulation (EC) No 364/2004, the Community framework for State aid for research and development and the Community Framework for State aid for research and development and innovation, it appears that, given the available research and development capabilities of both SMEs and large enterprises, market failures may prevent the market from reaching the optimal output and lead to an inefficient outcome. Such inefficient outcomes generally relate to positive externalities/knowledge spill-overs, public goods/knowledge spill-overs, imperfect and asymmetric information and coordination and network failures.
- (58) Aid for research, development and innovation is of particular importance, especially for SMEs because one of the structural disadvantages of SMEs lies in the difficulty they may experience in gaining access to new technological developments, technology transfers or highly qualified personnel. Therefore, aid for research and development projects, aid for technical feasibility studies and aid to cover industrial property rights costs for SMEs, as well as aid for young innovative small enterprises, aid for innovation advisory services and for innovation support services and aid for the loan of highly qualified personnel should be exempt from the requirement of prior notification, under certain conditions.
- (59) As regards project aid for research and development, the aided part of the research project should completely fall within the categories of fundamental research, industrial research or experimental development. When a project encompasses different tasks, each task should be qualified as falling under the categories of fundamental research, industrial research or experimental development or as not falling under any of those categories at all. That qualification need not necessarily follow a chronological approach, moving sequentially over time from fundamental research to activities closer to the market. Accordingly, a task which is carried out at a late stage of a project may be qualified as industrial research. Similarly, it is not excluded that an activity carried out at an earlier stage of the project may constitute experimental development.
- (60) In the agricultural sector certain aid for research and development should be exempted if conditions similar to those provided in the specific provisions laid down for the agricultural sector in the Community framework for State aid for research and development and innovation are fulfilled. If those specific conditions are not fulfilled, it is appropriate to provide for the aid to be exempted if it fulfils the conditions set out in the general provisions related to research and development in this Regulation.
- (61) The promotion of training and the recruitment of disadvantaged and disabled workers and compensation of additional costs for the employment of disabled workers constitute a central objective of the economic and social policies of the Community and of its Member States.

- (62) Training usually has positive externalities for society as a whole since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of Community industry and plays an important role in the Community employment strategy. Training, including e-learning, is also essential for the constitution, the acquisition and the diffusion of knowledge, a public good of primary importance. In view of the fact that undertakings in the Community generally under-invest in the training of their workers, especially when this training is general in nature and does not lead to an immediate and concrete advantage for the undertaking concerned, State aid can help to correct this market failure. Therefore such aid should be exempt, under certain conditions, from prior notification. In view of the particular handicaps with which SMEs are confronted and the higher relative costs that they have to bear when they invest in training, the intensities of aid exempted by this Regulation should be increased for SMEs. The characteristics of training in the maritime transport sector justify a specific approach for that sector.
- (63) A distinction can be drawn between general and specific training. The permissible aid intensities should differ in accordance with the type of training provided and the size of the undertaking. General training provides transferable qualifications and substantially improves the employability of the trained worker. Aid for this purpose has less distortive effects on competition, meaning that higher intensities of aid can be exempted from prior notification. Specific training, which mainly benefits the undertaking, involves a greater risk of distortion of competition and the intensity of aid which can be exempted from prior notification should therefore be much lower. Training should be considered to be general in nature also when it relates to environmental management, eco-innovation or corporate social responsibility and thereby increases the capacity of the beneficiary to contribute to general objectives in the environment field.
- (64) Certain categories of disabled or disadvantaged workers still experience particular difficulty in entering the labour market. For this reason there is a justification for public authorities to apply measures providing incentives to undertakings to increase their levels of employment, in particular of workers from these disadvantaged categories. Employment costs form part of the normal operating costs of any undertaking. It is therefore particularly important that aid for the employment of disabled and disadvantaged workers should have a positive effect on employment levels of those categories of workers and should not merely enable undertakings to reduce costs which they would otherwise have to bear. Consequently, such aid should be exempt from prior notification when it is likely to assist those categories of workers in re-entering the job market or, as regards disabled workers, re-entering and staying in the job market.
- (65) Aid for the employment of disabled workers in the form of wage subsidies may be calculated on the basis of the specific degree of disability of the disabled worker concerned or may be provided as a lump sum provided that neither method leads to the aid exceeding the maximum aid intensity for each individual worker concerned.
- (66) It is appropriate to lay down transitional provisions for individual aid which was granted before the entry into force of this Regulation and was not notified in breach of the obligation provided for in Article 88(3) of the Treaty. With the repeal of Regulation (EC) No 1628/2006, the existing regional investment schemes, as exempted, should be allowed to continue being implemented under the conditions foreseen by that Regulation, in line with Article 9(2), second subparagraph, of that Regulation.
- (67) In the light of 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 a further period of six months, in order to give Member States time to adapt.
- (68) Regulation (EC) No 70/2001, Regulation (EC) No 68/2001 and Regulation (EC) No 2204/2002 expired on 30 June 2008 and Regulation (EC) No 1628/2006 should be repealed,

HAS ADOPTED THIS REGULATION:

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## CHAPTER I

## COMMON PROVISIONS

## Article 1

## Scope

1. This Regulation shall apply to the following categories of aid:

(a) regional aid;

(b) SME investment and employment aid;

(c) aid for the creation of enterprises by female entrepreneurs;

(d) aid for environmental protection;

(e) aid for consultancy in favour of SMEs and SME participation in fairs;

(f) aid in the form of risk capital;

(g) aid for research, development and innovation;

(h) training aid;

(i) aid for disadvantaged or disabled workers.



2. It shall not apply to:

- (a) 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 costs linked to the export activity;
- (b) aid contingent upon the use of domestic over imported goods.

3. This Regulation shall apply to aid in all sectors of the economy with the exception of the following:

- (a) aid favouring activities in the fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000 <sup>(1)</sup>, except for training aid, aid in the form of risk capital, aid for research and development and innovation and aid for disadvantaged and disabled workers;
- (b) aid favouring activities in the primary production of agricultural products, except for training aid, aid in the form of risk capital, aid for research and development, environmental aid, and aid for disadvantaged and disabled workers to the extent that these categories of aid are not covered by Commission Regulation (EC) No 1857/2006;
- (c) aid favouring activities in the processing and marketing of agricultural products, in the following cases:
  - (i) when the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
  - (ii) when the aid is conditional on being partly or entirely passed on to primary producers;
- (d) aid favouring activities in the coal sector with the exception of training aid, research and development and innovation aid and environmental aid;
- (e) regional aid favouring activities in the steel sector;
- (f) regional aid favouring activities in the shipbuilding sector;
- (g) regional aid favouring activities in the synthetic fibres sector.

4. This Regulation shall not apply to regional aid schemes which are targeted at specific sectors of economic activity within manufacturing or services. Schemes aimed at tourism activities are not considered targeted at specific sectors.

5. This Regulation shall not apply to ad hoc aid granted to large enterprises, except as provided for in Article 13(1).

6. This Regulation shall not apply to the following aid:

- (a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the common market;
- (b) ad hoc aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the common market;
- (c) aid to undertakings in difficulty.

7. For the purposes of point (c) of paragraph 6, an SME shall be considered to be an undertaking in difficulty if it fulfils the following conditions:

- (a) in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months; or
- (b) in the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months; or
- (c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

An SME which has been incorporated for less than three years shall not be considered, for the purposes of this Regulation, to be in difficulty with regard to that period unless it meets the condition set out in point (c) of the first subparagraph.

<sup>(1)</sup> OJ L 17, 21.1.2000, p. 22.

## Article 2

**Definitions**

For the purposes of this Regulation the following definitions shall apply:

1. 'aid' means any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
2. 'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
3. 'individual aid' means:
  - (a) ad hoc aid; and
  - (b) notifiable awards of aid on the basis of an aid scheme;
4. 'ad hoc aid' means individual aid not awarded on the basis of an aid scheme;
5. 'aid intensity' means the aid amount expressed as a percentage of the eligible costs;
6. 'transparent aid' means aid in respect of which it is possible to calculate precisely the gross grant equivalent *ex ante* without need to undertake a risk assessment;
7. 'small and medium-sized enterprises' or 'SMEs' means undertakings fulfilling the criteria laid down in Annex I;
8. 'large enterprises' means undertakings not fulfilling the criteria laid down in Annex I;
9. 'assisted areas' means regions eligible for regional aid, as determined in the approved regional aid map for the Member State concerned for the period 2007-2013;
10. 'tangible assets' means, without prejudice to Article 17(12), assets relating to land, buildings and plant, machinery and equipment; in the transport sector transport means and transport equipment are considered eligible assets, except with regard to regional aid and except for road freight and air transport;
11. 'intangible assets' means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge;
12. 'large investment project' means an investment in capital assets with eligible costs above EUR 50 million, calculated at prices and exchange rates on the date when the aid is granted;
13. 'number of employees' means 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;
14. 'employment directly created by an investment project' means employment concerning the activity to which the investment relates, including employment created following an increase in the utilisation rate of the capacity created by the investment;
15. 'wage cost' means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising:
  - (a) the gross wage, before tax;
  - (b) the compulsory contributions, such as social security charges; and
  - (c) child care and parent care costs;
16. 'SME investment and employment aid' means aid fulfilling the conditions laid down in Article 15;
17. 'investment aid' means, regional investment and employment aid under Article 13, SME investment and employment aid under Article 15 and investment aid for environmental protection under Articles 18 to 23;
18. 'disadvantaged worker' means any person who:
  - (a) has not been in regular paid employment for the previous 6 months; or
  - (b) has not attained an upper secondary educational or vocational qualification (ISCED 3); or
  - (c) is over the age of 50 years; or
  - (d) lives as a single adult with one or more dependents; or

- (e) works in a sector or profession in a Member State where the gender imbalance is at least 25 % higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
- (f) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;
19. 'severely disadvantaged worker' means any person who has been unemployed for 24 months or more;
20. 'disabled worker' means any person:
- (a) recognised as disabled under national law; or
- (b) having a recognised limitation which results from physical, mental or psychological impairment;
21. 'sheltered employment' means employment in an undertaking where at least 50 % of workers are disabled;
22. 'agricultural product' means:
- (a) the products listed in Annex I to the Treaty, except fishery and aquaculture products covered by Regulation (EC) No 104/2000;
- (b) products falling under CN codes 4502, 4503 and 4504 (cork products);
- (c) products intended to imitate or substitute milk and milk products, as referred to in Council Regulation (EC) No 1234/2007 <sup>(1)</sup>;
23. 'processing of agricultural products' means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
24. 'marketing of agricultural products' means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered to be marketing if it takes place in separate premises reserved for that purpose;
25. 'tourism activities' means the following activities in terms of NACE Rev. 2:
- (a) NACE 55: Accommodation;
- (b) NACE 56: Food and beverage service activities;
- (c) NACE 79: Travel agency, tour operator reservation service and related activities;
- (d) NACE 90: Creative, arts and entertainment activities;
- (e) NACE 91: Libraries, archives, museums and other cultural activities;
- (f) NACE 93: Sports activities and amusement and recreation activities;
26. 'repayable advance' means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the research and development and innovation project;
27. 'risk capital' means finance provided through equity and quasi-equity financing to undertakings during their early-growth stages (seed, start-up and expansion phases);
28. 'enterprise newly created by female entrepreneurs' means a small enterprise fulfilling the following conditions:
- (a) one or more women own at least 51 % of the capital of the small enterprise concerned or are the registered owners of the small enterprise concerned; and
- (b) a woman is in charge of the management of the small enterprise;
29. 'steel sector' means all activities related to the production of one or more of the following products:
- (a) pig iron and ferro-alloys:
- pig iron for steelmaking, foundry and other pig iron, spiegeleisen and high-carbon ferro-manganese, not including other ferro-alloys;

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

- (b) crude and semi finished products of iron, ordinary steel or special steel:

liquid steel cast or not cast into ingots, including ingots for forging semi finished products: blooms, billets and slabs; sheet bars and tinplate bars; hot-rolled wide coils, with the exception of production of liquid steel for castings from small and medium-sized foundries;

- (c) hot finished products of iron, ordinary steel or special steel:

rails, sleepers, fishplates, soleplates, joists, heavy sections 80 mm and over, sheet piling, bars and sections of less than 80 mm and flats of less than 150 mm, wire rod, tube rounds and squares, hot-rolled hoop and strip (including tube strip), hot-rolled sheet (coated or uncoated), plates and sheets of 3 mm thickness and over, universal plates of 150 mm and over, with the exception of wire and wire products, bright bars and iron castings;

- (d) cold finished products:

tinplate, terneplate, blackplate, galvanized sheets, other coated sheets, cold-rolled sheets, electrical sheets and strip for tinplate, cold-rolled plate, in coil and in strip;

- (e) tubes:

all seamless steel tubes, welded steel tubes with a diameter of over 406.4 mm;

### 30. 'synthetic fibres sector' means:

- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
- (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
- (c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.

### Article 3

#### Conditions for exemption

1. Aid schemes fulfilling all the conditions of Chapter I of this Regulation, as well as the relevant provisions of Chapter II 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 any individual aid awarded under such scheme fulfils all the conditions of this Regulation, and the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*.

2. Individual aid granted under a scheme referred to in paragraph 1 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 fulfils all the conditions of Chapter I of this Regulation, as well as the relevant provisions of Chapter II of this Regulation, and that the individual aid measure contains an express reference to the relevant provisions of this Regulation, by citing the relevant provisions, the title of this Regulation and its publication reference in the *Official Journal of the European Union*.

3. Ad hoc aid fulfilling all the conditions of Chapter I of this Regulation, as well as the relevant provisions of Chapter II 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 the aid contains an express reference to the relevant provisions of this Regulation, by citing the relevant provisions, the title of this Regulation and its publication reference in the *Official Journal of the European Union*.

### Article 4

#### Aid intensity and eligible costs

1. For the purposes of calculating aid intensity, all figures used shall be taken before any deduction of tax or other charge. 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 shall be the reference rate applicable at the time of grant.

2. In cases where aid is awarded by means of tax exemptions or reductions on future taxes due, subject to the respect of a certain aid intensity defined in gross grant equivalent, discounting of aid tranches shall take place on the basis of the reference rates applicable at the various times the tax advantages become effective.

3. The eligible costs shall be supported by documentary evidence which shall be clear and itemised.

#### Article 5

##### Transparency of aid

1. This Regulation shall apply only to transparent aid.

In particular, the following categories of aid shall be considered to be transparent:

- (a) aid comprised in grants and interest rate subsidies;
  - (b) aid comprised in loans, where the gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant;
  - (c) aid comprised in guarantee schemes:
    - (i) where the methodology to calculate the gross grant equivalent has been accepted following notification of this methodology to the Commission in the context of the application of this Regulation or Regulation (EC) No 1628/2006 and the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake; or
    - (ii) where the beneficiary is a small or medium-sized enterprise and the gross grant equivalent has been calculated on the basis of the safe-harbour premiums laid down in the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees;
  - (d) aid comprised in fiscal measures, where the measure provides for a cap ensuring that the applicable threshold is not exceeded.
2. The following categories of aid shall not be considered to be transparent:
- (a) aid comprised in capital injections, without prejudice to the specific provisions concerning risk capital;
  - (b) aid comprised in risk capital measures, with the exception of aid fulfilling the conditions of Article 29.

3. Aid in the form of repayable advances shall be considered to be transparent aid only if the total amount of the repayable

advance does not exceed the applicable thresholds under this Regulation. If the threshold is expressed in terms of aid intensity, the total amount of the repayable advance, expressed as a percentage of the eligible costs, shall not exceed the applicable aid intensity.

#### Article 6

##### Individual notification thresholds

1. This Regulation shall not apply to any individual aid, whether granted ad hoc or on the basis of a scheme, the gross grant equivalent of which exceeds the following thresholds:

- (a) SME investment and employment aid: EUR 7,5 million per undertaking per investment project;
- (b) investment aid for environmental protection: EUR 7,5 million per undertaking per investment project;
- (c) aid for consultancy in favour of SMEs: EUR 2 million per undertaking per project;
- (d) aid for SME participation in fairs: EUR 2 million per undertaking per project;
- (e) research and development project aid and feasibility studies:
  - (i) if the project is predominantly fundamental research EUR 20 million per undertaking, per project/feasibility study;
  - (ii) if the project is predominantly industrial research, EUR 10 million per undertaking, per project/feasibility study;
  - (iii) for all other projects, EUR 7,5 million per undertaking, per project/feasibility study;
  - (iv) if the project is a EUREKA project twice the amounts laid down in points (i), (ii) and (iii) respectively.
- (f) aid for industrial property rights costs for SMEs: EUR 5 million per undertaking per project;
- (g) training aid: EUR 2 million per training project;
- (h) aid for the recruitment of disadvantaged workers: EUR 5 million per undertaking per year;



- (i) aid for the employment of disabled workers in the form of wage costs: EUR 10 million per undertaking per year;
- (j) aid compensating for additional costs of employing disabled workers: EUR 10 million per undertaking per year.

For the purposes of determining the appropriate threshold applicable to research and development project aid and feasibility studies pursuant to point (e), a project shall be considered to consist 'predominantly' of fundamental research or 'predominantly' of industrial research, if more than 50 % of the eligible project costs are incurred through activities which fall within the category of fundamental research or industrial research respectively. In cases where the predominant character of the project cannot be established, the lower threshold shall apply.

2. Regional investment aid awarded in favour of large investment projects shall be notified to the Commission if the total amount of aid from all sources exceeds 75 % of the maximum amount of aid an investment with eligible costs of EUR 100 million could receive, applying the standard aid threshold in force for large enterprises in the approved regional aid map on the date the aid is to be granted.

#### Article 7

##### Cumulation

1. In determining whether the individual notification thresholds laid down in Article 6 and the maximum aid intensities laid down in Chapter II are respected, the total amount of public support measures for the aided activity or project shall be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.

2. Aid exempted by this Regulation may be cumulated with any other aid exempted under this Regulation as long as those aid measures concern different identifiable eligible costs.

3. Aid exempted by this Regulation shall not be cumulated with any other aid exempted under this Regulation or *de minimis* aid fulfilling the conditions laid down in Commission Regulation (EC) No 1998/2006<sup>(1)</sup> or with other Community funding in relation to the same — partly or fully overlapping — eligible costs if such cumulation would result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.

4. By way of derogation from paragraph 3, aid in favour of disabled workers, as provided for in Articles 41 and 42, may be cumulated with aid exempted under this Regulation in relation to the same eligible costs above the highest applicable threshold

under this Regulation, provided that such cumulation does not result in an aid intensity exceeding 100 % of the relevant costs over any period for which the workers concerned are employed.

5. As regards the cumulation of aid measures exempted under this Regulation with identifiable eligible costs and aid measures exempted under this Regulation without identifiable eligible costs, the following conditions shall apply:

- (a) where a target undertaking has received capital under a risk capital measure under Article 29 and subsequently applies, during the first three years after the first risk capital investment, for aid within the scope of this Regulation, the relevant aid thresholds or maximum eligible amounts under this Regulation shall be reduced by 50 % in general and by 20 % for target undertakings located in assisted areas; the reduction shall not exceed the total amount of risk capital received; this reduction shall not apply to aid for research, development and innovation exempted under Articles 31 to 37;
- (b) during the first 3 years after being granted, aid for young innovative enterprises may not be cumulated with other aid exempted under this Regulation, with the only exception of aid exempted under Article 29 and aid exempted under Articles 31 to 37.

#### Article 8

##### Incentive effect

1. This Regulation shall exempt only aid which has an incentive effect.

2. Aid granted to SMEs, covered by this Regulation, shall be considered to have an incentive effect if, before work on the project or activity has started, the beneficiary has submitted an application for the aid to the Member State concerned.

3. Aid granted to large enterprises, covered by this Regulation, shall be considered to have an incentive effect if, in addition to fulfilling the condition laid down in paragraph 2, the Member State has verified, before granting the individual aid concerned, that documentation prepared by the beneficiary establishes one or more of the following criteria:

- (a) a material increase in the size of the project/activity due to the aid;
- (b) a material increase in the scope of the project/activity due to the aid;

<sup>(1)</sup> OJ L 379, 28.12.2006, p. 5.

- (c) a material increase in the total amount spent by the beneficiary on the project/activity due to the aid;
- (d) a material increase in the speed of completion of the project/activity concerned;
- (e) as regards regional investment aid referred to in Article 13, that the project would not have been carried out as such in the assisted region concerned in the absence of the aid.

4. The conditions laid down in paragraphs 2 and 3 shall not apply in relation to fiscal measures if the following conditions are fulfilled:

- (a) the fiscal measure establishes a legal right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; and
- (b) the fiscal measure has been adopted before work on the aided project or activity has started; this condition shall not apply in the case of fiscal successor schemes.

5. As regards aid compensating for the additional costs of employing disabled workers, as referred to in Article 42, the conditions laid down in paragraphs 2 and 3 of this Article shall be considered to be met if the conditions laid down in Article 42(3) are fulfilled.

As regards aid for the recruitment of disadvantaged workers in the form of wage subsidies and aid for the employment of disabled workers in the form of wage subsidies, as referred to in Articles 40 and 41, the conditions laid down in paragraphs 2 and 3 of this Article shall be considered to be met if the aid leads to a net increase in the number of disadvantaged/disabled workers employed.

As regards aid in the form of reductions in environmental taxes, as referred to in Article 25, the conditions laid down in paragraphs 2, 3 and 4 of this Article shall be considered to be met.

As regards aid in the form of risk capital, as referred to in Article 29, the conditions laid down in paragraph 2 of this Article shall be considered to be met.

6. If the conditions of paragraphs 2 and 3 are not fulfilled, the entire aid measure shall not be exempted under this Regulation.

#### Article 9

##### Transparency

1. Within 20 working days following the entry into force of an aid scheme or the awarding of an ad hoc aid, which has

been exempted pursuant to this Regulation, the Member State concerned shall forward to the Commission a summary of the information regarding such aid measure. That summary shall be provided in electronic form, via the established Commission IT application and in the form laid down in Annex III.

The Commission shall acknowledge receipt of the summary without delay.

The summaries shall be published by the Commission in the *Official Journal of the European Union* and on the Commission's website.

2. Upon the entry into force of an aid scheme or the awarding of an ad hoc aid, which has been exempted pursuant to this Regulation, the Member State concerned shall publish on the internet the full text of such aid measure. In the case of an aid scheme, this text shall set out the conditions laid down in national law which ensure that the relevant provisions of this Regulation are complied with. The Member State concerned shall ensure that the full text of the aid measure is accessible on the internet as long as the aid measure concerned is in force. The summary information provided by the Member State concerned pursuant to paragraph 1 shall specify an internet address leading directly to the full text of the aid measure.

3. When granting individual aid exempted pursuant to this Regulation, with the exception of aid taking the form of fiscal measures, the act granting the aid shall contain an explicit reference to the specific provisions of Chapter II concerned by that act, to the national law which ensures that the relevant provisions of this Regulation are complied with and to the internet address leading directly to the full text of the aid measure.

4. Without prejudice to the obligations contained in paragraphs 1, 2 and 3, whenever individual aid is granted under an existing aid scheme for research and development projects covered by Article 31 and the individual aid exceeds EUR 3 million and whenever individual regional investment aid is granted, on the basis of an existing aid scheme for large investment projects, which is not individually notifiable pursuant to Article 6, the Member States shall, within 20 working days from the day on which the aid is granted by the competent authority, provide the Commission with the summary information requested in the standard form laid down in Annex II, via the established Commission IT application.

#### Article 10

##### Monitoring

1. The Commission shall regularly monitor aid measures of which it has been informed pursuant to Article 9.

2. Member States shall maintain detailed records regarding any individual aid or aid scheme exempted under this Regulation. Such records shall contain all information necessary to establish that the conditions laid down in this Regulation are fulfilled, including information on the status of any undertaking whose entitlement to aid or a bonus depends on its status as an SME, information on the incentive effect of the aid and information making it possible to establish the precise amount of eligible costs for the purpose of applying this Regulation.

Records regarding individual aid shall be maintained for 10 years from the date on which the aid was granted. Records regarding an aid scheme shall be maintained for 10 years from the date on which the last aid was granted under such scheme.

3. 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 monitor the application of this Regulation.

Where the Member State concerned does not provide the information requested within the period prescribed by the Commission or within a commonly agreed period, or where the Member State provides incomplete information, the Commission shall send a reminder setting a new deadline for the submission of the information. If, despite such reminder, the Member State concerned does not provide the information requested, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all or part of the future aid measures to which this Regulation applies are to be notified to the Commission in accordance with Article 88(3) of the Treaty.

#### Article 11

##### Annual reporting

In accordance with Chapter III of Commission Regulation (EC) No 794/2004 <sup>(1)</sup>, Member States shall compile a report in electronic form on the application of this Regulation in respect of each whole year or each part of the year during which this Regulation applies. The internet address leading directly to the full text of the aid measures shall also be included in such annual report.

#### Article 12

##### Specific conditions applicable to investment aid

1. In order to be considered an eligible cost for the purposes of this Regulation, an investment shall consist of the following:

- (a) an investment in tangible and/or intangible 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; or

- (b) the acquisition of the capital assets directly linked to an establishment, where the establishment has closed or would have closed had it not been purchased, and the assets are bought by an independent investor; in the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought by an independent investor shall be waived.

The sole acquisition of the shares of an undertaking shall not constitute investment.

2. In order to be considered eligible costs for the purposes of this Regulation, intangible assets shall fulfil all the following conditions:

- (a) they must be used exclusively in the undertaking receiving the aid; as regards regional investment aid, they must be used exclusively in the establishment receiving the aid;
- (b) they must be regarded as amortizable assets;
- (c) they must be purchased from third parties under market conditions, without the acquirer being in a position to exercise control, within the meaning of Article 3 of Council Regulation (EC) No 139/2004 <sup>(2)</sup>, on the seller, vice versa; or
- (d) in the case of SME investment aid, they must be included in the assets of the undertaking for at least three years; in the case of regional investment aid, they must be included in the assets of the undertaking and remain in the establishment receiving the aid for at least five years or, in the case of SMEs, at least three years.

3. In order to be considered an eligible cost for the purposes of this Regulation, employment directly created by an investment project shall fulfil all the following conditions:

- (a) employment shall be created within three years of completion of the investment;

<sup>(1)</sup> OJ L 140, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 24, 29.1.2004, p. 1.



- (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 12 months;
- (c) the employment created shall be maintained during a minimum period of five years in the case of large enterprise and a minimum period of three years in case of SMEs.

## CHAPTER II

### SPECIFIC PROVISIONS FOR THE DIFFERENT CATEGORIES OF AID

#### SECTION 1

#### *Regional aid*

##### *Article 13*

#### **Regional investment and employment aid**

1. Regional investment and employment aid schemes 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 conditions laid down in this Article are fulfilled.

Ad hoc aid which is only used to supplement aid granted on the basis of regional investment and employment aid schemes and which does not exceed 50 % of the total aid to be granted for the investment, 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 ad hoc aid awarded fulfils all the conditions of this Regulation.

2. The aid shall be granted in regions eligible for regional aid, as determined in the approved regional aid map for the Member State concerned for the period 2007-2013. The investment must be maintained in the recipient region for at least five years, or three years in the case of SMEs, after the whole investment has been completed. This shall not prevent the replacement of plant or equipment which has become outdated due to rapid technological change, provided that the economic activity is retained in the region concerned for the minimum period.

3. The aid intensity in present gross grant equivalent shall not exceed the regional aid threshold which is in force at the time the aid is granted in the assisted region concerned.

4. With the exception of aid granted in favour of large investment projects and regional aid for the transport sector,

the thresholds fixed in paragraph 3 may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

5. The thresholds fixed in paragraph 3 shall apply to the intensity of the aid calculated either as a percentage of the investment's eligible tangible and intangible costs or as a percentage of the estimated wage costs of the person hired, calculated over a period of two years, for employment directly created by the investment project or a combination thereof, provided that the aid does not exceed the most favourable amount resulting from the application of either calculation.

6. Where the aid is calculated on the basis of tangible or intangible investment costs, or of acquisition costs in case of takeovers, the beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support. However, where the maximum aid intensity approved under the national regional aid map for the Member State concerned, increased in accordance with paragraph 4, exceeds 75 %, the financial contribution of the beneficiary is reduced accordingly. If the aid is calculated on the basis of tangible or intangible investment costs, the conditions set out in paragraph 7 shall also apply.

7. In the case of acquisition of an establishment, only the costs of buying assets from third parties shall be taken into consideration, provided that the transaction has taken place under market conditions. Where the acquisition is accompanied by other investment, the costs relating to the latter shall be added to the cost of the purchase.

Costs related to the acquisition of assets under lease, other than land and buildings, shall be taken into consideration only if the lease takes the form of financial leasing and contains an obligation to purchase the asset at the expiry of the term of the lease. For the lease of land and buildings, the lease must continue for at least five years after the anticipated date of the completion of the investment project or three years in the case of SMEs.

Except in the case of SMEs and takeovers, the assets acquired shall be new. In the case of takeovers, assets for the acquisition of which aid has already been granted prior to the purchase shall be deducted. For SMEs, the full costs of investments in intangible assets may also be taken into consideration. For large enterprises, such costs are eligible only up to a limit of 50 % of the total eligible investment costs for the project.

8. Where the aid is calculated on the basis of wage costs, the employment shall be directly created by the investment project.

9. By way of derogation from paragraphs 3 and 4, the maximum aid intensities for investments in the processing and marketing of agricultural products may be set at:

(a) 50 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty and 40 % of eligible investments in other regions eligible for regional aid, as determined in the regional aid map approved for the Member States concerned for the period 2007-2013, if the beneficiary is an SME;

(b) 25 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty and 20 % of eligible investments in other regions eligible for regional aid, as determined in the regional aid map approved for the Member States concerned for the period 2007-2013, if the beneficiary has less than 750 employees and/or less than EUR 200 million turnover, calculated in accordance with Annex I to this Regulation.

10. In order to prevent a large investment being artificially divided into sub-projects, a large investment project shall be considered to be a single investment project when the investment is undertaken within a period of three years by the same undertaking or undertakings and consists of fixed assets combined in an economically indivisible way.

#### Article 14

##### Aid for newly created small enterprises

1. Aid schemes in favour of newly created small enterprises 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 conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The beneficiary shall be a small enterprise.

3. The aid amount shall not exceed:

(a) EUR 2 million for small enterprises with their economic activity in regions eligible for the derogation provided for in Article 87(3)(a) of the Treaty;

(b) EUR 1 million for small enterprises with their economic activity in regions eligible for the derogation provided for in Article 87(3)(c) of the Treaty.

Annual amounts of aid per undertaking shall not exceed 33 % of the amounts of aid laid down in points (a) and (b).

4. The aid intensity shall not exceed:

(a) in regions covered by Article 87(3)(a) of the Treaty, 35 % of eligible costs incurred in the first three years after the creation of the undertaking, and 25 % in the two years thereafter;

(b) in regions covered by Article 87(3)(c) of the Treaty, 25 % of eligible costs incurred in the first three years after the creation of the undertaking, and 15 % in the two years thereafter.

These intensities may be increased by 5 % in regions covered by Article 87(3)(a) of the Treaty with a gross domestic product (GDP) per capita of less than 60 % of the EU-25 average, in regions with a population density of less than 12.5 inhabitants/km<sup>2</sup> and in small islands with a population of less than 5 000 inhabitants, and other communities of the same size suffering from similar isolation.

5. The eligible costs shall be legal, advisory, consultancy and administrative costs directly related to the creation of the small enterprise, as well as the following costs, insofar as they are actually incurred within the first five years after the creation of the undertaking:

(a) interest on external finance and a dividend on own capital employed not exceeding the reference rate;

(b) fees for renting production facilities/equipment;

(c) energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;

(d) depreciation, fees for leasing production facilities/equipment as well as wage costs, provided that the underlying investments or job creation and recruitment measures have not benefited from other aid.

6. Small enterprises controlled by shareholders of undertakings that have closed down in the previous 12 months cannot benefit from aid under this Article if the enterprises concerned are active in the same relevant market or in adjacent markets.

## SECTION 2

### **SME investment and employment aid**

#### *Article 15*

### **SME investment and employment aid**

1. SME investment and employment aid 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 conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aid intensity shall not exceed:

(a) 20 % of the eligible costs in the case of small enterprises;

(b) 10 % of the eligible costs in the case of medium-sized enterprises.

3. The eligible costs shall be the following:

(a) the costs of investment in tangible and intangible assets; or

(b) the estimated wage costs of employment directly created by the investment project, calculated over a period of two years.

4. Where the investment concerns the processing and marketing of agricultural products, the aid intensity shall not exceed:

(a) 75 % of eligible investments in the outermost regions;

(b) 65 % of eligible investments in the smaller Aegean Islands within the meaning of Council Regulation (EC) No 1405/2006 <sup>(1)</sup>;

(c) 50 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty;

(d) 40 % of eligible investments in all other regions.

## SECTION 3

### ***Aid for female entrepreneurship***

#### *Article 16*

### **Aid for small enterprises newly created by female entrepreneurs**

1. Aid schemes in favour of small enterprises newly created by female entrepreneurs 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 conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The beneficiaries shall be small enterprises newly created by female entrepreneurs.

3. The aid amount shall not exceed EUR 1 million per undertaking.

Annual amounts of aid per undertaking shall not exceed 33 % of the amounts of aid laid down in the first subparagraph.

4. The aid intensity shall not exceed 15 % of eligible costs incurred in the first five years after the creation of the undertaking.

5. The eligible costs shall be legal, advisory, consultancy and administrative costs directly related to the creation of the small enterprise, as well as the following costs, insofar as they are actually incurred within the first five years of the creation of the undertaking:

(a) interest on external finance and a dividend on own capital employed not exceeding the reference rate;

(b) fees for renting production facilities/equipment;

(c) energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;

(d) depreciation, fees for leasing production facilities/equipment as well as wage costs, provided that the underlying investments or job creation and recruitment measures have not benefited from other aid;

(e) child care and parent care costs including, where applicable, costs relating to parental leave.

6. Small enterprises controlled by shareholders of undertakings that have closed down in the previous 12 months cannot benefit from aid under this Article if the enterprises concerned are active in the same relevant market or in adjacent markets.

<sup>(1)</sup> OJ L 265, 26.9.2006, p. 1.

## SECTION 4

***Aid for environmental protection***

## Article 17

**Definitions**

For the purposes of this Section, the following definitions shall apply:

1. 'environmental protection' means any action designed to remedy or prevent damage to physical surroundings or natural resources by the beneficiary's own activities, to reduce risk of such damage or to lead to a more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy;
2. 'energy-saving measures' mean action which enables undertakings to reduce the amount of energy used notably in their production cycle;
3. 'Community standard' means:
  - (a) a mandatory Community standard setting the levels to be attained in environmental terms by individual undertakings; or
  - (b) the obligation under Directive 2008/1/EC of the European Parliament and of the Council <sup>(1)</sup> to use the best available techniques as set out in the most recent relevant information published by the Commission pursuant to Article 17(2) of that Directive;
4. 'renewable energy sources' means the following renewable non-fossil energy sources: wind, solar, geothermal, wave, tidal, hydropower installations, biomass, landfill gas, sewage treatment plant gas and biogases;
5. 'biofuels' means liquid or gaseous fuel for transport produced from biomass;
6. 'sustainable biofuels' means biofuels fulfilling the sustainability criteria set out in Article 15 of the proposal for a Directive of the European Parliament and the Council on the promotion of the use of energy from renewable sources <sup>(2)</sup>; once the Directive has been adopted by the European Parliament and the Council and published in the *Official Journal of the European Union*, the sustainability criteria laid down in the Directive shall apply;
7. 'energy from renewable energy sources' means energy produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants — which also use conventional energy sources; it includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems;
8. 'cogeneration' means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
9. 'high efficiency cogeneration' means cogeneration meeting the criteria of Annex III to Directive 2004/8/EC of the European Parliament and of the Council <sup>(3)</sup> and satisfying the harmonised efficiency reference values established by Commission Decision 2007/74/EC <sup>(4)</sup>;
10. 'environmental tax' means a tax whose specific tax base has a clear negative effect on the environment or which seeks to tax certain activities, goods or services so that the environmental costs may be included in their price and/or so that producers and consumers are oriented towards activities which better respect the environment;
11. 'Community minimum tax level' means the minimum level of taxation provided for in Community legislation; for energy products and electricity, the Community minimum tax level means the minimum level of taxation laid down in Annex I to Directive 2003/96/EC;
12. 'tangible assets' means investments in land which are strictly necessary in order to meet environmental objectives, investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances, and investments to adapt production methods with a view to protecting the environment.

## Article 18

**Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards**

1. Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards 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 conditions laid down in paragraphs 2 to 8 of this Article are fulfilled.

<sup>(1)</sup> OJ L 24, 29.1.2008, p. 8.

<sup>(2)</sup> COM(2008) 19 final.

<sup>(3)</sup> OJ L 52, 21.2.2004, p. 50.

<sup>(4)</sup> OJ L 32, 6.2.2007, p. 183.

2. The aided investment shall fulfil one of the following conditions:

- (a) the investment shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Community standards, irrespective of the presence of mandatory national standards that are more stringent than the Community standards;
- (b) the investment shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Community standards.

3. Aid may not be granted where improvements are to ensure that companies comply with Community standards already adopted and not yet in force.

4. The aid intensity shall not exceed 35 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

5. The eligible costs shall be the extra investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards concerned, without taking account of operating benefits and operating costs.

6. For the purposes of paragraph 5, the cost of the investment directly related to environmental protection shall be established by reference to the counterfactual situation:

- (a) where the cost of investing in environmental protection can be easily identified in the total investment cost, this precise environmental protection-related cost shall constitute the eligible costs;
- (b) in all other cases, the extra investment costs shall be established by comparing the investment with the counterfactual situation in the absence of State aid; the correct counterfactual shall be the cost of a technically comparable investment that provides a lower degree of environmental protection (corresponding to mandatory Community standards, if they exist) and that would credibly be realised without aid ('reference investment'); technically comparable investment means an investment with the same production capacity and all other technical characteristics (except those directly related to the extra investment for environmental protection); in addition, such a reference investment must, from a business point of view, be a credible alternative to the investment under assessment.

7. The eligible investment shall take the form of investment in tangible assets and/or in intangible assets.

8. In the case of investments aiming at obtaining a level of environmental protection higher than Community standards, the counterfactual shall be chosen as follows:

- (a) where the undertaking is adapting to national standards adopted in the absence of Community standards, the eligible costs shall consist of the additional investment costs necessary to achieve the level of environmental protection required by the national standards;
- (b) where the undertaking adapts to or goes beyond national standards which are more stringent than the relevant Community standards or goes beyond Community standards, the eligible costs shall consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards. The cost of investments needed to reach the level of protection required by the Community standards shall not be eligible;
- (c) where no standards exist, the eligible costs shall consist of the investment costs necessary to achieve a higher level of environmental protection than that which the undertaking or undertakings in question would achieve in the absence of any environmental aid.

9. Aid for investments relating to the management of waste of other undertakings shall not be exempted under this Article.

#### Article 19

#### **Aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards**

1. Investment aid for the acquisition of new transport vehicles enabling undertakings active in the transport sector to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards 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 conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aided investment shall fulfil the condition laid down in Article 18(2).

3. Aid for the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Community standards shall be exempted, when such acquisition occurs before these Community standards enter into force and where, once mandatory, they do not apply retroactively to vehicles already purchased.



4. Aid for retrofitting operations of existing transport vehicles with an environmental protection objective shall be exempted if the existing means of transport are upgraded to environmental standards that were not yet in force at the date of entry into operation of those means of transport or if the means of transport are not subject to any environmental standards.

5. The aid intensity shall not exceed 35 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

6. The eligible costs shall be the extra investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

#### Article 20

##### **Aid for early adaptation to future Community standards for SMEs**

1. Aid allowing SMEs to comply with new Community standards which increase the level of environmental protection and are not yet in force 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 conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The Community standards shall have been adopted and the investment shall be implemented and finalised at least one year before the date of entry into force of the standard concerned.

3. The aid intensity shall not exceed 15 % of the eligible costs for small enterprises and 10 % of the eligible costs for medium-sized enterprises if the implementation and finalisation take place more than three years before the date of entry into force of the standard and 10 % for small enterprises if the implementation and finalisation take place between one and three years before the date of entry into force of the standard.

4. The eligible costs shall be the extra investment costs necessary to achieve the level of environmental protection required by the Community standard compared to the existing level of environmental protection required prior to the entry into force of this standard.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

#### Article 21

##### **Environmental investment aid for energy saving measures**

1. Environmental investment aid enabling undertakings to achieve energy savings 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 meets:

(a) the conditions laid down in paragraphs 2 and 3 of this Article; or

(b) the conditions laid down in paragraphs 4 and 5 thereof.

2. The aid intensity shall not exceed 60 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

3. The eligible costs shall be the extra investment costs necessary to achieve energy savings beyond the level required by the Community standards.

The eligible costs shall be calculated as set out in Article 18(6) and (7).

The eligible costs shall be calculated net of any operating benefits and costs related to the extra investment for energy saving and arising during the first three years of the life of this investment in the case of SMEs, the first four years in the case of large undertakings that are not part of the EU CO<sub>2</sub> Emission Trading System and the first five years in the case of large undertakings that are part of the EU CO<sub>2</sub> Emission Trading System. For large undertakings this period may be reduced to the first three years of the life of this investment where the depreciation time of the investment can be demonstrated not to exceed three years.

The eligible cost calculations shall be certified by an external auditor.

4. The aid intensity shall not exceed 20 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

5. The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

#### Article 22

##### **Environmental investment aid for high-efficiency cogeneration**

1. Environmental investment aid for high-efficiency cogeneration 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 conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aid intensity shall not exceed 45 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

3. The eligible costs shall be the extra investment costs necessary to realise a high efficiency cogeneration plant as compared to the reference investment. The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

4. A new cogeneration unit shall overall make primary energy savings compared to separate production as provided for by Directive 2004/8/EC and Decision 2007/74/EC. The improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.

#### Article 23

##### **Environmental investment aid for the promotion of energy from renewable energy sources**

1. Environmental investment aid for the promotion of energy from renewable energy sources 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 conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aid intensity shall not exceed 45 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

3. The eligible costs shall be the extra costs borne by the beneficiary compared with a conventional power plant or with a conventional heating system with the same capacity in terms of the effective production of energy.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

4. Environmental investment aid for the production of biofuels shall be exempted only to the extent the aided investments are used exclusively for the production of sustainable biofuels.

#### Article 24

##### **Aid for environmental studies**

1. Aid for studies directly linked to investments referred to in Article 18, investments in energy saving measures under the conditions set out in Article 21 and investments for the promotion of energy from renewable energy sources under the conditions set out in Article 23 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 conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The aid intensity shall not exceed 50 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for studies undertaken on behalf of small enterprises and by 10 percentage points for studies undertaken on behalf of medium-sized enterprises.

3. The eligible costs shall be the costs of the study.

#### Article 25

##### **Aid in the form of reductions in environmental taxes**

1. Environmental aid schemes in the form of reductions in environmental taxes fulfilling the conditions of Directive 2003/96/EC 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 the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The beneficiaries of the tax reduction shall pay at least the Community minimum tax level set by Directive 2003/96/EC.

3. Tax reductions shall be granted for maximum periods of ten years. After such 10 year period, Member States shall re-evaluate the appropriateness of the aid measures concerned.

#### SECTION 5

### ***Aid for consultancy in favour of SMEs and SME participation in fairs***

#### *Article 26*

#### **Aid for consultancy in favour of SMEs**

1. Aid for consultancy in favour of SMEs 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 conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The aid intensity shall not exceed 50 % of the eligible costs.

3. The eligible costs shall be the consultancy costs of services provided by outside consultants.

The services concerned shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

#### *Article 27*

#### **Aid for SME participation in fairs**

1. Aid to SMEs for participation in fairs 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 the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The aid intensity shall not exceed 50 % of the eligible costs.

3. The eligible costs shall be the costs incurred for renting, setting up and running the stand for the first participation of an undertaking in any particular fair or exhibition.

#### SECTION 6

### ***Aid in the form of risk capital***

#### *Article 28*

#### **Definitions**

For the purposes of this Section, the following definitions shall apply:

1. 'equity' means ownership interest in an undertaking, represented by the shares issued to investors;

2. 'quasi-equity' means financial instruments whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default;

3. 'private equity' means private — as opposed to public — equity or quasi-equity investment in undertakings not listed on a stock-market, including venture capital;

4. 'seed capital' means financing provided to study, assess and develop an initial concept, preceding the start-up phase;

5. 'start-up capital' means financing provided to undertakings, which have not sold their product or service commercially and are not yet generating a profit for product development and initial marketing;

6. 'expansion capital' means financing provided for the growth and expansion of an undertaking, which may or may not break even or trade profitably, for the purposes of increasing production capacity, market or product development or the provision of additional working capital;

7. 'exit strategy' means a strategy for the liquidation of holdings by a venture capital or private equity fund in accordance with a plan to achieve maximum return, including trade sale, write-offs, repayment of preference shares/loans, sale to another venture capitalist, sale to a financial institution and sale by public offering, including Initial Public Offerings;

8. 'target undertaking' means an undertaking in which an investor or investment fund is considering investing.

#### *Article 29*

#### **Aid in the form of risk capital**

1. Risk capital aid schemes in favour of SMEs 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 the conditions laid down in paragraphs 2 to 8 of this Article are fulfilled.

2. The risk capital measure shall take the form of participation into a profit driven private equity investment fund, managed on a commercial basis.

3. The tranches of investment to be made by the investment fund shall not exceed EUR 1,5 million per target undertaking over any period of twelve months.



4. For SMEs located in assisted areas, as well as for small enterprises located in non-assisted areas, the risk capital measure shall be restricted to providing seed capital, start-up capital and/or expansion capital. For medium-sized enterprises located in non-assisted areas, the risk capital measure shall be restricted to providing seed capital and/or start-up capital, to the exclusion of expansion capital.

5. The investment fund shall provide at least 70 % of its total budget invested into target SMEs in the form of equity or quasi-equity.

6. At least 50 % of the funding of the investment funds shall be provided by private investors. In the case of investment funds targeting exclusively SMEs located in assisted areas, at least 30 % of the funding shall be provided by private investors.

7. To ensure that the risk capital measure is profit-driven, the following conditions shall be fulfilled:

(a) a business plan shall exist for each investment, containing details of product, sales and profitability development and establishing the *ex ante* viability of the project; and

(b) a clear and realistic exit strategy shall exist for each investment.

8. To ensure that the investment fund is managed on a commercial basis, the following conditions shall be fulfilled:

(a) there shall be an agreement between a professional fund manager and participants in the fund, providing that the manager's remuneration is linked to performance and setting out the objectives of the fund and proposed timing of investments; and

(b) private investors shall be represented in decision-making, such as through an investors' or advisory committee; and

(c) best practices and regulatory supervision shall apply to the management of funds.

#### SECTION 7

### **Aid for research and development and innovation**

#### Article 30

#### **Definitions**

For the purposes of this Section, the following definitions shall apply:

1. 'research organisation' means an entity, such as a university or research institute, irrespective of its legal status (organised under public or private law) or way of financing, whose

primary goal is to conduct fundamental research, industrial research or experimental development and to disseminate their results by way of teaching, publication or technology transfer; all profits must be reinvested in these activities, the dissemination of their results or teaching; undertakings that can exert influence upon such an organisation, for instance in their capacity as shareholders or members of the organisation, shall enjoy no preferential access to the research capacities of such an organisation or to the research results generated by it;

2. 'fundamental research' means 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;

3. 'industrial research' means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts to complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of prototypes;

4. 'experimental development' means the acquiring, combining, shaping and using 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. These may also include, for instance, other activities aiming at the conceptual definition, planning and documentation of new products, processes or services. Those activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use;

The development of commercially usable prototypes and pilot projects is also included where the prototype is necessarily the final commercial product and where it is too expensive to produce for it to be used only for demonstration and validation purposes. In case of a subsequent commercial use of demonstration or pilot projects, any revenue generated from such use must be deducted from the eligible costs.

The experimental production and testing of products, processes and services shall also be eligible, provided that these cannot be used or transformed to be used in industrial applications or commercially.

Experimental development shall not include routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements;

5. 'highly qualified personnel' means researchers, engineers, designers and marketing managers with tertiary education degree and at least 5 years of relevant professional experience; doctoral training may count as relevant professional experience;
6. 'secondment' means temporary employment of personnel by a beneficiary during a period of time, after which the personnel has the right to return to its previous employer.

#### Article 31

##### Aid for research and development projects

1. Aid for research and development projects 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 conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The aided part of the research and development project shall completely fall within one or more of the following research categories:

- (a) fundamental research;
- (b) industrial research;
- (c) experimental development.

When a project encompasses different tasks, each task shall be qualified as falling under one of the categories listed in the first subparagraph or as not falling under any of those categories.

3. The aid intensity shall not exceed:

- (a) 100 % of the eligible costs for fundamental research;
- (b) 50 % of the eligible costs for industrial research;
- (c) 25 % of the eligible costs for experimental development.

The aid intensity shall be established for each beneficiary of aid, including in a collaboration project, as provided in paragraph 4(b)(i).

In the case of aid for a research and development project being carried out in collaboration between research organisations and undertakings, the combined aid deriving from direct government support for a specific project and, where they constitute aid, contributions from research organisations to that project may not exceed the applicable aid intensities for each beneficiary undertaking.

4. The aid intensities set for industrial research and experimental development in paragraph 3 may be increased as follows:

- (a) where the aid is granted to SMEs, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises; and

- (b) a bonus of 15 percentage points may be added, up to a maximum aid intensity of 80 % of the eligible costs, if:

- (i) the project involves effective collaboration between at least two undertakings which are independent of each other and the following conditions are fulfilled:

- no single undertaking bears more than 70 % of the eligible costs of the collaboration project,
- the project involves collaboration with at least one SME or is carried out in at least two different Member States, or

- (ii) the project involves effective collaboration between an undertaking and a research organisation and the following conditions are fulfilled:

- the research organisation bears at least 10 % of the eligible project costs, and
- the research organisation has the right to publish the results of the research projects insofar as they stem from research carried out by that organisation, or

- (iii) in the case of industrial research, the results of the project are widely disseminated through technical and scientific conferences or through publication in scientific or technical journals or in open access repositories (databases where raw research data can be accessed by anyone), or through free or open source software.

For the purposes of point (b)(i) and (ii) of the first subparagraph, subcontracting shall not be considered to be effective collaboration.

5. The eligible costs shall be the following:

- (a) personnel costs (researchers, technicians and other supporting staff to the extent employed on the research project);
  - (b) costs of instruments and equipment to the extent and for the period used for the research project; if such instruments and equipment are not used for their full life for the research project, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice, shall be considered eligible;
  - (c) costs for buildings and land, to the extent and for the duration used for the research project; with regard to buildings, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice shall be considered eligible; for land, costs of commercial transfer or actually incurred capital costs shall be eligible;
  - (d) cost of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices, where the transaction has been carried out at arm's length and there is no element of collusion involved, as well as costs of consultancy and equivalent services used exclusively for the research activity;
  - (e) additional overheads incurred directly as a result of the research project;
  - (f) other operating costs, including costs of materials, supplies and similar products incurred directly as a result of the research activity.
6. All eligible costs shall be allocated to a specific category of research and development.

#### Article 32

##### **Aid for technical feasibility studies**

1. Aid for technical feasibility studies preparatory to industrial research or experimental development activities 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 conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.
2. The aid intensity shall not exceed:
  - (a) for SMEs, 75 % of the eligible costs for studies preparatory to industrial research activities and 50 % of the eligible costs for studies preparatory to experimental development activities;

- (b) for large enterprises, 65 % of the eligible costs for studies preparatory to industrial research activities and 40 % of the eligible costs for studies preparatory to experimental development activities.

3. The eligible costs shall be the costs of the study.

#### Article 33

##### **Aid for industrial property rights costs for SMEs**

1. Aid to SMEs for the costs associated with obtaining and validating patents and other industrial property rights 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 the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.
2. The aid intensity shall not exceed the intensity for research and development project aid laid down in Article 31(3) and (4), in respect of the research activities which first led to the industrial property rights concerned.
3. The eligible costs shall be the following:
  - (a) all costs preceding the grant of the right in the first jurisdiction, including costs relating to the preparation, filing and prosecution of the application as well as costs incurred in renewing the application before the right has been granted;
  - (b) translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdictions;
  - (c) costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right is granted.

#### Article 34

##### **Aid for research and development in the agricultural and fisheries sectors**

1. Aid for research and development concerning products listed in Annex I to the Treaty 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 conditions laid down in paragraphs 2 to 7 of this Article are fulfilled.
2. The aid shall be of interest to all operators in the particular sector or sub-sector concerned.

3. Information that research will be carried out, and with which goal, shall be published on the internet, prior to the commencement of the research. An approximate date of expected results and their place of publication on the internet, as well as a mention that the result will be available at no cost, must be included.

The results of the research shall be made available on internet, for a period of at least 5 years. They shall be published no later than any information which may be given to members of any particular organisation.

4. Aid shall be granted directly to the research organisation and must not involve the direct granting of non-research related aid to a company producing, processing or marketing agricultural products, nor provide price support to producers of such products.

5. The aid intensity shall not exceed 100 % of the eligible costs.

6. The eligible costs shall be those provided in Article 31(5).

7. Aid for research and development concerning products listed in Annex I to the Treaty and not fulfilling the conditions laid down in this Article shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in Articles 30, 31 and 32 of this Regulation are fulfilled.

#### Article 35

##### **Aid to young innovative enterprises**

1. Aid to young innovative enterprises 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 conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The beneficiary shall be a small enterprise that has been in existence for less than 6 years at the time when the aid is granted.

3. The research and development costs of the beneficiary shall represent at least 15 % of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor.

4. The aid amount shall not exceed EUR 1 million.

However, the aid amount shall not exceed EUR 1,5 million in regions eligible for the derogation provided for in

Article 87(3)(a) of the Treaty, and EUR 1,25 million in regions eligible for the derogation provided for in Article 87(3)(c) of the Treaty.

5. The beneficiary may receive the aid only once during the period in which it qualifies as a young innovative enterprise.

#### Article 36

##### **Aid for innovation advisory services and for innovation support services**

1. Aid for innovation advisory services and for innovation support services 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 conditions laid down in paragraphs 2 to 6 of this Article are fulfilled.

2. The beneficiary shall be an SME.

3. The aid amount shall not exceed a maximum of EUR 200 000 per beneficiary within any three year period.

4. The service provider shall benefit from a national or European certification. If the service provider does not benefit from a national or European certification, the aid intensity shall not exceed 75 % of the eligible costs.

5. The beneficiary must use the aid to buy the services at market price, or if the service provider is a non-for-profit entity, at a price which reflects its full costs plus a reasonable margin.

6. The eligible costs shall be the following:

(a) as regards innovation advisory services, the costs relating to: management consulting, technological assistance, technology transfer services, training, consultancy for acquisition, protection and trade in Intellectual Property Rights and for licensing agreements, consultancy on the use of standards;

(b) as regards innovation support services, the costs relating to: office space, data banks, technical libraries, market research, use of laboratory, quality labelling, testing and certification.

#### Article 37

##### **Aid for the loan of highly qualified personnel**

1. Aid for the loan of highly qualified personnel seconded from a research organisation or a large enterprise to an SME 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 conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The seconded personnel must not be replacing other personnel, but must be employed in a newly created function within the beneficiary undertaking and must have been employed for at least two years in the research organisation or the large enterprise, which is sending the personnel on secondment.

The seconded personnel must work on research and development and innovation activities within the SME receiving the aid.

3. The aid intensity shall not exceed 50 % of the eligible costs, for a maximum of 3 years per undertaking and per person borrowed.

4. The eligible costs shall be all personnel costs for borrowing and employing highly qualified personnel, including the costs of using a recruitment agency and of paying a mobility allowance for the seconded personnel.

5. This Article shall not apply to consultancy costs as referred to in Article 26.

#### SECTION 8

#### **Training aid**

##### *Article 38*

#### **Definitions**

For the purposes of this Section, the following definitions shall apply:

1. 'specific training' means training involving tuition directly and principally applicable to the employee's present or future position in the undertaking and providing qualifications which are not or only to a limited extent transferable to other undertakings or fields of work;

2. 'general training' means training involving tuition which is not applicable only or principally to the employee's present or future position in the undertaking, but which provides qualifications that are largely transferable to other undertakings or fields of work. Training shall be considered 'general' if, for example:

(a) it is jointly organised by different independent undertakings or where employees of different undertakings may avail themselves of the training;

(b) it is recognised, certified or validated by public authorities or bodies or by other bodies or institutions on which a Member State or the Community has conferred the necessary powers.

#### *Article 39*

#### **Training aid**

1. Training aid 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 conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aid intensity shall not exceed:

(a) 25 % of the eligible costs for specific training; and

(b) 60 % of the eligible costs for general training.

However, the aid intensity may be increased, up to a maximum aid intensity of 80 % of the eligible costs, as follows:

(a) by 10 percentage points if the training is given to disabled or disadvantaged workers;

(b) by 10 percentage points if the aid is awarded to medium-sized enterprises and by 20 percentage points if the aid is awarded to small enterprises.

Where the aid is granted in the maritime transport sector, it may reach an intensity of 100 % of the eligible costs, whether the training project concerns specific or general training, provided that the following conditions are met:

(a) the trainee shall not be an active member of the crew but shall be supernumerary on board; and

(b) the training shall be carried out on board ships entered on Community registers.

3. In cases where the aid project involves both specific and general training components which cannot be separated for the calculation of the aid intensity, and in cases where the specific or general character of the training aid project cannot be established, the aid intensities applicable to specific training shall apply.

4. The eligible costs of a training aid project shall be:

(a) trainers' personnel costs;

(b) trainers' and trainees' travel expenses, including accommodation;

(c) other current expenses such as materials and supplies directly related to the project;

(d) depreciation of tools and equipment, to the extent that they are used exclusively for the training project;



(e) cost of guidance and counselling services with regard to the training project;

(f) trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) up to the amount of the total of the other eligible costs referred to in points (a) to (e). As regards the trainees' personnel costs, only the hours during which the trainees actually participate in the training, after deduction of any productive hours, may be taken into account.

#### SECTION 9

##### ***Aid for disadvantaged and disabled workers***

###### *Article 40*

##### **Aid for the recruitment of disadvantaged workers in the form of wage subsidies**

1. Aid schemes for the recruitment of disadvantaged workers in the form of wage subsidies 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 the conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The aid intensity shall not exceed 50 % of the eligible costs.

3. Eligible costs shall be the wage costs over a maximum period of 12 months following recruitment.

However, where the worker concerned is a severely disadvantaged worker, eligible costs shall be the wage costs over a maximum period of 24 months following recruitment.

4. Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

5. Except in the case of lawful dismissal for misconduct, the disadvantaged worker shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts.

If the period of employment is shorter than 12 months or, as the case may be 24 months, the aid shall be reduced pro rata accordingly.

###### *Article 41*

##### **Aid for the employment of disabled workers in the form of wage subsidies**

1. Aid for the employment of disabled workers in the form of wage subsidies 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 the conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The aid intensity shall not exceed 75 % of the eligible costs.

3. Eligible costs shall be the wage costs over any given period during which the disabled worker is being employed.

4. Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

5. Except in the case of lawful dismissal for misconduct the workers shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts.

If the period of employment is shorter than 12 months, the aid shall be reduced pro rata accordingly.

###### *Article 42*

##### **Aid for compensating the additional costs of employing disabled workers**

1. Aid for compensating the additional costs of employing disabled workers 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 the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The aid intensity shall not exceed 100 % of the eligible costs.

3. Eligible costs shall be costs other than wage costs covered by Article 41, which are additional to those which the undertaking would have incurred if employing workers who are not disabled, over the period during which the worker concerned is being employed.



The eligible costs shall be the following:

- (a) costs of adapting premises;
- (b) costs of employing staff for time spent solely on the assistance of the disabled workers;
- (c) costs of adapting or acquiring equipment, or acquiring and validating software for use by disabled workers, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred if employing workers who are not disabled;
- (d) where the beneficiary provides sheltered employment, the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport which result directly from the employment of disabled workers.

#### CHAPTER III

#### FINAL PROVISIONS

##### Article 43

##### Repeal

Regulation (EC) No 1628/2006 shall be repealed.

Any references to the repealed Regulation and to Regulation (EC) No 68/2001, Regulation (EC) No 70/2001 and Regulation (EC) No 2204/2002 shall be construed as references to this Regulation.

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

Done at Brussels, 6 August 2008.

##### Article 44

##### Transitional provisions

1. This Regulation shall apply to individual aid granted before its entry into force, if the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 9.

2. Any aid granted before 31 December 2008, which does not fulfil the conditions laid down in this Regulation but fulfils the conditions laid down in Regulation (EC) No 68/2001, Regulation (EC) No 70/2001, Regulation (EC) No 2204/2002 or Regulation (EC) No 1628/2006 shall be compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty.

Any other aid granted before the entry into force of this Regulation, which fulfils neither the conditions laid down in this Regulation nor the conditions laid down in one of the Regulations referred to in the first subparagraph, shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

3. At the end of the period of validity of this Regulation, any aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months, with the exception of regional aid schemes. The exemption of regional aid schemes shall expire at the date of expiry of the approved regional aid maps.

##### Article 45

##### Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2013.

For the Commission

Neelie KROES

Member of the Commission

## ANNEX I

**Definition of SME***Article 1***Enterprise**

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

*Article 2***Staff headcount and financial thresholds determining enterprise categories**

1. The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

*Article 3***Types of enterprise taken into consideration in calculating staff numbers and financial amounts**

1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

- (a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;
  - (b) universities or non-profit research centres;
  - (c) institutional investors, including regional development funds;
  - (d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.
3. 'Linked enterprises' are enterprises which have any of the following relationships with each other:
    - (a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
    - (b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
    - (c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
    - (d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the thresholds set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Community rules.

#### Article 4

##### **Data used for the staff headcount and the financial amounts and reference period**

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.

2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive accounting periods.

3. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

#### Article 5

##### **Staff headcount**

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

- (a) employees;
- (b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
- (c) owner-managers;
- (d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

*Article 6***Establishing the data of an enterprise**

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph are added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

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## ANNEX II

**Form for the provision of summary information for research and development aid under the extended reporting obligation laid down in Article 9(4)**

1. Aid in favour of (name of the undertaking(s) receiving the aid, SME or not):
2. Aid scheme reference (Commission reference of the existing scheme or schemes under which the aid is awarded):
3. Public entity/entities providing the assistance (name and co-ordinates of the granting authority or authorities):
4. Member State where the aided project or measure is carried out:
5. Type of project or measure:
6. Short description of project or measure:
7. Where applicable, eligible costs (in EUR):
8. Discounted aid amount (gross) in EUR:
9. Aid intensity (% in gross grant equivalent):
10. Conditions attached to the payment of the proposed aid (if any):
11. Planned start and end date of the project or measure:
12. Date of award of the aid:

**Form for the provision of summary information for aid for large investment projects under the extended reporting obligation laid down in Article 9(4)**

1. Aid in favour of (name of the undertaking(s) receiving the aid).
2. Aid scheme reference (Commission reference of the existing scheme or schemes under which the aid is awarded).
3. Public entity/entities providing the assistance (name and co-ordinates of the granting authority or authorities).
4. Member State where the investment takes place.
5. Region (NUTS 3 level) where the investment takes place.
6. Municipality (previously NUTS 5 level, now LAU 2) where the investment takes place.
7. Type of project (setting-up of a new establishment, extension of 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).
8. Products manufactured or services provided on the basis of the investment project (with PRODCOM/NACE nomenclature or CPA nomenclature for projects in the service sectors).

9. Short description of investment project.
  10. Discounted eligible cost of investment project (in EUR).
  11. Discounted aid amount (gross) in EUR.
  12. Aid intensity (% in GGE).
  13. Conditions attached to the payment of the proposed assistance (if any).
  14. Planned start and end date of the project.
  15. Date of award of the aid.
-



## ANNEX III

**Form for the provision of summary information under the reporting obligation laid down in Article 9(1)**

Please fill in the information required below:

## PART I

Aid reference	<i>(to be completed by the Commission)</i>	
Member State		
Member State reference number		
Region	Name of the Region (NUTS) <sup>(1)</sup>	Regional aid status <sup>(2)</sup>
Granting authority	Name	
	Address	
	Webpage	
Title of the aid measure		
National legal basis (Reference to the relevant national official publication)		
Web link to the full text of the aid measure		
Type of measure	Scheme	
	Ad hoc aid	Name of the Beneficiary
Amendment of an existing aid measure		Commission aid number
	Prolongation	
	Modification	
Duration <sup>(3)</sup>	Scheme	dd/mm/yy to dd/mm/yy
Date of granting <sup>(4)</sup>	Ad hoc aid	dd/mm/yy
Economic sector(s) concerned	All economic sectors eligible to receive aid	
	Limited to specific sectors — Please specify in accordance with NACE Rev. 2. <sup>(5)</sup>	
Type of beneficiary	SME	
	Large enterprises	

Budget	Annual overall amount of the budget planned under the scheme <sup>(6)</sup>	National currency ... (in millions)	
	Overall amount of the ad hoc aid awarded to the undertaking <sup>(7)</sup>	National currency ... (in millions)	
	For guarantees <sup>(8)</sup>	National currency ... (in millions)	
Aid instrument (Art. 5)	Grant		
	Interest rate subsidy		
	Loan		
	Guarantee/Reference to the Commission decision <sup>(9)</sup>		
	Fiscal measure		
	Risk capital		
	Repayable advances		
	Other (please specify)		
If co-financed by Community funds	Reference(s):	Amount of Community funding	National currency ... (in millions)

<sup>(1)</sup> NUTS — Nomenclature of Territorial Units for Statistics.

<sup>(2)</sup> Article 87(3)(a) of the Treaty, Article 87(3)(c) of the Treaty, mixed areas, areas not eligible for regional aid.

<sup>(3)</sup> Period during which the granting authority can commit itself to grant the aid.

<sup>(4)</sup> Aid is to be considered to be granted at the moment the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.

<sup>(5)</sup> NACE Rev.2 — Statistical classification of Economic Activities in the European Community.

<sup>(6)</sup> In case of an aid scheme: Indicate the annual overall amount of the budget planned under the scheme or the estimated tax loss per year for all aid instruments contained in the scheme.

<sup>(7)</sup> In case of an ad hoc aid award: Indicate the overall aid amount/tax loss.

<sup>(8)</sup> For guarantees, indicate the (maximum) amount of loans guaranteed.

<sup>(9)</sup> Where appropriate, reference to the Commission decision approving the methodology to calculate the gross grant equivalent, in line with Article 5(1)(c) of the Regulation.

## PART II

Please indicate under which provision of the GBER the aid measure is implemented.

General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum aid amount in national currency	SME — bonuses in %
Regional investment and employment aid <sup>(1)</sup> (Art. 13)	Scheme	... %	
	Ad hoc aid (Art. 13(1))	... %	
Aid for newly created small enterprises (Art. 14)		... %	
SME investment and employment aid (Art. 15)		... %	
Aid for small enterprises newly created by female entrepreneurs (Art. 16)		... %	
Aid for Environmental protection (Art. 17–25)	Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards (Art. 18)  Please provide a specific reference to the relevant standard	... %	
	Aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards (Art. 19)	... %	
	Aid for early adaptation to future Community standards for SMEs (Art. 20)	... %	
	Environmental investment aid for energy saving measures (Art. 21)	... %	
	Environmental investment aid for high efficiency cogeneration (Art. 22)	... %	
	Environmental investment aid for the promotion of energy from renewable energy sources (Art. 23)	... %	
	Aid for environmental studies (Art. 24)	... %	
	Aid in the form of reductions in en- vironmental taxes (Art. 25)	... national currency	

General Objectives (list)	Objectives (list)		Maximum aid intensity in % or Maximum aid amount in national currency	SME — bonuses in %
Aid for consultancy in favour of SMEs and SME participation in fairs (Art. 26–27)	Aid for consultancy in favour of SMEs (Art. 26)		... %	
	Aid for SME participation in fairs (Art. 27)		... %	
Aid in the form of risk capital (Art. 28–29)			... national currency	
Aid for research, deve- lopment and innovation (Art. 30–37)	Aid for research and deve- lopment projects (Art. 31)	Fundamental research (Art. 31(2)(a))	... %	
		Industrial research (Art. 31(2)(b))	... %	
		Experimental develop- ment (Art. 31(2)(c))	... %	
	Aid for technical feasibility studies (Art. 32)		... %	
	Aid for industrial property rights costs for SMEs (Art. 33)		... %	
	Aid for research and development in the agricultural and fisheries sectors (Art. 34)		... %	
	Aid to young innovative enterprises (Art. 35)		... national currency	
	Aid for innovation advisory services and for innovation support services (Art. 36)		... national currency	
	Aid for the loan of highly qualified personnel (Art. 37)		... national currency	
Training aid (Art. 38–39)	Specific training (Art. 38(1))		... %	
	General training (Art. 38(2))		... %	

General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum aid amount in national currency	SME — bonuses in %
Aid for disadvantaged and disabled workers (Art. 40–42)	Aid for the recruitment of disadvan- taged workers in the form of wage subsidies (Art. 40)	... %	
	Aid for the employment of disabled workers in the form of wage subsidies (Art. 41)	... %	
	Aid for compensating the additional costs of employing disabled workers (Art. 42)	... %	

(<sup>1</sup>) In the case of ad hoc regional aid supplementing aid awarded under aid scheme(s), please indicate both the aid intensity granted under the scheme and the intensity of the ad hoc aid.

# COMMISSION

## COMMISSION RECOMMENDATION

of 6 May 2003

**concerning the definition of micro, small and medium-sized enterprises**

(notified under document number C(2003) 1422)

(Text with EEA relevance)

(2003/361/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211, second indent, thereof,

Whereas:

economic developments, pursuant to Article 2 of the Annex thereto, consideration must be given to a number of difficulties of interpretation which have emerged in its application, as well as the observations received from enterprises. In view of the number of amendments now requiring to be made to Recommendation 96/280/EC, and for the sake of clarity, it is appropriate to replace the Recommendation.

- (1) In a report submitted to the Council in 1992 at the request of the 'Industry' Council held on 28 May 1990, the Commission had proposed limiting the proliferation of definitions of small and medium-sized enterprises in use at Community level. Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises<sup>(1)</sup> was based on the idea that the existence of different definitions at Community level and at national level could create inconsistencies. Following the logic of a single market without internal frontiers, the treatment of enterprises should be based on a set of common rules. The pursuit of such an approach is all the more necessary in view of the extensive interaction between national and Community measures assisting micro, small and medium-sized enterprises (SME), for example in connection with Structural Funds or research. It means that situations in which the Community focuses its action on a given category of SMEs and the Member States on another must be avoided. In addition, it was considered that the application of the same definition by the Commission, the Member States, the European Investment Bank (EIB) and the European Investment Fund (EIF) would improve the consistency and effectiveness of policies targeting SMEs and would, therefore, limit the risk of distortion of competition.
- (2) Recommendation 96/280/EC has been applied widely by the Member States, and the definition contained in the Annex thereto has been taken over in 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<sup>(2)</sup>. Apart from the need to adapt Recommendation 96/280/EC to
- (3) It should also be made clear that, in accordance with Articles 48, 81 and 82 of the Treaty, as interpreted by the Court of Justice of the European Communities, an enterprise should be considered to be any entity, regardless of its legal form, engaged in economic activities, including in particular entities engaged in a craft activity and other activities on an individual or family basis, partnerships or associations regularly engaged in economic activities.
- (4) The criterion of staff numbers (the 'staff headcount criterion') remains undoubtedly one of the most important, and must be observed as the main criterion; introducing a financial criterion is nonetheless a necessary adjunct in order to grasp the real scale and performance of an enterprise and its position compared to its competitors. However, it would not be desirable to use turnover as the sole financial criterion, in particular because enterprises in the trade and distribution sector have by their nature higher turnover figures than those in the manufacturing sector. Thus the turnover criterion should be combined with that of the balance sheet total, a criterion which reflects the overall wealth of a business, with the possibility of either of these two criteria being exceeded.
- (5) The turnover ceiling refers to enterprises engaged in very different types of economic activity. In order not to restrict unduly the usefulness of applying the definition, it should be updated to take account of changes in both prices and productivity.

<sup>(1)</sup> OJ L 107, 30.4.1996, p. 4.

<sup>(2)</sup> OJ L 10, 13.1.2001, p. 33.



- (6) As regards the ceiling for the balance sheet total, in the absence of any new element, it is justified to maintain the approach whereby the turnover ceilings are subjected to a coefficient based on the statistical ratio between the two variables. The statistical trend requires a greater increase to be made to the turnover ceiling. Since the trend differs according to the size-category of the enterprise, it is also appropriate to adjust the coefficient in order to reflect the economic trend as closely as possible and not to penalise microenterprises and small enterprises as opposed to medium-sized enterprises. This coefficient is very close to 1 in the case of microenterprises and small enterprises. To simplify matters, therefore, a single value must be chosen for those categories for the turnover ceiling and balance sheet total ceiling.
- (7) As in Recommendation 96/280/EC, the financial ceilings and the staff ceilings represent maximum limits and the Member States, the EIB and the EIF may fix ceilings lower than the Community ceilings if they wish to direct their measures towards a specific category of SME. In the interests of administrative simplification, the Member States, the EIB and the EIF may use only one criterion — the staff headcount — for the implementation of some of their policies. However, this does not apply to the various rules in competition law where the financial criteria must also be used and adhered to.
- (8) Following the endorsement of the European Charter for Small Enterprises by the European Council of Santa Maria da Feira in June 2000, microenterprises — a category of small enterprises particularly important for the development of entrepreneurship and job creation — should also be better defined.
- (9) To gain a better understanding of the real economic position of SMEs and to remove from that category groups of enterprises whose economic power may exceed that of genuine SMEs, a distinction should be made between various types of enterprises, depending on whether they are autonomous, whether they have holdings which do not entail a controlling position (partner enterprises), or whether they are linked to other enterprises. The current limit shown in Recommendation 96/280/EC, of a 25 % holding below which an enterprise is considered autonomous, is maintained.
- (10) In order to encourage the creation of enterprises, equity financing of SMEs and rural and local development, enterprises can be considered autonomous despite a holding of 25 % or more by certain categories of investors who have a positive role in business financing and creation. However, conditions for these investors have not previously been specified. The case of 'business angels' (individuals or groups of individuals pursuing a regular business of investing venture capital) deserves special mention because — compared to other venture capital investors — their ability to give relevant advice to new entrepreneurs is extremely valuable. Their investment in equity capital also complements the activity of venture capital companies, as they provide smaller amounts at an earlier stage of the enterprise's life.
- (11) To simplify matters, in particular for Member States and enterprises, use should be made when defining linked enterprises of the conditions laid down in Article 1 of Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts <sup>(1)</sup>, as last amended by Directive 2001/65/EC of the European Parliament and of the Council <sup>(2)</sup>, in so far as these conditions are suitable for the purposes of this Recommendation. To strengthen the incentives for investing in the equity funding of an SME, the presumption of absence of dominant influence on the enterprise in question was introduced, in pursuance of the criteria of Article 5(3), of Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies <sup>(3)</sup>, as last amended by Directive 2001/65/EC.
- (12) Account should also be taken, in suitable cases, of relations between enterprises which pass through natural persons, with a view to ensuring that only those enterprises which really need the advantages accruing to SMEs from the different rules or measures in their favour actually benefit from them. In order to limit the examination of these situations to the strict minimum, the account taken of such relationships has been restricted to the relevant market or to adjacent markets — reference being had, where necessary, to the Commission's definition of 'relevant markets' in the Commission notice on the definition of relevant market for the purposes of Community competition law <sup>(4)</sup>.
- (13) In order to avoid arbitrary distinctions between different public bodies of a Member State, and given the need for legal certainty, it is considered necessary to confirm that an enterprise with 25 % or more of its capital or voting rights controlled by a public body is not an SME.
- (14) In order to ease the administrative burden for enterprises, and to simplify and speed up the administrative handling of cases for which SME status is required, it is appropriate to allow enterprises to use solemn declarations to certify certain of their characteristics.

<sup>(1)</sup> OJ L 193, 18.7.1983, p. 1.

<sup>(2)</sup> OJ L 283, 27.10.2001, p. 28.

<sup>(3)</sup> OJ L 222, 14.8.1978, p. 11.

<sup>(4)</sup> OJ C 372, 9.12.1997, p. 5.

- (15) It is necessary to establish in detail the composition of the staff headcount for SME definition purposes. In order to promote the development of vocational training and sandwich courses, it is desirable, when calculating staff numbers, to disregard apprentices and students with a vocational training contract. Similarly, maternity or parental leave periods should not be counted.
- (16) The various types of enterprise defined according to their relationship with other enterprises correspond to objectively differing degrees of integration. It is therefore appropriate to apply distinct procedures to each of those types of enterprise when calculating the quantities representing their activities and economic power,

HEREBY RECOMMENDS:

*Article 1*

1. This Recommendation concerns the definition of micro, small and medium-sized enterprises used in Community policies applied within the Community and the European Economic Area.
2. Member States, the European Investment Bank (EIB) and the European Investment Fund (EIF), are invited:
  - (a) to comply with Title I of the Annex for their programmes directed towards medium-sized enterprises, small enterprises or microenterprises;
  - (b) to take the necessary steps with a view to using the size classes set out in Article 7 of the Annex, especially where the monitoring of their use of Community financial instruments is concerned.

*Article 2*

The ceilings shown in Article 2 of the Annex are to be regarded as maximum values. Member States, the EIB and the EIF may fix lower ceilings. In implementing certain of their policies, they may also choose to apply only the criterion of number of employees, except in fields governed by the various rules on State aid.

*Article 3*

This Recommendation will replace Recommendation 96/280/EC as from 1 January 2005.

*Article 4*

This Recommendation is addressed to the Member States, the EIB and the EIF.

They are requested to inform the Commission by 31 December 2004 of any measures they have taken further to it and, no later than 30 September 2005, to inform it of the first results of its implementation.

Done at Brussels, 6 May 2003.

*For the Commission*

Erkki LIIKANEN

*Member of the Commission*

## ANNEX

## TITLE I

**DEFINITION OF MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES ADOPTED BY THE COMMISSION***Article 1***Enterprise**

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

*Article 2***Staff headcount and financial ceilings determining enterprise categories**

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

*Article 3***Types of enterprise taken into consideration in calculating staff numbers and financial amounts**

1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

- (a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses ('business angels'), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;
  - (b) universities or non-profit research centres;
  - (c) institutional investors, including regional development funds;
  - (d) autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants.
3. 'Linked enterprises' are enterprises which have any of the following relationships with each other:
    - (a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
    - (b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
    - (c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
    - (d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as stakeholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the ceilings set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Community rules.

#### *Article 4*

##### **Data used for the staff headcount and the financial amounts and reference period**

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.

2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial ceilings stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or microenterprise unless those ceilings are exceeded over two consecutive accounting periods.

3. In the case of newly established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

#### *Article 5*

##### **Staff headcount**

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

- (a) employees;
- (b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
- (c) owner-managers;
- (d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

#### *Article 6*

##### **Establishing the data of an enterprise**

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph is added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these is added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these is added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

## TITLE II

### SUNDRY PROVISIONS

#### *Article 7*

##### **Statistics**

The Commission will take the necessary measures to present the statistics that it produces in accordance with the following size-classes of enterprises:

- (a) 0 to 1 person;
- (b) 2 to 9 persons;
- (c) 10 to 49 persons;
- (d) 50 to 249 persons.

#### *Article 8*

##### **References**

1. Any Community legislation or any Community programme to be amended or adopted and in which the term 'SME', 'microenterprise', 'small enterprise' or 'medium-sized enterprise', or any other similar term occurs, should refer to the definition contained in this Recommendation.

2. As a transitional measure, current Community programmes using the SME definition in Recommendation 96/280/EC will continue to be implemented for the benefit of the enterprises which were considered SMEs when those programmes were adopted. Legally binding commitments entered into by the Commission on the basis of such programmes will remain unaffected.

Without prejudice to the first subparagraph, any amendment of the SME definition within the programmes can be made only by adopting the definition contained in this Recommendation in accordance with paragraph 1.

#### *Article 9*

##### **Revision**

On the basis of a review of the application of the definition contained in this Recommendation, to be drawn up by 31 March 2006, and taking account of any amendments to Article 1 of Directive 83/349/EEC on the definition of linked enterprises within the meaning of that Directive, the Commission will, if necessary, adapt the definition contained in this Recommendation, and in particular the ceilings for turnover and the balance-sheet total in order to take account of experience and economic developments in the Community.

### Commission communication

#### Model declaration on the information relating to the qualification of an enterprise as an SME

(2003/C 118/03)

This Communication aims to promote the application of Commission Recommendation 2003/361/EC <sup>(1)</sup> on the definition of SMEs, which replaces Recommendation 96/280/EC of 3 April 1996.

There are some 20 million micro, small and medium-sized enterprises in the European Economic Area. They are a major source of jobs and a challenge for competitiveness. Their ability to identify new needs of both end-consumers and industrial operators, their potential for absorbing new technologies, and their contribution to apprenticeship, vocational training and local development, govern future advances in productivity of the entire European Union and its ability to achieve the objectives set at the Lisbon European Council. The responsibility of local, national and Community administrations in devising enterprise policies which take account of the specific needs and skills of these categories of enterprise is thus a question of major importance.

Promoting the development of such policies is the main objective of the new Commission Recommendation on the definition of SMEs. A more precise definition will ensure greater legal certainty. More suited to the various subcategories of SME, and taking account of the various types of relations between enterprises, it will promote investment and innovation in SMEs and foster partnerships between enterprises. These advantages should be acquired while preventing enterprises which do not have the economic characteristics or face the problems of genuine SMEs from benefiting unduly from measures targeted at SMEs.

This Recommendation has been the subject of extremely wide-ranging discussions with business organisations, with the Member States and individual business experts within the Enterprise Policy Group <sup>(2)</sup>. The preliminary draft was in addition the subject of two open consultations on the Internet. After work lasting for more than one year, there was almost complete consensus despite the diversity of the objectives pursued.

All those who contributed to the revision felt that it is important that the increased legal certainty and improved recognition of the economic reality, should be accompanied by an effort by administrations to simplify and speed up the administrative handling of cases requiring qualification as a micro, small or medium-sized enterprise. To this end, offering enterprises the possibility to complete themselves a concise declaration was considered a modern and convenient method. This declaration could, if necessary, be completed on-line and could also function as a practical 'users' manual' for enterprises.

The document attached to this Communication is a model for such a declaration. It is in no way mandatory as regards its use or content, either for enterprises or for the administrations of the Member States, but is designed as one possible example amongst others. Such declarations are without prejudice to the checks or investigations provided for under national or Community rules.

If those Member States using the definition of SMEs wish to speed up the processing of administrative files, it would of course be desirable for this declaration not to increase the overall administrative burden on enterprises, but to replace whenever possible other requests for information previously required. Also it could be preferably incorporated into the files relating to applications to take part in measures for which SME qualification is required.

<sup>(1)</sup> OJ L 124, 20.5.2003, p. ...

<sup>(2)</sup> Commission Decision 2000/690/EC of 8 November 2000 setting up an Enterprise Policy Group (OJ L 285, 10.11.2000, p. 24).



To this end, the model can be used in the form proposed in the annex. It can also be completed, simplified or adapted to take account of customary national administrative usage. In order to maximise the simplification effect, it would of course be desirable that the same model declaration established by a Member State be used for all administrative purposes in that Member State for which the SME qualification is required.

As the aim of the Recommendation is to provide a common reference framework for the definition of SMEs, it would of course be counter-productive if the use of such a model declaration were to lead to diverging interpretations of that definition. Attention is therefore drawn to the fact that any other model declaration serving the same purpose must take account of all the provisions of the text of the Recommendation in order to determine the qualification of the applicant enterprise as a micro, small or medium-sized enterprise within this Recommendation's meaning. It is the text of the Recommendation, and not that of the declaration, which sets out the conditions for the SME qualification.

In this regard, it must be stressed that the model declaration proposed refers to the Seventh Council Directive 83/349/EEC concerning consolidated accounts. Enterprises meeting one or other of the conditions set out in Article 1 of that Directive are in fact linked within the meaning of Article 3(3) of the definition of SMEs, having regard to the nature of those conditions. It is therefore convenient for enterprises which are obliged to draw up consolidated accounts, pursuant to that Council Directive, to know automatically that they are also linked within the meaning of the definition of SMEs. In the event of a subsequent amendment to that Directive leading to a divergence between the two definitions, the model declaration would, however, have to be adapted to take account of that.

In view of the timetable for the entry into force of any such possible amendment, that adaptation could probably take place simultaneously with any possible future amendment to the Recommendation on the definition of SMEs, pursuant to Article 9 of its annex.

## MODEL DECLARATION

## INFORMATION ON THE SME QUALIFICATION

**Precise identification of the applicant enterprise**

Name or business name: .....

Address (of registered office): .....

Registration/VAT number <sup>(1)</sup>: .....Names and titles of the principal director(s) <sup>(2)</sup>: .....**Type of enterprise** (see explanatory note)

Tick to indicate which case(s) applies to the applicant enterprise:

☐ Autonomous enterprise      In this case the data filled in the box below result from the accounts of the applicant enterprise only. Fill in the declaration only, without annex.

☐ Partner enterprise      Fill in and attach the annex (and any additional sheets), then complete the declaration by copying the results of the calculations into the box below.

☐ Linked enterprise

**Data used to determine the category of enterprise**

Calculated according to Article 6 of the Annex to the Commission Recommendation C 2003/361/EC on the SME definition.

Reference period <sup>(\*)</sup>:

Headcount (AWU)	Annual turnover <sup>(**)</sup>	Balance sheet total <sup>(**)</sup>

<sup>(\*)</sup> All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year.

<sup>(\*\*)</sup> EUR 1 000 .

**Important:** Compared to the previous accounting period there is a change regarding the data, which could result in a change of category of the applicant enterprise (micro, small, medium-sized or big enterprise).

☐ No

☐ Yes (in this case fill in and attach a declaration regarding the previous accounting period <sup>(3)</sup>).

**Signature**

Name and position of the signatory, being authorised to represent the enterprise: .....

.....

I declare on my honour the accuracy of this declaration and of any annexes thereto.

Done at .....

Signature:

<sup>(1)</sup> To be determined by the Member State according to its needs.

<sup>(2)</sup> Chairman (CEO), Director-General or equivalent.

<sup>(3)</sup> Definition, Article 4(2) of the annex to Commission Recommendation 2003/361/EC.

## EXPLANATORY NOTE

## ON THE TYPES OF ENTERPRISES TAKEN INTO ACCOUNT FOR CALCULATING THE HEADCOUNT AND THE FINANCIAL AMOUNTS

## I. TYPES OF ENTERPRISES

The definition of an SME <sup>(1)</sup> distinguishes three types of enterprise, according to their relationship with other enterprises in terms of holdings of capital or voting rights or the right to exercise a dominant influence <sup>(2)</sup>.

**Type 1: Autonomous Enterprise**

This is by far the most common type of enterprise. It applies to all enterprises which are not one of the two other types of enterprise (partner or linked).

*An applicant enterprise is autonomous if it:*

- does not have a holding of 25 % <sup>(3)</sup> or more in any other enterprise,
- and is not 25 % <sup>(3)</sup> or more owned by any enterprise or public body or jointly by several linked enterprises or public bodies, apart from some exceptions <sup>(4)</sup>,
- and does not draw up consolidated accounts and is not included in the accounts of an enterprise which draws up consolidated accounts and is thus not a linked enterprise <sup>(5)</sup>.

**Type 2: Partner Enterprise**

This type represents the situation of enterprises which establish major financial partnerships with other enterprises, without the one exercising effective direct or indirect control over the other. Partners are enterprises which are not autonomous but which are not linked to one another.

*The applicant enterprise is a partner of another enterprise if:*

- it has a holding of more than 25 % <sup>(3)</sup> but less than 50 % <sup>(3)</sup> in the other enterprise,
- or the other enterprise has a holding of more than 25 % <sup>(3)</sup> but less than 50 % <sup>(3)</sup> in the applicant enterprise,
- and the applicant enterprise does not draw up consolidated accounts which include the other enterprise by consolidation, and is not included by consolidation in the accounts of the other enterprise or of an enterprise linked to it <sup>(5)</sup>.

**Type 3: Linked Enterprise**

This type corresponds to the economic situation of enterprises which form a group through the direct or indirect control of the majority of the capital or voting rights (including through agreements or, in certain cases, through natural persons as shareholders), or through the ability to exercise a dominant influence on an enterprise. Such cases are thus less frequent than the two preceding types.

In order to avoid difficulties of interpretation for enterprises, the Commission has defined this type of enterprise by taking over — wherever they are suitable for the purposes of the Definition — the conditions set out in Article 1 of Council Directive 83/349/EEC on consolidated accounts <sup>(6)</sup>, which has been applied for many years.

An enterprise thus generally knows immediately that it is linked, since it is already required under that Directive to draw up consolidated accounts or is included by consolidation in the accounts of an enterprise which is required to draw up such consolidated accounts.

The only two cases, which are however not very frequent, in which an enterprise can be considered linked although it is not already required to draw up consolidated accounts, are described in the first two indents of endnote 5 of this explanatory note. In those cases, the enterprise should check whether it meets one or other of the conditions set out in Article 3(3) of the Definition.

## II. THE HEADCOUNT AND THE ANNUAL WORK UNITS <sup>(7)</sup>

The headcount of an enterprise corresponds to the number of annual work units (AWU).

### Who is included in the headcount?

- The employees of the applicant enterprise,
- persons working for the enterprise being subordinate to it and considered to be employees under national law,
- owner-managers,
- partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not taken into account in the headcount.

### How is the headcount calculated?

One AWU corresponds to one person who worked full-time in the enterprise in question or on its behalf during the entire reference year. The headcount is expressed in AWUs.

The work of persons, who did not work the entire year, or who worked part-time — regardless of its duration — and seasonal work is counted as fractions of AWU.

The duration of maternity or parental leaves is not counted.

<sup>(1)</sup> Henceforth in the text, the term 'Definition' refers to the Annex to Commission Recommendation 2003/361/EC on the definition of SMEs.

<sup>(2)</sup> Definition, Article 3.

<sup>(3)</sup> In terms of the share of the capital or voting rights, whichever is higher is applied. To this percentage should be added the holding in that same enterprise of each enterprise, which is linked to the holding company (Definition, Article 3(2)).

<sup>(4)</sup> An enterprise may continue being considered as autonomous when this 25 % threshold is reached or exceeded, if that percentage is held by the following categories of investors (provided that those are not linked with the applicant enterprise):

- a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses ('business angels'), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;
- b) universities or non-profit research centres;
- c) institutional investors, including regional development funds. (Definition, Article 3(2), second subparagraph).

<sup>(5)</sup> — If the registered office of the enterprise is situated in a Member State which has provided for an exception to the requirement to draw up such accounts pursuant to the Seventh Council Directive 83/349/EEC of 13 June 1983, the enterprise should nevertheless check specifically whether it does not meet one or other of the conditions laid down in Article 3(3) of the Definition.

- There are also some very rare cases in which an enterprise may be considered linked to another enterprise through a person or a group of natural persons acting jointly (Definition, Article 3(3)).
- Conversely, there are very few cases of enterprises drawing up consolidated accounts voluntarily, without being required to do so under the Seventh Directive. In that case, the enterprise is not necessarily linked and can consider itself only a partner.

To determine whether the enterprise is linked or not, in each of the three situations it should be checked whether or not the enterprise meets one or other of the conditions laid down in Article 3(3) of the Definition, where applicable through a natural person or group of natural persons acting jointly.

<sup>(6)</sup> Seventh Council Directive 83/349/EEC of 13 June 1983, based on Article 54(3)(g) of the Treaty and concerning consolidated accounts (OJ L 193, 18.7.1983, p. 1), as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

<sup>(7)</sup> Definition, Article 5.

## ANNEX TO THE DECLARATION

## CALCULATION FOR THE PARTNER OR LINKED TYPE OF ENTERPRISE

**Annexes to be enclosed if necessary**

- Annex A if the applicant enterprise has at least one partner enterprise (and any additional sheets)
- Annex B if the applicant enterprise has at least one linked enterprise (and any additional sheets)

**Calculation for the partner or linked type of enterprise <sup>(1)</sup> (see explanatory note)**Reference period <sup>(2)</sup>:

	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
1. Data <sup>(2)</sup> of the applicant enterprise or consolidated accounts (copy data from box B(1) in annex B <sup>(3)</sup> )			
2. Proportionally aggregated data <sup>(2)</sup> of all partner enterprises (if any) (copy data from box A in annex A)			
3. Added up data <sup>(2)</sup> of all linked enterprises (if any) — if not included by consolidation in line 1 (copy data from box B(2) in annex B)			
Total			

(\*) EUR 1 000.

<sup>(1)</sup> Definition, Article 6(2) and (3).<sup>(2)</sup> All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year (Definition, Article 4).<sup>(3)</sup> The data of the enterprise, including the headcount, are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

The data entered in the 'Total' srow of the above table should be entered in the box 'Data used to determine the category of enterprise' in the declaration.

## ANNEX A

**Partner enterprises**

For each enterprise for which a 'partnership sheet' has been completed (one sheet for each partner enterprise of the applicant enterprise and for any partner enterprises of any linked enterprise, of which the data is not yet included in the consolidated accounts of that linked enterprise <sup>(1)</sup>), the data in the 'partnership box' in question should be entered in the summary table below:

**Box A**

Partner enterprise (name/identification)	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
Total			

(\*) EUR 1 000.

(attach sheets or expand the present table, if necessary)

**Reminder:** This data is the result of a proportional calculation done on the 'partnership sheet', for each direct or indirect partner enterprise.

The data entered in the 'Total' row of the above table should be entered in line 2 (regarding partner enterprises) of the table in the Annex to the declaration.

<sup>(1)</sup> If the data of an enterprise are included in the consolidated accounts to a lesser proportion than the one determined under Article 6(2), the percentage rate according to that article should be applied (Definition, Article 6(3), second subparagraph).

## PARTNERSHIP SHEET

**1. Precise identification of the partner enterprise**

Name or business name: .....

Address (of registered office):.....

Registration/VAT number <sup>(1)</sup>: .....Names and titles of the principal director(s) <sup>(2)</sup>: .....**2. Raw data regarding that partner enterprise**

Reference period:

	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
Raw data			

(\*) EUR 1 000.

**Reminder:** These raw data are derived from the accounts and other data of the partner enterprise, consolidated if they exist. To them are added 100 % of the data of enterprises which are linked to this partner enterprise, unless the accounts data of those linked enterprises are already included through consolidation in the accounts of the partner enterprise <sup>(3)</sup>. If necessary, add 'linkage sheets' for the enterprises which are not yet included through consolidation.

**3. Proportional calculation**

- a) Indicate precisely the holding <sup>(4)</sup> of the enterprise drawing up the declaration (or of the linked enterprise via which the relation to the partner enterprise is established) in the partner enterprise to which this sheet relates:

.....  
 .....

Indicate also the holding of the partner enterprise to which this sheet relates in the enterprise drawing up the declaration (or in the linked enterprise):

.....  
 .....

- b) The higher of these two holding percentages should be applied to the raw data entered in the previous box. The results of this proportional calculation should be given in the following table:

**'Partnership box'**

Percentage: . . .	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
Proportional results			

(\*) EUR 1 000.

These data should be entered in Box A in Annex A.

<sup>(1)</sup> To be determined by the Member State according to its needs.

<sup>(2)</sup> Chairman (CEO), Director-General or equivalent.

<sup>(3)</sup> Definition, Article 6(3), first sub-paragraph.

<sup>(4)</sup> In terms of the share of the capital or voting rights, whichever is higher. To this holding should be added the holding of each linked enterprise in the same enterprise (Definition, Article 3(2) first subparagraph).



## ANNEX B

**Linked enterprises****A) Determine the case applicable to the applicant enterprise:**

- ☐ **Case 1:** The applicant enterprise draws up consolidated accounts or is included by consolidation in the consolidated accounts of another enterprise. (Box B(1))
- ☐ **Case 2:** The applicant enterprise or one or more of the linked enterprises do not establish consolidated accounts or are not included in the consolidated accounts. (Box B(2)).

**Please note:** The data of the enterprises, which are linked to the applicant enterprise, are derived from their accounts and their other data, consolidated if they exist. To them are aggregated proportionally the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included through consolidation <sup>(1)</sup>.

**B. Calculation methods for each case:**

**In case 1:** The consolidated accounts serve as the basis for the calculation. Fill in box B(1) below.

**Box B(1)**

	Headcount (AWU) (*)	Annual turnover (**)	Balance sheet total (**)
Total			

(\*) Where in the consolidated accounts no headcount data appears, the calculation of it is done by adding the data from the enterprises to which the enterprise in question is linked.

(\*\*) EUR 1 000.

The data entered in the 'Total' row of the above table should be entered in line 1 of the table in the Annex to the declaration.

## Identification of the enterprises included through consolidation

Linked enterprise (name/identification)	Address (of registered office)	Registration/ VAT number (*)	Names and titles of the principal director(s) (**)
A.			
B.			
C.			
D.			
E.			

(\*) To be determined by the Member State according to its needs.

(\*\*) Chairman ((CEO)), Director-General or equivalent.

**Important:** Partner enterprises of such a linked enterprise, which are not yet included through consolidation, are treated like direct partners of the applicant enterprise. Their data and a 'partnership sheet' should therefore be added in Annex A.

**In case 2:** For each linked enterprise (including links via other linked enterprises), complete a 'linkage sheet' and simply add together the accounts of all the linked enterprises by filling in Box B(2) below.

<sup>(1)</sup> Definition, Article 6(3), second subparagraph.

**Box B(2)**

Enterprise No.:	Headcount (AWU)	Annual turnover (**)	Balance sheet total (**)
1. (*)			
2. (*)			
3. (*)			
4. (*)			
5. (*)			
Total			

(\*) attach one 'linkage sheet' per enterprise.

(\*\*) EUR 1 000.

The data entered in the 'Total' row of the above table should be entered in line 3 (regarding linked enterprises) of the table in the Annex to the declaration.

## LINKAGE SHEET

(only for linked enterprises not included by consolidation in Box B)

**1. Precise identification of the enterprise**

Name or business name: .....

Address (of registered office): .....

Registration/VAT number <sup>(1)</sup>: .....Names and titles of the principal director(s) <sup>(2)</sup>: .....**2. Data on the enterprise**

Reference period:

	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
Total			

(\*) EUR 1 000

These data should be entered in Box B(2) in Annex B.

**Important:** The data of the enterprises, which are linked to the applicant enterprise, are derived from their accounts and their other data, consolidated if they exist. To them are aggregated proportionally the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included through consolidation <sup>(3)</sup>.

Such partner enterprises are treated like direct partner enterprises of the applicant enterprise. Their data and a 'partnership sheet' have therefore to be added in Annex A.

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<sup>(1)</sup> To be determined by the Member State according to its needs.

<sup>(2)</sup> Chairman (CEO), Director-General or equivalent.

<sup>(3)</sup> If the data of an enterprise are included in the consolidated accounts to a lesser proportion than the one determined under Article 6 (2), the percentage rate according to that article should be applied (Definition, Article 6 (3), second subparagraph).

**CORRIGENDA****Corrigendum to the Commission Communication — Model Declaration on the information relating to the qualification of an enterprise as an SME**

*(Official Journal of the European Union C 118 of 20 May 2003)*

(2003/C 156/13)

On page 9, in footnote 4, the following is inserted after point (c):

‘(d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.’

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