

## **E. HORIZONTAL RULES**



## PART III.1

**SUPPLEMENTARY INFORMATION SHEET ON SME AID**

*This supplementary information sheet must be used for the notification of any individual aid pursuant to Article 6 of Regulation (EC) 70/2001 <sup>(1)</sup> in its modified form <sup>(2)</sup>. It must also be used in the case of any individual aid or scheme, which is notified to the Commission for reasons of legal certainty.*

**1. Type of individual aid or scheme**

Does the individual aid or scheme relate to:

- 1.1. ☐ investment aid
- 1.2. ☐ consultancy and other services and activities including participation in fairs
- 1.3. ☐ R&D expenditure
- ☐ yes:
- for notifications of R&D aid to SMEs please complete:
  - supplementary information sheet for R&D 6 a for aid schemes
  - supplementary information sheet for R & D 6 b for individual aid

**2. Initial Investment Aid**

2.1. Does the aid cover investment in fixed capital relating to:

- ☐ the setting-up of a new establishment ?
- ☐ the extension of an existing establishment ?
- ☐ the starting-up of a new activity involving a fundamental change in the product or production process of an existing establishment (through rationalisation, diversification or modernisation)?
- ☐ the purchase of an establishment, which has closed, or which would have closed had it not been purchased?

Is replacement investment excluded?

☐ yes ☐ no

2.2. Is the aid calculated as percentage of:

- ☐ the investment's eligible costs
- ☐ the wage costs of employment created by the investment (aid to job creation )

2.3. a) ☐ investment in tangible assets: .....

Is the value of the investment established as a percentage on the basis of :

- ☐ land ?
- ☐ buildings ?
- ☐ plant/machinery (equipment)?

Please provide a short description:

.....

If the undertaking has its main economic activity in the transport sector, are transport means and transport equipment excluded from the eligible costs (except for railway rolling stock)?

☐ yes ☐ no

<sup>(1)</sup> Commission Regulation (EC) N° 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, OJ L 10, 13.1.2001, p. 33.

<sup>(2)</sup> OJ L 63, 28.2.2004, p. 22.

**▼ B**

If no, please specify the transport means or equipment that are eligible:

.....  
 .....

- b) ☐ purchasing price for the take over of an establishment which has closed or which would have closed had it not been purchased  
 c) ☐ intangible investment

The eligible costs of intangible investment shall be the costs of acquisition of the technology:

- ☐ patents' rights  
☐ operating or patented know-how licences  
☐ unpatented know-how (technical knowledge)

Please provide a short description <sup>(1)</sup> .....

- d) ☐ wage costs:

Is the amount of the aid expressed as a percentage of the wage costs over a period of two years relating to the employment created?

☐ yes ☐ no

2.4. Intensity of the aid

2.4.1 Investment projects situated outside of assisted regions under Article 87(3)(c) and under Article 87(3)(a) for:

small enterprises ☐ medium sized enterprises ☐

2.4.2 What are the intensities of the aid for investment projects expressed in gross terms?

Please specify:.....  
 .....

Investment projects situated inside of assisted regions under Article 87(3)(c) and under Article 87(3)(a):

small enterprises ☐ medium sized enterprises ☐

What are the intensities of the aid for investment projects expressed in gross terms? Please specify:

.....  
 .....

3. **Cumulation of the aid**

3.1. What is the maximum ceiling for cumulated aid?

Please specify: .....  
 .....

4. **Specific conditions for aid for job creation**

4.1. Does the aid provide for guarantees that the aid for job creation is linked to the carrying-out of an initial investment project in tangible or intangible assets?

☐ yes ☐ no

4.2. Does the aid provide for guarantees that the aid for job creation is created within three years of the investment's completion?

☐ yes ☐ no

<sup>(1)</sup> This description should reflect how the authorities intend to ensure consistency with point 4,6 of the Guidelines of National Regional Aid, OJ 74, 10.3.1998, p. 9, as amended by the community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty, OJ C 288, 9.10.1999, p. 2, and the subsequent Amendments to the Guidelines on National Regional Aid, OJ C 258, 9.9.2000, p.5.

**▼ B**

Should one of the two previous questions be answered in the negative, please explain how the authorities intend to comply with these requirements:

.....

- 4.3. Does the employment created represent a net increase in the number of employees in the establishment concerned, compared with the average over the past 12 months?

☐ yes ☐ no

- 4.4. Does the aid provide for guarantees that the employment within the qualified region will be maintained for a minimum period of five years?

☐ yes ☐ no

If yes, what are the guarantees for that ? .....

- 4.5. Does the aid provide for guarantees that the jobs lost during the period of reference are being deducted from the apparent number of jobs created during the same period?

☐ yes ☐ no

5. **Specific Conditions for Investment Project in assisted areas with higher regional aid**

- 5.1. Does the aid include a clause stipulating that the recipient has made a minimum contribution of at least 25% of the total investment and that this contribution will be exempted of any aid?

☐ yes ☐ no

- 5.2. What are the guarantees that the aid for initial investment (both material and intangible investment) is made conditional on the maintenance of the investment for a minimum period of five years?
- .....
- .....

6. **Aid to consultancy and other service activities**

- 6.1. Are eligible costs limited to:

- ☐ costs for services provided by outside consultants and other services providers?

Please specify if such services are not a continuous or periodic activity nor relate to the enterprise's usual operating expenditure, such as routine tax consultancy services, regular legal service or advertising

.....

.....

- ☐ costs of firms participating in fairs and exhibitions? Please specify if the aid is related to the additional costs incurred for renting, setting up and running the stand:

Is the participation limited to the first participation in a fair or exhibition?

☐ yes ☐ no

- ☐ Other costs (in particular cases where aid is awarded directly to the service(s) provider or consultant(s) Please specify under which conditions: .....

- 6.2. Please indicate the maximum aid intensity expressed in gross terms:

If the aid intensity exceeds 50 % gross please indicate in detail why this aid intensity should be necessary:

.....

- 6.3. Please indicate the maximum ceiling for cumulated aid:
- .....
- .....



## II

*(Information)*

## INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COMMISSION

**Communication from the Commission — Criteria for the analysis of the compatibility of State aid for training subject to individual notification**

(2009/C 188/01)

## 1. INTRODUCTION

1. The Lisbon European Council in March 2000 set a strategic goal for the European Union to become the most competitive and dynamic knowledge-based economy in the world. The Lisbon conclusions stressed the central role of education and training as the main instruments to increase human capital and its impact on growth, productivity and employment. Training usually has positive external effects for society as a whole since it increases the pool of skilled workers from which undertakings can draw and it improves the competitiveness of the economy and promotes a knowledge society capable of embracing a more innovative development path.
2. Undertakings may, however, provide less than a socially optimal level of training if employees are free to change employers and other undertakings can benefit from recruiting employees trained by them. This is particularly true of training targeted at skills that are transferable between undertakings. State aid may help to create additional incentives for employers to provide training at a level that is socially desirable.
3. This Communication sets out guidance as to the criteria the Commission will apply for the assessment of training aid measures. This guidance is intended to make the Commission's reasoning transparent and to create predictability and legal certainty. Pursuant to Article 6(1)(g) of 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) <sup>(1)</sup> any individual training aid, whether granted ad hoc or on the basis of a scheme, will be subject to this guidance when its grant equivalent exceeds EUR 2 million per training project.
4. The criteria set out in this guidance will not be applied mechanically. The level of the Commission's assessment and the kind of information it may require will be proportional to the risk of distortion of competition. The scope of the analysis will depend on the nature of the case.

## 2. POSITIVE EFFECTS OF THE AID

## 2.1. Existence of market failures

5. Skilled workers contribute to increasing the productivity and competitiveness of undertakings. Nevertheless, employers and employees may under-invest in training for a number of reasons. Employees

<sup>(1)</sup> OJ L 214, 9.8.2008, p. 3. For ad-hoc training aid to a large undertaking below the threshold of EUR 2 million, the Commission will *mutatis mutandis* apply the principles as outlined in this Communication, though in a less detailed manner.

may limit their investment in training if they are risk averse, suffer from financial constraints or have difficulties signalling the level of their acquired knowledge to future employers.

6. Undertakings may refrain from training their workforce at the level that would be optimal for society as a whole. This is due to the market failure linked with the positive externalities of training and to difficulties in appropriating the rents if employees are free to change employers. Undertakings may invest less into training, if they are concerned that once trained, an employee will leave before the undertaking has recouped its investment. Undertakings may be reluctant to provide sufficient training to their workers unless training pays off quickly or is rather specific to the needs of the undertaking concerned, or unless contractual clauses can prevent the trained employee from leaving the undertaking before the training cost have been amortised or (part of) the training expenses have been reimbursed.
7. Underinvestment in training may even occur if the undertaking can fully recoup its investment but its private benefits are smaller than the benefits for society as a whole. Such positive externalities of training may arise in particular if training improves transferable skills; that is to say, skills that can be used in more than one undertaking. In contrast, specific training only yields productivity gains in a specific undertaking and can be easily appropriated by undertakings <sup>(1)</sup>. Thus the scope for positive externalities of specific training is less pronounced than the scope for such externalities of general training.
8. Where undertakings are faced with higher costs and uncertain benefits for training disadvantaged or disabled workers <sup>(2)</sup> there may be an incentive to provide less training to those groups. However, training disadvantaged or disabled workers can usually be expected to produce positive externalities for society as a whole <sup>(3)</sup>.
9. Member States should demonstrate that there is a market failure justifying the aid. In its analysis, the Commission will, among other things, consider the following elements:
  1. The nature of the training — whether it is specific or general within the meaning of Article 38 of Regulation (EC) No 800/2008; a single training project can comprise both general and specific elements; general training will produce more positive externalities.
  2. The transferability of the skills acquired during the training; the more transferable the skills the higher the likelihood of positive externalities training will be considered to provide transferable skills if, for example:
    - (a) training is jointly organised by several independent undertakings, or if employees of different undertakings may benefit from the training;
    - (b) training is certified, leads to a recognised diploma or is validated by public authorities or institutions;
    - (c) training targets the categories of employees that are characterised by a high turnover in the undertaking and in the sector concerned;
    - (d) training could be valuable for the employee beyond his current job (future occupations in another undertaking, social life, well-being etc.).
  3. The participants in the training; the inclusion of disabled or disadvantaged workers may increase the positive externalities of the training.

<sup>(1)</sup> However, externalities of general training can also be appropriated by the undertakings through special clauses in contracts requiring the trained employee to remain in the undertaking for a defined period of time after he had received such training.

<sup>(2)</sup> Disabled and disadvantaged workers are defined in Article 2 of Regulation (EC) No 800/2008.

<sup>(3)</sup> For example, society will attach more value to training received by young and low skilled workers than an undertaking will do due to a perceived or real lower productivity.

## 2.2. State aid as an appropriate policy instrument

10. State aid is not the only policy instrument available to Member States to encourage training. Most training is provided through education systems (for example, universities, schools, vocational training carried out or sponsored by state authorities). Training can also be undertaken by the individuals themselves, with or without the support of their employers.
11. Where the Member State has considered other policy options, and the advantages of using a selective instrument such as State aid for a specific undertaking are established, the measures concerned are considered to constitute an appropriate instrument. The Commission will in particular take account of any impact assessment of the proposed measure the Member State may have made.

## 2.3. Incentive effect and necessity of the aid

12. State aid for training must result in the aid beneficiary changing its behaviour so that it provides more and/or better training than would have been the case without the aid. If such an increase in the quantity or quality of planned training activities does not take place, the aid is considered not to have an incentive effect.
13. Incentive effect is identified by counterfactual analysis, comparing the levels of intended training with aid and without aid. Most employers find it necessary to train their workforce in order to ensure the proper functioning of their undertakings. It cannot be presumed that State aid for training, especially for specific training, is always needed.
14. Member States should demonstrate to the Commission the existence of the incentive effect and the necessity of the aid. First, the beneficiary must have submitted an application for the aid to the Member State concerned before it started the training project. Second, the Member State must demonstrate that the State aid leads to an increase, by comparison to the situation without aid, in the size, quality, scope or targeted participants of the training project. The additional amount of training offered with aid can be shown, for example, by higher number of training hours or courses, higher numbers of participants, shifting from undertaking-specific to general training, or increasing the participation of certain categories of disadvantaged or disabled workers.
15. In its analysis, the Commission will consider, among other things, the following elements:
  - (a) internal documents of the aid beneficiary on training costs, budgets, participants, content and scheduling for two scenarios: training with aid and training without aid;
  - (b) the existence of a legal obligation for employers to provide a certain type of training (for example, safety): if such an obligation exists, the Commission will normally conclude that there is no incentive effect;
  - (c) the credibility of the project submitted, for example, by referring to and comparing it with training budgets for previous years;
  - (d) the relationship between the training programme and the business activities of the aid beneficiary: the closer the relationship, the less likely the incentive effect. For example, training on the introduction of a new technology in a specific sector is unlikely to have an incentive effect since undertakings have no choice but to train their workforce on the newly introduced technology.

## 2.4. Proportionality of the aid

16. The Member State must demonstrate that the aid is necessary and the amount is kept to the minimum in order to achieve the objective of the aid.

Eligible costs must be calculated in accordance with Article 39 of Regulation (EC) No 800/2008 and be limited to the costs arising from training activities which would not be undertaken without aid.

Member States should provide evidence that the aid amount does not exceed the part of the eligible costs that cannot be appropriated by the undertaking <sup>(1)</sup>. In any case, aid intensities must never exceed those laid down in Article 39 of Regulation (EC) No 800/2008 and will be applied to the eligible costs <sup>(2)</sup>.

### 3. NEGATIVE EFFECTS OF THE AID

17. If the aid is proportionate to achieve the objective of the aid the negative effects of the aid are likely to be limited and an analysis of the negative effects may not be necessary <sup>(3)</sup>. However, in some cases, even where aid is necessary and proportionate for a specific undertaking to increase the amount of training provided, the aid may result in a change in the behaviour of the beneficiary which significantly distorts competition. In those cases the Commission will conduct a thorough analysis of the distortion of competition. The extent of the distortion of competition caused by the aid can vary depending on the characteristics of the aid and of the markets affected <sup>(4)</sup>.
18. The aid characteristics that may affect the likelihood and the extent of the distortion are:
  - (a) selectivity;
  - (b) the size of the aid;
  - (c) the repetition and duration of the aid;
  - (d) the effect of the aid on the undertaking's costs.
19. For example, a training scheme used to encourage undertakings in general in a Member State to undertake more training is likely to have a different effect on the market than a large amount of aid given to a single undertaking to enable it to increase its training. The latter is likely to distort competition more significantly as the aid beneficiary's competitors become less able to compete <sup>(5)</sup>. The distortion will be even greater if the training costs in the beneficiary's business represent a high share of the total costs.
20. In assessing the market characteristics, which can give a much more accurate picture of the likely impact of an aid, the Commission will among other things consider:
  - (a) the structure of the market; and
  - (b) the characteristics of the sector or industry.
21. The structure of the market will be assessed through the concentration of the market, the size of undertakings <sup>(6)</sup>, importance of product differentiation <sup>(7)</sup> and barriers to entry and exit. Market shares and concentration ratios will be calculated once the relevant market has been defined. In general, the fewer undertakings there are, the larger their share of the market, and the less competition one would expect to observe <sup>(8)</sup>. If the affected market is concentrated with high barriers to entry <sup>(9)</sup> and the aid beneficiary is a major player on it then it is more likely that competitors will have to alter their behaviour in response to the aid.

<sup>(1)</sup> This equals the part of the extra costs of the training that the undertaking cannot recover by benefiting directly from the skills acquired by its employees during the training.

<sup>(2)</sup> See also current case practice, for example, C 35/2007, Training aid to Volvo Cars in Gent, Commission Decision 2008/948/EC of 23 July 2008 on measures by Germany to assist DHL and Leipzig Halle airport (OJ L 346, 23.12.2008, p. 1) and Commission Decision 2007/612/EC of 4 April 2007 on State aid C 14/06 which Belgium is planning to implement for General Motors Belgium in Antwerp (OJ L 243, 18.9.2007, p. 71).

<sup>(3)</sup> In addition, if the labour market functioned perfectly, employees could always extract a larger salary for their better skills due to the training received and internalise positive externalities of the training.

<sup>(4)</sup> A number of markets can be affected by the aid, because the impact of the aid may not be restricted to the markets where the aid beneficiary is active but it can extend to other markets, for example input markets.

<sup>(5)</sup> It should be noted however, that training aid given to a whole sector in one Member State may lead to a distortion on trade between Member States.

<sup>(6)</sup> Size of the undertaking can be expressed in the terms of market shares as well as turnover and/or employment.

<sup>(7)</sup> The lower the degree of product differentiation, the greater the effect of the aid on competitors' profits will be.

<sup>(8)</sup> It is important to note however, that some markets are competitive despite there being few undertakings present.

<sup>(9)</sup> It should be noted however, that sometimes granting of an aid helps to overcome entry barriers and allows new undertakings to enter a market.

22. While examining the characteristics of the sector the Commission will look among other things at the importance of the trained workforce for the business, the existence of overcapacity, whether the markets in the industry are growing, mature or declining, financing strategies of competitors for training (State aid, employees, employers). For example, training aid in a declining industry may increase the risk of a distortion of competition by keeping an inefficient undertaking afloat.
23. Training aid may, in particular cases, lead to distortions of competition in respect of market entry and exit, effect on trade flows and crowding out of training investment.

*Market entry and exit*

24. In a competitive market undertakings sell products that generate profits. By altering costs, State aid alters profitability, and can therefore affect the undertaking's decision to offer a product or not. For example, State aid that would reduce the ongoing costs of production such as training for staff would make entry more appealing and enable undertakings with otherwise poor commercial prospects to enter a market or introduce new products to the detriment of more efficient competitors.
25. The availability of State aid may also affect an undertaking's decision to leave a market where it is already operating. State aid for training could reduce the size of losses and enable an undertaking to stay in the market for longer — which may mean that other, more efficient undertakings that do not get aid are forced to exit instead.

*Effect on trade flows*

26. State aid for training may result in some territories benefiting from more favourable production conditions than others. This may result in the displacement of trade flows in favour of the regions where such aid is given.

*Crowding out of training investment*

27. To survive in the marketplace and maximize profits, undertakings have incentives to invest in training of staff. The amount of investment in training which each undertaking is willing to make also depends on how much its competitors invest. Undertakings which are subsidised by the state may reduce their own investment. Alternatively, if the aid induces the aid beneficiary to invest more, competitors may react by reducing their own expenditure in training. If, to achieve the same objective, aid beneficiaries or their competitors spend less in the presence of the aid than in its absence, their private investment in training of staff is crowded out by the aid.

#### 4. BALANCING AND DECISION

28. The last step in the analysis is to evaluate the extent to which the positive effects of the aid outweigh its negative effects. This will be done on a case-by-case basis. In order to balance the positive and the negative effects, the Commission will assess them and make an overall assessment of their impact on producers and consumers in each of the markets affected. Unless quantitative information is readily available the Commission will use qualitative information for the purposes of the assessment.
29. The Commission is likely to take a more positive stance and therefore accept a higher degree of distortion of competition, if the aid is necessary, well targeted and proportionate for a specific undertaking to increase its training activities and society benefits from the extra training provided more than the aid beneficiary.

**▼ B****7. Necessity of the aid**

7.1. Does the aid foresee that any application for aid must be submitted before work on the project is started?

☐ yes ☐ no

7.2. If not has the Member State adopted legal provisions establishing a legal right to aid according to objective criteria, and without further exercise of discretion by the Member States?

☐ yes ☐ no

**8. Other Information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the Regulation (EC) 70/2001.

**PART III.2****UPPLEMENTARY INFORMATION SHEET ON TRAINING AID**

*This supplementary information sheet must be used for the notification of individual aid pursuant to Article 5 of the Regulation (EC) 68/2001 <sup>(1)</sup> in its modified form <sup>(2)</sup>. It must also be used in the case of any individual aid or scheme, which is notified to the Commission for reasons of legal certainty.*

**1. Scope of the individual aid or scheme**

1.1. Does the measure apply to the production and/or processing and/or marketing of the agricultural products listed in Annex I to the EC Treaty?

☐ yes ☐ no

1.12. Does the measure apply to the production, processing and/or marketing of the fisheries and/or aquaculture products listed in Annex I to the EC Treaty?

☐ yes ☐ no

1.13. Is the aid foreseen for the maritime transport sector?

☐ yes ☐ no

If yes, please answer the following questions:

Is the trainee not an active member of the crew but a supernumerary on board?

☐ yes ☐ no

Shall the training be carried out on board ships entered on Community registers?

☐ yes ☐ no

1.4. What are the intensities of the aid expressed in gross terms? Please specify:

.....  
 .....  
 .....

**2. Type of scheme or individual aid**

Does the scheme or the individual aid relate to:

<sup>(1)</sup> Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 to training aid, OJ L 10, 13.1.2001, p. 20.

<sup>(2)</sup> OJ L 63, 28.2.2004, p. 20.

**▼B**

## 2.1 Specific training:

☐ yes ☐ no

If yes, please give a description of the measure related to specific training:

.....  
 .....

## 2.2. General training:

☐ yes ☐ no

If yes, please give a description of the measure related to general training:

.....  
 .....

## 2.3. Training aid given to disadvantaged workers:

☐ yes ☐ no

If yes, please give a description of the measure related to disadvantaged workers:

.....  
 .....

## 2.4. Intensity of the aid

## 2.4.1. Aid for general training

2.4.1.1. ☐ granted outside of assisted regions under to Article 87.(3)(a) EC Treaty and 87 3(c) EC Treaty:

If yes, please specify what are the intensities expressed in gross terms for:

— large enterprises: .....  
 — small or medium-sized enterprises: .....

If yes, please specify what are the intensities in case that the training is given to disadvantaged workers:

.....  
 .....

2.4.1.2. ☐ granted in assisted regions under Article 87(3)(a) EC Treaty and under Article 87 (3)(c) EC Treaty

If yes, please specify what are the intensities expressed in gross terms for:

— large enterprises: .....  
 — small or medium sized enterprises: .....

If yes, please specify what are the intensities in case that the training is given to disadvantaged workers:

.....  
 .....

## 2.4.2. Aid for specific training

2.4.2.1. ☐ granted outside of assisted regions under Article 87(3)(a) EC Treaty and under Article 87 (3)(c) EC Treaty:

☐ yes ☐ no

If yes, please specify what are the intensities expressed in gross terms for:

— large enterprises: .....  
 — small or medium sized enterprises: .....

If yes, please specify what are the intensities in case that the training is given to disadvantaged workers:

.....  
 .....

**▼B**

- 2.4.2.2. ☐ granted in assisted regions under Article 87(3)(a) EC Treaty and under Article 87 (3)(c) EC Treaty

If yes, please specify what are the intensities expressed in gross terms for:

- large enterprises:.....  
 — small or medium sized enterprises: .....

If yes, please specify what are the intensities in case that the training is given to disadvantaged workers:

.....

3. **Eligible costs**

Which are the eligible costs foreseen under the scheme or for the individual aid ?

- ☐ trainers personnel costs  
☐ trainers and trainees travel expenses  
☐ other current expenses such as materials and supplies  
☐ depreciation of tools and equipment, to the extent that they are used exclusively for the training project  
☐ cost of guidance and counselling services with regard to the training project  
☐ trainees personnel  
☐ indirect costs (administrative, rent, overheads, transport and tuition costs for participants)

In the case of ad hoc individual aid under a scheme, please provide for each of the eligible costs documentary evidence, which shall be transparent and itemized.....

4. **Cumulation**

Can the aid foreseen in the scheme or in the individual aid be cumulated?

- ☐ yes ☐ no

If yes, can the aid intensities as stipulated in Art. 4 of the Regulation No 68/2001 be exceeded by this cumulation?

- ☐ yes ☐ no

5. **Other Information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the Regulation (EC) 68/2001.



**Communication from the Commission — Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification**

(2009/C 188/02)

**1. INTRODUCTION**

1. The promotion of employment and social cohesion is a central aim of the economic and social policies of the Community and of its Member States. Unemployment and, in particular, structural unemployment, remains a significant problem in some parts of the Community, and certain categories of workers still encounter difficulties in entering the labour market. State aid in the form of subsidies to wage costs, where 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; and (b) the compulsory contributions, such as social security charges; and (c) child care and parent care costs ('wage subsidies') can provide additional incentives to undertakings to increase their levels of employment of disadvantaged and disabled workers. The objective of such aid is thus to encourage the recruitment of the targeted categories of worker.
2. This Communication sets out guidance as to the criteria the Commission will apply for the assessment of State aid in the form of wage subsidies that needs to be notified individually pursuant to Article 6(1)(h) and (i) of the 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 <sup>(1)</sup>). This guidance is intended to make the Commission's reasoning transparent and to create predictability and legal certainty.
3. This guidance applies to State aid in the form of wage subsidies for disadvantaged workers, severely disadvantaged workers and disabled workers within the meaning of Article 2(18), (19) and (20) of Regulation (EC) No 800/2008. Any individual measure, whether granted ad hoc or on the basis of a scheme, will be subject to this guidance when its grant equivalent exceeds EUR 5 million per undertaking per year for the employment of disadvantaged workers and severely disadvantaged workers (hereinafter referred to together as 'disadvantaged workers') and EUR 10 million per undertaking per year for the employment of disabled workers <sup>(2)</sup>.
4. The criteria set out in this guidance will not be applied mechanically. The level of the Commission's assessment and the kind of information it may require will be proportional to the risk of distortion of competition. The scope of the analysis will depend on the nature of the case.

**2. POSITIVE EFFECTS OF THE AID**

**2.1. Existence of an objective of common interest**

5. Certain categories of worker experience particular difficulty in finding jobs, because employers consider them to be less productive or have prejudices against them. This perceived or real lower productivity may be due either to lack of recent experience in employment (for example, young workers or long-term unemployed) or to a permanent disability. Because of their perceived or real lower productivity the workers are likely to be excluded from the labour market unless employers are offered compensation for their employment.
6. It is socially desirable that all categories of workers are integrated in the labour market. This means that a share of the domestic income may be redistributed to the categories of workers concerned by the

<sup>(1)</sup> OJ L 214, 9.8.2008, p. 3.

<sup>(2)</sup> Due to their specific nature, individual measures applying to the compensation for the additional cost of employing disabled workers and additional costs incurred by social enterprises of which the grant equivalent exceeds EUR 10 million per undertaking per year will be assessed on the basis of Article 87(3)(c) of the Treaty establishing the European Community. For ad-hoc aid for the employment of disadvantaged workers below EUR 5 million and ad-hoc aid to large undertakings for the employment of disabled workers below EUR 10 million, the Commission will *mutatis mutandis* apply the principles as outlined in this guidance, though in a less detailed manner.

measures. State aid may help disadvantaged and disabled workers to enter the labour market or stay in the labour market by covering the extra costs resulting from their perceived or real lower productivity.

7. Member States should demonstrate that the aid will address the objective of common interest. In its analysis, the Commission will, among other things, consider the following elements:

- (a) the number and categories of workers concerned by the measure;
- (b) employment rates of the categories of workers concerned by the measure on the national and/or regional level and in the undertaking or undertakings concerned;
- (c) unemployment rates for the categories of workers concerned by the measure on the national and/or regional level;
- (d) particularly marginalised sub-groups within the broader categories of disabled and disadvantaged workers.

### **2.2. State aid as an appropriate policy instrument**

8. State aid in the form of wage subsidies is not the only policy instrument available to Member States to encourage employment of disadvantaged and disabled workers. Member States can also use general measures such as reduction of the taxation of labour and social costs, boosting investment in education and training, measures to provide guidance and counselling, assistance and training for the unemployed and improvements in labour law.
9. Where the Member State has considered other policy options, and the advantages of using a selective instrument such as State aid for a specific undertaking are established, the measures concerned are considered to constitute an appropriate instrument. The Commission will in particular take account of any impact assessment of the proposed measure the Member State may have made.

### **2.3. Incentive effect and necessity of the aid**

10. State aid for the employment of disadvantaged and disabled workers must result in the aid beneficiary changing its behaviour so that the aid results in a net increase in the number of disadvantaged or disabled employees in the undertaking concerned. Newly recruited disadvantaged or disabled employees should only fill newly created posts or posts that have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct. Posts resulting from redundancy are not to be filled with subsidised disadvantaged or disabled workers. Thus State aid cannot be used to replace workers in respect of whom the undertaking no longer receives a subsidy and who have consequently been dismissed.
11. Member States should demonstrate to the Commission the existence of the incentive effect and the necessity of the aid. First, the beneficiary must have submitted an application for the aid to the Member State concerned before the categories of workers concerned by the measures were employed. Second, the Member State must demonstrate that the aid is paid in respect of a disadvantaged or disabled worker in an undertaking, where the recruitment would have not occurred without the aid.
12. In its analysis, the Commission will consider, among other things, the following elements:
- (a) internal documents of the aid beneficiary on employment costs in relation to the categories of workers concerned by the measure for two scenarios: with aid and without aid;

- (b) existing or past wage subsidies in the undertaking concerned; categories and number of workers subject to subsidies;
- (c) annual turnover of the categories of workers concerned by the measure.

#### 2.4. Proportionality of the aid

13. The Member State must demonstrate that the aid is necessary and the amount is kept to the minimum in order to achieve the objective of the aid.

Member States should provide evidence that the aid amount does not exceed the net additional costs of employing the categories of workers concerned by the measure compared to the costs of employing workers who are not disadvantaged or disabled <sup>(1)</sup>.

In any case, aid intensities must never exceed those laid down in Articles 40 <sup>(2)</sup> and 41 <sup>(3)</sup> of Regulation (EC) No 800/2008. Eligible costs, to which aid intensities are to be applied, must be calculated in accordance with Articles 40 <sup>(4)</sup> and 41 <sup>(5)</sup> of Regulation (EC) No 800/2008.

#### 3. NEGATIVE EFFECTS OF THE AID

14. If the aid is proportionate to achieve the objective of the aid, the negative effects of the aid are likely to be limited and an analysis of the negative effects may not be necessary. However, in some cases, even where the aid is necessary and proportionate for a specific undertaking to increase the employment of categories of workers concerned by the measure, the aid may result in a change in the behaviour of the beneficiary which significantly distorts competition. In those cases the Commission will conduct an analysis of the distortion of competition. The extent of the distortion of competition caused by the aid can vary depending on the characteristics of the aid and of the markets affected <sup>(6)</sup>.
15. The aid characteristics that may affect the likelihood and the extent of the distortion are:
- (a) selectivity;
  - (b) the size of the aid;
  - (c) the repetition and duration of the aid;
  - (d) the effect of the aid on the undertaking's costs.
16. For example, an aid scheme used to encourage undertakings in general in a Member State to employ more disadvantaged or disabled workers is likely to have a different effect on the market than a large amount of aid given ad hoc to a single undertaking to enable it to increase its employment of a certain category of workers. The latter is likely to distort competition more significantly as the aid beneficiary's competitors become less able to compete. The distortion will be even greater if the labour costs in the beneficiary's business represent a high share of the total costs.

<sup>(1)</sup> Net additional costs take into account the costs corresponding to the employment of the targeted categories of disadvantaged or disabled workers (for example, due to lower productivity) and benefits, which the aid beneficiary extracts from this employment (for example, due to an improvement of the image of the undertaking).

<sup>(2)</sup> The aid intensity for disadvantaged workers must not exceed 50 % of the eligible costs.

<sup>(3)</sup> The aid intensity for disabled workers must not exceed 75 % of the eligible costs.

<sup>(4)</sup> For the employment of disadvantaged workers eligible costs are the wage costs over a maximum period of 12 months following recruitment. However, where the worker concerned is a severely disadvantaged worker, eligible costs are the wage costs over a maximum period of 24 months following recruitment.

<sup>(5)</sup> For the employment of disabled workers eligible costs are the wage costs over any given duration during which the disabled worker is being employed.

<sup>(6)</sup> A number of markets can be affected by the aid, because the impact of the aid may not be restricted to the markets where the aid beneficiary is active but can extend to other markets, for example input markets.

17. In assessing the market characteristics, which can give a much more accurate picture of the likely impact of an aid, the Commission will among other things consider:
- (a) the structure of the market;
  - (b) the characteristics of the sector or industry;
  - (c) the situation on the national/regional labour market.
18. The structure of the market will be assessed through the concentration of the market, the size of undertakings <sup>(1)</sup>, importance of product differentiation <sup>(2)</sup>, and barriers to entry and exit. Market shares and concentration ratios will be calculated once the relevant market has been defined. In general, the fewer undertakings there are, the larger their share of the market, and the less competition one would expect to observe <sup>(3)</sup>. If the affected market is concentrated with high barriers to entry <sup>(4)</sup> and the aid beneficiary is a major player on it then it is more likely that competitors will have to alter their behaviour in response to the aid, for example postpone or abandon the introduction of a new product or technology or exit the market all together.
19. The Commission will also look at the characteristics of the sector, such as the existence of overcapacity and whether the markets in the industry are growing <sup>(5)</sup>, mature or declining. For example, the presence of overcapacity or of mature markets in an industry may increase the risk of aid leading to inefficiency and displacement of output among undertakings which do not have subsidised workers.
20. Finally, the measure will be placed in the context of the situation on the labour market, that is to say, unemployment and employment rates, wage levels, and labour law.
21. Wage subsidies may in particular cases lead to the distortions of competition discussed in paragraphs 22 to 27.

*Substitution and displacement effect*

22. The substitution effect relates to the situation where jobs given to a certain category of workers simply replace jobs for other categories. A wage subsidy which targets a specific subgroup of workers splits the labour force into subsidised workers and unsubsidised workers, and may induce undertakings to replace unsubsidised workers with subsidised workers. This occurs because relative wage costs for subsidised and unsubsidised workers are changed <sup>(6)</sup>.
23. Since undertakings which employ subsidised workers, compete in the same markets for goods or services as those which do not employ subsidised workers, wage subsidies can contribute to the reduction of jobs elsewhere in the economy. Such a situation occurs when an undertaking employing subsidised workers increases output, but displaces output among undertakings who do not employ subsidised workers and, as a result, the aid crowds-out unsubsidised employment.

*Market entry and exit*

24. Employment costs form part of the normal operating costs of any undertaking. It is therefore particularly important that aid should have a positive effect on employment and should not merely enable undertakings to reduce costs which they would otherwise bear. For example, wage subsidies reduce the ongoing costs of production and thus would make entry more appealing and enable undertakings with otherwise poor commercial prospects to enter a market or introduce new products to the detriment of more efficient competitors.

<sup>(1)</sup> Size of the undertaking can be expressed in the terms of market shares as well as turnover and/or employment.

<sup>(2)</sup> The lower the degree of product differentiation, the greater the effect of the aid on competitors' profits will be.

<sup>(3)</sup> However, some markets are competitive despite there being few undertakings present.

<sup>(4)</sup> However, granting aid sometimes helps to overcome entry barriers and allows new undertakings to enter a market.

<sup>(5)</sup> The existence of growing markets will usually lead to a less pronounced effect of the aid on competitors.

<sup>(6)</sup> Such substitution effect depends on the elasticity of demand for labour, both for subsidised and unsubsidised workers.

25. The availability of State aid may also affect an undertaking's decision to leave a market where it is already operating. Wage subsidies could reduce the size of losses and enable an undertaking to stay in the market for longer — which may mean that other, more efficient undertakings that do not receive aid are forced to exit instead.

*Investment incentives*

26. In the markets where wage subsidies are granted undertakings are discouraged from competing and may reduce their investments and attempts to increase efficiency and innovation. There may be a delay in the introduction of new less labour intensive technologies by the aid beneficiary due to the change in relative costs for labour intensive and technology intensive production methods. Manufacturers of competing or complementary products may also decrease or delay their investment. As a consequence, the overall investment level in the industry concerned will decline.

*Effect on trade flows*

27. Wage subsidies within a particular region may result in some territories benefiting from more favourable production conditions than others. This may result in the displacement of trade flows in favour of the regions where such aid is given.

#### 4. BALANCING AND DECISION

28. The last step in the analysis is to evaluate the extent to which the positive effects of the aid outweigh its negative effects. This will be done on a case-by-case basis for all individual measures. In order to balance the positive and the negative effects, the Commission will assess them and make an overall assessment of their impact on producers and consumers in each of the markets affected. Unless quantitative information is readily available the Commission will use qualitative information for the purposes of the assessment.
29. The Commission is likely to take a more positive stance and therefore accept a higher degree of distortion of competition if the aid is necessary and well targeted to achieve the objective of the aid and is limited to the net extra costs of compensating for the lower productivity of the categories of workers concerned by the measure.
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## PART III.3

**SUPPLEMENTARY INFORMATION SHEET ON EMPLOYMENT AID**

*This supplementary information sheet must be used for the notification of any individual aid or any scheme pursuant to Article 9 of Regulation (EC) 2204/2002 <sup>(1)</sup>. It must also be used in the case of an individual aid or scheme, which is notified to the Commission for reasons of legal certainty. This supplementary information sheet must as well be used for the notification of any employment aid in the transport sector (granted pursuant to Art. 4(6) of the SME Regulation or pursuant to the Regional Guidelines).*

**1. Scope Of The Individual Aid Or Scheme**

- 1.1. Does the measure apply to the production and/or processing and/or marketing of the agricultural products listed in Annex I to the EC Treaty?

☐ yes ☐ no

- 1.2. Does the measure apply to the production, processing and/or marketing of the fisheries and/or aquaculture products listed in Annex I to the EC Treaty?

☐ yes ☐ no

**2. Creation Of Employment**

- 2.1. Are the aid intensities calculated with regard to the wage costs over a period of two years relating to the employment created? .....

☐ yes ☐ no

- 2.2. Is the creation of employment for SMEs outside of assisted areas under the Article 87.(3).(a) EC Treaty and under Article 87 (3).(c) EC Treaty or sectors?

☐ yes ☐ no

if yes please specify what are the intensities expressed in gross terms .....

Is the creation of employment in assisted areas according to Article 87(3)(a) EC Treaty and 87(3)(c) EC Treaty or sectors?

☐ yes ☐ no

- 2.2.1. Is the aid defined in terms of intensity compared to standard reference cost?

☐ yes ☐ no

Is the aid subject to taxes?

☐ yes ☐ no

What are the intensities expressed in net terms? .....

Shall the ceiling be increased because the scheme or the aid is applicable also to SMEs?

☐ yes ☐ no

If yes please specify what increases are foreseen, expressed in gross terms .....

<sup>(1)</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, OJ L 337, 13.12.2002, p. 3 and OJ L 349, 24.12.2002, p. 126.

**▼ B**

2.2.2. Has the recipient to make a minimum contribution, exempted of any aid, of at least 25% of the eligible costs?

☐ yes ☐ no

2.2.3. Does the aid provide that the employment is maintained for a minimum period of three years in the case of large enterprises?

☐ yes ☐ no

Does the aid provide that the employment in the regions or sectors which qualify for regional aid is maintained for a minimum period of two years in the case of SMEs?

☐ yes ☐ no

If yes, what are the guarantees that the aid linked or not linked to the initial investment is made conditional on the maintenance of the employment for a minimum period of two or three years?

2.2.4. Does the employment created represent a net increase in the number of employees, both in the establishment and in the enterprise concerned, compared with the average over the past 12 months?

☐ yes ☐ no

2.2.5. Have the new workers employed never had a job or have lost or are in the process of losing their previous job?

☐ yes ☐ no

2.2.6. Does the scheme provide that any application for aid must be submitted before the employment concerned is created?

☐ yes ☐ no

If not has the Member State adopted legal provisions establishing a legal right to aid according to objective criteria, and without further exercise of discretion by the Member States?

☐ yes ☐ no

2.2.7. Does the aid provide that in cases where the employment created is linked to the carrying-out of a project of investment in tangible and intangible assets and the employment is created within three years of the investment's completion for a minimum period of three years in the case of SMEs, the application for aid must be submitted before work is started on the investment projects?

☐ yes ☐ no

2.3 In case of creation of employment in the production, processing and marketing of products listed in Annex I to the EC Treaty in areas which qualify as less favoured areas under Council Regulation (EC) No 1257/1999 <sup>(1)</sup>, will the aid be granted according to the higher regional aid ceilings mentioned in article 4, paragraph 3, fourth subparagraph of Regulation (EC) No 2204/2002 or, where applicable, according to the higher aid ceilings of Regulation (EC) No 1257/1999. Please indicate which will be the intensity of the aid granted.

### 3. Recruitment Of Disadvantaged And Disabled Workers

3.1. Are the aid intensities calculated with regard to the wage costs over a period of one year relating to the employment created?

☐ yes ☐ no

Do the gross aid intensities of all aid relating to the employment of the disadvantaged or disabled workers exceed respectively 50 % or 60 %?

☐ yes ☐ no

<sup>(1)</sup> Council Regulation (EC) 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, OJ L 160, 26.6.1999, p. 80.

**▼ B**

- 3.2. Does the recruitment represent a net increase in the number of employees in the establishment concerned?

☐ yes ☐ no

If not, have the post or posts fallen vacant following voluntary departure, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy?

☐ yes ☐ no

- 3.3. Is the aid limited to disadvantaged workers in the meaning of Article 2 (f)?

☐ yes ☐ no

- 3.4. Is the aid limited to disabled workers in the meaning of Article 2 (g)?

☐ yes ☐ no

If the aid is not limited to disadvantaged or disabled workers in the meaning of Article 2 (f) and (g) please explain in detail why you consider that targeted categories of workers should be considered as disadvantage

.....

#### 4. **Additional Costs Of Employment Of Disabled Workers**

- 4.1. Does the aid refer to the recruitment of individual disabled workers and ancillary costs?

☐ yes ☐ no

If yes please demonstrate that the conditions of Article 6.2 are fulfilled

- 4.2. Does the aid refer to sheltered employment?

☐ yes ☐ no

If yes, please demonstrate that the aid does not exceed the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport which result from employment of disabled workers: .....

#### 5. **Cumulation**

- 5.1. Does the aid ceiling fixed in Article 4, 5 and 6 apply regardless of whether the support is financed entirely from state resources or is partly financed by the Community?

☐ yes ☐ no

- 5.2. Can the notified aid for the creation of new jobs be cumulated with other State aid within the meaning of Article 87 (1) EC Treaty or with other Community funding in relation to the same wage costs?

☐ yes ☐ no

If yes can the cumulation lead to a result where the aid intensity as fixed in Article 4(2) and (3) is exceeded (aid for disadvantaged and disabled workers excluded)?

☐ yes ☐ no

- 5.3. Can the notified aid for the creation of employment under Article 4 of this regulation be cumulated with any other State aid within the meaning of Article 87 (1) EC Treaty in relation to the costs of any investment to which the created employment is linked and which has not yet been completed at the time the employment is created or which was completed in the three years before the employment was created?

☐ yes ☐ no

If yes can the cumulated aid result in an aid intensity exceeding the relevant ceiling of regional investment aid determined in the guidelines in regional investment aid and in the map approved by the Commission for each member State or the ceiling in Exemption Regulation (EC) N 70/2001?

☐ yes ☐ no



**▼B**

- 5.4. Can the aid for the recruitment of disadvantaged or disabled workers under Article 5 and 6 be cumulated with aid and/or Community funding for the creation of employment under Article 4 in relation with the same wage costs?

☐ yes ☐ no

If yes, is it ensured that such cumulation does not result in a gross aid intensity exceeding 100 % of the wage costs over any period for which the worker or workers are employed?

- 5.5. Can the aid for the recruitment of disadvantaged or disabled workers under Article 5 and 6 of the Regulation be cumulated with other State aid and/or with other Community funding for other purposes than the creation of employment under Article 4 of the Regulation in relation to the same wage costs?

☐ yes ☐ no

If yes, please explain the "other purposes":.....

If yes is it ensured that such cumulation does not result in a gross aid intensity exceeding 100 % of the wage costs over any period for which the worker or workers are employed?

☐ yes ☐ no

6. **Other Information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the Regulation (EC) 2204/2002.

**GUIDELINES ON NATIONAL REGIONAL AID FOR 2007-2013**

(2006/C 54/08)

(Text with EEA relevance)

**1. Introduction**

1. On the basis of Article 87(3)(a) and (c) of the Treaty, State aid granted to promote the economic development of certain disadvantaged areas within the European Union may be considered to be compatible with the common market by the Commission. This kind of State aid is known as national regional aid. National regional aid consists of aid for investment granted to large companies, or in certain limited circumstances, operating aid, which in both cases are targeted on specific regions in order to redress regional disparities. Increased levels of investment aid granted to small and medium-sized enterprises located within the disadvantaged regions over and above what is allowed in other areas are also considered as regional aid.
2. By addressing the handicaps of the disadvantaged regions, national regional aid promotes the economic, social and territorial cohesion of Member States and the European Union as a whole. This geographical specificity distinguishes regional aid from other forms of horizontal aid, such as aid for research, development and innovation, employment, training or the environment, which pursue other objectives of common interest in accordance with Article 87(3) of the Treaty, albeit sometimes with higher rates of aid in the disadvantaged areas in recognition of the specific difficulties which they face <sup>(1)</sup>.
3. National regional investment aid is designed to assist the development of the most disadvantaged regions by supporting investment and job creation. It promotes the expansion and diversification of the economic activities of enterprises located in the less-favoured regions, in particular by encouraging firms to set up new establishments there.
4. The criteria applied by the Commission when examining the compatibility of national regional aid with the common market under Articles 87(3)(a) and 87(3)(c) of the EC Treaty have been codified in the 1998 guidelines on national regional aid <sup>(2)</sup> which cover the period 2000-2006 <sup>(3)</sup>. The specific rules governing aid for large investment projects have been codified in the 2002 Multisectoral Framework <sup>(4)</sup>. However, important political and economic developments since 1998, including the enlargement of the European Union on 1 May 2004, the anticipated accession of Bulgaria and Romania and the accelerated process of integration following the introduction of the single currency, have created the need for a comprehensive review in order to prepare new guidelines which will apply from 2007 to 2013.
5. Regional aid can only play an effective role if it is used sparingly and proportionately and is concentrated on the most disadvantaged regions of the European Union. In particular the permissible aid ceilings should reflect the relative seriousness of the problems affecting the development of the regions concerned. Furthermore, the advantages of the aid in terms of the development of a less-favoured region must outweigh the resulting distortions of competition <sup>(5)</sup>. The weight given to the advantages of the aid is likely to vary according to the derogation applied, so that a greater distortion of competition can be accepted in the case of the most disadvantaged regions covered by Article 87(3)(a) than in those covered by Article 87(3)(c) <sup>(6)</sup>.

<sup>(1)</sup> Regional top-ups for aid granted for such purposes are therefore not considered as regional aid.

<sup>(2)</sup> OJ C 74 10.3.1998, p. 9, modified in OJ C 288 9.10.1999, p. 2, and OJ C 285 9.9.2000, p. 5.

<sup>(3)</sup> Point 4.4 of the regional aid guidelines was amended by the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 288, 9.10.1999, p. 2.

<sup>(4)</sup> OJ C 70, 19.3.2002, p. 8, as amended in OJ C 263, 1.11.2003, p. 3.

<sup>(5)</sup> See in this respect the judgment of the Court of Justice in Case 730/79, *Philip Morris* [1980], ECR 2671, paragraph 17 and in Case C-169/95, *Spain v Commission* [1997], ECR I-135, paragraph 20.

<sup>(6)</sup> See in this respect the judgment of the Court of First Instance in T-380/94, *AIUFFASS and AKT* [1996], ECR II-2169, paragraph 54.

6. In certain very limited, well-defined cases, the structural handicaps of a region may be so severe that regional investment aid, together with a comprehensive horizontal aid regime may not be sufficient to trigger a process of regional development. Only in such cases may regional investment aid be supplemented by regional operating aid.
7. An increasing body of evidence suggests that there are significant barriers to the formation of new enterprises in the Community which are more acute inside the disadvantaged regions. The Commission has therefore decided to introduce a new aid instrument in these guidelines to encourage small business start-ups in disadvantaged regions with differentiated aid ceilings according to the regions concerned.

## 2. Scope

8. The Commission will apply these Guidelines to regional aid granted in every sector of the economy apart from the fisheries sector and the coal industry <sup>(7)</sup> which are subject to special rules laid down by specific legal instruments.

In the agricultural sector, these guidelines do not apply to the production of agricultural products listed in Annex I of the Treaty. They do apply to the processing and marketing of such products, but only to the extent laid down in the Community guidelines for State aid in the agriculture sector <sup>(8)</sup>, or any replacement Guidelines.

In addition, some other sectors are also subject to specific rules which take account of the particular situation of the sectors concerned and which may totally or partially derogate from these guidelines <sup>(9)</sup>.

As regards the steel industry, in accordance with its long-established practice, the Commission considers that regional aid to the steel industry as defined in Annex I is not compatible with the common market. This incompatibility also applies to large individual aid grants made in this sector to small and medium-sized enterprises within the meaning of Article 6 of Regulation (EC) No 70/2001 <sup>(10)</sup>, or any successor regulation, which are not exempted by the same Regulation.

In addition, due to its specific characteristics, no regional investment aid may be granted in the synthetic fibres sector as defined in Annex II.

9. Aid may only be granted to firms in difficulties within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(11)</sup> in accordance with the latter guidelines. <sup>(12)</sup>
10. As a general rule, regional aid should be granted under a multi-sectoral aid scheme which forms an integral part of a regional development strategy with clearly defined objectives. Such a scheme may also enable the competent authorities to prioritise investment projects according to their interest for the region concerned. Where, exceptionally, it is envisaged to grant individual ad hoc aid to a single firm, or aid confined to one area of activity, it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy and that, having

<sup>(7)</sup> For the purposes of these guidelines 'coal' means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal laid down by the United Nations Economic Commission for Europe.

<sup>(8)</sup> OJ C 28 of 1.2.2000, p.2. Corrigendum OJ C 232 12.8.2000, p. 17.

<sup>(9)</sup> The sectors covered by special rules over and above those set out here are currently: transport and shipbuilding.

<sup>(10)</sup> OJ L 10, 13.1.2001, p. 33. Regulation as amended by Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22).

<sup>(11)</sup> OJ C 244, 1.10.2004, p. 2.

<sup>(12)</sup> In particular, aid granted to large or medium-sized enterprises during the restructuring period must always be notified individually to the Commission, even if it is granted as part of an approved scheme.

regard to the nature and size of the project, it will not result in unacceptable distortions of competition. If aid granted under a scheme appears to be unduly concentrated on a particular sector of activity, the Commission may review the scheme pursuant to Article 17 of Regulation (EC) No 659/1999 of 22 March 1999 on modalities for the application of Article 93 of the EC Treaty <sup>(13)</sup> and may propose, in line with Article 18 (c) of this Regulation, to abolish the scheme.

11. Member States do not have to notify national regional aid schemes which fulfil all the conditions laid down in the group exemption Regulations adopted by the Commission pursuant to Article 1 of Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the EC Treaty establishing the European Community to certain categories of horizontal State aid <sup>(14)</sup>.

### 3. Demarcation of regions

#### 3.1. Population coverage eligible for regional aid, 2007-2013

12. In the light of the principle of the exceptional nature of regional aid, the Commission considers that the total population coverage of assisted regions in the Community must be substantially less than that of unassisted regions.
13. Having regard to the conclusions of different European Councils calling for a reduction in overall levels of State aid, and in view of the widely shared concerns about the distortive effects of investment aid for large companies, the Commission considers that the overall population coverage of the regional aid guidelines for 2007-2013 should be limited to that which is necessary to allow coverage of the most disadvantaged regions, as well as a limited number of regions which are disadvantaged in relation to the national average in the Member State concerned. Accordingly, it has decided to fix the limit for the overall population coverage to 42 % of the population of the current Community of 25 Member States, which is similar to the limit fixed on the basis of a Community of 15 members in 1998. This limit will provide for an appropriate level of concentration of regional aid in EU-25, while allowing a sufficient degree of flexibility for the accession of Bulgaria and Romania, the entire territory of which will normally be eligible for regional aid <sup>(15)</sup>.
14. This notwithstanding, in order to ensure a sufficient degree of continuity for the existing Member States, the Commission has also decided to apply an additional safety net to ensure that no Member State loses more than 50 % of the coverage of its population covered during the period 2000-2006 <sup>(16)</sup>.

#### 3.2. The derogation in Article 87(3)(a)

15. Article 87(3)(a) provides that aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment may be considered compatible with the common market. As the Court of Justice of the European Communities has held, 'the use of the words "abnormally" and "serious" in the exemption contained in [Article 87(3)(a)] shows that it concerns only areas where the economic situation is extremely unfavourable in relation to the Community as a whole' <sup>(17)</sup>.

<sup>(13)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(14)</sup> OJ L 142, 14.5.1998, p. 1.

<sup>(15)</sup> This 42 % limit is estimated to rise to 45,5 % on an EU-27 basis following the Accession of Bulgaria and Romania.

<sup>(16)</sup> Application of the safety net will lead to a total population coverage of about 43.1 % on an EU-25 basis, or 46,6 % on an EU-27 basis.

<sup>(17)</sup> Case 248/84, *Germany v Commission* [1987, ECR 4013, paragraph 19.

16. The Commission accordingly considers that the conditions laid down are fulfilled if the region, being a NUTS <sup>(18)</sup> level II geographical unit, has a per capita gross domestic product (GDP), measured in purchasing power standards (PPS), of less than 75 % of the Community average <sup>(19)</sup>. The GDP per capita <sup>(20)</sup> of each region and the Community average to be used in the analysis are determined by the Statistical Office of the European Communities. In the interest of ensuring the maximum possible coherence between the designation of regions eligible for the derogation under Article 87(3)(a) under the regional aid guidelines, and the regions eligible for the convergence objective under the structural fund regulations, the Commission has used the same GDP per capita data to designate the Article 87(3)(a) regions as that used to designate the convergence regions under the structural fund regulations <sup>(21)</sup>.
17. In recognition of the special handicaps which they face by reason of their remoteness and specific constraints in integrating into the internal market, the Commission considers that regional aid for the outermost regions covered by Article 299(2) of the Treaty <sup>(22)</sup> also falls within the scope of the derogation in Article 87(3)(a), whether or not the regions concerned have a GDP per capita of less than 75 % of the Community average.

### 3.3. Phasing out arrangements for the 'statistical effect' regions

18. For certain regions, the GDP per capita exceeds 75 % of the Community average solely because of the statistical effect of enlargement. These are regions at NUTS II level which have a GDP per capita of more than 75 % of the EU-25 average, but less than 75 % of the EU-15 average <sup>(23)</sup> <sup>(24)</sup>.
19. In order to ensure that the past progress of these regions is not undermined by too rapid change, in terms of aid intensities and the availability of operating aid, the Commission considers that they should continue to remain eligible for the derogation in Article 87(3)(a) on a transitional basis until 31 December 2010.
20. In 2010 the Commission will review the position of these regions on the basis of the three-year average of the most recent GDP data available from Eurostat. If the relative GDP per capita of any of the regions has declined below 75 % of the EU-25 average, the regions concerned will continue to be eligible for the derogation under Article 87(3)(a). Otherwise the statistical effect regions will become eligible for aid under the derogation of Article 87(3)(c) from 1 January 2011.

### 3.4. The derogation in Article 87(3)(c)

21. The Court of Justice, in Case 248/84 <sup>(25)</sup>, has expressed its views on the range of problems covered by this derogation and the reference framework for the analysis as follows: 'The exemption in [Article 87(3)(c)], on the other hand, is wider in scope inasmuch as it permits the development of certain areas without being restricted by the economic conditions laid down in [Article 87(3)(a)], provided such aid "does not adversely affect trading conditions to an extent contrary to the common interest". That provision gives the Commission power to authorize aid intended to further the economic development of areas of a Member State which are disadvantaged in relation to the national average'.

<sup>(18)</sup> Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) OJ L 154, 21.6.2003, p. 1. The NUTS nomenclature is used by EUROSTAT as a reference for the collection, development and harmonisation of EU regional statistics and for socio-economic analyses of the regions.

<sup>(19)</sup> The underlying assumption being that the GDP indicator is capable of reflecting synthetically both the phenomena mentioned.

<sup>(20)</sup> In this, and all subsequent references to GDP per capita in these guidelines, GDP is measured in terms of purchasing power standards.

<sup>(21)</sup> The data cover the period 2000-2002.

<sup>(22)</sup> Azores, Madeira, Canary Islands, Guadeloupe, Martinique, Réunion and French Guyana.

<sup>(23)</sup> In practice, 75 % of the average EU-15 GDP per capita corresponds to 82,2 % of the average EU-25 GDP per capita.

<sup>(24)</sup> These regions are subsequently referred to as the 'statistical effect' regions.

<sup>(25)</sup> Footnote 17, *supra*.

22. The regional aid covered by the derogation in Article 87(3)(c) must, however, form part of a well-defined regional policy of the Member State and adhere to the principle of geographical concentration. Inasmuch as it is intended for regions which are less disadvantaged than those to which Article 87(3)(a) relates, both the geographic scope of the exception and the aid intensity allowed must be strictly limited. This being so, only a small part of the national territory of a Member State may normally qualify for the aid in question.
23. So as to afford national authorities sufficient latitude when it comes to choosing eligible regions without jeopardizing the effectiveness of the system of checks and balances operated by the Commission in respect of this type of aid and the equal treatment of all Member States, the selection of the regions eligible under the derogation in question should be undertaken by a two-step process which consists, first, of the determination by the Commission of the maximum population coverage for each Member State <sup>(26)</sup> for such aid, and, secondly, of the selection of eligible regions.

#### 3.4.1. Determination of eligible national population coverage

24. As a first step, the determination of the national population coverage eligible for aid under the derogation in Article 87(3)(c) must be made by a method which is objective, fair and transparent. Furthermore, the final outcome must remain within the overall limit for coverage of regional aid determined by the Commission under section 3.1, taking account also of the safety net. In order to achieve this, the Commission determines the population ceiling for each Member State on the basis of the following method.
25. First, Member States automatically receive an allocation equivalent to the population of any regions which were eligible for aid under the derogation in Article 87(3)(a) of the Treaty but which no longer meet the conditions for eligibility under that Article and which are not covered by the arrangements for the statistical effect regions described in section 3.3. These are the regions which had a GDP per capita of less than 75 % on an EU-15 basis when the 1998 regional aid guidelines were adopted, but which as a result of their economic development no longer meet that condition on an EU-15 basis. Since these regions <sup>(27)</sup> have previously benefited from a relatively high level of aid, the Commission considers it necessary to allow Member States the flexibility, if they so wish, to continue to support these regions for the duration of these guidelines, under the derogation in Article 87(3)(c) <sup>(28)</sup>.
26. Second, in order to allow for the continued support of low population density regions, the Member States concerned also receive an allocation based on the population of low population density regions <sup>(29)</sup>.
27. After deducting the population coverage resulting from the application of the objective criteria set out in sections 3.2 and 3.3, as well as the allocations referred to in the two preceding paragraphs from the upper limit of 42 % of EU-25 population determined in section 3.1, the balance is available for distribution between the Member States using a distribution key that takes account of variations in GDP per capita and unemployment between the regions, both in a national and a Community context. The detailed formula is set out in Annex IV <sup>(30)</sup>.
28. Finally, as indicated in section 3.1, a safety net is applied to ensure that no Member State loses more than 50 % of the coverage of its population under the 1998 guidelines.

<sup>(26)</sup> With the exception of Member States whose entire territory is eligible for the derogation under Article 87(3)(a).

<sup>(27)</sup> Subsequently referred to as the 'economic development' regions.

<sup>(28)</sup> Although it was not eligible for aid pursuant to Article 87(3)(a), Northern Ireland has in fact benefited during the period 2000-2006 from the same aid intensities as many of the Article 87(3)(a) regions. Accordingly, Northern Ireland should also be considered as an economic development region for the purposes of these Guidelines.

<sup>(29)</sup> Calculated on the basis of the NUTS III option of paragraph 30(b) of these guidelines.

<sup>(30)</sup> The same method was used by the Commission in its 1998 Guidelines on national regional aid: Annex 3, paragraphs 4-7.



29. The resulting allocations are set out in Annex V, together with the lists of regions eligible for support under Article 87(3)(a), the statistical effect regions and the economic development regions.

#### 3.4.2. Selection of eligible regions <sup>(31)</sup>

30. The eligibility criteria for the selection of regions by the Member States must be sufficiently flexible to allow for the wide diversity of situations in which the granting of national regional aid may potentially be justified but at the same time they must be transparent and provide sufficient safeguards that the award of regional aid will not distort trade and competition to an extent contrary to the common interest. Accordingly, the Commission considers that the following regions may be eligible for selection by the Member States concerned for the award of regional investment aid pursuant to the derogation under Article 87(3)(c) <sup>(32)</sup>:

- (a) the 'economic development' regions;
- (b) the low population density regions: such areas are made up essentially of NUTS-II geographic regions with a population density of less than 8 inhabitants per km<sup>2</sup>, or NUTS-III geographic regions with a population density of less than 12.5 inhabitants per km<sup>2</sup> <sup>(33)</sup>. However, a certain flexibility is allowed in the selection of these areas, subject to the following limitations:
  - flexibility in the selection of areas must not mean an increase in the population covered;
  - the NUTS III parts qualifying for flexibility must have a population density of less than 12.5 inhabitants per square kilometer;
  - they must be contiguous with NUTS III regions which satisfy the low population density test;
- (c) regions which form contiguous zones with a minimum population of at least 100 000 and which are located within either NUTS-II or NUTS-III regions which have either a GDP per capita of less than the EU-25 average, **or** which have an unemployment rate which is higher than 115 % of the national average, (both calculated on the average of the most recent 3 years of Eurostat data);
- (d) NUTS-III regions with less than 100 000 population which have either a GDP per capita of less than the EU-25 average **or** which have an unemployment rate which is higher than 115 % of the national average, (both calculated on the average of the most recent three years of Eurostat data);
- (e) islands and other regions categorised by similar geographical isolation <sup>(34)</sup> which have either a GDP per capita of less than the EU-25 average, **or** which have an unemployment rate which is higher than 115 % of the national average, (both calculated on the average of the most recent three years of Eurostat data);
- (f) islands with fewer than 5 000 inhabitants and other communities with fewer than 5 000 inhabitants categorised by similar geographical isolation;

<sup>(31)</sup> Those statistical effect regions which from 1 January 2011 are not eligible for the derogation under Article 87(3)(a) are automatically eligible under Article 87(3)(c).

<sup>(32)</sup> Taking account of their small size, for Cyprus and Luxembourg it is sufficient that the regions designated have either a GDP per capita which is less than the EU average, or an unemployment rate which is higher than 115 % of the national average, and have a minimum population of 10 000 inhabitants.

<sup>(33)</sup> In order to prevent double counting, this criterion should be applied on a residual basis, after taking account of the relative wealth of the regions concerned.

<sup>(34)</sup> For example peninsulas and mountainous regions.

- (g) NUTS-III regions or parts thereof adjacent to a region which is eligible for support under Article 87(3)(a) as well as NUTS-III regions or parts thereof which share a land border, or a sea border of less than 30 kilometres with a country which is not a Member State of the European Economic Area or EFTA.
- (h) In duly justified cases, Member States may also designate other regions which form contiguous zones with a minimum population of at least 50 000 which are undergoing major structural change, or are in serious relative decline, when compared with other comparable regions. It will be the task of Member States which wish to use this possibility to demonstrate that the award of regional investment aid in the region concerned is justified, using recognised economic indicators and comparisons with the situation at Community level.
31. In addition, in order to allow Member States greater flexibility to target very localised regional disparities, below the NUTS-III level, Member States may also designate other smaller areas which do not meet the conditions described above provided they have a minimum population of 20 000 <sup>(35)</sup>. It will be the task of Member States which wish to use this possibility to demonstrate that the areas proposed are relatively more in need of economic development than other areas in that region, using recognised economic indicators such as GDP per capita, employment or unemployment levels, local productivity or skills indicators. Regional aid will be approved by the Commission in these areas for SMEs, and the relevant SME bonus will also apply. However, because of the potential distortion of competition resulting from the spill-over effect into the more prosperous surrounding regions, the Commission will not approve aid for investments by large companies in these areas, or aids for investments with eligible expenses exceeding EUR 25 million.
32. Compliance with the total coverage allowed for each Member State will be determined by the actual population of the regions concerned, on the basis of the most recent recognised statistical information available.

#### 4. Regional investment aid

##### 4.1. Form of aid and aid ceilings

###### 4.1.1. Form of aid

33. Regional investment aid is aid awarded for an initial investment project.
34. *Initial investment* means an investment in material and immaterial assets relating to;
- the setting-up of a new establishment;
  - the extension of an existing establishment;
  - diversification of the output of an establishment into new, additional products;
  - a fundamental change in the overall production process of an existing establishment.

'Material assets' means assets relating to land, buildings and plant/machinery. In case of acquisition of an establishment, only the costs of buying assets from third parties should be taken into consideration, provided the transaction has taken place under market conditions.

'Immaterial assets' means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge.

<sup>(35)</sup> This minimum limit may be reduced in the case of islands and other areas categorised by similar geographical isolation.



Replacement investment which does not meet any of these conditions is thus excluded from the concept <sup>(36)</sup>.

35. The acquisition of the assets directly linked to an establishment may also be regarded as initial investment provided the establishment has closed or would have closed had it not been purchased, and is bought by an independent investor <sup>(37)</sup>.
36. Regional investment aid is calculated either in reference to material and immaterial investment costs resulting from the initial investment project or to (estimated) wage costs for jobs directly created by the investment project <sup>(38)</sup>.
37. The form of the aid is variable. It may, for example, take the form of grants, low-interest loans or interest rebates, state guarantees, the purchase of a share-holding or an alternative provision of capital on favourable terms, exemptions or reductions in taxes, social security or other compulsory charges, or the supply of land, goods or services at favourable prices.
38. It is important to ensure that regional aid produces a real incentive effect to undertake investments which would not otherwise be made in the assisted areas. Therefore aid may only be granted under aid schemes if the beneficiary has submitted an application for aid and the authority responsible for administering the scheme has subsequently confirmed in writing <sup>(39)</sup> that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project <sup>(40)</sup>. An express reference to both conditions must also be included in all aid schemes <sup>(41)</sup>. In the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on Commission approval of the measure, to award aid before work starts on the project. If work begins before the conditions laid down in this paragraph are fulfilled, the whole project will not be eligible for aid.
39. Where the aid is calculated on the basis of material or immaterial investment costs, or of acquisition costs in the case referred to in paragraph 35, to ensure that the investment is viable and sound and respecting the applicable aid ceilings, 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 <sup>(42)</sup>.
40. Furthermore, in order to ensure that the investment makes a real and sustained contribution to regional development, aid must be made conditional, through the conditions attached to the aid, or its method of payment, on the maintenance of the investment in question in the region concerned for a minimum period of at least five years after its completion <sup>(43)</sup>. In addition, where the aid is calculated on the basis of wage costs, the posts must be filled within three years of the completion of the works. Each of the jobs created through the investment must be maintained within the region concerned for a period of five years from the date the post was first filled. In the case of SMEs, Member States may reduce these five-year periods for the maintenance of an investment or jobs created to a minimum of three years.

<sup>(36)</sup> Replacement investment may however qualify as operating aid under certain conditions as set out in section 5.

<sup>(37)</sup> Consequently, the sole acquisition of the shares of the legal entity of an enterprise does not qualify as initial investment.

<sup>(38)</sup> A job is deemed to be directly created by an investment project if it concerns the activity to which the investment relates and is created within three years of completion of the investment, including jobs created following an increase in the utilisation rate of the capacity created by the investment.

<sup>(39)</sup> In the case of aid which is subject to individual notification to and approval by the Commission, confirmation of eligibility must be made conditional on the Commission decision approving the aid.

<sup>(40)</sup> 'Start of work' means either the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies.

<sup>(41)</sup> The only exception to these rules is in the case of approved tax aid schemes where a tax exemption or reduction is granted automatically to qualifying expenditure without any discretion on the part of the authorities.

<sup>(42)</sup> This is for example not the case for a subsidised loan, public equity-capital loans or public participations which do not meet the market economy investor principle, state guarantees containing elements of aid, as well as public support granted within the scope of the *de minimis* rule.

<sup>(43)</sup> This rule shall not prevent the replacement of plant or equipment which has become out-dated within this five year period due to rapid technological change, provided the economic activity is retained in the region concerned for the minimum period.

41. The level of the aid is defined in terms of intensity compared with reference costs. All aid intensities must be calculated in terms of gross grant equivalents (GGE) <sup>(44)</sup>. The aid intensity in gross grant equivalent is the discounted value of the aid expressed as a percentage of the discounted value of the eligible costs. For aid which is individually notified to the Commission, the gross grant equivalent is calculated at the moment of notification. In other cases, the eligible investment costs are discounted to their value at the moment of the granting of the aid. Aid payable in several instalments shall be discounted to its value at the moment of its being notified or granted, as appropriate. The interest rate to be used for discounting purposes and to calculate the aid amount in a soft loan is the reference rate applicable at the time of grant. In cases where aid is awarded by means of tax exemptions or reductions on future taxes due, discounting of aid tranches takes place on the basis of the reference rates applicable at the various times the tax advantages become effective.

#### 4.1.2. Aid ceilings (maximum aid intensities) for aid to large companies

42. The intensity of the aid must be adapted to take account of the nature and intensity of the regional problems that are being addressed. This means that the admissible aid intensities are from the outset less high in regions qualifying for exemption under Article 87(3)(c) than in those qualifying under Article 87(3)(a).
43. The Commission must also take account of the fact that following recent enlargements the disparities in the relative wealth of the regions qualifying under Article 87(3)(a) have increased substantially. In fact, a significant number of regions and indeed entire Member States now have a per capita GDP of below 45 % of the EU-25 average, which was not the case in 1998. The existence of these greater disparities of wealth within the Community requires the Commission to introduce a greater categorisation of the regions concerned.
44. In the case of regions falling under Article 87(3)(a), the Commission thus considers that the intensity of regional aid must not exceed:
- 30 % GGE for regions with less than 75 % of average EU-25 GDP per capita, for outermost regions with higher GDP per capita and until 1 January 2011 statistical effect regions;
  - 40 % GGE for regions with less than 60 % of average EU-25 GDP per capita;
  - 50 % GGE for regions with less than 45 % of average EU-25 GDP per capita.
45. In recognition of their specific handicaps, the outermost regions will be eligible for a further bonus of 20 % GGE if their GDP per capita falls below 75 % of the EU-25 average and 10 % GGE in other cases.
46. The statistical effect regions which fall under the derogation under Article 87(3)(c) from 1 January 2011 will be eligible for an aid intensity of 20 %.
47. In the other Article 87(3)(c) regions, the ceiling on regional aid must not exceed 15 % GGE. This is reduced to 10 % GGE in the case of regions with both more than 100 % of average EU-25 GDP per capita and a lower unemployment rate than the EU-25 average, measured at NUTS-III level (based on averages for the last three years, using Eurostat data) <sup>(45)</sup>.

<sup>(44)</sup> The Commission is discontinuing its former practice of converting regional aid notified by Member States into net grant equivalents in order to take account of the judgment of the Court of First Instance of 15 June 2000 in Case T-298/97, *Alzetta*. In that case the Court of First Instance ruled: 'The Commission is not empowered, under the State aid monitoring system established by the Treaty, to take into consideration the incidence of tax on the amount of financial aid allocated when it assesses whether it is compatible with the Treaty. Such charges are not levied specifically on the aid itself but are levied downstream, and apply to the aid in question in the same way as to any income received. They cannot therefore be relevant when assessing the specific effect of the aid on trade and competition and, in particular, when estimating the benefit obtained by the recipients of such aid by comparison with competing undertakings which have not received such aid and whose income is also liable to tax.' Furthermore, the Commission considers that the use of GGEs, which are also used to calculate the intensities of other types of State aid, will contribute to increasing the simplicity and transparency of the State aid control system, and also takes account of the increased proportion of State aid which is awarded in the form of tax exemptions.

<sup>(45)</sup> By way of exception, a higher aid intensity may be permitted in the case of a NUTS-III region, or smaller, adjacent to an Article 87(3)(a) region if this is necessary to ensure that the differential between the two regions does not exceed 20 percentage points.

48. However, the low population density regions and regions (corresponding to NUTS-III level or smaller) adjoining a region with Article 87(3)(a) status selected by Member States for coverage under Article 87(3)(c), as well as NUTS-III regions or parts thereof which share a land border with a country which is not a Member State of the European Economic Area or EFTA, are always eligible for an aid intensity of 15 % GGE.

#### 4.1.3. Bonuses for small and medium-sized enterprises

49. In the case of aid awarded to small and medium-sized enterprises <sup>(46)</sup>, the ceilings in section 4.1.2 may be increased by 20 % GGE for aid granted to small enterprises and by 10 % GGE for aid granted to medium-sized enterprises <sup>(47)</sup>.

### 4.2. *Eligible expenses*

#### 4.2.1. Aid calculated on the basis of investment costs

50. Expenditures on land, buildings and plant/machinery <sup>(48)</sup> are eligible for aid for initial investment.
51. For SMEs, the costs of preparatory studies and consultancy costs linked to the investment may also be taken into account up to an aid intensity of 50 % of the actual costs incurred.
52. In the event of an acquisition of the type referred to in paragraph 35, only the costs of buying assets <sup>(49)</sup> from third parties should be taken into consideration <sup>(50)</sup>. The transaction must take place under market conditions.
53. Costs related to the acquisition of assets other than land and buildings under lease can only be taken into consideration 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 for large companies, and three years for SMEs.
54. Except in the case of SMEs and takeovers, the assets acquired should be new. In the case of takeovers, assets for whose acquisition aid has already been granted prior to the purchase should be deducted.
55. For SMEs, the full costs of investments in intangible assets by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge may always be taken into consideration. For large companies, such costs are eligible only up to a limit of 50 % of the total eligible investment expenditure for the project.
56. In all cases, eligible intangible assets will be subject to the necessary conditions for ensuring that they remain associated with the recipient region eligible for the regional aid and, consequently, that they are not the subject of a transfer benefiting other regions, especially other regions not eligible for regional aid. To this end, eligible intangible assets will have to satisfy the following conditions in particular:
- they must be used exclusively in the establishment receiving the regional aid;
  - they must be regarded as amortizable assets;

<sup>(46)</sup> Annex I of Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001, OJ L 63, 28.2.2004, p. 22, or any successor regulation.

<sup>(47)</sup> These bonuses do not apply to aid awarded in the transport sector.

<sup>(48)</sup> In the transport sector, expenditure on the purchase of transport equipment (movable assets) is not eligible for aid for initial investment.

<sup>(49)</sup> Where the acquisition is accompanied by other initial investment, the expenditure relating to the latter should be added to the cost of the purchase.

<sup>(50)</sup> In exceptional cases, the aid may alternatively be calculated by reference to the (estimated) wage costs for the jobs safeguarded or newly created by the acquisition. These cases have to be individually notified to the Commission.

- they must be purchased from third parties under market conditions;
- they must be included in the assets of the firm and remain in the establishment receiving the regional aid for at least five years (three years for SMEs).

#### 4.2.2. Aid calculated on the basis of wage costs

57. As was indicated in section 4.1.1, regional aid may also be calculated by reference to the expected wage costs <sup>(51)</sup> arising from job creation as a result of an initial investment project.
58. *Job creation* means a *net* increase in the number of employees <sup>(52)</sup> directly employed in a particular establishment compared with the average over the previous 12 months. Any jobs lost during that 12 month period must therefore be deducted from the apparent number of jobs created during the same period <sup>(53)</sup>.
59. The amount of aid must not exceed a certain percentage of the wage cost of the person hired, calculated over a period of two years. The percentage is equal to the intensity allowed for investment aid in the area in question.

### 4.3. *Aid for large investment projects*

60. For the purpose of these guidelines, a 'large investment project' is an 'initial investment' as defined by these guidelines with an eligible expenditure above EUR 50 million <sup>(54)</sup>. In order to prevent that a large investment project being artificially divided into sub-projects in order to escape the provisions of these guidelines, a large investment project will be considered to be a single investment project when the initial investment is undertaken in a period of three years by one or more companies and consists of fixed assets combined in an economically indivisible way <sup>(55)</sup>.
61. To calculate whether the eligible expenditure for large investment projects reaches the various thresholds in these guidelines, the eligible expenditure to be taken into account is either the traditional investment costs or the wage cost, whichever is the higher.
62. In two successive Multisectoral frameworks on regional aid for large investment projects in 1998 <sup>(56)</sup> and 2002 <sup>(57)</sup>, the Commission reduced the maximum aid intensities for large investment projects to limit distortions of competition. In the interests of simplification and transparency, the Commission has decided to integrate the provisions of the 2002 Multisectoral framework (MSF-2002) into the Regional aid guidelines for the period 2007-13.

<sup>(51)</sup> The wage cost means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising the gross wage, before tax, and the compulsory social security contributions.

<sup>(52)</sup> The number of employees means the number of annual labour units, namely the number of persons employed full time in one year, part-time and seasonal work being ALU fractions.

<sup>(53)</sup> Such a definition holds true as much for an existing establishment as for a new establishment.

<sup>(54)</sup> The EUR 50 million must be calculated at prices and exchange rates on the date when the aid is granted, or in the case of large investment projects where individual notification is required, at prices and exchange rates at the date of the notification.

<sup>(55)</sup> To assess whether an initial investment is economically indivisible, the Commission will take into account the technical, functional and strategic links and the immediate geographical proximity. The economic indivisibility will be assessed independently from ownership. This implies 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 undertakings 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).

<sup>(56)</sup> OJ C 107, 7.4.1998, p. 7.

<sup>(57)</sup> OJ C 70, 19.3.2002, p. 8 as amended by OJ C 263, 1.11.2003, p. 1.

63. MSF-2002 will therefore cease to apply to aid awarded or notified <sup>(58)</sup> after 31 December 2006 and will be replaced by these guidelines <sup>(59)</sup>.

#### 4.3.1. Increased transparency and monitoring of large investment projects

64. Member States are required to notify individually to the Commission any aid to be awarded to investment projects under an existing aid scheme if the aid proposed from all sources is more than the maximum allowable amount of aid that an investment with eligible expenditure EUR 100 million can receive under the scale and the rules laid down in paragraph 67 <sup>(60)</sup>.

The notification thresholds for different regions with the most commonly encountered aid intensities under these guidelines are summarised in the table below.

Aid intensity	10 %	15 %	20 %	30 %	40 %	50 %
Notification threshold	EUR 7,5 million	EUR 11,25 million	EUR 15,0 million	EUR 22,5 million	EUR 30,0 million	EUR 37,5 million

65. Whenever regional aid is granted on the basis of existing aid schemes for non-notifiable large investments projects, Member States must, within 20 working days starting from the granting of the aid by the competent authority, provide the Commission with the information requested in the standard form laid down in Annex III. The Commission will make summary information available to the public through its website (<http://europa.eu.int/comm/competition/>).
66. Member States must maintain detailed records regarding the granting of aid for all large investment projects. Such records, which must contain all information necessary to establish that the maximum allowable aid intensity has been observed, must be maintained for 10 years from the date on which the aid was granted.

#### 4.3.2. Rules for the assessment of large investment projects

67. Regional investment aid for large investment projects is subject to an adjusted regional aid ceiling <sup>(61)</sup>, on the basis of the following scale:

Eligible expenditure	Adjusted aid ceiling
Up to EUR 50 million	100 % of regional ceiling
For the part between EUR 50 million and EUR 100 million	50 % of regional ceiling
For the part exceeding EUR 100 million	34 % of regional ceiling

Thus, the allowable aid amount for a large investment project will be calculated according to the following formula: maximum aid amount =  $R \times (50 + 0,50 \times B + 0,34 \times C)$ , where R is the unadjusted regional aid ceiling, B is the eligible expenditure between EUR 50 million and EUR 100 million, and C is the eligible expenditure above EUR 100 million. This is calculated on the basis of the official exchange rates prevailing on the date of the grant of aid, or in the case of aid subject to individual notification, on the date of notification.

<sup>(58)</sup> Individually notifiable investment projects will be assessed in accordance with the rules in force at the time of notification.

<sup>(59)</sup> Given the wide general scope of these guidelines, the Commission decided that it is not technically feasible to proceed with the establishment of a list of sectors where serious structural difficulties prevail.

<sup>(60)</sup> Ad hoc individual aid must always be notified to the Commission. Because of its clear effect on the conditions of trade and competition, the need for a specific justification for the link with regional development applies with greater force to ad hoc individual aid for large individual investment projects.

<sup>(61)</sup> The starting point for the calculation of the adjusted aid ceiling is always the maximum aid intensity allowed for aid for large enterprises in accordance with section 4.1.2 above. No SME bonuses may be granted to large investment projects.

68. Where the total amount of aid from all sources exceeds 75 % of the maximum amount of aid an investment with eligible expenditure of EUR 100 million could receive, applying the standard aid ceiling in force for large enterprises in the approved regional aid map on the date the aid is to be granted, and where
- (a) the aid beneficiary accounts for more than 25 % of the sales of the product(s) concerned on the market(s) concerned before the investment or will account for more than 25 % after the investment, or
  - (b) the production capacity created by the project is more than 5 % of the market measured using apparent consumption data <sup>(62)</sup> for the product concerned, unless the average annual growth rate of its apparent consumption over the last five years is above the average annual growth rate of the European Economic Area's GDP,
- the Commission will approve regional investment aid only after a detailed verification, following the opening of the procedure provided for in Article 88(2) of the Treaty, that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effect on trade between Member States <sup>(63)</sup>.
69. The product concerned is normally the product covered by the investment project <sup>(64)</sup>. When the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be the downstream product. The relevant product market includes the product concerned and its substitutes considered to be such either by the consumer (by reason of the product's characteristics, prices and intended use) or by the producer (through flexibility of the production installations).
70. The burden of proof that the situations to which paragraphs 68(a) and (b) refer do not apply, lies with the Member State <sup>(65)</sup>. For the purpose of applying points (a) and (b), sales and apparent consumption will be defined at the appropriate level of the Prodcom classification <sup>(66)</sup>, normally in the EEA, or, if such information is not available or relevant, on the basis of any other generally accepted market segmentation for which statistical data are readily available.

#### 4.4. Rules on the cumulation of aid

71. The aid intensity ceilings laid down in sections 4.1 and 4.3 above apply to the total aid:
- where assistance is granted concurrently under several regional schemes or in combination with ad hoc aid;
  - whether the aid comes from local, regional, national or Community sources.
72. Where aid calculated on the basis of material or immaterial investment costs is combined with aid calculated on the basis of wage costs, the intensity ceiling laid down for the region concerned must be respected <sup>(67)</sup>.
73. Where the expenditure eligible for regional aid is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable ceiling under the applicable rules.

<sup>(62)</sup> Apparent consumption of the product concerned is production plus imports minus exports.

<sup>(63)</sup> Before the entry into force of these guidelines the Commission will draw up further guidance on the criteria it will take into account during this assessment.

<sup>(64)</sup> Where an investment project involves the production of several different products, each of the products needs to be considered.

<sup>(65)</sup> If the Member State demonstrates that the aid beneficiary creates a new product market, the tests laid down in paragraph 68 (a) and (b) do not need to be carried out, and the aid will be authorised under the scale in paragraph 67.

<sup>(66)</sup> Council Regulation (EEC) No 3924/91 of 19 December 1991 on the establishment of a Community survey of industrial production (OJ L 374, 31.12.1991, p. 1).

<sup>(67)</sup> This condition is deemed to be met if the sum of the aid for the initial investment, expressed as a percentage of the investment, and of the job creation aid, expressed as a percentage of wage costs, does not exceed the most favourable amount resulting from application of either the ceiling set for the region in accordance with the criteria indicated at section 4.1 or the ceiling set for the region in accordance with the criteria indicated at section 4.3.



74. Where the Member State lays down that State aid under one scheme may be combined with aid under other schemes, it must specify, in each scheme, the method by which it will ensure compliance with the conditions listed above.
75. Regional investment aid shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in these guidelines.

## 5. Operating aid <sup>(68)</sup>

76. Regional aid aimed at reducing a firm's current expenses (operating aid) is normally prohibited. Exceptionally, however, such aid may be granted in regions eligible under the derogation in Article 87(3)(a) provided that (i) it is justified in terms of its contribution to regional development and its nature and (ii) its level is proportional to the handicaps it seeks to alleviate <sup>(69)</sup>. It is for the Member State to demonstrate the existence and importance of any handicaps <sup>(70)</sup>. In addition, certain specific forms of operating aid can be accepted in the low population density regions and the least populated areas.
77. Operating aid should in principle only be granted in respect of a predefined set of eligible expenditures or costs <sup>(71)</sup> and limited to a certain proportion of those costs.
78. Because of the specific nature of financial and intra-group activities, as defined in Section J (codes 65, 66 and 67) and intra-group activities falling within the scope of Section K (code 74) of the NACE code, operating aid granted for these activities has only a very limited likelihood of promoting regional development but a very high risk of distorting competition, as stated in the Commission notice on the application of the State aid rules to measures relating to direct business taxation <sup>(72)</sup>. The Commission will therefore not approve any operating aid to the financial services sector, or for intra-group activities under these guidelines unless such aid is granted under general schemes which are open to all sectors and which are designed to offset additional transport or employment costs. Operating aid intended to promote exports is likewise excluded.
79. Because it is intended to overcome delays and bottlenecks in regional development, except as provided for in paragraphs 80 and 81, operating aid should always be temporary and reduced over time, and should be phased out when the regions concerned achieve real convergence with the wealthier areas of the EU <sup>(73)</sup>.
80. In derogation from the previous paragraph, operating aid which is not both progressively reduced and limited in time may only be authorised:
- in the outermost regions, in so far as it is intended to offset the additional costs arising in the pursuit of economic activity from the factors identified in Article 299(2) of the Treaty, the permanence and combination of which severely restrain the development of such regions (remoteness, insularity, small size, difficult topography and climate, and economic dependence on a few products) <sup>(74)</sup>;

<sup>(68)</sup> Like other forms of regional aid, the granting of operating aid is always subject to the specific rules which may apply in particular sectors.

<sup>(69)</sup> Operating aid takes the form in particular of tax exemptions or reductions in social security contributions which are not linked to eligible investment costs.

<sup>(70)</sup> The Commission is currently studying the feasibility of establishing a methodology for evaluating the additional costs in the outermost regions.

<sup>(71)</sup> For example, replacement investments, transport costs or labour costs.

<sup>(72)</sup> OJ C 384, 10.12.1998, p. 3.

<sup>(73)</sup> This principle of degressivity must also be respected when new operating aid schemes are notified to replace existing ones. However, flexibility as regards the application of this principle may be permitted in the case of operating aid schemes designed to address the geographical handicaps of particular areas located within Article 87(3)(a) regions.

<sup>(74)</sup> In view of the constraints faced by the outermost regions, except in the cases referred to in paragraph 78, the Commission considers that operating aid of up to 10 % of the turnover of the beneficiary may be awarded without the need for specific justification. It is the task of the Member State to demonstrate that any proposed aid above this amount is justified in terms of its contribution to regional development, and that its level is proportional to the additional costs linked to the factors identified in Article 299(2) which it is intended to offset.

- in the least populated regions, in so far as it is intended to prevent or reduce the continuing depopulation of these regions <sup>(75)</sup>. The least populated regions represent or belong to regions at NUTS-II level with a population density of 8 inhabitants per km<sup>2</sup> or less and extend to adjacent and contiguous smaller areas meeting the same population density criterion.
81. In addition, in the outermost regions and low population density regions, aid which is not both progressively reduced and limited in time and which is intended partly to offset additional transport costs may be authorized under the following conditions:
- aid may serve only to compensate for the additional cost of transport, taking into account other schemes of assistance to transport. While the amount of aid may be calculated on a representative basis, systematic overcompensation must be avoided;
  - aid may be given only in respect of the extra cost of transport of goods produced in the outermost regions and low population density regions inside the national borders of the country concerned. It must not be allowed to become export aid. No aid may be given towards the transport or transmission of the products of businesses without an alternative location (products of the extractive industries, hydroelectric power stations, etc.);
  - for the outermost regions only, aid may also cover the cost of transporting primary commodities, raw materials or intermediate products from the place of their production to the place of final processing in the region concerned;
  - the aid must be objectively quantifiable in advance, on the basis of an aid-per-passenger or aid-per-ton/kilometer ratio, and there must be an annual report drawn up which, among other things, shows the operation of the ratio or ratios;
  - the estimate of additional cost must be based on the most economical form of transport and the shortest route between the place of production or processing and commercial outlets using that form of transport; external costs to the environment should also be taken into account.
82. In all cases, the need for and level of operating aid should be regularly re-examined to ensure its long-term relevance to the region concerned. The Commission will therefore only approve operating aid schemes for the duration of these guidelines.
83. In order to verify the effects on trade and competition of operating aid schemes, Member States will be required to provide each year a single report in respect of each NUTS-II region in which operating aid is granted which provides a breakdown of total expenditure, or estimated income forgone, for each operating aid scheme approved in the region concerned and identifies the ten largest beneficiaries of operating aid in the region concerned <sup>(76)</sup>, specifying the sector(s) of activity of the beneficiaries and the amount of aid received by each.

## 6. Aid for newly created small enterprises

84. While newly created small enterprises encounter difficulties throughout the EU, it appears that 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 therefore appears necessary to introduce a new form 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.

<sup>(75)</sup> It is the task of the Member State to demonstrate that the aid proposed is necessary and appropriate to prevent or reduce continuing depopulation.

<sup>(76)</sup> In terms of the amount of aid received.



85. In order to ensure that it is effectively targeted, it appears that this type of aid should be graduated according to 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, for an initial period at least, be strictly limited to small enterprises, limited in amount and degressive.
86. The Commission will accordingly approve aid schemes which provide aid of up to a total of EUR 2 million per enterprise <sup>(77)</sup> for small enterprises with their economic activity in regions eligible for the derogation in Article 87(3)(a), and up to EUR 1 million per enterprise for small enterprises with their economic activity in regions eligible for the derogation in Article 87(3)(c). Annual amounts of aid awarded for newly created small enterprises must not exceed 33 % of the abovementioned total amounts of aid per enterprise.
87. The eligible expenses are legal, advisory, consultancy and administrative costs directly related to the creation of the enterprise, as well as the following costs, insofar as they are actually incurred within the first five years of the creation of the enterprise thereafter: <sup>(78)</sup>
- interests on external finance and a dividend on own capital employed not exceeding the reference rate;
  - fees for renting production facilities/equipment;
  - energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;
  - depreciation, fees for leasing production facilities/equipment as well as wage costs including compulsory social charges may also be included provided that the underlying investments or job creation and recruitment measures have not benefited from other forms of aid.
88. The aid intensity may not exceed
- in Article 87(3)(a) regions, 35 % of eligible expenses incurred in the first three years after the creation of the enterprise, and 25 % in the two years thereafter;
  - in Article 87(3)(c) regions, 25 % of eligible expenses incurred in the first three years after the creation of the enterprise, and 15 % in the two years thereafter.
89. These intensities are increased by 5 % in Article 87(3)(a) regions with a 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, and other communities of the same size suffering from similar isolation.
90. The Member State shall put in place the necessary system to ensure that the upper limits for the amount of aid and the relevant aid intensity in relation to the eligible costs concerned are not exceeded. In particular, the aid provided for in this chapter shall not be cumulated with other public support (including *de minimis* support) in order to circumvent the maximum aid intensities or amounts laid down.
91. Granting aid designed exclusively for newly created small enterprises may produce perverse incentives for existing small enterprises to close down and re-open in order to receive this type 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.

<sup>(77)</sup> Eligible enterprises are small enterprises within the meaning of Article 2 of Annex I to Commission Regulation (EC) No 364/2004 or any successor regulation, which are autonomous within the meaning of Article 3 of the Annex to Commission Regulation (EC) No 364/2004 and which have been created less than five years ago.

<sup>(78)</sup> VAT and direct business profit/income taxes are not included in the eligible expenses.

## 7. Transitional arrangements

### 7.1. Reductions of aid intensities for regions remaining within Article 87(3)(a) on 1 January 2007

92. Where the implementation of these guidelines will result in a reduction in maximum aid intensities of more than 15 percentage points, net to gross <sup>(79)</sup>, the reduction may be implemented in two stages with the initial reduction of a minimum of 10 percentage points being applied on 1 January 2007, and the balance on 1 January 2011.

### 7.2. Reductions of aid intensities in the economic development regions

93. Provided the areas concerned are proposed by the Member State as eligible for regional aid under Article 87(3)(c) for the whole period 2007-2013, the reduction of aid intensities for the economic development regions may take place in two stages. A reduction of at least 10 percentage points net to gross shall be applied on 1 January 2007. As necessary to meet the new aid intensities allowed under these guidelines, a final reduction shall be applied at the latest on 1 January 2011 <sup>(80)</sup>.

### 7.3. Phasing-out of operating aid

94. For regions which lose their capacity to grant operating aid as a result of the loss of eligibility under Article 87(3)(a), the Commission can accept a linear phasing out of operating aid schemes over a two-year period from the date of the loss of eligibility to grant such aid.

### 7.4. Phasing out of Article 87(3)(c) regions

95. Following the entry into force of these guidelines, a number of regions will lose their eligibility for regional investment aid. In order to facilitate the smooth transition of these regions to the reformed horizontal State aid regime which is progressively being put in place through the implementation of the State aid action plan, Member States may exceptionally designate additional regions to be eligible for regional aid under Article 87(3)(c) until 1 January 2009, provided that the following conditions are met:

- the regions concerned were eligible for regional aid under Article 87(3)(c) on 31 December 2006;
- the combined total population of the regions eligible for regional investment aid under Article 87(3)(c) pursuant to the allocation of population coverages referred to in paragraphs 27 and 28 and those designated in accordance with this provision shall not exceed 66 % of the national population eligible for regional aid under Article 87(3)(c) on 31 December 2006 <sup>(81)</sup>;
- the maximum aid intensity permitted in the additional regions designated in accordance with this provision shall not exceed 10 %.

<sup>(79)</sup> I.e. from 50 % net grant equivalent to 30 % gross grant equivalent.

<sup>(80)</sup> Since Northern Ireland benefited from a specific provision in the regional aid guidelines for the period 2000-2006, the application of the same transitional arrangement is also justified.

<sup>(81)</sup> After exclusion of those regions which were eligible for regional aid under Article 87(3)(c) on 31 December 2006 and which qualify for aid under the present guidelines by virtue of other provisions (statistical effect regions, economic development regions, low population density regions). The resulting allocations are set out in Annex V.

## 8. Regional aid maps and declaration of compatibility

96. The regions of a Member State eligible for regional investment aid under the derogations and the ceilings on the intensity of aid for initial investment <sup>(82)</sup> approved for each region together form a Member State's regional aid map. The regional aid map also defines the regions eligible to grant enterprise aid. Operating aid schemes are not covered by the regional aid maps, and are assessed on a case by case basis on the basis of a notification by the Member State concerned pursuant to Article 88(3) of the Treaty.
97. The Court of Justice has ruled that the 'decisions' by which the Commission adopts the regional aid maps for each Member State should be construed as forming an integral part of the guidelines on regional aid and as having binding force only on condition that they have been accepted by Member States. <sup>(83)</sup>
98. Furthermore, it should be recalled that the regional aid maps also define the scope of any group exemption exempting regional aid from the notification obligation under Article 88(3) of the Treaty, whether such aid is granted on the basis of Regulation (EC) No 70/2001 <sup>(84)</sup>, or on the basis of a possible future exemption regulation for other forms of regional aid. Article 1(1)(b) of Regulation (EC) No 994/98 <sup>(85)</sup> provides only for the exemption of 'aid that complies with the map approved by the Commission for each Member State for the grant of regional aid'.
99. Under these guidelines, depending on the socio-economic situation of the Member States, the regional aid map will include:
  - (1) regions which can be identified on the basis of the criteria set out in these guidelines and in respect of which maximum aid intensities are defined by these guidelines. These are the regions eligible for the derogation under Article 87(3)(a) and the statistical effect regions.
  - (2) regions which are to be designated by Member States for eligibility for regional aid in accordance with Article 87(3)(c) up to the limit for population coverage determined in accordance with section 3.4.1.
100. Of course, provided they respect the conditions set out in these guidelines, it is the responsibility of the Member States themselves to decide whether they wish to grant regional investment aid and up to what level. As soon as possible after the publication of these guidelines, each Member State should accordingly notify to the Commission, in accordance with Article 88(3) of the Treaty, a single regional aid map covering its entire national territory.
101. The Commission will examine the notifications in accordance with the procedure set out in Article 88(3) of the Treaty. At the conclusion of its examination, it will publish the approved regional aid maps in the *Official Journal of the European Union*. These maps will take effect on 1 January 2007, or their date of publication if later, and will be considered an integral part of the present guidelines.
102. The notification should clearly identify the regions proposed for eligibility under Article 87(3)(a) or (c), and the aid intensities envisaged for large companies, taking account of adjustments in the regional aid ceiling for large investment projects. Where for certain regions, transitional rules will apply, or where a change of aid intensity is anticipated, the relevant periods and aid intensities should be detailed.

<sup>(82)</sup> As adjusted in accordance with paragraph 67 in the case of individually notifiable aid for large investment projects.

<sup>(83)</sup> Judgment of 18 June 2002 in Case C-242/00 Germany v. Commission.

<sup>(84)</sup> 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 (OJ L 10, 13.1.2001, p. 33), as amended by Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63, 28.2.2004, p. 22).

<sup>(85)</sup> 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 OJ L 142, 14.5.1998, p. 1.

103. Given that the regions eligible for support under Article 87(3)(a) and the statistical effect regions are determined exogenously at the NUTS-II level, it will not normally be necessary to provide detailed supporting socio-economic data. On the other hand detailed supporting information should be given to explain the designation of the Article 87(3)(c) regions, other than the economic development, the low population density and the border regions, including the detailed identification of the regions concerned, population data, information on GDP and unemployment levels in the regions concerned, and any other relevant information.
104. In order to ensure continuity, which is essential for long-term regional development, the list of regions notified by Member States should in principle apply throughout the period 2007-2013. It may, however, be subject to a mid-term review in 2010. Any Member State wishing to amend the list of regions eligible for aid under Article 87(3)(c) or the applicable aid intensities must submit a notification to the Commission before 1 April 2010 at the latest. Any changes of region in this context may not exceed 50 % of the total coverage allowed for the Member State under Article 87(3)(c). With the exception of the statistical effect regions, regions which lose their eligibility for regional aid coverage as a result of this mid-term review will not be eligible for any transitional support. Moreover, Member States may at any time notify to the Commission a request to add further regions to the list until such time as the relevant population coverage is reached.

#### 9. Entry into force, implementation, transparency and review

105. The Commission intends to apply these guidelines to all regional aid to be granted after 31 December 2006. Regional aid awarded or to be granted before 2007 will be assessed in accordance with the 1998 guidelines on national regional aid.
106. Since they must be coherent with the regional aid map, notifications of regional aid schemes, or ad hoc aid to be granted after 31 December 2006, cannot normally be considered complete until the regional aid map has been adopted for the Member State concerned in accordance with the arrangements described in section 8. Accordingly, the Commission will not normally examine notifications of regional aid schemes which are to apply after 31 December 2006, or ad hoc aid to be granted after that date, until the adoption of the regional aid map for the Member State concerned<sup>(86)</sup>. The same applies to aid schemes for newly created small enterprises covered by section 6 of these guidelines.
107. The Commission considers that the implementation of these guidelines will lead to substantial changes in the rules applicable to regional aid throughout the Community. Furthermore, in the light of the changed economic and social conditions prevailing in the EU, it appears necessary to review the continuing justification for and effectiveness of all regional aid schemes, including both investment aid and operating aid schemes. For these reasons, the Commission will propose the following appropriate measures to Member States pursuant to Article 88(1) of the Treaty:
- without prejudice to Article 10(2) of Regulation (EC) No 70/2001<sup>(87)</sup> on the application of Articles 87 and 88 of the Treaty to State aid for small and medium-sized enterprises, as amended by Regulation (EC) No 364/2004<sup>(88)</sup> and to Article 11(2) of Regulation (EC) No 2204/2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment<sup>(89)</sup>, Member States shall limit the application in time of all existing regional aid schemes to aid to be granted on or before 31 December 2006;

<sup>(86)</sup> The Commission informs the Member States that in order to reduce that burden of the obligation of notification to the maximum extent possible, it intends to make use of the powers conferred on it by Regulation (EC) No 994/98 to exempt from notification under Article 88(3) of the Treaty all transparent regional investment aid schemes which comply with the national regional aid map approved for the Member State concerned. Ad hoc individual aid and operating aid schemes will not be exempt from notification. Moreover, the information and individual notification requirements for large individual aid projects set out in section 4.3 of these guidelines will continue to apply, including in the case of aid which is granted under exempted schemes.

<sup>(87)</sup> OJ L 10, 13.1.2001, p. 33.

<sup>(88)</sup> OJ L 63, 28.2.2004, p. 22.

<sup>(89)</sup> OJ L 337, 13.12.2002, p. 3.

- where environment aid schemes allow regional investment aid to be granted for environmental investments pursuant to footnote 29 of the Community guidelines on State aid for environmental protection <sup>(90)</sup>, Member States shall amend the relevant schemes in order to ensure that aid may only be granted after 31 December 2006 if it complies with the regional aid map in force on the date the aid is granted;
- Member States shall as necessary amend other existing aid schemes in order to ensure that any regional bonuses such as those allowed for training aid, aid for research and development or environment aid may only be granted after 31 December 2006 in areas which are eligible for support under Article 87(3)(a) or (c) in accordance with the regional aid map adopted by the Commission in force on the date the aid is granted.

The Commission will invite Member States to confirm their acceptance of these proposals within one month.

108. In addition, the Commission considers that further measures are necessary to improve the transparency of regional aid in an enlarged union. In particular, it appears necessary to ensure that the Member States, economic operators, interested parties and indeed the Commission itself should have easy access to the full text of all applicable regional aid schemes in the EU. The Commission considers that this can easily be achieved through the establishment of linked internet sites. For this reason, when examining regional aid schemes, the Commission will systematically seek an undertaking from the Member State that the full text of the final aid scheme will be published on the internet and that the internet address of the publication will be communicated to the Commission. Projects for which expenses were incurred before the date of publication of the scheme will not be eligible for regional aid.
109. The Commission may decide to review or amend these guidelines at any time if this should be necessary for reasons associated with competition policy or in order to take account of other Community policies and international commitments.
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<sup>(90)</sup> OJ C 37, 3.2.2001, p. 3.

## ANNEX I

## Definition of the steel industry

The steel industry, for the purposes of these guidelines consists of the undertakings engaged in the production of the steel products listed below:

Product	Combined Nomenclature Code <sup>(1)</sup>
Pig iron	7201
Ferro-alloys	7202 11 20, 7202 11 80, 7202 99 11
Ferrous products obtained by direct reduction of iron ore and other spongy ferrous products	7203
Iron and non-alloy steel	7206
Semi-finished products of iron or non-alloy steel	7207 11 11, 7207 11 14, 7207 11 16, 7207 12 10, 7207 19 11, 7207 19 14, 7207 19 16, 7207 19 31, 7207 20 11, 7207 20 15, 7207 20 17, 7207 20 32, 7207 20 51, 7207 20 55, 7207 20 57, 7207 20 71
Flat rolled products of iron and non-alloy steel	7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37, 7208 38, 7208 39, 7208 40, 7208 51, 7208 52, 7208 53, 7208 54, 7208 90 10, 7209 15 00, 7209 16, 7209 17, 7209 18, 7209 25 00, 7209 26, 7209 27, 7209 28, 7209 90 10, 7210 11 10, 7210 12 11, 7210 12 19, 7210 20 10, 7210 30 10, 7210 41 10, 7210 49 10, 7210 50 10, 7210 61 10, 7210 69 10, 7210 70 31, 7210 70 39, 7210 90 31, 7210 90 33, 7210 90 38, 7211 13 00, 7211 14, 7211 19, 7211 23 10, 7211 23 51, 7211 29 20, 7211 90 11, 7212 10 10, 7212 10 91, 7212 20 11, 7212 30 11, 7212 40 10, 7212 40 91, 7212 50 31, 7212 50 51, 7212 60 11, 7212 60 91
Bars and rods, hot rolled, in irregularly wound coils, of iron or non alloy steel	7213 10 00, 7213 20 00, 7213 91, 7213 99
Other bars and rods of iron and non-alloy steel	7214 20 00, 7214 30 00, 7214 91, 7214 99, 7215 90 10
Angles, shapes and sections of iron or non-alloy steel	7216 10 00, 7216 21 00, 7216 22 00, 7216 31, 7216 32, 7216 33, 7216 40, 7216 50, 7216 99 10
Stainless steel	7218 10 00, 7218 91 11, 7218 91 19, 7218 99 11, 7218 99 20
Flat-rolled products of stainless steel	7219 11 00, 7219 12, 7219 13, 7219 14, 7219 21, 7219 22, 7219 23 00, 7219 24 00, 7219 31 00, 7219 32, 7219 33, 7219 34, 7219 35, 7219 90 10, 7220 11 00, 7220 12 00, 7220 20 10, 7220 90 11, 7220 90 31
Bars and rods of stainless steel	7221 00, 7222 11, 7222 19, 7222 30 10, 7222 40 10, 7222 40 30
Flat rolled products of other alloy steel	7225 11 00, 7225 19, 7225 20 20, 7225 30 00, 7225 40, 7225 50 00, 7225 91 10, 7225 92 10, 7225 99 10, 7226 11 10, 7226 19 10, 7226 19 30, 7226 20 20, 7226 91, 7226 92 10, 7226 93 20, 7226 94 20, 7226 99 20

Product	Combined Nomenclature Code <sup>(1)</sup>
<i>Bars and rods of other alloys steels</i>	7224 10 00, 7224 90 01, 7224 90 05, 7224 90 08, 7224 90 15, 7224 90 31, 7224 90 39, 7227 10 00, 7227 20 00, 7227 90, 7228 10 10, 7228 10 30, 7228 20 11, 7228 20 19, 7228 20 30, 7228 30 20, 7228 30 41, 7228 30 49, 7228 30 61, 7228 30 69, 7228 30 70, 7228 30 89, 7228 60 10, 7228 70 10, 7228 70 31, 7228 80
<i>Sheet piling</i>	7301 10 00
<i>Rails and cross ties</i>	7302 10 31, 7302 10 39, 7302 10 90, 7302 20 00, 7302 40 10, 7302 10 20
<i>Seamless tubes, pipes and hollow profiles</i>	7303, 7304
<i>Welded iron or steel tubes and pipes, the external diameter of which exceeds 406,4 mm</i>	7305

<sup>(1)</sup> OJ L 279, 23.10.2001, p. 1.

## ANNEX II

**Definition of the synthetic fibres industry**

The synthetic fibres industry is defined, for the purposes of these guidelines, as:

- extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses, or
- polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used, or
- 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.

## ANNEX III

**Form for the provision of summary information for aid for large investment projects requested in paragraph 65**

- (1) Aid in favour of (name of the company/companies 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-III level) where the investment takes place:
- (6) Municipality (previously NUTS-V 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 output of existing establishment into new, additional products, 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 IV

**Method for allocation of population shares in assisted Article 87(3)(c) areas across Member States**

The guiding principle behind the allocation of eligible population figures is to attribute them according to the observed **degree of regional disparities** within and between different Member States.

These disparities are captured through two indicators the Gross Domestic Product per capita in Purchasing Power Standard (**GDP per capita in PPS**) and the **unemployment** level. The method calculates the disparities leaving aside all assisted Article 87(3)(a) regions and the 'statistical effect' as well as the economic development regions and the low population density regions. The data employed in the calculation is the average for the last three years for which data is available, 2000-2002 for GDP per capita and 2001-2003 for unemployment at national and EU-25 level.

The methodology is applied in three sequential steps:

**Step I**

In order to verify the referred disparity two **thresholds are used**. Regions at the NUTS-III level definition must have a GDP per capita below 85 % or an unemployment level of more than 115 % of the national average (MS = 100). As far as the unemployment level is concerned, it is considered that sufficient disparity is attained if the region in question has an unemployment figure that is 50 % higher than the national average.

**Step II**

To take into account the relative position of the Member State with respect to the EU-25 average the thresholds of 85 for GDP per capita and 115 for unemployment are modified according to the following formulas:

$$\text{Adjusted GDP threshold } GDP = 85 \times \left( \frac{1 + \frac{100}{RMS}}{2} \right)$$

$$\text{Adjusted unemployment threshold } Unemployment = MIN \left[ 150; 115 \times \left( \frac{1 + \frac{100}{RMS}}{2} \right) \right]$$

where RMS is the relative position of the MS to the EU 25 average in %.

The introduction of these corrections implies that regions in richer Member States should show a lower GDP per capita in comparison with the national average in order to qualify for the criteria of sufficient disparity. Regions in Member States with a low unemployment should have to show a higher level of unemployment although capped at the 150 % unemployment level. On the contrary, regions in poorer Member States can have a higher GDP per capita than 85 and regions in Member States with a high unemployment can prove sufficient disparity with an unemployment level below 115.

Examples of application of correction formulas

Relative position of the Netherlands (EU-25 =100): GDP per capita 122,5, Unemployment 32,9.

After application of the mentioned correction formulas the thresholds for the Netherlands shift from 85 to 77,2 for GDP per capita and from 115 to 150 for unemployment.

Relative position of Greece (EU-25 =100): GDP per capita 74,5, Unemployment 111,7

After application of the mentioned correction formulas the thresholds employed for Greece shift from 85 to 99,5 for GDP per capita and from 115 to 109,0 for unemployment.

**Step III**

The next step is to verify which areas not eligible for regional aid pursuant to Article 87(3)(a) or not specifically allocated as areas eligible for Article 87(3)(c) qualify for the sufficient disparity criteria. The population for all the NUTS-III areas that verify these criteria are added together for each Member State. Then the total population figure of all areas fulfilling these criteria for the EU-25 is calculated as well as the percentage that each Member State represents in this total. These respective percentages are then considered to be the **Repatriation Key** for shares of population coverage allowed.

If the decision of the Commission is to allow coverage of 42 % of the EU-25 population to live in assisted areas, the population of all assisted Article 87(3)(a) and earmarked Article 87(3)(c) areas are deducted from this figure. The remaining quantity is distributed among the Member States according to the **Repartition Key**.

In addition and also since it is not feasible to prove any internal disparity for Member States with no NUTS-III regional breakdown (Luxemburg and Cyprus) a safety net is applied to guarantee that no Member State can have its assisted areas coverage reduced by more than 50 % Article (87(3)(a) and (c) areas taken together) than that under the 1998 Regional Aid Guidelines. The aim is to ensure that all Member States are allocated a margin providing sufficient flexibility for an effective regional development policy.

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## ANNEX V

**Regional aid coverage, 2007-2013**

<b>Belgium</b>	Regions	GDP/CAP <sup>(1)</sup>	Population covered
Article 87(3)(a)	...		
Statistical effect	Hainaut	75,45	
			12,4 %
Article 87(3)(c)			13,5 %
Total population coverage 2007-2013			25,9 %

<sup>(1)</sup> GDP per capita 2000-2002, PPS, EU-25 = 100 (Eurostat news release 47/2005 of 7.4.2005).

<b>Czech Republic</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Střední Morava	52,03	
	Severozápad	53,29	
	Střední Čechy	54,35	
	Moravskoslezsko	55,29	
	Severovýchod	55,59	
	Jihovýchod	58,17	
	Jihozápad	60,41	
			88,6 %
Statistical effect .....			
Article 87(3)(c) ....			
Total population coverage 2007-2013			88,6 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			7,7 %

<b>Denmark</b>	Population covered
Article 87(3)(a) ...	
Statistical effect ...	
Article 87(3)(c)	8,6 %
Total population coverage 2007-2013	8,6 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)	2,7 %

<b>Germany</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Dessau	65,99	
	Chemnitz	69,63	
	Brandenburg-Nordost	70,64	
	Magdeburg	72,27	
	Mecklenburg-Vorpommern	72,56	
	Thüringen	73,10	
	Dresden	74,95	
			12,5 %
Statistical effect	Halle	75,07	
	Leipzig	77,12	
	Brandenburg-Südwest	77,45	
	Lüneburg	81,80	
			6,1 %
Article 87(3)(c)			11,0 %
Total population coverage 2007-2013			29,6 %
<b>Estonia</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Estonia	44,94	100 %
<b>Greece</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Dytiki Ellada	56,30	
	Anatoliki Makedonia, Thraki	57,40	
	Ipeiros	59,30	
	Thessalia	62,90	
	Ionia Nisia	65,53	
	Kriti	72,27	
	Peloponnisos	73,71	
	Voreio Aigaio	74,29	
			36,6 %
Statistical effect	Kentriki Makedonia	75,89	
	Dytiki Makedonia	76,77	
	Attiki	78,98	
			55,5 %
Article 87(3)(c)			7,9 %
Total population coverage 2007-2013			100,0 %

<b>Spain</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Extremadura	59,89	
	Andalucia	69,29	
	Galicia	73,36	
	Castilla-La Mancha	74,75	
	Canarias	87,79	
			36,2 %
Statistical effect	Asturias	79,33	
	Murcia	79,37	
	Ceuta	79,64	
	Melilla	79,72	
			5,8 %
Article 87(3)(c)			17,7 %
Total population coverage 2007-2013			59,6 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			12,4 %
<b>France</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Guyane	56,76	
	Réunion	60,63	
	Guadeloupe	67,32	
	Martinique	74,88	
			2,9 %
Statistical effect ...			
Article 87(3)(c)			15,5 %
Total population coverage 2007-2013			18,4 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			6,9 %
<b>Ireland</b>			Population covered
Article 87(3)(a) ...			
Statistical effect ...			
Article 87(3)(c)			50,0 %
Total population coverage 2007-2013			50,0 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			25,0 %

<b>Italy</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Calabria	67,93	
	Campania	71,78	
	Sicilia	71,98	
	Puglia	72,49	
			29,2 %
Statistical effect	Basilicata	77,54	
			1,0 %
Article 87(3)(c)			3,9 %
Total population coverage 2007-2013			34,1 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			5,6 %
<b>Cyprus</b>			Population covered
Article 87(3)(a) ...			
Statistical effect ...			
Article 87(3)(c)			50,0 %
Total population coverage 2007-2013			50,0 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			16,0 %
<b>Latvia</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Latvia	37,28	100 %
<b>Lithuania</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Lithuania	40,57	100 %
<b>Luxembourg</b>			Population covered
Article 87(3)(a) ...			
Statistical effect ...			
Article 87(3)(c)			16,0 %
Total population coverage 2007-2013			16,0 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			5,1 %

<b>Hungary</b>		GDP/CAP	Population covered
Regions			
Article 87(3)(a)	Észak Magyarország	36,10	
	Észak Alföld	36,31	
	Dél Alföld	39,44	
	Dél Dunántúl	41,36	
	Közép Dunántúl	52,28	
	Nyugat Dunántúl	60,37	
			72,2 %
Statistical effect ...			
Article 87(3)(c) ...			27,8 %
Total population coverage 2007-2013			100,0 %
<b>Malta</b>		GDP/CAP	Population covered
Regions			
Article 87(3)(a)	Malta	74,75	100 %
<b>Netherlands</b>			Population covered
Article 87(3)(a) ...			
Statistical effect ...			
Article 87(3)(c)			7,5 %
Total population coverage 2007-2013			7,5 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			2,4 %
<b>Austria</b>			Population covered
Article 87(3)(a) ...			
Statistical effect	Burgenland	81,50	3,4 %
Article 87(3)(c)			19,1 %
Total population coverage 2007-2013			22,5 %

<b>Poland</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Lubelskie	32,23	
	Podkarpackie	32,80	
	Warminsko-Mazurskie	34,70	
	Podlaskie	35,05	
	Swietokrzyskie	35,82	
	Opolskie	38,28	
	Malopolskie	39,81	
	Lubuskie	41,09	
	Lódzkie	41,45	
	Kujawsko-Pomorskie	41,80	
	Pomorskie	45,75	
	Zachodniopomorskie	46,29	
	Dolnoslaskie	47,52	
	Wielkopolskie	48,18	
	Slaskie	50,62	
	Mazowieckie	68,77	
			100 %
<b>Portugal</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Norte	61,94	
	Centro (PT)	63,08	
	Alentejo	65,72	
	Açores	61,61	
	Madeira	87,84	
			70,1
Statistical effect	Algarve	80,05	3,8 %
Article 87(3)(c) ...			2,8 %
Total population coverage 2007-2013			76,7 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			19,2 %
<b>Slovenia</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Slovenia	74,40	100 %



<b>Slovakia</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Východné Slovensko	37,21	
	Stredné Slovensko	40,72	
	Západné Slovensko	45,42	
			88,9 %
Statistical effect ...			
Article 87(3)(c) ...			
Total population coverage 2007-2013			88,9 %
Transitional additional coverage 2007-2008 under Article 87(3)(c)			7,5 %
<b>Finland</b>			Population covered
Article 87(3)(a) ...			
Statistical effect ...			
Article 87(3)(c)			33,0 %
Total population coverage 2007-2013			33,0 %
<b>Sweden</b>			Population covered
Article 87(3)(a) ...			
Statistical effect ...			
Article 87(3)(c)			15,3 %
Total population coverage 2007-2013			15,3 %
<b>United Kingdom</b>	Regions	GDP/CAP	Population covered
Article 87(3)(a)	Cornwall & Isles of Scilly	70,16	
	West Wales and the Valleys	73,98	
			4,0 %
Statistical effect	Highlands and Islands	77,71	0,6 %
Article 87(3)(c)			19,3 %
Total population coverage 2007-2013			23,9 %

## COMMUNICATION FROM THE COMMISSION

### CRITERIA FOR AN IN-DEPTH ASSESSMENT OF REGIONAL AID TO LARGE INVESTMENT PROJECTS

#### 1. INTRODUCTION

##### 1.1. General rules for regional aid measures

1. The Commission Guidelines on national Regional Aid for 2007-2013<sup>1</sup> (“RAG”) clarify the general approach of the Commission regarding regional state aid. Under the conditions laid down in the RAG, and notwithstanding the negative effects that regional state aid may have on trade and competition, the Commission may consider State aid compatible with the common market if it is granted to promote the economic development of certain disadvantaged regions within the European Union.
2. In general, the RAG take account of the relative seriousness of the problems affecting the development of the regions concerned by introducing specific regional aid ceilings. These maximum aid intensities are graduated between 10% and 50% of eligible costs, based primarily on the GDP per capita of the regions concerned, but also allowing Member States some flexibility to take account of local conditions. The regional aid maps for each Member State are published on the Europa site.<sup>2</sup> These graduated aid intensities reflect, in the simplest and most direct way, for a large number of cases below defined investment thresholds, the balancing exercise which the Commission must perform between, on the one hand, the positive effect that regional investment aid can have, in particular in terms of promoting cohesion through attracting investment to eligible areas, and, on the other hand, limiting the potential negative effects that can be inherent to such aid to individual undertakings, for example on other economic operators and on regions whose relative competitive advantage is correspondingly diminished.
3. Large investments are less affected by important region-specific problems in disadvantaged areas. There is an increased risk that trade will be affected by these projects and thus a risk of a stronger distortion effect vis-à-vis competitors in other regions. There are also risks with these projects that the amount of aid exceeds the minimum necessary to compensate for the regional disadvantages and that State aid for these projects leads to perverse effects (inefficient location choices), higher distortion of competition and, since aid is a costly transfer from taxpayers in favour of aid recipients, net welfare losses.
4. The RAG foresee specific rules for regional aid to large investment projects<sup>3</sup>. A large investment project is an initial investment with an eligible expenditure above EUR 50 million in present value. The RAG provide for the automatic, progressive scaling-

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<sup>1</sup> OJ C 54, 4.3.2006.

<sup>2</sup> [http://ec.europa.eu/comm/competition/state\\_aid/regional\\_aid/regional\\_aid.html](http://ec.europa.eu/comm/competition/state_aid/regional_aid/regional_aid.html)

<sup>3</sup> Cf. section 4.3 of the RAG.

down of regional aid ceilings for these large investment projects to limit distortions of competition to a level which can generally be assumed to be compensated by their benefits in terms of development of the regions concerned<sup>4</sup>.

5. Moreover, Member States have to notify individually any aid for investment projects if the aid proposed is more than the maximum allowable amount of aid that an investment with eligible expenditure of € 100 million can receive under the applicable rules (notification threshold)<sup>5</sup>. For these notified cases, the Commission verifies in particular the aid intensities, the compatibility with the general criteria of the RAG and whether the notified investment represents a major increase of production capacities, while at the same time addressing an underperforming or even declining market, or benefits firms with high market shares.

## **1.2. Regional aid measures subject to an in-depth assessment**

6. Despite the automatic scaling-down, certain large regional aids for large investment projects could still have significant effects on trade, and may lead to substantive distortions of competition. For this reason, it was formerly Commission policy not to authorise aid for large investment projects above the following thresholds<sup>6</sup>:
  - the aid beneficiary accounts for more than 25 % of the sales of the product(s) concerned on the market(s) concerned, or
  - the production capacity created by the project exceeds 5% of the market, while the growth rate of the market concerned is below the EEA GDP growth rate.
7. However, under the current RAG, the Commission has opted for a more individualised approach, which allows the cohesion and other benefits that can be derived from such projects to be taken into consideration, in as concrete a fashion as possible. Any such benefits must, however, be weighed against the likely negative effects on trade and competition, which should also be identified in as concrete a manner as possible. Therefore, paragraph 68 of the RAG foresees that the Commission will conduct a formal investigation procedure pursuant to Article 88 paragraph 2 of the EC Treaty for cases above the notification threshold and meeting one or both of the conditions of paragraph 68 of the RAG (the in-depth assessment thresholds which are the same as the thresholds described in paragraph 6 above). In these cases, the objective of the formal investigation is to carry out a detailed verification “that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effect on trade between Member States”<sup>7</sup>.
8. In footnote 63 of the RAG, the Commission announced its intention to “*draw up further guidance on the criteria it will take into account during this assessment*”. Below, the Commission presents guidance as to the kind of information it may require and the methodology it would follow for measures subject to a detailed

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<sup>4</sup> Cf. paragraph 67 of the RAG.

<sup>5</sup> Cf. paragraph 64 of the RAG.

<sup>6</sup> Cf. paragraph 24 of the 2002 Multisectoral framework on regional aid for large investment projects. OJ C 70, 19.3.2002, p. 8, as amended in OJ C 263, 1.11.2003, p. 3.

<sup>7</sup> Cf. paragraph 68 of the RAG.

assessment. In line with the State Aid Action Plan<sup>8</sup>, the Commission will carry out an overall evaluation of the aid based on a balance of its positive and negative effects in order to determine whether as a whole, the aid measure can be approved.

9. The detailed assessment should be proportionate to the potential distortions which may be created by the aid. This means that the scope of the analysis will depend on the nature of the case. Therefore, the nature and the level of the evidence required will also depend on the features of each individual case. Also, while respecting the provisions governing the conduct of formal investigation procedure as set out in Articles 6 and 7 of Regulation (EC) 659/1999<sup>9</sup>, the Commission may, inter alia, ask the Member State to provide independent studies to confirm the information contained in the notification, or seek input from other economic operators active in the relevant markets or from experts in regional development. Moreover, comments by interested parties are welcomed during individual formal investigation procedures. The Commission will identify the key issues on which it is seeking input in the opening of the procedure.
10. The present notice is intended to ensure the transparency and predictability of the Commission decision making process, and equal treatment of Member States. The Commission reserves the possibility to amend and review this guidance in the light of case experience.

## **2. POSITIVE EFFECTS OF THE AID**

### **2.1. Objective of the aid**

11. Regional aid has an equity objective of common interest, namely furthering economic cohesion by helping to reduce the gap between the development levels of the various regions of the EU. Paragraph 2 of the RAG sets out that: *"By addressing the handicaps of the disadvantaged regions, national regional aid promotes the economic, social and territorial cohesion of Member States and the European Union as a whole"*. Paragraph 3 of the RAG adds that: *"Regional investment aid is designed to assist the development of the most disadvantaged regions by supporting investment and job creation. It promotes the expansion and diversification of the economic activities of enterprises located in the less-favoured regions, in particular by encouraging firms to set up new establishments there"*.
12. For those large investment projects that meet the in-depth assessment thresholds, the Member State will be requested to demonstrate that the aid will address the equity objective in question. The Member State will therefore need to substantiate the contribution of the investment project to the development of the region concerned.
13. While the primary objective of regional aid is to foster equity concerns as economic cohesion, regional aid may also address issues of market failure. Regional handicaps may be linked to market failures as imperfect information, co-ordination problems, difficulties to appropriate investments in public goods or externalities from

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<sup>8</sup> Cf. paragraphs 11 and 20 of the SAAP.

<sup>9</sup> OJ L 83, 27.3.1999, p.1

investments. Where, apart from equity objectives, a regional aid also addresses efficiency concerns, the overall positive effect of the aid will be considered larger.

14. The following non-exhaustive list of indicative criteria can be used to demonstrate the regional contribution of the aid, in so far as it leads to attracting additional investment and activity in the region. These positive effects of the aid can be both direct (e.g. direct jobs created) and indirect (e.g. local innovation).
- The number of direct jobs created by the investment is an important indicator of the contribution to regional development. The quality of the jobs created and the required skill level should also be considered.
  - An even higher number of new jobs might be created in the local (sub-)supplier network, helping to better integrate the investment in the region concerned and ensuring more widespread spillover effects. The number of indirect jobs created will therefore also be taken into account.
  - A commitment by the beneficiary to enter into widespread training activities to improve the skills (general and specific) of its workforce will be considered as a factor that contributes to regional development. Emphasis will also be put on training that improves the knowledge and employability of workers outside the firm. General or specific training for which training aid is approved will not be counted as a positive effect of the regional aid to avoid double counting.
  - External economies of scale or other benefits from a regional development viewpoint may arise as a result of proximity (clustering effect). Clustering of firms in the same industry allows individual plants to specialize more which leads to increased efficiency. Physical proximity facilitates the exchange of information, ideas and knowledge between firms. A concentration of economic activities attracts many job seekers, which assures a large pool of workers with different skills available to firms. Access to legal and commercial services is ensured which enhances productivity. In general, a concentration of economic activities may again attract other investments which in turn increase the positive spillover effects (virtuous circle).
  - Investments embody technical knowledge and can be the source of a significant transfer of technology (knowledge spillovers). Investments taking place in technology intensive industries are more likely to involve technology transfer to the recipient region. The level and the specificity of the knowledge dissemination are also important in this regard.
  - The projects' contribution to the region's ability to create new technology through local innovation can also be considered. Co-operation of the new production facility with local higher education institutions can be considered positively in this respect.
  - The duration of the investment and possible future follow-on investments are an indication of a durable engagement of a company in the region.
15. The Member States are, in particular, invited to rely on evaluations of past State aid schemes or measures, impact assessments made by the granting authorities, expert opinions and other possible studies related to the investment project under assessment. The business plan of the aid beneficiary could provide information on the number of jobs created, salaries paid (increase in household wealth as spill-over

effect), volume of sales from local producers, turnover generated by the investment and benefiting the region possibly through additional tax revenues.

16. If relevant, the relationship between the planned investment project and the National Strategic Reference Programme, as well as the Operational Programmes being co-financed by the structural funds, also has to be considered. In this regard, the Commission might specifically take account of any Commission decision relating to the measure in the context of the analysis of major projects under the structural funds or the Cohesion Fund<sup>10</sup>. Such a decision is, among other elements, based on "*a cost-benefit analysis, including a risk assessment and the foreseeable impact on the sector concerned and on the social-economic situation of the member state and/or the region and, when possible and where appropriate, of other regions of the Community.*"

## **2.2. Appropriateness of the aid instrument**

17. State aid in the form of investment subsidies is not the only policy instrument available to Member States to support investment and job creation in the disadvantaged regions. In fact, Member States can use general measures such as infrastructure development, enhancing the quality of education and training, or improvements in the general business environment.
18. Measures for which the Member State considered other policy options, and for which the advantages of using a selective instrument such as State aid for a specific company are established, are considered to constitute an appropriate instrument. The Commission will in particular take account of any impact assessment of the proposed measure the Member State may have made.

## **2.3. Incentive effect**

19. Analysing the incentive effect of the aid measure is one of the most important elements in the in-depth assessment of regional aid to large investment projects. The Commission will assess whether the proposed aid is necessary to produce "*a real incentive effect to undertake investments which would not otherwise be made in the assisted areas*"<sup>11</sup>. This assessment will take place at two levels: first, at a general, procedural level, and, second, at a more detailed, economic level.
20. In paragraph 38, the RAG already contain general criteria to provide a formal assessment of the incentive effect of regional aid. These criteria apply to all regional aid, not only regional aid for large investment projects.
21. In the case of regional aid to large investment projects covered by this notice, the Commission verifies in detail "*that the aid is necessary to provide an incentive effect for the investment*"<sup>12</sup>. The objective of this detailed assessment is to determine whether the aid actually contributes to changing the behaviour of the beneficiary, so that it undertakes (additional) investment in the assisted region concerned. Indeed,

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<sup>10</sup> Cf. section 2 of Council Regulation (EC) No 1083/2006 of July 2006 Laying down general provisions on the ERDF, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999.

<sup>11</sup> Cf. paragraph 38 of the RAG.

<sup>12</sup> Cf. paragraph 68 of the RAG.

there are many valid reasons for a company to locate in a certain region, even without any aid being granted.

22. Having regard to the equity objective deriving from cohesion policy and as far as the aid contributes to achieving this objective, an incentive effect can be proven in two possible scenarios:
  - (1) The aid gives an incentive to adopt a positive investment decision because an investment that would otherwise not be profitable for the company at any location can take place in the assisted region<sup>13</sup>.
  - (2) The aid gives an incentive to opt to locate a planned investment in the relevant region rather than elsewhere because it compensates for the net handicaps and costs linked to a location in the assisted region.
23. The Member State should demonstrate to the Commission the existence of an incentive effect and necessity of the aid. It will need to provide clear evidence that the aid is needed by effectively impacting on the investment choice or the location choice. It will have to specify which scenario applies. In order to permit a comprehensive assessment, the Member State will have to provide not only information concerning the aided project but also a comprehensive description of the counterfactual scenario, in which no aid would be granted by the Member State to the beneficiary.
24. In scenario 1, the Member State could provide proof of the incentive effect of the aid by providing company documents that show that the investment would not have been profitable without the aid and that no other location than the assisted region concerned could be envisaged.
25. In scenario 2, the Member State could provide proof of the incentive effect of the aid by providing company documents that show a comparison has been made between the costs and benefits of locating in the assisted region concerned with an alternative region. Such comparative scenarios will have to be considered realistic by the Commission.
26. The Member States are, in particular, invited to rely on risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents that are submitted to an investment committee and that elaborate on various investment scenarios, or documents provided to the financial markets could help to verify the incentive effect.
27. In this context, and in particular in scenario 1, the level of profitability can be evaluated by reference to methodologies which are standard practice in the particular industry concerned, and which may include: methods to evaluate the Net Present Value of the project (NPV), the internal rate of return (IRR) or the return on capital employed (ROCE).

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<sup>13</sup> Such investments may create conditions allowing further investments that are able to survive without additional aid

28. If the aid does not change the behaviour of the beneficiary by stimulating (additional) investment in the assisted region concerned, there is a lack of incentive effect to achieve the regional objective. If the aid has no incentive effect to achieve the regional objective, this aid can be considered as free money for the company. Therefore, in an in-depth assessment of regional aid to large investment projects, aid will not be approved in cases where it appears that the same investment would take place in the region also without the aid.

#### **2.4. Proportionality of the aid**

29. For the regional aid to be proportional, the amount and intensity of the aid must be limited to the minimum needed for the investment to take place in the assisted region.
30. The RAG generally ensure that regional aid is proportional to the seriousness of the problems affecting the assisted regions by applying regional aid ceilings in general and an automatic, progressive scaling-down of these regional aid ceilings for large investment projects (see introduction of this guidance).
31. For regional aid cases that require an in-depth assessment, a more detailed verification of this general principle of proportionality contained in the RAG is necessary.
32. In scenario 1, for an investment incentive, the aid will generally be considered proportionate if, because of the aid, the return on investment is in line with the normal rate of return applied by the company in other investment projects, with the cost of capital of the company as a whole or with returns commonly observed in the industry concerned.
33. In scenario 2, for a location incentive, the aid will generally be considered proportionate if it equals the difference between the net costs for the beneficiary company to invest in the assisted region and the net costs to invest in the alternative region(s). All such costs and benefits need to be taken into account, including for example administrative costs, transportation costs, training costs not covered by training aid and also wage differences.
34. Ultimately, these net costs which are considered to be related to the regional handicaps result in a lower profitability of the investment. For that reason, calculations used for the analysis of the incentive effect, can also be used to evaluate whether the aid is proportionate.
35. The Member State needs to demonstrate the proportionality on the basis of appropriate documentation such as the ones mentioned under the section on incentive effect above.
36. In no case can the aid intensity be higher than the regional aid ceilings corrected by the scaling-down mechanism, as stipulated in the RAG.



### 3. NEGATIVE EFFECTS OF THE AID

37. To assess market shares and potential overcapacity in a market in structural decline, the Commission needs to define the relevant product and geographic market. Thus usually<sup>14</sup>, the relevant market will already have been defined for all regional aid measures subject to an in-depth assessment.
38. Two main indicators of potential negative effects arising from the aid are already identified in paragraph 68 of the RAG, namely high market shares and potential overcapacity in a market in structural decline. They are linked to two theories of harm in a competition context, respectively the creation of market power and the creation/maintenance of inefficient market structures. A prima facie measurement of these two indicators will already have taken place before the opening of the investigation procedure. In order to provide all the elements for the final balancing exercise, the assessment of the two indicators will be refined in the in-depth assessment. A third indicator of potential negative effects arising from the aid that will be assessed in depth is the influence of the aid on trade.. Although these three indicators are considered as the main negative effects potentially arising from regional aid to a large investment project, the Commission does not exclude that other indicators might also be relevant in specific cases.
39. The Commission will place particular emphasis on the negative effects linked with the notion of market power and overcapacity in cases where the aid gives an incentive to change the investment decision, so where without the aid no investment would take place (scenario 1 of the incentive effect).
40. If, however, the counterfactual suggests that without the aid the investment would have gone ahead in any case, albeit possibly in another location (scenario 2), and if the aid is proportional, possible indications of distortions such as a high market share and an increase in capacity in an underperforming market would in principle be the same regardless of the aid.

#### 3.1. Crowding out of private investment

##### 3.1.1. *Market power*

41. When establishing its optimum investment level, in markets with a limited number of market players (a situation typical for large investment projects) each firm takes into account the investment carried out by its competitors. If aid induces a particular company to invest more, competitors may react by reducing their own expenditure in that area. In that case aid leads to a crowding out of private investment. If, as a result, such competitors are weakened or even have to exit, the aid distorts competition. In this regard, as discussed above, the RAG distinguishes cases where the aid beneficiary has market power and cases where the aid leads to a significant capacity expansion in a declining market.
42. In general, any aid to one beneficiary in a concentrated market is more likely to distort competition, since the decision of each firm is likely to affect its competitors

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<sup>14</sup> Where doubts remain as to the appropriate definition of the relevant markets, the Commission will identify these in the decision to initiate the formal investigation procedure pursuant to Article 88(2) EC Treaty.

more directly. This is especially the case if a dominant market player is subsidised. As a result, if due to the aid, the beneficiary can maintain or increase its market power<sup>15</sup>, regional aid for large investment projects may have a chilling effect on competitors' investment decisions and thereby generate distortions of competition. This would be to the detriment of consumers, therefore, the Commission wants to limit state aid to companies with market power.

43. For all regional aid cases that trigger the notification threshold (paragraph 64 of the RAG), the Commission already needs to assess (paragraph 68 (a) of the RAG) the share of the aid beneficiary (or the group to which it belongs) of the sales of the product(s) concerned on the relevant product and geographic market(s). However, market shares can only give a preliminary indication of possible problems. Therefore, in an in-depth assessment, the Commission will also take account of other factors, where relevant, including for example the market structure by looking at the concentration in the market<sup>16</sup>, possible barriers to entry<sup>17</sup>, buyer power<sup>18</sup> and barriers to exit.
44. The Commission will take account of the market shares and related other factors before and after the investment (normally the year before the investment starts and the year after full production is reached). When assessing negative effects in detail, the Commission will take into account that, while some investment projects are carried out over a relatively short time-scale of one or two years, most large investment projects have a much longer duration. Therefore, in most cases, long-term analyses of the evolution of markets are necessary. However, the Commission will acknowledge the fact that those long-term analyses are more speculative, particularly in the case of volatile markets or markets undergoing rapid technological change. Therefore, the more long-term and thus the more speculative the analysis is, the less weight will be attached to the possible negative effect of market power or the possibility of exclusionary behaviour.

### 3.1.2. *Creating or maintaining inefficient market structures*

45. It is a sign of effective competition if inefficient firms are forced to exit a market. In the long term, this process fosters technological progress and an efficient use of scarce resources in the economy. However, a substantial capacity expansion induced by State aid in an underperforming market might unduly distort competition as the possibly created overcapacity could lead to a squeeze on profit margins and a reduction of competitors' capacity or even their exit from the market. This might lead to a situation where competitors that would otherwise be able to stay on are forced

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<sup>15</sup> Market power is the power to influence market prices, output, the variety or quality of goods and services, or other parameters of competition on the market for a significant period of time.

<sup>16</sup> For this purpose, the Commission may consider the Herfindahl-Hirschman index (HHI). This index provides a basic analysis of the market structure. In a market with few market players where several of them have a relatively high market share, a high market share of the beneficiary might be less of a concern for competition.

<sup>17</sup> These entry barriers include legal barriers (in particular intellectual property rights), economies of scale and scope, access barriers to networks and infrastructure. Where the aid concerns a market where the aid beneficiary is an incumbent, possible barriers to entry may exacerbate the potential market power by the aid beneficiary and thus the possible negative effects of that market power.

<sup>18</sup> Where there are strong buyers in the market, it is less likely that an aid beneficiary can increase prices vis-à-vis these strong buyers.

out of the market as a consequence of State aid. It may also prevent low cost firms from entering and it may weaken incentives for competitors to innovate. This results in inefficient market structures which are also harmful to consumers in the long run.

46. In order to evaluate whether the aid may serve to create or maintain inefficient market structures, as pointed out above, the Commission will take into account the additional production capacity created by the project and whether the market is underperforming<sup>19</sup>. According to the RAG, additional capacity will only be considered problematic if it is created in an underperforming market and if the additional capacity is more than five per cent of the market concerned.
47. Since capacity created in a market in absolute decline will normally be more distortive than capacity created in a market in relative decline, the Commission will distinguish between cases for which in long term considerations, the relevant market is structurally in decline (i.e. shows a negative growth rate), and cases for which the relevant market is in relative decline (i.e. shows a positive growth rate, but does not exceed a benchmark growth rate (see below)). Where the capacity created by the project takes place in a market which is structurally in absolute decline, the Commission will consider it to be a negative element in the balancing test that is unlikely to be compensated by any positive elements. The long term benefit for the region concerned is also more doubtful in such a case.
48. Underperformance of the market will normally be measured compared to the EEA GDP over the last five years before the start of the project (benchmark rate). Data on past performance are more readily available and less speculative than future projections. Nevertheless, in the in-depth assessment, the Commission may also take into account expected future trends since the increase in capacity will exert its effect in the years following the investment. Indicators could be the foreseeable future growth of the market concerned and the resulting expected capacity utilisation rates, as well as the likely impact of the capacity increase on competitors through its effects on prices and profit margins.
49. Experience also shows that in some cases, considering the growth of the product concerned in the EEA may not be the appropriate benchmark to assess the effects of aid, in particular if the market is considered to be worldwide and there is only limited production or consumption of the products concerned within the EEA. In such cases, the Commission will take a broader view of the effect of the aid on market structures, having regard, in particular, to its potential to crowd out EEA producers.

### **3.2. Negative effects on trade**

50. As explained in paragraph 2 of the RAG, the geographical specificity of regional aid distinguishes it from other forms of horizontal aid. It is a particular characteristic of regional aid that it is intended to influence the choice made by investors about where to locate investment projects. When regional aid is off-setting the additional costs stemming from the regional handicaps and supports additional investment in assisted

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<sup>19</sup> In this context, a market is meant to be "underperforming" if its average annual growth rate in the reference period does not exceed the growth rate of EEA's GDP.

areas, it is contributing not only to the development of the region, but also to cohesion and ultimately benefits the whole EU<sup>20</sup>. With regard to the potential negative location effects of regional aid, these are already recognised and restricted to a degree by RAG and the regional aid maps, which define exhaustively the areas eligible to grant regional aid, taking account of the equity and cohesion policy objectives, and the eligible aid intensities. Aid may not be granted to attract investments outside of these areas. When appraising large investment projects subject to this guidance, the Commission should have all necessary information to consider whether State aid would result in a substantial loss of jobs in existing locations within the European Union.

51. More concretely, when investments adding production capacity in a market are made possible because of State aid, there is a risk that production or investment in other regions of the EU may be negatively affected. This is particularly likely if the capacity increase exceeds market growth, which will generally be the case for large investment projects meeting the second criteria of paragraph 68 of the RAG. The negative effects on trade, corresponding to the lost economic activity in the regions affected by the aid, may be felt through lost jobs in the market concerned, at the level of subcontractors<sup>21</sup> and as a result of lost positive externalities.

#### **4. BALANCING THE EFFECTS OF THE AID**

52. Having established that the aid is necessary as an incentive to carry out the investment in the region concerned, the Commission will balance the positive effects of the regional investment aid to a large investment project with its negative effects. Careful consideration will be given to the overall effects of the aid on cohesion within the EU. The Commission will not use the criteria set out in this guidance mechanically but will make an overall assessment of their relative importance. In this balancing exercise, no single element is determinant, nor can any set of elements be regarded as sufficient on its own to ensure compatibility.
53. In particular, the Commission considers that attracting an investment to a poorer region (as defined by the higher regional aid ceiling) is more beneficial for cohesion within the EU than if the same investment locates in a more advantaged region. Thus, under scenario 2, where proof has to be given of an alternative location, an assessment that without aid the investment would have located to a poorer region (more regional handicaps – higher maximum regional aid intensity) or to a region that is considered to have the same regional handicaps as the target region (same maximum regional aid intensity) will constitute a negative element in the overall balancing test that is unlikely to be compensated by any positive elements because it runs counter the very rationale of regional aid. On the other hand, the positive effects of regional aid which merely compensates for the difference in net costs relative to a more developed alternative investment location (and thus fulfils the proportionality test above, in addition to the "positive effect" requirements as to objective, appropriateness and incentive effect), will normally be considered, under the

---

<sup>20</sup> In particular, additional activity or increased standard of living in the assisted area may increase demand for products and services originating from other parts of the EU

<sup>21</sup> Especially if they operate in local markets in the region

balancing test, to outweigh any negative effects in the alternative location for new investment.

54. However, where there is credible evidence that the State aid would result in a substantial loss of jobs in existing locations within the European Union, which would otherwise have been likely to be preserved in the medium term, the social and economic effects on that existing location will have to be taken into account in the balancing exercise.
55. The Commission may, following the formal investigation procedure laid down in Article 6 of Regulation (EC) No 659/1999, close the procedure with a decision pursuant to Article 7 of that Regulation.
56. The Commission may decide either to approve, condition or prohibit the aid<sup>22</sup>. If it adopts a conditional decision pursuant to Article 7(4) of that Regulation, it may attach conditions to limit the potential distortion of competition and ensure proportionality. In particular, it may reduce the notified amount of aid or aid intensity to a level considered to be proportional and thus compatible with the common market.

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<sup>22</sup> When the aid is granted on the basis of an existing regional aid scheme, it is however to be noticed that the Member State retains the possibility to grant such aid up to the level which corresponds the maximum allowable amount that an investment with eligible expenditure of €100 million can receive under the applicable rules.



M1

## PART III.4

## SUPPLEMENTARY INFORMATION SHEET ON REGIONAL AID

This supplementary information sheet must be used for the notification of any aid scheme or ad hoc aid covered by the guidelines on national regional aid for 2007-2013 (RAG)<sup>(1)</sup>. The present annex cannot be used for the particular purpose of notification of new regional aid maps for the period 2007-2013. Transparent investment aid schemes falling under the scope of the exemption regulation on regional investment aid are exempted from the notification obligation. Therefore, Member States are invited to clarify the scope of their notification; in the particular case that a scheme covers both transparent and non-transparent forms of investment aid, they are invited to limit the scope of the notification only to the second category.

In the case of ad hoc aid (i.e. aid granted outside existing aid schemes), Member States will have to demonstrate that the project contributes towards a coherent regional development strategy and that, having regard to the nature and size of the project, it will not result in unacceptable distortions of competition. Moreover, Member States will have to demonstrate that the aid will not be unduly concentrated on a particular sector of activity and that it creates no adverse sectoral effects.

Another supplementary information sheet (Part III.5) must be submitted in case of notification of regional investment aid to large investment projects in the accordance with section 4.3 of the RAG.

## 1. Scheme or ad hoc aid

The scheme or the ad hoc aid relates to

1.1. ☐ initial investment

☐ The aid is calculated as a percentage of the investment's eligible material and immaterial costs

☐ The aid is calculated as a percentage of the expected wage costs of the persons to be hired

☐ operating aid

☐ aid for newly-created small enterprises

☐ combination of any above

## 1.2. The aid is granted:

☐ automatically, should the conditions of the scheme be fulfilled

☐ on a discretionary basis, following a decision of the authorities

Should the aid be granted on a discretionary basis, please provide a short description of the criteria followed and attach a copy of the administrative provisions applicable for the awarding of aid:

.....  
 .....

## 1.3. Does the aid respect the regional aid ceilings determined in the regional aid map in force at the time of awarding the aid, including those resulting from the provisions applicable to aid for large investment projects (section 4.3 of RAG)?

☐ yes ☐ no

Does the scheme include a reference to the regional aid map in force?

☐ yes ☐ no

<sup>(1)</sup> Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).

**▼ M1****2. Initial investment aid**

2.1. Does the scheme cover investment in fixed capital or job creation linked to initial investment 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?
- ☐ a fundamental change in the overall production process of an existing establishment?
- ☐ the acquisition by an independent investor of capital assets directly linked to an establishment which has closed or which would have closed had it not been purchased?

2.2. Where the aid is calculated on the basis of material or immaterial investment costs, or of acquisition costs in the case of a takeover, does the aid include a clause stipulating that the beneficiary makes a financial contribution of at least 25 % of the total eligible costs and that this contribution will be free of any public support, including *de minimis* aid?

☐ yes ☐ no

2.3. Where the aid is granted automatically on the basis of objective criteria under a legal basis giving rights to the beneficiaries to receive the aid, does the scheme exclude the award of aid to projects which have started before the entry into force of the legal basis?

☐ yes ☐ no

Where the aid is not granted automatically, does the scheme provide that the application for aid must be submitted before work is started on the project and the competent authorities must have confirmed in writing that, subject to the final outcome of a detailed verification, the project meets the conditions of eligibility laid down by the scheme (see p. 38 of the RAG)?

☐ yes ☐ no

In the case of ad hoc aid, did the competent authority issue a letter of intent to award aid before work started on the project, which was conditional on the Commission approval of the measure?

☐ yes ☐ no

If any of the previous points mentioned above under 2.3 are not fulfilled, please explain why and how the authorities intend to comply with these necessary conditions:

.....

2.4. What are the aid intensities under the scheme or ad hoc aid expressed in gross terms?

.....

What are the parameters enabling the calculation of aid intensities?

.....

2.4.1. ☐ Grants

☐ in nominal amount

.....

☐ in present (discounted) value

.....



**▼M1**2.4.2. ☐ *Tax measures*

How is the discounted value of the tax capped and to which aid intensity?

.....

2.4.3. ☐ *Public soft loans*

maximum period of the loan:

.....

maximum proportion (amount of the loan as a % of the eligible investment):

.....

maximum length of the grace period:

.....

minimum interest rate:

.....

— Is the loan covered by normal securities required by banks?

☐ yes ☐ no

If yes, to what extent?

.....

— What is the expected default rate, by categories of beneficiaries?

.....

— Is the interest rate increased in situations involving a particular risk?

☐ yes ☐ no

— Is the interest rate fixed, variable, dependent on profits, a combination of above?

.....

— Are the loans subordinated?

☐ yes ☐ no

2.4.4. ☐ *Interest rate subsidy:*

maximum amount of the rebate:

.....

maximum proportion (amount of the loan as a % or proportion of the eligible investment):

.....

maximum length of the grace period:

.....

duration of the loan:

.....

**▼ M1**2.4.5. ☐ *Guarantee schemes*

Please indicate the types of loans for which guarantees may be granted:

.....

Please indicate the method and the parameters used for the calculation of the grant equivalent of the guarantee, including duration, proportion and amount of the loan:

.....

Please specify the premiums paid by the State to the bank:

.....

What is the expected default rate, by categories of beneficiaries?

.....

What is the maximum coverage (percentage) of a loan by the guarantee?

.....

What are the conditions for the mobilisation of guarantees?

.....

2.4.6. ☐ *Public participations*

Please indicate if the scheme involves aid in form of public participations:

.....

To what extent does the public participation deviate from the Market Economy Investor principle?

.....

Please provide relevant information in order to calculate the aid element of the public participation:

.....

2.4.7. ☐ *Other:*

.....

## 2.5. Is replacement investment excluded from the scheme?

☐ yes ☐ no

If not, the authorities are requested to fill in section 3 of this form on operating aid.

2.6. Is assistance for firms in difficulty <sup>(1)</sup> and/or for the financial restructuring of firms in difficulty excluded from the scheme?

☐ yes ☐ no

<sup>(1)</sup> As defined in the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

**▼ M1**

2.7. Investment aid calculated as a percentage of the investment's eligible material and immaterial costs

Does the eligible expenditure under the scheme relate to:

2.7.1. ☐ *Material assets:*

The value of the investment is established on the basis of <sup>(1)</sup>:

☐ land

☐ buildings

☐ plant/machinery (equipment)

☐ in case of a takeover, capital assets

Please provide a short description:

.....

.....

Are the assets acquired new, except in the case of SMEs and takeovers?

☐ yes

☐ no

Please specify:

.....

Does the scheme ensure that any aid awarded in the past for the acquisition of assets in case of takeovers has been taken into account/deducted prior to the purchase (see p. 54 of the RAG)?

☐ yes

☐ no

Please specify:

.....

How is it ensured that the transactions in case of takeovers will take place under market conditions?

.....

Are costs related to the acquisition of assets — other than land and buildings — under financial lease included in the eligible expenditure?

☐ yes

☐ no

Does the lease contain an obligation to purchase the asset — other than land and buildings — at the expiry of the term of the lease?

☐ yes

☐ no

<sup>(1)</sup> In the transport sector, expenditure on the purchase of transport equipment (movable assets) is not eligible for investment aid.

**▼ M1**

For the financial lease of land and buildings, does the lease continue for at least five years after the anticipated date of the completion of the investment project, for large companies, and three years for SMEs?

☐ yes ☐ no

Should one of the previous questions under 2.7 be answered in the negative, please explain how the authorities intend to comply with the necessary conditions:

.....  
 .....

2.7.2. ☐ *Immaterial assets:*

The value of the investment is established on the basis of expenditure entailed by the transfer of technology through the acquisition of:

- ☐ patent rights
- ☐ licences
- ☐ know-how
- ☐ unpatented technical knowledge

Please provide a short description:

.....  
 .....

Does the scheme include a clause stipulating that the expenditure on eligible intangible investment must not exceed 50 % of the total eligible investment expenditure for the project in the case of large firms?

☐ yes ☐ no

Does the measure ensure that eligible immaterial assets:

- ☐ are used exclusively in the establishment receiving the regional aid?
- ☐ are regarded as amortisable assets?
- ☐ are purchased from third parties under market conditions?
- ☐ are included in the capital assets of the firm and remain in the establishment receiving the regional aid for at least five years for large companies and three years for SMEs?

Should one of these conditions not be explicitly reflected in the scheme, explain why and how the authorities intend to respect these requirements:

.....  
 .....

**▼ M1**

Does the scheme include in the eligible expenditure for SMEs the costs of preparatory studies and consultancy costs linked to the investment?

☐ yes ☐ no

Does the scheme provide that consultancy costs for SMEs are limited to an aid intensity of up to 50 % of the actual costs incurred?

☐ yes ☐ no

2.7.3. How is it ensured that aid for initial investment (both material and immaterial assets) is made conditional on the maintenance of the investment for a minimum period of five years in case of large companies and three years in case of SMEs?

.....  
 .....

2.8. Investment aid calculated on the basis of wage costs

2.8.1. Does the measure ensure that the aid calculated on the basis of wage costs is linked to an initial investment project?

☐ yes ☐ no

2.8.2. Does the measure ensure that job creation means a net increase in the number of employees (ALU) directly employed in a particular establishment compared with the average over the previous 12 months, after deducting any jobs lost during that 12 month period in the same establishment?

☐ yes ☐ no

2.8.3. How is it ensured that the eligible expenditure will not exceed the wage costs of a person hired, calculated over a period of two years?

.....

2.8.4. Does the measure ensure that the posts will be filled within three years of the completion of works?

☐ yes ☐ no

2.8.5. Does the measure ensure that the jobs created will be maintained within the region concerned for a minimum period of five years (or three years in the case of SMEs) from the date the post was first filled?

☐ yes ☐ no

Should one of the previous questions mentioned under 2.8 be answered in the negative, please explain how the authorities intend to comply with these necessary conditions:

.....  
 .....

**▼ M1****3. Operating aid**

3.1. What is the direct link between the awarding of operating aid and the contribution to regional development?

.....  
 .....

3.2. What are the structural handicaps that the operating aid is seeking to redress?

.....  
 .....

3.3. How is it ensured that the nature and the level of the operating aid are proportional to the handicaps it seeks to alleviate?

.....  
 .....

3.4. What arrangements have been made to ensure that the operating aid is progressively reduced and limited in time?

.....  
 .....

3.5. Is the operating aid scheme open to all sectors?

☐ yes ☐ no

3.6. Is the scheme designed to offset additional transport or employment costs?

☐ yes ☐ no

3.7. If one of the above questions (3.5—3.6) is answered negatively, how is it ensured that p. 78 of the RAG is respected?

.....  
 .....

3.8. Is operating aid intended to promote exports excluded?

☐ yes ☐ no

**Specific questions relating to the outermost regions or to regions with low population density or regions with least population density**

3.9. Should operating aid not be progressively reduced and not be limited in time, please specify whether the following conditions are met:

3.9.1. Does the aid benefit an outermost region or a region with low population density or with least population density?

☐ yes ☐ no

3.9.2. Is this aid intended to offset in part additional transport costs?

☐ yes ☐ no

Please provide proof of the existence of these additional costs and the method of calculation used to determine their amount <sup>(1)</sup>. In particular, please provide proof that the conditions of point 81 of the RAG are respected:

.....  
 .....

Indicate what will be the maximum amount of aid (on the basis of an aid-per-passenger/kilometre ratio or aid per tonne/kilometre) and the percentage of the additional costs covered by the aid:

.....  
 .....

<sup>(1)</sup> The description should reflect how the authorities intend to ensure that the aid is given only in respect of the extra cost of transport of goods inside the national borders, it must not be allowed to become export aid, it is calculated on the basis of the most economical form of transport and the shortest route between the place of production or processing and commercial outlets, and cannot be given for the transport of the products of businesses without an alternative location.

**▼M1**

- 3.9.3. In the outermost regions, is the aid intended to offset the additional costs arising in the pursuit of economic activity from the factors identified in Article 299(2) of the EC Treaty?

☐ yes ☐ no

Please determine the amount of the additional cost and the method of calculation:

.....  
 .....

How can the authorities establish the link between the additional costs and the factors identified in Article 299(2) of the EC Treaty?

.....  
 .....

- 3.9.4. Is the aid intended to prevent or reduce the continuing depopulation of the least populated regions?

☐ yes ☐ no

How can the authorities demonstrate that the aid proposed is necessary and appropriate to prevent or reduce continuing depopulation and that it will not affect trading conditions to an extent contrary to the common interest?

.....  
 .....

#### 4. Aid for newly-created small enterprises

*Information on the beneficiaries*

- 4.1. Are the beneficiaries small enterprises on the date of granting the aid within the meaning of Article 2 of Annex I to Commission Recommendation 2003/361/EC <sup>(1)</sup>?

☐ yes ☐ no

- 4.2. Is the aid awarding authority required to verify that all the beneficiaries are autonomous in the meaning of Article 3 of Annex I to Recommendation 2003/361/EC?

☐ yes ☐ no

- 4.3. Does the scheme ensure that aid is only granted to small enterprises which have been created less than five years before the date of granting the aid?

☐ yes ☐ no

- 4.4. Please describe the mechanisms put in place in order to ensure that no misuse of the aid measure takes place in the form of existing enterprises being artificially closed down and re-started in order to receive this type of aid:

.....  
 .....

*Geographical application of the scheme*

- 4.5. Is the aid scheme limited to assisted areas only?

☐ yes ☐ no

<sup>(1)</sup> OJ L 124, 20.5.2003, p. 36.

**▼ M1**

- 4.6. The beneficiaries conduct their economic activity in the following regions (please specify in conformity with the denomination of the regions as defined in the regional aid map):

— All assisted areas in the Member State concerned  
☐ yes ☐ no

— Article 87(3)(a) region(s)  
☐ yes ☐ no

Please specify the region(s) (NUTS):  
 .....

— Article 87(3)(c) region(s)  
☐ yes ☐ no

Please specify the region(s) (NUTS):  
 .....

*Eligible expenditure*

- 4.7. Are legal, advisory, consultancy and administrative costs directly related to the creation of the enterprise included in the eligible expenditure?

☐ yes ☐ no

If yes, please specify: .....

- 4.8. Are the eligible costs strictly limited to those that are incurred within the first five years after the creation of the enterprise and, within those five years, to the time when the company qualifies as a small enterprise according to Article 2 and 3 of Annex 1 to Recommendation 2003/361/EC?

☐ yes ☐ no

- 4.9. Please indicate in the following list, which costs are included in the eligible expenditures:

— Interests on external finance

☐

— Dividend on own capital employed, not exceeding the reference rate

☐

— Fees for renting production facilities/equipment

☐

— Energy, water, heating costs

☐

— Taxes (other than VAT and corporate taxes on business income)

☐

Please specify: .....

— Administrative charges

☐

Please specify: .....

— Depreciation

☐

— Fees for leasing production facilities/equipment

☐



▼ **M1**

— Wage costs

☐

Are compulsory social charges included in the wage costs?

☐ yes ☐ no

As regards depreciation, fees for leasing production facilities/equipment or wage costs, can you confirm that the underlying investments or job creation and recruitment measures have not benefited or will not benefit from other forms of aid?

☐ yes ☐ no

*Aid intensities*

4.10. What is the aid intensity foreseen by the measure for eligible expenses incurred within the first three years after the creation of the enterprises or for expenditures directly related to the creation of the enterprise?

... % for Article 87(3)(a) region(s)

... % for Article 87(3)(c) region(s)

4.11. What is the aid intensity foreseen by the measure for eligible expenses incurred in the fourth and fifth year after the creation of the enterprises?

... % for Article 87(3)(a) region(s)

... % for Article 87(3)(c) region(s)

4.12. Is the aid intensity increased by five percentage points as indicated under point 89 of the RAG?

☐ yes ☐ no

If yes, please specify:

— For Article 87(3)(a) regions with a GDP <sup>(1)</sup> of less than 60 % of Community average

☐ yes ☐ no

— For low population density regions with less than 12,5 inhabitants/km<sup>2</sup>

☐ yes ☐ no

— For small islands with a population of less than 5 000

☐ yes ☐ no

— For other communities with a population of less than 5,000 suffering from similar isolation like islands

☐ yes ☐ no

Please specify the region(s): .....

4.13. In case the beneficiaries have establishments located in more than one type of region (Article 87(3)(a) or (c), outside assisted areas or those indicated under 4.12.), please indicate how it will be ensured that intensities or a possible top-up are applied correctly:

.....  
 .....

*Aid amount*

4.14. Is the maximum aid amount awarded to beneficiaries located in Article 87(3)(a) regions limited to EUR 2 million per enterprise and in Article 87(3)(c) regions to EUR1 million per enterprise?

☐ yes ☐ no

4.15. Are the annual aid amounts awarded limited to 33 % of the abovementioned maximum amounts?

☐ yes ☐ no

<sup>(1)</sup> GDP per capita in Purchasing Power Standard (PPS).

**▼M1**

- 4.16. Please provide a description on the mechanisms used or the form in which the aid is awarded to the beneficiary enterprises (e.g. grant, loan, etc.) and explain in detail how aid intensities and maximum aid amounts are calculated, in particular, for non transparent forms of aid:

.....  
 .....

*Cumulation*

- 4.17. Can any other form of public support be granted on the basis of the same eligible costs as regards interest on external finance, dividend on own capital employed, fees for renting production facilities/equipment, energy, water, heating costs, or taxes (other than VAT and corporate taxes)?

☐ yes ☐ no

If yes, please describe the mechanism put in place in order to ensure that the upper limits for the aid amount per enterprise in total and per year as well as aid intensities are respected:

.....  
 .....

**5. Scope of the scheme or ad hoc aid**

- 5.1. Does the aid scheme apply to all sectors?

☐ yes ☐ no

Is the aid scheme targeted at a particular sector of activity?

☐ yes ☐ no

If yes, please explain

.....

- 5.2. Does the scheme apply to the production of the agricultural products listed in Annex I to the Treaty?

☐ yes ☐ no

Does the scheme apply to the processing and marketing of agricultural products, but only to the extent laid down in the Community guidelines for State aid in the agriculture sector <sup>(1)</sup>, or any replacement Guidelines?

☐ yes ☐ no

- 5.3. Does the scheme apply to the transport sector?

☐ yes ☐ no

If yes,

— Transport Services

- ☐ Maritime Transport  
☐ Air Transport  
☐ Road Transport  
☐ Rail Transport  
☐ Urban Transport  
☐ Inland waterway Transport  
☐ Combined transport

<sup>(1)</sup> OJ C 28, 1.2.2000, p. 2. Corrected by OJ C 232, 12.8.2000, p. 17.

**▼ M1**

Management of transport infrastructure

- ☐ Port infrastructure  
☐ Airport infrastructure  
☐ Road infrastructure  
☐ Rail infrastructure  
☐ Urban Transport infrastructure  
☐ Inland waterway infrastructure

— Monitoring

Will the annual report trace any individual aid falling under the abovementioned categories with its amount and its beneficiary?

- ☐ yes ☐ no

5.4. Does the scheme apply to the shipbuilding sector?

- ☐ yes ☐ no

5.5. Does the scheme respect the specific provisions, such as the prohibition to grant aid to the steel sector <sup>(1)</sup> and/or synthetic fibres <sup>(2)</sup>?

- ☐ yes ☐ no

5.6. Does the scheme provide for respect of individual notification obligation foreseen in section 4.3. of the RAG – Aid for large investment projects <sup>(3)</sup>?

- ☐ yes ☐ no

**6. Cumulation**

6.1. Where regional aid under one scheme can be combined with aid under other scheme(s), please specify, in each scheme, the method by which compliance is ensured with the conditions on cumulation listed in section 4.4 of the RAG.

.....

6.2. Is it ensured that regional investment aid shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the approved regional aid map?

- ☐ yes ☐ no

6.3. Where aid calculated on the basis of (material or immaterial) investment costs is combined with aid calculated on the basis of wage costs, does the aid scheme respect the intensity ceiling laid down for the region concerned?

- ☐ yes ☐ no

**7. Transparency**

7.1. Does the scheme exclude projects for which eligible expenditure was incurred before the date of publication of the final scheme in the Internet (see p. 108 of the RAG)?

- ☐ yes ☐ no

**8. Other information**

Please indicate here any other information (e.g. environmental impacts or benefits) you consider relevant to the assessment of the measure(s) concerned under the guidelines on national regional aid.

.....

<sup>(1)</sup> In the sense of Annex I to the RAG.

<sup>(2)</sup> In the sense of Annex II to the RAG.

<sup>(3)</sup> Please note that you have to fill in a specific notification form (Part III.5) in case of aid to large investment projects.



## PART III.5

**SUPPLEMENTARY INFORMATION SHEET ON REGIONAL AID FOR LARGE INVESTMENT PROJECTS**

*This supplementary information sheet must be used for the notification of any regional investment aid exceeding the threshold for individual notification defined in point 64 of the Guidelines for national regional aid for 2007-2013.*

*For ad hoc aid (aid granted outside existing schemes) the Member State must also provide the Supplementary Information Sheet on regional aid (Part III.4). In addition, Member States will have to demonstrate that the project contributes towards a coherent regional development strategy and that, having regard to the nature and size of the project, it will not result in unacceptable distortions of competition. Moreover, Member States will have to demonstrate that the aid will not be unduly concentrated on a particular sector of activity and that it creates no adverse sectoral effects.*

*The Commission reserves the right to ask for further information in order to carry out an in-depth assessment if the thresholds for such an assessment as defined in point 68 of the Regional Aid Guidelines are reached.*

*Additionally to this supplementary information sheet(s) the Member State must provide:*

— Part I. General Information,

— Part II. Summary Information for publication in the Official Journal of the European Union.

*The Member State must also provide the relevant investment agreement, the (draft) aid contract and any other relevant document (including, in the case of ad hoc aid, the letter of intent), in order to confirm that the granting of the aid is in conformity with the general rules under the Guidelines for national regional aid for 2007-2013 and with any underlying aid scheme.*

*If amounts are converted into the euro or other currencies, please provide the implicit exchange rate assumptions. Please always indicate if the amounts mentioned are in nominal amounts or discounted.*

**1. Additional information on beneficiaries****1.1. Structure of the company or companies investing in the project****1.1.1. Identity of aid recipient(s):**

.....

**1.1.2. If the legal identity of the aid recipient is different from the undertaking(s) that finance(s) the project or from the actual beneficiary(ies) of the aid, describe also these differences.**

.....

**1.1.3. Please give a clear description of the relation between the beneficiary, the group of enterprises it belongs to and other associated enterprises, including joint ventures.**

.....

**1.2. For the company or companies investing in the project, provide the following data for the last three financial years (at group level).****1.2.1. Worldwide turnover, EEA turnover, turnover in the Member State concerned:**

.....

**1.2.2. Net operating income, return on capital employed and free cash flow:**

.....

**1.2.3. Employment worldwide, at EEA level and in the Member State concerned:**

.....

**1.2.4. Audited financial statements and annual report(s) for the last three years:**

.....

**1.3. If the investment takes place in an existing establishment (plant), provide the following data for the last three financial years of that entity (data for the existing establishment/plant).****1.3.1. Worldwide turnover, EEA turnover, turnover in Member State concerned:**

.....

**▼ M1**

1.3.2. Net operating income, return on capital employed and free cash flow:

.....

1.3.3. Employment:

.....

1.3.4. Aid history — Did the beneficiary receive aid for any other investment in the same establishment (plant) in the last three years?

☐ yes ☐ no

If yes, please give more details:

.....

1.4. *Firms in difficulty*

Does the aid benefit a firm in difficulty <sup>(1)</sup> or will it be used for the financial restructuring of a firm in difficulty?

☐ yes ☐ no

If yes, please note that the Community guidelines on State aid for rescuing and restructuring firms in difficulty are applicable.

## 2. **Aid**

2.1. *Form of aid*

Please give a detailed description of each form of aid:

.....

2.2. *Amount of aid*

For each form of aid, provide the following information:

2.2.1. Amount of support, both in nominal and discounted terms:

.....

2.2.2. A complete schedule of the payment of the proposed assistance:

.....

In case of aid awarded in the form of exemptions on future taxes, please indicate how the discounted aid amount will be capped:

.....

2.2.3. The applicable existing aid scheme(s), including title, State aid number and reference to Commission approval, submission under interim procedure, or supplementary information sheet pursuant to an exemption regulation:

.....

2.2.4. The application for aid was submitted before work was started on the project and the competent authorities have confirmed in writing that, subject to the final outcome of a detailed verification, the project meets the conditions of eligibility laid down by the scheme.

☐ yes ☐ no

If no, please explain.

.....

2.3. *Characteristics*

2.3.1. Are any of the assistance measures of the overall package not yet defined?

☐ yes ☐ no

If yes, please specify, and explain how the total discounted aid amount will be capped:

.....

<sup>(1)</sup> As defined in the Community guidelines on State aid for Rescuing and Restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

**▼ M1**

2.3.2. Indicate which of the abovementioned measures does not constitute State aid and for what reason(s):

.....

2.3.3. How is it ensured that the aid is made conditional on the maintenance of the investment or the jobs created for a minimum period of five years in case of large companies and three years in case of SMEs?

.....

2.4. *Financing from Community and other sources*

2.4.1. Are some of the abovementioned measures to be co-financed by Community funds (European Investment Bank, European Social Fund, European Regional Development Fund, other)? Please explain.

.....

2.4.2. Is some additional support for the same project to be requested from any other European or international financing institutions?

☐ yes ☐ no

If so, for what amounts?

.....

2.5. *Reporting*

Please confirm that the following documents will be provided to the Commission:

☐ within two months of granting the aid, a copy of the aid contract between the granting authority and the beneficiary;

☐ on a five-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant);

☐ within six months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

3. **Assisted project**

3.1. *Timeline*

Specify the planned start date of the investment, the planned date of completion of the investment and the planned year by which full production will be reached, if necessary for each product envisaged by the investment project.

.....

3.2. *Description of the project*

3.2.1. Specify the type of the project and whether it is a new establishment; the extension of an existing establishment; diversification of the output of an establishment into new, additional products; a fundamental change in the overall production process of an existing establishment; or the acquisition of capital assets directly linked to an establishment by an independent investor which has closed or which would have closed had it not been purchased:

.....

3.2.2. Provide a short description of the project:

.....

3.3. *Breakdown of the project costs*

3.3.1. Specify the total cost of the investment over the lifetime of the project:

.....

3.3.2. Provide a detailed breakdown per year and per category (land, buildings, plant/machinery, or other) of the eligible costs associated with the investment project, where relevant for each product envisaged by the investment project:

.....

**▼ M1****3.4. Financing of total project costs**

Please provide a complete description of the financing of the project and how it ensures that at least 25 % of the eligible costs are financed in a way which is free of public support, including *de minimis* aid.

.....

**4. Product and market characteristics**

In this section, if applicable, please take account of any relevant marketing or similar arrangements with other companies for the calculation of the capacity and the market share (e.g. exclusive licenses for sales).

**4.1. Characterisation of product(s) envisaged by the project****4.1.1. Specify all the product(s) that will be produced in the aided facility upon the completion of the investment and indicate, where appropriate, the Prodcom code or CPA nomenclature for projects in the service sectors.**

.....

**4.1.2. Will the products envisaged by the project replace any other products produced by the beneficiary (at group level)? What product(s) will it replace? If these replaced products are not produced at the location of the project, indicate where they are currently produced. Please provide a description of the link between the replaced production and the current investment and give a time schedule for the replacement.**

.....

**4.1.3. What other product(s) can be produced with the same new facilities (through flexibility of the production installations of the beneficiary) at little or no additional cost?**

.....

**4.2. Product concerned and relevant product market****4.2.1. Explain if the project concerns an intermediate product and if a significant part of the output is not sold on the market (under market conditions). Based on the above explanation, for the purpose of calculating the market share and capacity increase in the remainder of this section. Please indicate if the product concerned is the product envisaged by the project or if it is the downstream product.**

.....

**4.2.2. Please indicate the demand side substitutes and the supply side substitutes of the product concerned. The relevant product market includes the product concerned and its substitutes considered to be such either by the consumer (by reason of the product's characteristics, prices and intended use) or by the producer (through flexibility of the production installations of the beneficiary and its competitors).**

.....

**4.3. Market share data**

Please answer the following questions for all products concerned.

**4.3.1. For the purpose of applying point 68(a) of the RAG, the Commission will normally assume that the relevant geographic market is the European Economic Area (EEA). Please provide arguments if another geographic market for the product(s) is considered relevant.**

.....

**4.3.2. Please provide an estimate of all sales of the aid recipient on the relevant market (at group level, in value and volume terms), from the year preceding the start year of the investment to the year following full production of the product envisaged by the project. If applicable, provide a breakdown of these sales into product concerned and other categories of products sold by the aid beneficiary on the relevant market.**

.....

**4.3.3. Please provide an estimate of the overall sales of all producers on the relevant market (in value and volume terms), from the year preceding the start year of the investment to the year following full production of the product envisaged by the project. If available, include statistics prepared by public and/or independent sources.**

.....

**▼ M1**

4.3.4. Please explain the methodology underlying the estimates and the implicit price assumptions.

.....

4.4. *Market evolution*

Please answer the following questions for all products concerned.

4.4.1. Provide for each of the last six years data on apparent consumption <sup>(1)</sup> (in value and volume terms) in the relevant product market in the EEA. Please also provide implicit price assumptions. If available, include statistics prepared by the public and/or independent sources.

.....

4.4.2. Please calculate from the above figures the Compound Annual Growth Rate (CAGR) <sup>(2)</sup> of apparent consumption in the relevant product market in the EEA.

.....

4.4.3. Please calculate the average annual growth rate of the EEA's GDP over the last five years as a Compound Annual Growth Rate (CAGR) using Eurostat figures <sup>(3)</sup> ([www.eu.int/comm/eurostat/](http://www.eu.int/comm/eurostat/) — currently the figures can be found under "Themes/Economy and finance/National accounts/Annual national accounts/GDP and main aggregates").

.....

4.4.4. Is the average annual growth rate of the apparent consumption on the relevant product market in the EEA over the last five years below the average annual growth rate of the EEA GDP over the last five years?

☐ yes

☐ no

4.5. *Capacity considerations*

Please answer the following questions for all products concerned.

If from point 4.4 on market evolution follows that the average annual growth rate of the apparent consumption on the relevant market is below the average annual growth rate of the EEA GDP, provide the following information:

4.5.1. Provide an estimate of the production capacity created by the investment (in volume and value terms).

.....

4.5.2. Provide an estimate of any changes in the total capacity of the beneficiary (at group level) in the EEA between the year preceding the start year of the project and the year following completion of the project (in volume and in value terms). Please also provide implicit price assumptions. If available, include statistics prepared by public and/or independent sources.

.....

4.5.3. Provide an estimate of the total apparent consumption on the relevant product market(s) in the EEA for the year preceding the start year and for the year following the completion of the project (in volume and in value terms). Please also provide implicit price assumptions. If available, include statistics prepared by public and/or independent sources.

.....

5. **Other information**

Please indicate here any other information (e.g. environmental impacts or benefits) you consider relevant to the assessment of the measure(s) concerned.

.....

<sup>(1)</sup> Apparent consumption is production plus imports minus exports. If no apparent consumption data are readily available, other relevant data can be used.

<sup>(2)</sup> The CAGR is calculated as  $[y(t) / y(t - 5)]^{1/5} - 1$ .

<sup>(3)</sup> EU25 can be used as a proxy for the EEA in this context.



## I

*(Information)*

## COMMISSION

**COMMUNITY FRAMEWORK FOR STATE AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION**

(2006/C 323/01)

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## 1. INTRODUCTION

### 1.1. Objectives of State aid for Research and Development and Innovation

Promoting Research and Development and Innovation (hereinafter: R&D&I) is an important objective of common interest. Article 163 of the EC Treaty stipulates that 'The Community shall have the objective of strengthening the scientific and technological bases of Community industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary ...'. Articles 164 to 173 of the EC Treaty determine the activities to be carried out in this respect and the scope and implementation of the multi-annual framework programme.

When meeting in Barcelona in March 2002, the European Council adopted a clear goal for the future development of research spending. It agreed that overall spending on Research and Development (hereinafter: R&D) and innovation in the Community should be increased with the aim of approaching 3 % of gross domestic product by 2010. It further clarified that two-thirds of this new investment should come from the private sector. To reach this objective, research investment should grow at an average rate of 8 % every year, shared between a 6 % growth rate for public expenditure <sup>(1)</sup> and a 9 % yearly growth rate for private investment <sup>(2)</sup>.

The objective is through State aid to enhance economic efficiency <sup>(3)</sup> and thereby, contribute to sustainable growth and jobs. Therefore, State aid for R&D&I shall be compatible if the aid can be expected to lead to additional R&D&I and if the distortion of competition is not considered to be contrary to the common interest, which the Commission equates for the purposes of this framework with economic efficiency. The aim of this framework is to ensure this objective and in particular, to make it easier for Member States to better target the aid to the relevant market failures <sup>(4)</sup>.

Article 87(1) of the EC Treaty lays down the principle that State aid is prohibited. In certain cases, however, such aid may be compatible with the common market on the basis of Article 87 (2) and (3). Aid for R&D&I will primarily be justified on the basis of Article 87(3)(b) and 87(3)(c). In this framework the

Commission lays down rules which it will apply in the assessment of aid notified to it, thereby exercising its discretion and increasing legal certainty and transparency of its decision-making.

### 1.2. State aid policy and R&D&I

In the context of the Lisbon strategy the level of R&D&I is considered not to be optimal for the economy in the Community, implying that an increase in the level of R&D&I would lead to higher growth in the Community. The Commission considers that the existing rules for State aid to R&D have to be modernised and enhanced to meet this challenge.

First, the Commission, in this framework, expands the existing possibilities of aid to R&D to new activities supporting innovation. Innovation is related to a process connecting knowledge and technology with the exploitation of market opportunities for new or improved products, services and business processes compared to those already available on the common market, and encompassing a certain degree of risk. For the purpose of State aid rules, the Commission considers however that State aid for innovation should be authorised not on the basis of an abstract definition of innovation but only to the extent that it relates to precise activities, which clearly address the market failures that are hampering innovation and for which the benefits of State aid are likely to outweigh any possible harm to competition and trade

Second, the Commission aims at supporting a better administration of State aid to R&D&I. It intends to extend the scope of the block-exemption for R&D, which is currently limited to aid to small and medium-sized enterprises (hereafter: SMEs) <sup>(5)</sup>. A future general block exemption regulation (hereafter: BER) will cover the less problematic aid measures in the area of R&D&I. This framework will continue to apply for all measures notified to the Commission whether because the measure is not covered by the BER, because of an obligation in the BER to notify aid individually, or because the Member State decides to notify a measure which could in principle have been exempted under the BER, as well as for the assessment of all non-notified aid.

Third, in order to better focus the Commission's scrutiny, this framework provides, for the assessment of measures falling within its scope, not only rules on the compatibility of certain aid measure (Chapter 5 below) but also, due to the increased risk of certain aid measures distorting competition and trade, additional elements concerning the analysis of the incentive effect and necessity of aid (Chapter 6 below) and an additional methodology to be applied in case of detailed assessment (Chapter 7 below).

<sup>(5)</sup> State Aid Action Plan. Less and better targeted State aid: a roadmap for State aid reform 2005-2009. COM(2005) 107 final — SEC (2005) 795; adopted on 7 June 2005.

<sup>(1)</sup> It must be kept in mind that only a part of the public expenditure on R&D will qualify as State aid.

<sup>(2)</sup> Cf. 'Investing in research: an action plan for Europe'; Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM(2003)226 final, p. 7.

<sup>(3)</sup> In economics, the term 'efficiency' (or 'economic efficiency') refers to the extent to which total welfare is optimised in a particular market or in the economy at large. Additional R&D&I increases economic efficiency by shifting market demand towards new or improved products, processes or services, which is equivalent to a decrease in the quality adjusted price of these goods.

<sup>(4)</sup> A 'market failure' is said to exist when the market, if left to its own devices, does not lead to an economically efficient outcome. It is in those circumstances that state intervention, including state aid, has the potential to improve the market outcome in terms of prices, output and use of resources.

In this context the Commission underlines that competitive markets should in principle, on their own, lead to the most efficient outcome in terms of R&D&I. However, this may not always be the case in the field of R&D&I and government intervention might then improve the outcome. Undertakings will invest more in research only to the extent that they can draw concrete commercial benefits from the results and are aware of the possibilities to do so. There are many reasons for low levels of R&D&I, which are partly due to structural barriers, and partly to the presence of market failures. Structural barriers should preferably be handled by structural measures<sup>(6)</sup>, whereas State aid may play a role in counter-weighting inefficiencies due to market failures. Furthermore, empirical evidence indicates that for State aid to be efficient it must be accompanied by favourable framework conditions, such as adequate intellectual property right systems, a competitive environment with research and innovation-friendly regulations and supportive financial markets.

However, State aid also distorts competition, and strong competition is at the same time a crucial factor for the market-driven stimulation of investment in R&D&I. Therefore, State aid measures must be carefully designed in order to limit the distortions. Otherwise, State aid can become counter-productive and reduce the overall level of R&D&I and economic growth.

The main concern related to R&D&I aid to undertakings is that rival undertakings' dynamic incentives to invest are distorted and possibly reduced. When an undertaking receives aid, this generally strengthens its position on the market and reduces the return on investment for other undertakings. When the reduction is significant enough, it is possible that rivals will cut back on their R&D&I activity. In addition, when the aid results in a soft budget constraint for the beneficiary, it may also reduce the incentive to innovate at the level of the beneficiary. Furthermore, the aid can support inefficient undertakings or enable the beneficiary to enhance exclusionary practices or market power.

### 1.3. The balancing test and its application to aid to Research and Development and Innovation

#### 1.3.1. *The State Aid Action Plan: less and better targeted aid, balancing test for the assessment of aid*

In the State Aid Action Plan<sup>(7)</sup>, the Commission announced that 'to best contribute to the re-launched Lisbon Strategy for growth and jobs, the Commission will, when relevant, strengthen its economic approach to State aid analysis. An economic approach is an instrument to better focus and target certain State aid towards the objectives of the re-launched Lisbon Strategy'.

<sup>(6)</sup> Including: university education, research programmes and public research facilities, IPR rules favouring innovation, attractive framework conditions for undertakings to do R&D&I

<sup>(7)</sup> State aid Action Plan (footnote), paragraph 21.

In assessing whether an aid measure can be deemed compatible with the common market, the Commission balances the positive impact of the aid measure in reaching an objective of common interest against its potentially negative side effects by distortion of trade and competition. The State Aid Action Plan, building on existing practice, has formalised this balancing exercise in what has been termed a 'balancing test'<sup>(8)</sup>. It operates in three steps to decide upon the approval of a State aid measure; the first two steps are addressing the positive effects of State aid and the third is addressing the negative effects and resulting balancing of the positive and negative effects:

- (1) Is the aid measure aimed at a well-defined objective of common interest (eg growth, employment, cohesion, environment)?
- (2) Is the aid well designed to deliver the objective of common interest i.e. does the proposed aid address the market failure or other objective?
  - (i) Is State aid an appropriate policy instrument?
  - (ii) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
  - (iii) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (3) Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

This balancing test is applicable to the design of State aid rules as well as for the assessment of cases.

For a block exemption regulation, the State aid is compatible if the conditions laid down are fulfilled. The same applies in general to most cases addressed in this framework. However, for the individual aid measures which may have a high distortive potential due to high aid amounts, the Commission will make an overall assessment of the positive and negative effects of the aid based on the proportionality principle.

#### 1.3.2. *The objective of common interest addressed by the framework*

This framework addresses the objective of common interest of promoting Research and Development and Innovation. It aims at enhancing economic efficiency by tackling well defined market failures, which prevent the economy in the Community from reaching the optimal level of R&D&I.

<sup>(8)</sup> Cf. State Aid Action Plan (footnote 5), paragraph 11 and 20, as elaborated in more detail already in the Communication on Innovation, COM(2005) 436 final of 21 September 2005.

To establish rules ensuring that aid measures achieve this objective, it is, first of all, necessary to identify the market failures hampering R&D&I. R&D&I takes place through a series of activities, which are upstream to a number of product markets, and which exploit available R&D&I capabilities to develop new or improved products <sup>(9)</sup> and processes in these product markets, thus fostering growth in the economy. However, given the available R&D&I capabilities, market failures may prevent the market from reaching the optimal output and lead to an inefficient outcome for the following reasons:

- **Positive externalities/knowledge spill-overs:** R&D&I often generate benefits for society in the form of knowledge spill-overs. However, left to the market, a number of projects may have an unattractive rate of return from a private perspective, even though the projects would be beneficial for society because profit seeking undertakings neglect the external effects of their actions when deciding how much R&D&I they should undertake. Consequently, projects in the common interest may not be pursued unless the government intervenes.
- **Public good/knowledge spill-overs:** For the creation of general knowledge, like fundamental research, it is impossible to prevent others from using the knowledge (public good), whereas more specific knowledge related to production can be protected, for example through patents allowing the inventor a higher return on their invention. To find the appropriate policy to support R&D&I, it is important to distinguish between creation of general knowledge and knowledge that can be protected. Undertakings tend to free ride on the general knowledge created by others, which makes undertakings unwilling to create the knowledge themselves. In fact, the market may not only be inefficient but completely absent. If more general knowledge was produced, the whole society could benefit from the knowledge spill-overs throughout the economy. For this purpose, governments may have to support the creation of knowledge by undertakings. In the case of fundamental research, they may have to pay fully for companies' efforts to conduct fundamental research.
- **Imperfect and asymmetric information:** R&D&I are characterised by a high degree of risk and uncertainty. Due to imperfect and/or asymmetric information, private investors may be reluctant to finance valuable projects; highly-qualified personnel may be unaware of recruitment possibilities in innovative undertakings. As a result, the allocation of human resources and financial resources may not be adequate in these markets and valuable projects for the economy may not be carried out.
- **Coordination and network failures.** The ability of undertakings to coordinate with each other or at least

interact, and thus deliver R&D&I may be impaired. Problems may arise for various reasons, including difficulties in coordinating R&D and finding adequate partners.

### 1.3.3. *Appropriate instrument*

It is important to keep in mind that there may be other, better placed instruments to increase the level of R&D&I in the economy, for example regulation, increase in funding of universities, general tax measures in favour of R&D&I <sup>(10)</sup>. The appropriateness of a policy instrument in a given situation is normally linked to the main reasons behind the problem. Reducing market barriers may be more appropriate than State aid to deal with the difficulty of a new entrant to appropriate R&D&I results. Increased investment in universities may be more appropriate to deal with a lack of qualified R&D&I personnel than granting State aid to R&D&I projects. Member States should therefore choose State aid when it is an appropriate instrument on the basis of the problem they are trying to address. This means it is necessary to clearly identify the market failure they intend to target with the aid measure.

### 1.3.4. *Incentive effect and necessity of aid*

State aid for R&D&I must lead to the recipient of aid changing its behaviour so that it increases its level of R&D&I activity and R&D&I projects or activities take place which would not otherwise be carried out, or which would be carried out in a more restricted manner. The Commission considers that as a result of aid, R&D&I activity should be increased in size, scope, amount spent or speed. Incentive effect is identified by counterfactual analysis, comparing the levels of intended activity with aid and without aid. Member States must clearly demonstrate how they intend to ensure that the incentive effect is present.

### 1.3.5. *Proportionality of the aid*

Aid is considered to be proportional only if the same result could not be reached with a less distortive aid measure. In particular, the amount and intensity of the aid must be limited to the minimum needed for the aided R&D&I activity to take place.

### 1.3.6. *Negative effects of the aid to R&D&I must be limited so that the overall balance is positive*

The possible distortions of competition resulting from State aid for R&D&I can be categorised as:

- disrupting the dynamic incentives of undertakings and crowding out;
- supporting inefficient production;

<sup>(9)</sup> This includes services.

<sup>(10)</sup> See the Notice on the application of the State aid rules to measures relating to direct business taxation; OJ C 384, 10.12.1998, p. 3.



- exclusionary practices and enhancing market power;
- effects on the localisation of economic activities across Member States;
- effects on trade flows within the internal market.

The negative effects are normally higher for higher aid amounts and for aid granted to activities which are close to commercialisation of the product or the service. Therefore aid intensities should generally be lower for activities linked to development and innovation than for research related activities. Furthermore, in the definition of eligible costs it is important to ensure that costs that can be considered to cover routine company activities are not eligible for aid. Also, characteristics of the beneficiary and the relevant markets have an influence on the level of distortion. Such aspects will be taken into account in more detail for the cases which will undergo a detailed assessment.

#### 1.4. Implementing the balancing test: legal presumptions and need for more specific assessment

This framework will be used for the assessment of aid for research and development and innovation which is notified to the Commission. The Commission's compatibility assessment will be conducted on the basis of the balancing test presented in Chapter 1. Accordingly, a measure will only be approved if, considering each of the elements in the balancing test, this leads to an overall positive evaluation. However, the Commission's assessment may differ in the way this evaluation is conducted, as in each case the risks for competition and trade associated with certain types of measures may differ. Without prejudice to Articles 4 to 7 of 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>(11)</sup>, the Commission applies different legal presumptions according to the type of State aid measure notified.

All notified aid will be assessed first under the provisions in Chapter 5. In that chapter, the Commission has identified a series of measures for which it considers *a priori* that State aid targeting these measures will address a specific market failure hampering R&D&I. The Commission has furthermore elaborated a series of conditions and parameters, which aim at ensuring that State aid targeting these measures actually presents an incentive effect, is proportionate and has a limited negative impact on competition and trade. Chapter 5 thus contains parameters in respect of the aided activity, aid intensities and conditions attached to compatibility. In principle, only measures which fulfil the criteria specified in Chapter 5 are eligible for compatibility under Article 87(3)(c) of the EC Treaty on the basis of this framework.

In Chapter 6, the Commission presents more specifically how it will assess the necessity and incentive effect of the aid.

In Chapter 7, the Commission presents more specifically in which cases and how it will conduct a detailed assessment.

This translates into different levels of assessment described in more detail below. For the first level, the Commission considers that it is in principle sufficient that the measures concerned are in line with the conditions described in Chapter 5, provided that the conditions in Chapter 6 to presume the incentive effect are fulfilled. For all other measures, the Commission considers that additional scrutiny is necessary, because of higher risks for competition and trade, due to the activity, aid amount, or type of beneficiary. The additional scrutiny will generally consist in further and more detailed factual analysis of the case in line with the provisions set out in Chapter 6 in respect of necessity and incentive effect or in Chapter 7, in respect of the assessment for aid exceeding the threshold set in section 7.1. of this framework. As a result of this additional scrutiny, the Commission may approve the aid, declare it incompatible with the common market or declare that it is compatible with the common market subject to conditions.

Firstly, the Commission considers that for certain aid measures, fulfilling the provisions set out in Chapters 5 and 6 will generally be sufficient for securing compatibility, as it is presumed that for such a measure the result of the application of the balancing test would be positive. Whether a measure falls into this category depends upon the type of beneficiary, the activity aided and the amount of aid granted. The Commission considers that the following measures will be declared compatible on the basis of Chapters 5 and 6 if (i) they fulfil all the conditions and parameters mentioned in Chapter 5 and (ii) the aid is only granted after the aid application has been made to the national authorities:

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

For the measures listed above, Chapter 6 clarifies that the incentive effect is presumed to be present if the condition mentioned above in (ii) is fulfilled.

Second, for notified aid **below** the thresholds set in section 7.1. of this framework, the additional scrutiny consists in a demonstration of the incentive effect and necessity as set out in Chapter 6. Such measures will therefore be declared compatible on the basis of Chapter 5 and Chapter 6 only if (i) they fulfil all the conditions and parameters mentioned in

<sup>(11)</sup> OJ L 83, 27.3.1999, p. 1.

Chapter 5 and (ii) the incentive effect and necessity have been demonstrated in accordance with Chapter 6.

Third, for notified aid **above** the thresholds set in section 7.1. of this framework, the additional scrutiny consists in a detailed assessment according to Chapter 7. These measures will therefore be declared compatible on the basis of Chapters 5, 6 and 7 only if (i) they fulfil all the conditions and parameters mentioned in Chapter 5 and (ii) the balancing test pursuant to Chapter 7 results in an overall positive evaluation.

### 1.5. Motivation for specific measures covered by this framework

Applying these criteria to R&D&I, the Commission has identified a series of measures for which State aid may, under specific conditions, be compatible with Article 87(3) (c) of the EC Treaty.

*Aid for projects covering fundamental and industrial research and experimental development* is mainly targeted at the market failure related to positive externalities (knowledge spillovers), including public goods. The Commission considers it useful to maintain different categories of R&D&I activities regardless of the fact that the activities may follow an interactive model of innovation rather than a linear model. Different aid intensities reflect different sizes of market failures and how close the activity is to commercialisation. Furthermore, compared to the previous State aid rules in this field, certain innovation activities have been included in experimental development. In addition, the bonus system has been simplified. Due to expected larger implications of market failures and expected higher positive externalities, bonuses appear justified for SMEs, collaboration by and collaboration with SMEs, cross-border collaboration as well as public-private partnerships (collaborations of undertakings with public research organisations).

*Aid for technical feasibility studies* related to R&D&I projects aims at overcoming the market failure related to imperfect and asymmetric information. These studies are considered to be further away from the market than the project itself, and therefore relatively high aid intensities can be accepted.

*Aid for industrial property rights costs for SMEs* is targeted at the market failure related to positive externalities (knowledge spillovers). The aim is to increase the possibilities for SMEs to sufficiently appropriate returns, thereby giving them greater incentive to undertake R&D&I.

*Aid for young innovative enterprises* has been introduced to deal with the market failures linked with imperfect and asymmetric information, which harm these undertakings in a particularly acute way, damaging their ability to receive appropriate funding for innovative ventures.

*Aid for process and organisational innovation in services* targets the market failures linked to imperfect information and positive externalities. It is meant to tackle the problem that innovation in services activities may not fit in the R&D categories. Innovation in service activities often results from interactions with customers and confrontation with the market, rather than from

the exploitation and use of existing scientific, technological or business knowledge. Furthermore, innovation in service activities tends to be based on new processes and organisation rather than technological development. To that extent, process and organisational innovation in services is not properly covered by R&D project aid and requires an additional and specific aid measure to address the market failures that hamper it.

*Aid for advisory services and innovation support services*, provided by innovation intermediaries, targets market failures linked with insufficient information dissemination, externalities and lack of coordination. State aid is an appropriate solution to change the incentives for SMEs to buy such services and to increase the supply and demand of the services provided by innovation intermediaries.

*Aid for the loan of highly qualified personnel* addresses the market failure linked with imperfect information in the labour market in the Community. Highly qualified personnel in the Community are more likely to be hired by large undertakings, because they tend to perceive large undertakings as offering better working conditions, and more secure and more attractive careers. By contrast, SMEs could benefit from important knowledge transfer and from increased innovation capabilities, if they were able to recruit highly qualified personnel to conduct R&D&I activities. Creating bridges between large undertakings or universities and SMEs may also contribute to addressing coordination market failures, and supporting clustering.

*Aid for innovation clusters* aims at tackling market failures linked with coordination problems hampering the development of clusters, or limiting the interaction and knowledge flows within clusters. State aid could contribute in two ways to this problem: first by supporting the investment in open and shared infrastructures for innovation clusters, and secondly by supporting cluster animation, so that collaboration, networking and learning is enhanced.

## 2. SCOPE OF APPLICATION AND DEFINITIONS

### 2.1. Scope of application of the framework

This framework applies to State aid for research and development and innovation. It will be applied in accordance with other Community policies on State aid, other provisions of the Treaties founding the European Communities and legislation adopted pursuant to those Treaties.

According to general Treaty principles, State aid cannot be approved if the aid measure is discriminatory to an extent not justified by its State aid character. With regard to R&D&I, it should in particular be underlined that the Commission will not approve an aid measure which excludes the possibility of exploitation of R&D&I results in other Member States.

Public authorities may commission R&D from companies or buy the results of R&D from them. If such R&D is not procured at market price, this will normally involve State aid within the meaning of Article 87(1) of the EC Treaty. If, on the other hand,



these contracts are awarded according to market conditions, an indication for which may be that a tender procedure in accordance with the applicable directives on public procurement, in particular Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors<sup>(12)</sup> and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>(13)</sup> has been carried out, the Commission will normally consider that no State aid within the meaning of Article 87(1) of the EC Treaty is involved.

This framework applies to aid to support research and development and innovation in all sectors governed by the EC Treaty. It also applies to those sectors which are subject to specific Community rules on State aid, unless such rules provide otherwise.<sup>(14)</sup>

This framework applies to State aid for R&D&I in the environmental field<sup>(15)</sup>, as there are many synergies to exploit between innovation for quality and performance and innovation to optimise energy use, waste and safety.

Following the entry into force of Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development<sup>(16)</sup>, aid for research and development to SMEs is exempt from the notification requirement under the conditions stipulated 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>(17)</sup>. Member States, however, remain free to notify such aid. If they decide to do so, this framework will continue to be used for the assessment of such notified aid.

While personnel costs are eligible in several of the measures covered by this framework and a measure on aid for the loan of highly qualified personnel has been introduced, general employment and training aid for researchers continue to fall under the specific State aid instruments for employment and training aid, currently 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>(18)</sup> and 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>(19)</sup>.

<sup>(12)</sup> OJ L 134, 30.4.2004, p. 1.

<sup>(13)</sup> OJ L 134, 30.4.2004, p. 114.

<sup>(14)</sup> For example, Article 3 of Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway provides special rules for the compatibility of State aid to R&D in the sector of transport by rail, road and inland waterway.

<sup>(15)</sup> See current Community guidelines on State aid for environmental protection, OJ C 37, 3.2.2001, p. 3, point 7. In addition, in the context of the revision of the environmental guidelines, the Commission will consider the opportunity to integrate new measures that can also cover eco-innovation.

<sup>(16)</sup> OJ L 63, 28.2.2004, p. 22.

<sup>(17)</sup> OJ L 10, 13.1.2001, p. 33. Regulation as amended by Regulation (EC) No 364/2004.

<sup>(18)</sup> OJ L 10, 13.1.2001, p. 20. Regulation as amended by Regulation (EC) No 363/2004, (OJ L 63, 28.2.2004, p. 20).

<sup>(19)</sup> OJ L 337, 13.12.2002, p. 3.

Aid for research and development and innovation for undertakings in difficulty within the meaning of the Community Guidelines on State aid for rescue and restructuring undertakings in difficulty<sup>(20)</sup> is excluded from the scope of this framework.

## 2.2. Definitions

For the purpose of this framework the following definitions apply:

- (a) **'small and medium-sized enterprises'**, or 'SMEs', **'small enterprises'** and **'medium-sized enterprises'** means such undertakings within the meaning of Regulation (EC) No 70/2001, or any regulation replacing that regulation;
- (b) **'large enterprises'** means undertakings not coming under the definition of small and medium-sized enterprises;
- (c) **'aid intensity'** means the gross aid amount expressed as a percentage of the project's eligible costs. 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 and for calculating the aid amount in a soft loan shall be the reference rate applicable at the time of grant. The aid intensity is calculated per beneficiary;
- (d) **'research organisation'** means an entity, such as 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 are reinvested in these activities, the dissemination of their results or teaching; undertakings that can exert influence upon such an entity, in the quality of, for example, shareholders or members, shall enjoy no preferential access to the research capacities of such an entity or to the research results generated by it;
- (e) **'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;

<sup>(20)</sup> Currently OJ C 244, 1.10.2004, p. 2.

- (f) **‘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 of complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of prototypes as covered by point(g);
- (g) **‘experimental development’** means the acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services. These may also include, for example, other activities aiming at the conceptual definition, planning and documentation of new products, processes and services. The 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 are also eligible, provided that these cannot be used or transformed to be used in industrial applications or commercially.

Experimental development does not include the 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;

- (h) **‘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 R&D&I project,
- (i) **‘process innovation’** <sup>(21)</sup> means the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment and/or software). Minor changes or improvements, an increase in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, regular seasonal and other cyclical changes, trading of new or significantly improved products are not considered innovations;

- (j) **‘organisational innovation’** <sup>(22)</sup> means the implementation of a new organisational method in the undertaking's business practices, workplace organisation or external relations. Changes in business practices, workplace organisation or external relations that are based on organisational methods already in use in the undertaking, changes in management strategy, mergers and acquisitions, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, regular seasonal and other cyclical changes, trading of new or significantly improved products are not considered innovations;
- (k) **‘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;
- (l) **‘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;
- (m) **‘innovation clusters’** means groupings of independent undertakings — innovative start-ups, small, medium and large undertakings as well as research organisations — operating in a particular sector and region and designed to stimulate innovative activity by promoting intensive interactions, sharing of facilities and exchange of knowledge and expertise and by contributing effectively to technology transfer, networking and information dissemination among the undertakings in the cluster. Preferably, the Member State should intend to create a proper balance of SMEs and large undertakings in the cluster, to achieve a certain critical mass, notably through specialisation in a certain area of R&D&I and taking into account existing clusters in the Member State and at Community-level.

### 3. STATE AID WITHIN THE MEANING OF ARTICLE 87(1) OF THE EC TREATY

Generally, any funding meeting the criteria of 87(1) of the EC Treaty will be considered to be State aid. For the sake of providing further guidance, situations typically arising in the field of Research, Development and Innovation activities are considered below.

#### 3.1. Research organisations and innovation intermediaries as recipients of State aid within the meaning of Article 87(1) of the EC Treaty

The question whether research organisations are recipients of State aid must be answered in accordance with general State aid principles.

<sup>(21)</sup> Cf. definition in the OSLO manual, Guidelines for Collecting and Interpreting Innovation Data, 3rd Edition, Organisation for Economic Co-operation and Development, 2005, page 49.

<sup>(22)</sup> Cf. definition in the OSLO manual, page 51.

In line with Article 87(1) of the EC Treaty and the case-law of the Court, public financing of R&D&I activities by research organisations will qualify as State aid, if all conditions of Article 87(1) of the EC Treaty are fulfilled. In accordance with the case-law, this requires inter alia that the research organisation qualifies as an undertaking within the meaning of Article 87(1) of the EC Treaty. This does not depend upon its legal status (organized under public or private law) or economic nature (i.e. profit making or not). What is decisive for its qualification as an undertaking is whether the research organisation carries out an economic activity, which is an activity consisting of offering goods and/or services on a given market<sup>(23)</sup>. Accordingly, any public funding of economic activities falls under Article 87(1) of the EC Treaty, should all other conditions be fulfilled.

### 3.1.1. *Public funding of non-economic activities*

If the same entity carries out activities of both economic and non-economic nature, in order to avoid cross-subsidisation of the economic activity, the public funding of the non-economic activities will not fall under Article 87(1) of the EC Treaty, if the two kinds of activities and their costs and funding can be clearly separated<sup>(24)</sup>. Evidence that the costs have been allocated correctly can consist of annual financial statements of the universities and research organisations.

The Commission nevertheless considers that the primary activities of research organisations are normally of a non-economic character, notably:

- education for more and better skilled human resources;
- the conduct of independent R&D for more knowledge and better understanding, including collaborative R&D;
- the dissemination of research results.

The Commission furthermore considers that technology transfer activities (licensing, spin-off creation or other forms of management of knowledge created by the research organisation) are of

non-economic character if these activities are of an internal nature<sup>(25)</sup> and all income from these activities is reinvested in the primary activities of the research organisations<sup>(26)</sup>.

### 3.1.2. *Public funding of economic activities*

If research organisations or other not-for-profit innovation intermediaries (for example, technology centres, incubators, chambers of commerce) perform economic activities, such as renting out infrastructures, supplying services to business undertakings or performing contract research, this should be done on normal market conditions, and public funding of these economic activities will generally entail State aid.

However, if the research organisation or not-for-profit innovation intermediary can prove that the totality of the State funding that it received to provide certain services has been passed on to the final recipient, and that there is no advantage granted to the intermediary, the intermediary organisation may not be recipient of State aid.

For aid to the final recipients, normal State aid rules apply.

## 3.2. **Indirect State aid within the meaning of Article 87(1) of the EC Treaty to undertakings through publicly funded research organisations**

This section is intended to clarify under which conditions undertakings obtain an advantage within the meaning of Article 87(1) of the EC Treaty in cases of contract research by a research organisation or collaboration with a research organisation. As far as the other elements of Article 87(1) of the EC Treaty are concerned, the normal rules apply. In particular, it will have to be assessed in accordance with the relevant case-law whether the behaviour of the research organisation can be attributed to the State<sup>(27)</sup>.

<sup>(25)</sup> By internal nature, the Commission means a situation where the management of the knowledge of the research organisation(s) is conducted either by a department or a subsidiary of the research organisation or jointly with other research organisations. Contracting the provision of specific services to third parties by way of open tenders does not jeopardise the internal nature of such activities.

<sup>(26)</sup> For all remaining kinds of technology transfer receiving State funding, the Commission does not consider itself in a position, on the basis of its current knowledge, to decide in a general manner upon the State aid character of the funding of such activities. It underlines the obligation of the Member States under Article 88(3) of the EC Treaty to assess the character of such measures in each case and to notify them to the Commission, in case they consider them to represent State aid.

<sup>(27)</sup> Cf. Case C-482/99 *France v. Commission* [2002] ECR I-4397, on the issue of imputability to the State.

<sup>(23)</sup> Case 118/85 *Commission v. Italy* [1987] ECR 2599, paragraph 7, Case C-35/96 *Commission v. Italy* [1998] ECR I-3851, CNSD, paragraph 36; Case C-309/99 *Wouters* [2002] ECR I-1577 paragraph 46.

<sup>(24)</sup> Economic activities comprise in particular research carried out under contract with industry, the renting out of research infrastructure and consultancy work.

### 3.2.1. *Research on behalf of undertakings (Contract research or research services)*

This point concerns the situation in which a project is carried out by a research organisation on behalf of an undertaking. The research organisation, acting as an agent, renders a service to the undertaking acting as principal in situations where (i) the agent receives payment of an adequate remuneration for its service and (ii) the principal specifies the terms and conditions of this service. Typically, the principal will own the results of the project and carry the risk of failure. When a research organisation carries out such a contract, there will normally be no State aid passed to the undertaking through the research organisation, if one of the following conditions is fulfilled:

- (1) the research organisation provides its service at market price; or
- (2) if there is no market price, the research organisation provides its service at a price which reflects its full costs plus a reasonable margin.

### 3.2.2. *Collaboration of undertakings and research organisations*

In a collaboration project, at least two partners participate in the design of the project, contribute to its implementation and share the risk and the output of the project.

In the case of collaboration projects carried out jointly by undertakings and research organisations, the Commission considers that no indirect State aid is granted to the industrial partner through the research organisation due to the favourable conditions of the collaboration if one of the following conditions is fulfilled:

- (1) the participating undertakings bear the full cost of the project.
- (2) the results which do not give rise to intellectual property rights may be widely disseminated and any intellectual property rights to the R&D&I results which result from the activity of the research organisation are fully allocated<sup>(28)</sup> to the research organisation.
- (3) the research organisation receives from the participating undertakings compensation equivalent to the market price for the intellectual property rights<sup>(29)</sup> which result from the activity of the research organisation carried out in the project and which are transferred to the participating

<sup>(28)</sup> 'Full allocation' means that the research organization enjoys the full economic benefit of those rights by retaining full disposal of them, notably the right of ownership and the right to license. These conditions may also be fulfilled if the organisation decides to conclude further contracts concerning these rights including licensing them to the collaboration partner.

<sup>(29)</sup> 'Compensation equivalent to the market price for the intellectual property rights' refers to compensation for the full economic benefit of those rights. In line with general State aid principles and given the inherent difficulty to establish objectively the market price for intellectual property rights, the Commission will consider this condition fulfilled if the research organisation as seller negotiates in order to obtain the maximum benefit at the moment when the contract is concluded.

undertakings. Any contribution of the participating undertakings to the costs of the research organisation shall be deducted from such compensation.

If none of the previous conditions are fulfilled, the Member State may rely on an individual assessment of the collaboration project<sup>(30)</sup>. There may also be no State aid where the assessment of the contractual agreement between the partners leads to the conclusion that any intellectual property rights to the R&D&I results as well as access rights to the results are allocated to the different partners of the collaboration and adequately reflect their respective interests, work packages, and financial and other contributions to the project. If conditions (1), (2) and (3) are not fulfilled and the individual assessment of the collaboration project does not lead to the conclusion that there is no State aid, the Commission will consider the full value of the contribution of the research organisation to the project as aid to undertakings.

## 4. COMPATIBILITY OF AID UNDER ARTICLE 87(3)(B) OF THE EC TREATY

Aid for R&D&I to promote the execution of an important project of common European interest may be considered to be compatible with the common market pursuant to Article 87(3)(b) of the EC Treaty.

The Commission will conclude that Article 87(3)(b) of the EC Treaty applies if the following cumulative conditions are fulfilled:

- (1) the aid proposal concerns a project which is clearly defined in respect of the terms of its implementation including its participants as well as its objectives. The Commission may also consider a group of projects as together constituting a project.
- (2) the project must be in the common European interest: the project must contribute in a concrete, clear and identifiable manner to the Community interest. The advantage achieved by the objective of the project must not be limited to one Member State or the Member States implementing it, but must extend to the Community as a whole. The project must present a substantive leap forward for the Community objectives, for instance by being of great importance for the European Research Area or being a lead project for European industry. The fact that the project is carried out by undertakings in different countries is not sufficient. The positive effects of the aid could be shown for example by important spill-overs for society, through the contribution of the measure to the improvement of the Community situation regarding R&D&I in the international context, through creation of new markets or the development of

<sup>(30)</sup> This provision does not intend to modify the obligation of the Member States to notify certain measures on the basis of Article 88 (3) of the EC Treaty.



new technologies. The benefits of the project should not be confined to the industry directly concerned but its results should be of wider relevance and application to the economy within the Community (up- or downstream markets, alternative uses in other sectors, etc.).

- (3) the aid is necessary to achieve the defined objective of common interest and presents an incentive for the execution of the project, which must also involve a high level of risk. This could be shown by looking at the level of profitability of the project, at the amount of investment and time path of cash flows and at feasibility studies, risk assessments and expert opinions.
- (4) the project is of great importance with respect to its character and its volume: it must be a meaningful project with regard to its objective and a project of substantial size.

The Commission will consider notified projects more favourably if they include a significant own contribution of the beneficiary to the project. It will equally consider more favourably notified projects involving undertakings or research entities from a significant number of Member States.

In order to allow for the Commission to properly assess the case, the common European interest must be demonstrated in practical terms: for example, it must be demonstrated that the project enables significant progress to be made towards achieving specific Community objectives.

## 5. COMPATIBILITY OF AID UNDER ARTICLE 87(3)(C) OF THE EC TREATY

State aid for research and development and innovation shall be compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty, if, on the basis of the balancing test, it leads to increased R&D&I-activities without adversely affecting trading conditions to an extent contrary to the common interest. The Commission will view favourably notifications of aid measures which are supported by rigorous evaluations of similar past aid measures demonstrating the incentive effect of the aid. The following measures are eligible for compatibility under Article 87(3)(c) of the EC Treaty.

### 5.1. Aid for R&D projects

Aid for R&D projects will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty provided that the conditions set out in this section are fulfilled.

#### 5.1.1. *Research categories*

The aided part of the research project must completely fall within one or more of the following research categories: fundamental research, industrial research, experimental development.

When classifying different activities, the Commission will refer to its own practice as well as the specific examples and explanations provided in the Frascati Manual on the Measurement of Scientific and technological Activities, Proposed Standard Practice for Surveys on Research and Experimental Development <sup>(31)</sup>.

When a project encompasses different tasks, each task must 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.

This qualification need not necessarily follow a chronological approach, moving sequentially over time from fundamental research to activities closer to the market. Accordingly, nothing will prevent the Commission from qualifying a task which is carried out at a late stage of a project as industrial research, while finding that an activity carried out at an earlier stage of the project constitutes experimental development or is not research at all.

#### 5.1.2. *Basic aid intensities*

The aid intensity, as calculated on the basis of the eligible costs of the project, shall not exceed:

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

The aid intensity must be established for each beneficiary of aid, including in a collaboration project.

In the case of State aid for an R&D project being carried out in collaboration between research organisations and undertakings, the combined aid deriving from direct government support for a specific research project and, where they constitute aid (see section), contributions from research organisations to that project may not exceed the applicable aid intensities for each benefiting undertaking.

#### 5.1.3. *Bonuses*

The ceilings fixed for industrial research and experimental development may be increased as follows:

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

<sup>(31)</sup> Organisation for Economic Co-operation and Development, 2002.

(b) up to a maximum aid intensity of 80 %, a bonus of 15 percentage points may be added if <sup>(32)</sup>:

(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 must bear more than 70 % of the eligible costs of the collaboration project;
- the project must involve collaboration with at least one SME or be cross-border, that is to say, the research and development activities are carried out in at least two different Member States.

(ii) the project involves effective collaboration between an undertaking and a research organisation, particularly in the context of co-ordination of national R&D policies, and the following conditions are fulfilled:

- the research organisation bears at least 10 % of the eligible project costs;
- the research organisation has the right to publish the results of the research projects insofar as they stem from research implemented by that organisation.

(iii) only in case of industrial research, if the results of the project are widely disseminated through technical and scientific conferences or published 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 points (i) and (ii) subcontracting is not considered to be effective collaboration. In case of collaboration between an undertaking and a research organisation, the maximum aid intensities and bonuses specified in this Framework do not apply to the research organisation.

**Table illustrating the aid intensities:**

	Small enterprise	Medium-sized enterprise	Large Enterprise
<i>Fundamental research</i>	100 %	100 %	100 %
<i>Industrial research</i>	70 %	60 %	50 %
<i>Industrial research</i> subject to:	80 %	75 %	65 %
— collaboration between undertakings;			

<sup>(32)</sup> Projects funded under the Framework programme of the European Community for research, technological development and demonstration activities will automatically qualify for a bonus for collaboration due to the minimum conditions for participation in such projects.

	Small enterprise	Medium-sized enterprise	Large Enterprise
for large undertakings: cross-border or with at least one SME or — collaboration of an undertaking with a research organisation or — dissemination of results			
<i>Experimental development</i>	45 %	35 %	25 %
<i>Experimental development</i> subject to:	60 %	50 %	40 %
— collaboration between undertakings; for large undertakings, with cross-border or at least one SME or — collaboration of an undertaking with a research organisation			

#### 5.1.4. Eligible costs

The aid intensity will be calculated on the basis of the costs of the research project to the extent that they can be considered as eligible. All eligible costs must be allocated to a specific category of R&D.

The following costs shall be eligible:

- (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, are considered as eligible;
- (c) costs for building 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 are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are 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 expenses, including costs of materials, supplies and similar products incurred directly as a result of the research activity.

#### 5.1.5. *Repayable advance*

If a Member State grants a repayable advance which qualifies as State aid within the meaning of Article 87(1) of the EC Treaty, the following rules shall apply.

Where a Member State can demonstrate, on the basis of a valid methodology based on sufficient verifiable data, that it is possible to calculate the gross grant equivalent of such aid granted in the form of a repayable advance and to accordingly design a scheme where this gross grant equivalent fulfils the conditions on maximum intensities in this section, it may notify this scheme and the associated methodology to the Commission. If the Commission accepts the methodology and deems the scheme compatible, the aid may be granted on the basis of the gross grant equivalent of the repayable advance, up to the aid intensities permissible under this section.

In all other cases, the repayable advance is expressed as a percentage of the eligible costs; it may then exceed the rates indicated in this section. provided that the following rules are fulfilled.

In order to allow the Commission to assess the measure, it must provide for detailed provisions on the repayment in case of success and clearly define what will be considered as a successful outcome of the research activities. All these elements must be notified to the Commission. The Commission will examine that the definition of a successful outcome has been established on the basis of a reasonable and prudent hypothesis.

In case of a successful outcome, the measure must provide that the advance is repaid with an interest rate at least equal to the applicable rate resulting from the application of the Commission notice on the method for setting the reference and discount rates <sup>(33)</sup>.

<sup>(33)</sup> OJ C 273, 9.9.1997, p. 3. also published under:  
[http://ec.europa.eu/comm/competition/state\\_aid/legislation/reference.html](http://ec.europa.eu/comm/competition/state_aid/legislation/reference.html).

In case of a success exceeding the outcome defined as successful, the Member State concerned should be entitled to request payments beyond repayment of the advance amount including interest according to the reference rate foreseen by the Commission.

In case the project fails, the advance does not have to be fully repaid. In case of partial success, the Commission will normally require that the repayment secured is in proportion to the degree of success achieved.

The advance may cover up to a maximum of 40 % of the eligible costs for the experimental development phase of the project and up to 60 % for the industrial research phase, to which bonuses can be added.

#### 5.1.6. *Fiscal measures*

On the basis of evaluation studies <sup>(34)</sup> provided by Member States in the notification, the Commission will consider that R&D&I fiscal aid schemes have an incentive effect by stimulating higher R&D&I-spending by undertakings.

The aid intensity of an R&D&I fiscal State aid measure can be calculated either on the basis of individual R&D&I projects or, at the level of an undertaking, as the ratio between the overall tax relief and the sum of all eligible R&D&I costs incurred in a period not exceeding three consecutive fiscal years. In the latter case, the R&D&I fiscal State aid measure may apply without distinction to all eligible R&D&I activities; the applicable aid intensity for experimental development must then not be exceeded <sup>(35)</sup>.

At the time of notification, the Member State must provide an estimate of the number of beneficiaries.

#### 5.1.7. *Matching clause*

In order to address actual or potential direct or indirect distortions of international trade, higher intensities than generally permissible under this section may be authorized if — directly or indirectly — competitors located outside the Community have received (in the last three years) or are going to receive, aid of an equivalent intensity for similar projects, programmes, research, development or technology. However, where distortions of international trade are likely to occur after more than three years, given the particular nature of the sector in question, the reference period may be extended accordingly.

<sup>(34)</sup> Even though this may not be possible *ex ante* for a newly introduced fiscal State aid measure, Member States will be expected to provide evaluation studies on the incentive effects of their own fiscal measures.

<sup>(35)</sup> Conversely, where an R&D&I fiscal State aid measure distinguishes between different R&D&I categories, the relevant aid intensities must not be exceeded.

If at all possible, the Member State concerned will provide the Commission with sufficient information to enable it to assess the situation, in particular regarding the need to take account of the competitive advantage enjoyed by a third-country competitor. If the Commission does not have evidence concerning the granted or proposed aid, it may also base its decision on circumstantial evidence.

## 5.2. Aid for technical feasibility studies

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)(c) of the EC Treaty provided that the aid intensity, as calculated on the basis of the study costs, does not exceed the following aid intensities:

- (a) for SMEs, 75 % for studies preparatory to industrial research activities and 50 % for studies preparatory to experimental development activities,
- (b) for large undertakings, 65 % for studies preparatory to industrial research activities and 40 % for studies preparatory to experimental development activities.

## 5.3. Aid for industrial property rights costs for SMEs

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)(c) of the EC Treaty up to the same level of aid as would have qualified as R&D aid in respect of the research activities which first led to the industrial property rights concerned.

Eligible costs are:

- (a) all costs preceding the grant of the right in the first legal 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.

## 5.4. Aid for young innovative enterprises

Aid to young innovative enterprises shall be compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty if the following conditions are fulfilled <sup>(36)</sup>:

- (a) the beneficiary is a small enterprise that has been of existence for less than 6 years at the time when the aid is granted and
- (b) the beneficiary is an innovative enterprise, on the basis that:
  - (i) the Member State can demonstrate, by means of an evaluation carried out by an external expert, notably on the basis of a business plan, that the beneficiary will in the foreseeable future develop products, services or processes which are technologically new or substantially improved compared to the state of the art in its industry in the Community, and which carry a risk of technological or industrial failure, or
  - (ii) the R&D expenses of the beneficiary represent at least 15 % of its total operating expenses 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.
- (c) the aid is not higher than EUR 1 million. This aid may not exceed EUR 1,5 million in regions eligible for the derogation in Article 87(3)(a) of the EC Treaty, and EUR 1,25 million in regions eligible for the derogation in Article 87(3)(c) of the EC Treaty.

The beneficiary may receive the aid only once during the period in which it qualifies as a young innovative enterprise. This aid may be cumulated with other aid under this framework, with aid for research and development and innovation exempted by Regulation (EC) No 364/2004 or any successor regulation and with aid approved by the Commission under the risk capital guidelines.

The beneficiary may receive State aid other than R&D&I aid and risk capital aid only 3 years after the granting of the young innovative enterprise aid.

## 5.5. Aid for process and organisational innovation in services

Innovation in services may not always fall within the research categories defined in section 5.1 but is typically less systematic

<sup>(36)</sup> This is without prejudice to the application of the Guidelines on national regional aid for 2007 — 2013, OJ C 54, 4.3.2006, p. 13, and notably the granting of aid for newly created small enterprises up to a total of EUR 2 million per small enterprise located in regions eligible for the derogation in Article 87(3)(a) of the Treaty.



and stems frequently from customer interaction, market demand, adoption of business and organisational models and practices from more innovative sectors or from other similar sources.

Aid for process and organisational innovation in services shall be compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty with a maximum aid intensity of 15 % for large enterprises, 25 % for medium enterprises and 35 % for small enterprises. Large enterprises are only eligible for such aid if they collaborate with SMEs in the aided activity, whereby the collaborating SMEs must incur at least 30 % of the total eligible costs.

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, do not qualify for State aid.

The following conditions must be fulfilled:

- (a) organisational innovation must always be related to the use and exploitation of Information and Communication Technologies (ICT) to change the organisation;
- (b) the innovation must be formulated as a project with an identified and qualified project manager, as well as identified project costs;
- (c) the result of the aided project must be the development of a standard, of a business model, methodology or concept, which can be systematically reproduced, possibly certified, and possibly patented;
- (d) the process or organisational innovation must be new or substantially improved compared to the state of the art in its industry in the Community. The novelty could be demonstrated by the Member States for instance on the basis of a precise description of the innovation, comparing it with state of the art process or organisational techniques used by other undertakings in the same industry;
- (e) the process or organisational innovation project must entail a clear degree of risk. This risk could be demonstrated by the Member State for instance in terms of: project costs in relation to company turnover, time required to develop the new process, expected gains from the process innovation by comparison with the project costs, probability of failure.

Eligible costs are the same as for aid to R&D projects (cf. section). In case of organisational innovation, however, costs of instruments and equipment cover costs of ICT instruments and equipment only.

#### 5.6. Aid for innovation advisory services and for innovation support services

Aid for innovation advisory services and for innovation support services shall be compatible with the common market within the meaning of Article 87 (3) (c) of the EC Treaty if each of the following conditions are fulfilled:

- (1) the beneficiary is an SME;
- (2) the aid does not exceed a maximum of EUR 200 000 per beneficiary within any three year period <sup>(37)</sup>;
- (3) the service provider benefits from a national or European certification. If the service provider does not benefit from a national or European certification, the aid may not cover more than 75 % of the eligible costs;
- (4) the beneficiary must use the State 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).

The following costs shall be eligible:

- as regards innovation advisory services the following costs: 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
- as regards innovation support services the following costs: office space; data banks; technical libraries; market research; use of laboratory; quality labelling, testing and certification;

If the service provider is a not-for-profit entity, the aid may be given in the form of a reduced price, as the difference between the price paid and the market price (or a price which reflects full costs plus a reasonable margin). In such a case, the Member States shall set up a system ensuring transparency about the full costs of the innovation advisory and innovation support services provided, as well as about the price paid by the beneficiary, so that the aid received can be measured and monitored.

#### 5.7. Aid for the loan of highly qualified personnel

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)(c) of the EC Treaty, provided the following conditions are fulfilled:

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

<sup>(37)</sup> Without prejudice to the possibility of also receiving *de minimis* aid in respect of other eligible expenses.

enterprise, which is sending the personnel on secondment. The seconded personnel must work on R&D&I activities within the SME receiving the aid.

Eligible costs are all personnel costs for borrowing and employing highly qualified personnel, including the costs of using a recruitment agency, as well as a mobility allowance for the seconded personnel. The maximum aid intensity shall be 50 % of the eligible costs, for a maximum of 3 years per undertaking and per person borrowed.

This provision does not allow covering consultancy costs (payment of the service rendered by the expert, without employing the expert in the undertaking) as such, which are covered under the rules for SME-aid <sup>(38)</sup>.

### 5.8. Aid for innovation clusters

**Investment aid** may be granted for the setting up, expansion and animation of innovation clusters exclusively to the legal entity operating the innovation cluster. This entity shall be in charge of managing the participation and access to the cluster's premises, facilities and activities. Access to the cluster's premises, facilities and activities must not be restricted and the fees charged for using the cluster's facilities and for participating in the cluster's activities should reflect their costs.

Such aid may be granted for the following facilities:

- facilities for training and research centre;
- open-access research infrastructures: laboratory, testing facility;
- broadband network infrastructures.

The maximum aid intensity is 15 %.

In the case of regions falling under Article 87(3)(a) of the EC Treaty, the Commission considers that the intensity must not exceed:

- 30 % for regions with less than 75 % of average EU-25 GDP per capita, for outermost regions with higher GDP per capita and until 1 January 2011 statistical effect regions <sup>(39)</sup>,
- 40 % for regions with less than 60 % of average EU-25 GDP per capita,
- 50 % for regions with less than 45 % of average EU-25 GDP per capita.

In recognition of their specific handicaps, the outermost regions will be eligible for a further bonus of 20 % if their GDP per capita falls below 75 % of the EU-25 average and 10 % in other cases.

The statistical effect regions which fall under the derogation under Article 87(3)(c) of the EC Treaty from 1 January 2011 will be eligible for an aid intensity of 20 %.

In the case of aid being granted to an SME, the maximum intensities shall be increased by 20 percentage points for aid granted to a small enterprise and by 10 percentage points for aid granted to a medium-sized enterprise.

The eligible costs shall be the costs relating to investment in land, buildings, machinery and equipment.

**Operating aid for cluster animation** may be granted to the legal entity operating the innovation cluster. Such aid must be temporary and, as a general rule, must be abolished over time, so as to provide an incentive for prices to reflect costs reasonably rapidly.

Such aid may be granted for a limited duration of five years where the aid is degressive. Its intensity may amount to 100 % the first year but must have fallen in a linear fashion to zero by the end of the fifth year. In the case of non-degressive aid, its duration is limited to five years and its intensity must not exceed 50 % of the eligible costs. In duly justified cases, and on the basis of convincing evidence provided by the notifying Member State, aid for cluster animation may be granted for a longer period of time, not exceeding 10 years.

The eligible costs shall be the personnel and administrative costs relating to the following activities:

- marketing of the cluster to recruit new companies to take part in the cluster,
- management of the cluster's open-access facilities,
- organisation of training programmes, workshops and conferences to support knowledge sharing and networking between the members of the cluster.

When notifying investment aid or aid for cluster animation, the Member State must provide an analysis of the technological specialisation of the innovation cluster, existing regional potential, existing research capacity, presence of clusters in the Community with similar purposes and potential market volumes of the activities in the cluster.

Cases where Member States fund innovation infrastructure to be operated on an open access basis within not for profit research organisations should be assessed using the provisions set out in section 3.1.

<sup>(38)</sup> Currently Regulation (EC) No 70/2001.

<sup>(39)</sup> Cf. Guidelines on national regional aid for 2007-2013, para. 18-20.

## 6. INCENTIVE EFFECT AND NECESSITY OF AID

State aid must have an incentive effect, i.e. result in the recipient changing its behaviour so that it increases its level of R&D&I activity. As a result of the aid, the R&D&I activity should be increased in size, scope, amount spent or speed.

The Commission considers that the aid does not present an incentive for the beneficiary in all cases in which the R&D&I-activity<sup>(40)</sup> has already commenced prior to the aid application by the beneficiary to the national authorities.

If the aided R&D&I-project has not started before the application, the Commission considers that the incentive effect is **automatically met** for the following aid measures:

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

For all other measures<sup>(41)</sup>, the Commission will require that an incentive effect is demonstrated by the notifying Member States.

In order to verify that the planned aid will induce the aid recipient to change its behaviour so that it increases its level of R&D&I activity, the Member States shall provide an *ex-ante* evaluation of the increased R&D&I activity **for all individual measures assessed by the Commission**, on the basis of an analysis comparing a situation without aid and a situation with aid being granted. The following criteria may be used, together with other relevant quantitative and/or qualitative factors submitted by the Member State that made the notification:

*increase in project size*: increase in the total project costs (without decreased spending by the aid beneficiary by comparison with a situation without aid); increase in the number of people assigned to R&D&I activities;

*increase in scope*: increase in the number of the expected deliverables from the project; more ambitious project illustrated by a higher probability of a scientific or technological breakthrough or a higher risk of failure (notably linked to the higher risk involved in the research project, to the long-term nature of the project and uncertainty about its results);

<sup>(40)</sup> If the aid proposal is to grant aid for an R&D&I-project, this does not exclude that the potential beneficiary has already carried out feasibility studies which are not covered by the request for State aid.

<sup>(41)</sup> I.e. project aid for large undertakings and for SMEs for aid exceeding EUR 7,5 million; aid for process and organisational innovation in services and aid for innovation clusters.

*increase in speed*: shorter time before completion of the project as compared to the same project being carried out without aid;

*increase in total amount spent on R&D&I*: increase in total R&D&I spending by the aid beneficiary; changes in the committed budget for the project (without corresponding decrease in the budget of other projects); increase in R&D&I spending by the aid beneficiary as a proportion of total turnover.

If a significant effect on *at least one* of these elements can be demonstrated, taking account of the normal behaviour of an undertaking in the respective sector, the Commission will normally conclude that the aid proposal has an incentive effect.

If the Commission undertakes a **detailed assessment** of an individual measure, these indicators may not be considered sufficient demonstration of an incentive effect, and the Commission may need to be provided with complementary evidence.

When **assessing an aid scheme**, the conditions relating to the incentive effect shall be deemed to be satisfied if the Member State has committed itself to grant individual aid under the approved aid scheme only after it has verified that an incentive effect is present and to submit annual reports on the implementation of the approved aid scheme. In the annual reports, the Member State must demonstrate how it has assessed the incentive effect of the aid before granting the aid through the use of the quantitative and qualitative indicators given above.

## 7. COMPATIBILITY OF AID SUBJECT TO A DETAILED ASSESSMENT

The Commission considers that an increase in the level of R&D&I activity in the Community is in the common interest of the Community as it can be expected to significantly contribute to growth, prosperity and sustainable development. In this context, the Commission recognises that State aid has a positive role to play when it is well targeted and creates the right incentive for undertakings to increase R&D&I. Nevertheless, State aid may also lead to significant distortions of competition which must be taken into consideration.

### 7.1. Measures subject to a detailed assessment

For the following measures, due to the higher risk of distortion of competition, the Commission will carry out a more detailed assessment.

*For measures covered by a BER*

- for all cases notified to the Commission following a **duty to notify aid individually** as prescribed in the BER.

*For measures covered by this framework:*

Where the aid amount exceeds :

- for **project aid** <sup>(42)</sup> and **feasibility studies**:
  - if the project is predominantly fundamental research <sup>(43)</sup>, EUR 20 million per undertaking, per project/feasibility study;
  - if the project is predominantly industrial research <sup>(44)</sup>, EUR 10 million per undertaking, per project/feasibility study;
  - for all other projects, EUR 7,5 million per undertaking, per project/feasibility study.
- for **process or organisational innovation** in services activities, EUR 5 million per project per undertaking;
- for **innovation clusters** (per cluster), EUR 5 million.

The purpose of this detailed assessment is to ensure that high amounts of aid for R&D&I do not distort competition to an extent contrary to the common interest, but actually contribute to the common interest. This happens when the benefits of State aid in terms of additional R&D&I outweigh the harm for competition and trade.

The detailed assessment is a proportionate assessment, depending on the distortion potential of the case. Accordingly, the fact that a detailed assessment will be carried out does not necessarily imply the need to open a formal investigation procedure, although this may be the case for certain measures.

Provided Member States ensure full co-operation and provide adequate information in a timely manner, the Commission will use its best endeavours to conduct the investigation in a timely manner.

## 7.2. Methodology of the detailed assessment: R&D&I criteria for economic assessment of certain individual cases

Below, the Commission presents guidance as to the kind of information it may require and the methodology it would follow

<sup>(42)</sup> For EUREKA projects, this ceiling is set at twice the amount.

<sup>(43)</sup> A project is considered to consist 'predominantly' of fundamental research, if more than half of the eligible project costs is incurred through activities which fall within the category of fundamental research.

<sup>(44)</sup> A project is considered to consist 'predominantly' of industrial research, if more than half of the eligible project costs is incurred through activities which fall within the categories of industrial research or fundamental research.

for measures subject to a detailed assessment. This guidance is intended to make the Commission's decisions and their reasoning transparent and foreseeable in order to create predictability and legal certainty.

Detailed assessment will be conducted on the basis of the following positive and negative elements which will apply in addition to the criteria set out in Chapter 5. In some cases, the applicability and the weight attached to these elements may depend on the form or objective of the aid. The level of the Commission's assessment will be proportional to the risk of distortion of competition. This means that the scope of the analysis will depend on the nature of the case. State aid for activities that are far away from the market is therefore less likely to give rise to very extensive scrutiny.

Member States are invited to provide all the elements that they consider useful for the assessment of the case. The Member States are, in particular, invited to rely on evaluations of past State aid schemes or measures, impact assessments made by the granting authority, risk assessments, financial reports, internal business plans that any company should realise for important projects, expert opinions and other studies related to R&D&I.

## 7.3. Positive effects of the aid

The fact that the aid induces undertakings to pursue R&D&I in the Community which they would not otherwise have pursued constitutes the main positive element to take into consideration when assessing the compatibility of the aid.

In this context, the Commission will notably pay attention to the following elements:

- the net increase of R&D&I conducted by the undertaking,
- the contribution of the measure to the global improvement of the sector concerned as regards the level of R&D&I,
- the contribution of the measure to the improvement of the Community situation regarding R&D&I in the international context.

### 7.3.1. Existence of a market failure

As indicated in Chapter 1, State aid may be necessary to increase R&D&I in the economy only to the extent that the market, on its own, fails to deliver an optimal outcome. It is established that certain market failures hamper the overall level of R&D&I in the Community. However, not all undertakings and sectors in the economy are confronted to these market failures to the same extent. Consequently, as regards measures subject to a detailed



assessment, the Member State should provide adequate information whether the aid refers to a general market failure regarding R&D&I in the Community, or to a specific market failure.

Depending on the specific market failure addressed, the Commission will take into consideration the following elements:

- **Knowledge spillovers:** the level of information dissemination foreseen; the specificity of the knowledge created; the availability of IPR protection.
- **Imperfect and asymmetric information:** level of risk and complexity of research; need for external finance; characteristics of the aid beneficiary to receive external finance.
- **Coordination failures:** number of collaborating undertakings; intensity of collaboration; diverging interest between collaborating partners; problems in designing contracts; problems of third parties to coordinate collaboration.

For State aid targeting R&D&I projects or activities located in assisted areas, the Commission will take into account: (i) disadvantages caused by the peripherality and other regional specificities, (ii) specific local economic data, social and/or historic reasons for a low level of R&D&I activity in comparison with the relevant average data and/or situation at national and/or Community level as appropriate; and (iii) any other relevant indicator showing an increased degree of market failure.

### 7.3.2. *Appropriate Instrument*

State aid for R&D&I can be authorised under Article 87(3)(c) of the EC Treaty when it is necessary to achieve an objective of common interest, as an exception to the general prohibition of State aid. An important element in the balancing test is whether and to what extent State aid for R&D&I can be considered an appropriate instrument to increase R&D&I activities, given that other less distortive instruments may achieve the same results.

In its compatibility analysis, the Commission will take particular account of any impact assessment of the proposed measure which the Member State has made. Measures for which the Member State has considered other policy options and for which the advantages of using a selective instrument such as State aid are established and submitted to the Commission, are considered to constitute an appropriate instrument.

### 7.3.3. *Incentive effect and necessity of aid*

Analysing the incentive effect of the aid measure is the most important condition in analysing State aid for R&D&I. Identifying the incentive effect **translates** into assessing whether

the planned aid will induce undertakings to pursue R&D&I which they would not otherwise have pursued.

Chapter 6 provides a series of indicators that can be used by Member States to demonstrate an incentive effect. However, when a measure undergoes a detailed assessment, the Commission will require that the incentive effect of the aid is substantiated more precisely, to avoid undue distortions of competition.

In its analysis, the Commission will, in addition to the indicators mentioned in Chapter 6, take into consideration the following elements:

- **Specification of intended change:** the intended change in behaviour State aid aims at in the notified case has to be well specified (new project triggered, size, scope or speed of a project enhanced).
- **Counterfactual analysis:** the change of behaviour has to be identified by counterfactual analysis: what would be the level of intended activity with and without aid? The difference of the two scenarios is considered to be the impact of the aid measure and describes the incentive effect.
- **Level of profitability:** if a project would not, in itself, be profitable to undertake for a private undertaking, but would generate important benefits for society, it is more likely that the aid has an incentive effect. To evaluate the overall profitability (or lack thereof) of the project, evaluation methodologies can be used which are standard practice in the particular industry concerned <sup>(45)</sup>.
- **Amount of investment and time path of cash flows:** High start-up investment, low level of appropriable cash flows and a significant fraction of cash flows arising in the very far future will be considered positive elements in assessing the incentive effect.
- **Level of risk involved in the research project:** On the basis of e.g. feasibility studies, risk assessments and expert opinions, the assessment of risk will in particular take into account the irreversibility of the investment, the probability of commercial failure, the risk that the project will be less productive than expected, the risk that conducting the project would undermine other activities and the risk that the project costs undermine the undertaking's financial viability. For State aid targeting R&D&I projects or activities located in assisted areas, the Commission will take into account disadvantages caused by the peripherality and other regional specificities, which negatively impact on the level of risk in the research project.

<sup>(45)</sup> These may include methods to evaluate the Net Present Value of the project (that is to say, the sum of the discounted expected cash flow resulting from the investment minus the investment cost), the internal rate of return (IRR) or the return of capital employed (ROCE). Financial reports and internal business plans containing information on demand forecasts; cost forecasts; financial forecasts (for example, NPV, IRR, ROCE), documents that are submitted to an investment committee and that elaborate on various investment scenarios or documents provided to the financial markets could serve as evidence.

- **Continuous evaluation:** measures for which (low scale) pilot projects are foreseen, or which define well specified milestones resulting in termination of the project in case of failure and where a publicly available *ex post* monitoring is foreseen will be considered more positively as regards the assessment of the incentive effect.

#### 7.3.4. Proportionality of the aid

Independently of the criteria mentioned in Chapter 5, the Member State concerned should provide the additional following information:

- **Open selection process:** Where there are multiple (potential) candidates for undertaking the R&D&I project in a Member State, the proportionality requirement is more likely to be met if the project has been allocated on the basis of transparent, objective and non-discriminatory criteria.
- **Aid to the minimum:** Member States have to explain how the amount given has been calculated to ensure that it is limited to the minimum necessary.

#### 7.4. Analysis of the distortion of competition and trade

State aid for R&D&I may impact on competition at two levels: (i) competition in the innovation process, i.e. competition in terms of R&D&I which takes place upstream of product markets and (ii) competition in the product markets where the results of the R&D&I activities are exploited.

In assessing the negative effects of the aid measure, the Commission will focus its analysis of the distortions of competition on the foreseeable impact the R&D&I aid has on competition between undertakings in the product markets concerned. The Commission will give more weight to risks for competition and trade that arise in a predictable future and with particular likelihood.

The impact on competition in the innovation process will be relevant insofar as it has a foreseeable impact on the outcome of future product market competition. In certain cases the results of R&D&I, for example, in the form of intellectual property rights, are themselves traded in so-called technology markets, for instance through patent licensing. In these cases, the Commission may also consider the effect of the aid on competition in the technology markets.

The impact of R&D&I on product markets is largely dynamic and the analysis will therefore be of a forward-looking nature. Frequently, the same innovative activity will be associated with multiple future product markets. If so, the impact of State aid will be looked upon on the set of markets concerned.

There are three distinct ways in which R&D&I aid can distort competition in product markets:

- (1) R&D&I aid can distort the dynamic incentives of market players to invest (crowding out effect);
- (2) R&D&I aid can create or maintain positions of market power;
- (3) R&D&I aid can maintain an inefficient market structure.

State aid may also have a negative effect on trade in the common market. In particular where R&D&I aid leads to the crowding out of competitors, the aid measures may essentially result in a shift of trade flows and location of economic activity.

##### 7.4.1. Distorting dynamic incentives

The main concern related to R&D&I aid to undertakings is that competitors' dynamic incentives to invest are distorted. When an undertaking receives aid, this generally increases the likelihood of successful R&D&I on the part of this undertaking leading to an increased presence on the product market(s) in the future. This increased presence may lead competitors to reduce the scope of their original investment plans (crowding out effect).

In its analysis, the Commission will consider the following elements:

- **Aid amount.** Aid measures which involve significant amounts of aid are more likely to lead to significant crowding out effects. The significance of the aid amount will be measured with reference to total private R&D expenditure in the sector, and the amount spent by the main players.
- **Closeness to the market/category of the aid.** The more the aid measure is aimed at R&D&I activity close to the market, the more it is liable to develop significant crowding out effects.
- **Open selection process:** Where the grant is given on the basis of objective and non-discriminatory criteria, the Commission will take a more positive stance.
- **Exit barriers:** Competitors are more likely to maintain (or even to increase) their investment plans when exit barriers to the innovation process are high. This may be the case when many of the competitors' past investments are locked in to a particular R&D&I trajectory.
- **Incentives to compete for a future market:** R&D&I aid may lead to a situation where competitors to the aid beneficiary renounce competing for a future market, because the advantage provided by the aid (in terms of the degree of technological advance or in terms of timing) reduces the possibility for them to profitably enter this future market..

- **Product differentiation and intensity of competition:** Where product innovation is rather about developing differentiated products (related, for example, to distinct brands, standards, technologies, consumer groups) competitors are less likely to be affected. The same is true if there are many effective competitors in the market.

#### 7.4.2. *Creating market power*

Aid in support of R&D&I may have distortive effects in terms of increasing or maintaining the degree of market power in product markets. Market power is the power to influence market prices, output, the variety or quality of goods and services, or other parameters of competition on the market for a significant period of time, to the detriment of consumers. The Commission will assess the market power before the aid is granted, and the change in market power, which can be expected as a result of the aid.

The Commission is concerned mainly about those R&D&I measures allowing the aid beneficiary to transfer or strengthen market power held on existing product markets to future product markets. The Commission is therefore unlikely to identify competition concerns related to market power in markets where each aid beneficiary has a market share below 25 % and in markets having a market concentration with Herfindahl-Hirschman Index (HHI) below 2 000.

In its analysis, the Commission will consider the following elements:

- **Market power of aid beneficiary and market structure:** Where the recipient is already dominant on a product market, the aid measure may reinforce this dominance by further weakening the competitive constraint that competitors can exert on the recipient undertaking. Similarly, State aid measures may have significant impact in oligopolistic markets where only a few players are active.
- **Level of entry barriers:** In the field of R&D&I, significant entry barriers may exist for new entrants. These barriers include legal entry barriers (in particular intellectual property rights), economies of scale and scope, access barriers to networks and infrastructure, and other strategic barriers to entry or expansion.
- **Buyer power:** The market power of an undertaking may also be limited by the market position of the buyers. The presence of strong buyers can serve to counter a finding of a strong market position if it is likely that the buyers will seek to preserve sufficient competition in the market.
- **Selection process:** Aid measures which allow undertakings with a strong market position to influence the selection process, for example, by having the right to recommend undertakings in the selection process or influencing the research path in a way which disfavours alternatives path on unjustified grounds, is liable to raise concern by the Commission.

#### 7.4.3. *Maintaining inefficient market structures*

R&D&I aid may, if not correctly targeted, support inefficient undertakings and hence lead to market structures where many market players operate significantly below efficient scale. In its analysis, the Commission will consider whether the aid is granted in markets featuring overcapacity, in declining industries or in sensitive sectors. Concerns are less likely in situations where State aid for R&D&I aims at changing the growth dynamics of the sector, notably by introducing new technologies.

### 7.5. **Balancing and decision**

In the light of these positive and negative elements, the Commission balances the effects of the measure and determines whether the resulting distortions adversely affect trading conditions to an extent contrary to the common interest. The analysis in each particular case will be based on an overall assessment of the foreseeable positive and negative impacts of the State aid. For that purpose the Commission will not use the criteria set out in sections 7.3 and 7.4 mechanically but will make an overall assessment based on the proportionality principle.

The Commission may raise no objections to the notified aid measure without entering into the formal investigation procedure or, following the formal investigation procedure laid down in Article 6 of Regulation (EC) No 659/1999, decide to close the procedure with a decision pursuant to Article 7 of that Regulation. If it takes a conditional decision within the meaning of Article 7(4) of Regulation (EC) No 659/1999, it may in particular consider attaching the following conditions, which must reduce the resulting distortions or effect on trade and be proportionate:

- lower aid intensities than the maximum intensities allowed in Chapter 5, including claw-back mechanisms and different conditions for repaying reimbursable advances,
- diffusion of results, collaboration and other behavioural commitments,
- separation of accounts in order to avoid cross-subsidization from one market to another market, when the beneficiary is active in multiple markets,
- no discrimination against other potential beneficiaries (reduce selectivity).

### 8. **CUMULATION**

As regards cumulation, the aid ceilings fixed under this framework shall apply regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community, except in the specific and limited context of the conditions established for Community funding under the RTD Framework Programmes, adopted

respectively in accordance with Title XVIII of the EC Treaty or Title II of the Euratom Treaty.

Where the expenditure eligible for aid for R&D&I is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable ceiling under the applicable rules. This limitation does not apply to aid granted in accordance with the Community guidelines on State aid to promote risk capital investments in SME <sup>(46)</sup>.

Aid for R&D&I shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in this framework.

## 9. SPECIAL RULES FOR AGRICULTURE AND FISHERIES

As regards R&D aid concerning products listed in Annex I to the EC Treaty, and by way of derogation from aid intensity limitations or supplements specified elsewhere in this framework, the Commission will continue to allow an aid intensity of up to 100 %, subject to fulfilment in each case of the four following conditions:

- it is of general interest to the particular sector or sub-sector concerned;
- information that research will be carried out, and with which goal, is 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 are made available on internet, for a period of at least 5 years. This information on the internet shall be published no later than any which may be given to members of any particular organisation;
- aid shall be granted directly to the researching institution or body 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.

The Commission will allow State aid for cooperation pursuant to Article 29 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) <sup>(47)</sup> if such cooperation has been approved for Community co-financing under that Article and/or the State aid is granted as additional financing pursuant to Article 89 of Regulation (EC)

No 1698/2005 under the same conditions and at the same intensity as the co-financing.

Cases of R&D aid for products listed in Annex I to the EC Treaty not fulfilling the conditions in this chapter are to be examined under the normal rules of this framework.

## 10. FINAL PROVISIONS

### 10.1. Reporting and monitoring

#### 10.1.1. Annual reports

In line with the requirements of Regulation (EC) No 659/1999 and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(48)</sup>, Member States must submit annual reports to the Commission.

Beyond the requirements stipulated in those provisions, annual reports for R&D&I-aid measures shall contain for each measure, including the granting of aid under an approved scheme, the following information:

- the name of the beneficiary,
- the aid amount per beneficiary,
- the aid intensity,
- the sectors of activity where the aided projects are undertaken.

In case of fiscal aid, the Member State must only provide a list of those beneficiaries who have received an annual tax relief in excess of 200 000 EUR.

In case of clusters, the report must also give a brief description of the activity of the cluster and its effectiveness in attracting R&D&I activity. The Commission may request additional information regarding the aid granted, to check whether the conditions of the Commission's decision approving the aid measure have been respected.

The annual reports will be published on the internet site of the Commission.

For all aid granted under an approved scheme to large undertakings, Member States must also explain in the annual report how the incentive effect has been respected for aid given to such undertakings, notably using the indicators and criteria mentioned in Chapter 6 above.

<sup>(46)</sup> OJ C 194, 18.8.2006, p. 2.

<sup>(47)</sup> OJ L 277, 21.10.2005, p. 1. Regulation as amended by Regulation (EC) No 1463/2006 (OJ L 277, 9.10.2006, p. 1).

<sup>(48)</sup> OJ L 140, 30.4.2004, p. 1. Regulation as amended by Regulation (EC) No 1627/2006 (OJ L 302, 1.11.2006, p. 10).



### 10.1.2. Access to full text of schemes

The Commission considers that further measures are necessary to improve the transparency of State aid in the Community. In particular, it appears necessary to ensure that the Member States, economic operators, interested parties and the Commission itself have easy access to the full text of all applicable R&D&I aid schemes.

This can easily be achieved through the establishment of linked internet sites. For this reason, when examining R&D&I aid schemes, the Commission will systematically require the Member State concerned to publish the full text of all final aid schemes on the internet and to communicate the internet address of the publication to the Commission. The scheme must not be applied before the information is published on the internet.

### 10.1.3. Information sheets

Besides, whenever aid for R&D&I is granted on the basis of aid schemes without falling under the duty for individual notification, and exceeds EUR 3 million, Member States must, within 20 working days starting from the granting of the aid by the competent authority, provide the Commission with the information requested in the standard form laid down in the Annex to this framework. The Commission will make summary information available to the public through its website ([http://ec.europa.eu/comm/competition/index\\_en.html](http://ec.europa.eu/comm/competition/index_en.html)).

Member States must ensure that detailed records regarding the granting of aid for all R&D&I measures are maintained. Such records, which must contain all information necessary to establish that the eligible costs and maximum allowable aid intensity have been observed, must be maintained for 10 years from the date on which the aid was granted.

The Commission will ask Member States to provide this information in order to carry out an impact assessment of this framework three years after its entry into force <sup>(49)</sup>.

## 10.2. Appropriate Measures

The Commission herewith proposes to Member States, on the basis of Article 88(1) of the EC Treaty, the following appropriate measures concerning their respective existing research and development aid schemes:

In order to comply with the provisions of this framework, Member States should amend, where necessary, such schemes in order to bring them into line with this framework within twelve months after its entry into force, with the following exceptions:

- Member States have twenty four months to introduce amendments regarding the provisions covered in point 3.1.1 of this framework;

- the new threshold for large individual projects will apply as from the entry into force of this framework;
- the duty to provide more detailed annual reports pursuant to point 10.1.1. and the duty to submit information sheets pursuant to point 10.1.3. will apply to existing aid schemes six months after the entry into force of this framework.

The Member States are invited to give their explicit unconditional agreement to these proposed appropriate measures within two months from the date of publication of this framework. In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.

## 10.3. Entry into force, validity and revision

This framework will enter into force on 1 January 2007 or, if it has not been published in the *Official Journal of the European Union* before that date, on the first day following its publication therein and will replace the Community Framework for State aid for Research and Development.

This framework will be applicable until 31 December 2013. After consulting the Member States, the Commission may amend it before that date on the basis of important competition policy or research policy considerations or in order to take account of other Community policies or international commitments. The Commission intends to carry out a review of the framework 3 years after its entry into force.

The Commission will apply this framework to all aid projects notified in respect of which it is called upon to take a decision after the framework is published in the *Official Journal*, even where the projects were notified prior to its publication. This includes individual aid granted under approved aid schemes and notified to the Commission following an obligation to notify such aid individually.

In line with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid <sup>(50)</sup>, the Commission will apply in the case of non-notified aid,

- this framework if the aid was granted after its entry into force,
- the framework in force when the aid was granted in all other cases.

<sup>(49)</sup> In that process, Member States may want to support the Commission by providing their own *ex post* assessment of schemes and individual measures.

<sup>(50)</sup> OJ C 119, 22.5.2002, p. 22.

## ANNEX

**Form for the provision of summary information for aid under the extended reporting obligation (section 10.1)**

- (1) Aid in favour of (name of the undertaking/undertakings 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: .....
- .....

## ▼ M3

## PART III.6.a

**SUPPLEMENTARY INFORMATION SHEET FOR RESEARCH AND DEVELOPMENT  
AND INNOVATION AID: AID SCHEMES**

*This supplementary information sheet must be used for the notification of any aid scheme <sup>(16)</sup> covered by the Community framework for State aid for research and development and innovation (hereinafter the R&D&I Framework) <sup>(17)</sup>. It must also be used for aid schemes for Research and Development to SMEs, which do not fall under a Block Exemption Regulation <sup>(18)</sup> as well as for aid intended for the production, processing and marketing of agricultural products.*

**1. Basic characteristics of the notified measure**

*Please fill in the relevant parts of the notification form corresponding to the character of the notified scheme. Please find below a basic guidance.*

(A) Please specify the type of aid and fill in the appropriate subsections of **Section 4** (Compatibility of aid under Article 87(3)(c) of the EC Treaty) of this supplementary information sheet:

- ☐ Aid for R&D projects, *fill in Section 4.1;*
- ☐ Aid for technical feasibility studies, *fill in Section 4.2;*
- ☐ Aid for industrial property right costs for SMEs, *fill in Section 4.3;*
- ☐ Aid for young innovative enterprises, *fill in Section 4.4;*
- ☐ Aid for process and organisational innovation in services, *fill in Section 4.5;*
- ☐ Aid for innovations advisory services and for innovation support services, *fill in Section 4.6;*
- ☐ Aid for the loan of highly qualified personnel, *fill in Section 4.7;*
- ☐ Aid for innovation clusters, *fill in Section 4.8.*

*Furthermore, please fill in also **Section 5** (Incentive effect and necessity of aid) and **Section 8** (Reporting and monitoring) in order to provide the requested confirmations.*

(B) Does the aid scheme involve research organisations <sup>(19)</sup>/innovation intermediaries?

- ☐ yes ☐ no

*If yes, please fill in **Section 2 and/or 3** (Research organisations and innovation intermediaries and Indirect State aid to undertakings through publicly funded research organisations) of this supplementary information sheet.*

(C) Can the aid be combined with other aid?

- ☐ yes ☐ no

*If yes, fill in **Section 6** (Cumulation) of this supplementary information sheet.*

(D) Does the R&D aid concern products listed in Annex I to the EC Treaty?

- ☐ yes ☐ no

*If yes, fill in **Section 7** (Specific questions related to agriculture and fisheries) of this supplementary information sheet.*

<sup>(16)</sup> As regards the aid for promotion of execution of important projects of common European interest, the Commission may also consider a group of projects as together constituting a project. For details see Section 4 of Supplementary Information Sheet for research and development and innovation aid: individual aid (part III.6.b of Annex I to Commission Regulation (EC) No 794/2004).

<sup>(17)</sup> Community framework for State aid for research and development and innovation (OJ C 323, 30.12.2006, p. 1).

<sup>(18)</sup> Currently 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 (OJ L 10, 13.1.2001, p. 33) as amended by Commission Regulation (EC) No 364/2004 of 25 February 2004, amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63, 28.2.2004, p. 22) or any subsequent regulation replacing it.

<sup>(19)</sup> For definition see Section 2.2(d) of the R&D&I Framework.

## ▼ M3

- (E) Please confirm that if the SME specific aid <sup>(20)</sup>/bonus is granted, the beneficiaries comply with the SME definition as defined by the Community legislation <sup>(21)</sup>:

☐ yes

- (F) If the scheme involves commissioning/purchasing of R&D activities/results from undertakings by the public authorities, are the providers selected in an open tender procedure <sup>(22)</sup>?

☐ yes

☐ no

*If no, please note that such payments from the public authorities to undertakings would normally involve State aid.*

- (G) If applicable, please provide an exchange rate which has been used for the purposes of the notification: .....

- (H) Please confirm that any aid granted under the notified scheme will be notified individually to the Commission if it reaches the thresholds for a detailed assessment laid down in Section 7.1 of the R&D&I Framework.

☐ yes

- (I) All documents provided by the Member States as annexes to the notification form shall be numbered and document numbers shall be indicated in the relevant parts of this supplementary information sheet.

## 2. Research organisations and innovation intermediaries as recipients of State aid <sup>(23)</sup>

### 2.1. Public funding of non-economic activities

- (A) Do the research organisations or non-for-profit innovation intermediaries carry out an economic activity <sup>(24)</sup> (an activity consisting in offering goods and/or services on a given market)?

☐ yes

☐ no

If yes, please provide description of these activities:

.....

- (B) If the same entity carries out activities of both economic and non-economic <sup>(25)</sup> nature, can the two kinds of activities and their costs and funding be clearly separated?

☐ yes

☐ no

If yes, provide details:

.....

*If yes, please note that public funding of non-economic activities does not fall under Article 87(1) of the EC Treaty. If not, public funding of economic activities generally entails State aid.*

### 2.2. Public funding of economic activities

- (C) Can the Member State prove that:

— the totality of the State funding is passed on from the research organisations or not-for-profit innovation intermediaries (carrying out economic activities) to the final recipients;

AND

— there is no advantage granted to the intermediaries?

☐ yes

☐ no

Please provide details and evidence:

.....

.....

*If yes, please note that the intermediary organisations may not be recipient of State aid. As regards the aid to final recipients, normal State aid rules apply.*

<sup>(20)</sup> I.e. measures under Sections 4.3, 4.4, 4.6 and 4.7 of this supplementary information sheet. Please note that the measure under Section 4.4 is limited to small enterprises.

<sup>(21)</sup> See footnote 20.

<sup>(22)</sup> Cf. R&D&I Framework, Section 2.1.

<sup>(23)</sup> Cf. R&D&I Framework, Section 3.1.

<sup>(24)</sup> For details see Section 3.1.1 of R&D&I Framework (footnote 24).

<sup>(25)</sup> For details see Section 3.1.1 (second and third paragraphs) of R&D&I Framework.

▼ **M3**3. **Indirect State aid to undertakings through publicly funded research organisations** <sup>(26)</sup>3.1. *Research on behalf of undertakings*

- (A) Are the projects supported under the notified scheme carried out by research organisations on behalf of undertakings?

☐ yes ☐ no

- (B) If yes, do the research organisations (acting as agent) render services to the undertakings (acting as principals) in situations, where:

— the agents receive payment of an adequate remuneration for their services,

☐ yes ☐ no

AND

— do the principals specify the terms and conditions of these services?

☐ yes ☐ no

Please provide details:

.....  
 .....

- (C) Do the research organisations provide their services at market price?

☐ yes ☐ no

If there is no market price, do the research organisations provide their services at a price which reflects full costs plus a reasonable margin?

☐ yes ☐ no

Please provide details:

.....  
 .....

*If a research organisation renders services and if the answer to one of the questions in Section C is yes, there will be normally no State aid passed to the undertakings through the research organisation.*

3.2. *Collaboration of undertakings and research organisations*

- (A) Is the collaboration project carried out jointly by undertakings and research organisations?

☐ yes ☐ no

If yes, provide details on the partnerships.

.....  
 .....

- (B) If yes, do the participating undertakings bear the full cost of the projects supported under the notified scheme?

☐ yes ☐ no

Are the results which do not give rise to intellectual property rights widely disseminated AND are any intellectual property rights which result from the activity of the research organisations fully allocated <sup>(27)</sup> to the research organisations?

☐ yes ☐ no

Do the research organisations receive from the participating undertakings compensation equivalent to the market price for the intellectual property rights <sup>(28)</sup> which result from the activity of the research organisations carried out in the project and which are transferred to the participating undertakings?

☐ yes ☐ no

Please provide details (please note that any contribution of the participating undertakings to the costs of the research organisations shall be deducted from the compensation):

.....  
 .....

<sup>(26)</sup> Cf. R&D&I Framework, Section 3.2.

<sup>(27)</sup> For details see Section 3.2.2 (footnote 28) of the R&D&I Framework.

<sup>(28)</sup> For details see Section 3.2.2 (footnote 29) of the R&D&I Framework.

## ▼ M3

- (C) If none of the answers to questions of Section B is yes, the Member State may rely on individual assessment of the collaboration projects <sup>(29)</sup>.

Please provide an individual assessment of the collaboration projects, taking into account the above mentioned elements. Please attach also the contractual agreements to the notification.

*If none of the answers to questions of Section B is yes and if the individual assessment of the collaboration projects does not lead to the conclusion that there is no State aid, the Commission will consider the full value of the contribution of the research organisation to the project as aid to undertakings.*

#### 4. Compatibility of aid under Article 87(3)(c) of the EC Treaty

##### 4.1. Aid for R&D projects <sup>(30)</sup>

##### 4.1.1. Research category <sup>(31)</sup>

- (A) Please indicate which R&D stages <sup>(32)</sup> are supported under the notified scheme:

- ☐ fundamental research
- ☐ industrial research
- ☐ experimental development

Give examples of major projects to be covered by the notified scheme:

.....

.....

- (B) If individual R&D projects encompass different research categories, please explain how this will be taken into account in determining the maximum aid intensity of a given project (the maximum aid intensity applicable must reflect the stages of research involved).

.....

.....

##### 4.1.2. Eligible costs

*All eligible costs must be allocated to a specific category of R&D <sup>(33)</sup>. Please specify (or tick) below.*

	Fundamental research	Industrial research	Experimental development
Personnel costs			
Costs of instruments and equipment			
Costs for building and land			
Cost of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices			
Additional overheads incurred directly as a result of the research project			
Other operating expenses			

<sup>(29)</sup> There also may be no State aid where the assessment of the contractual agreement between the partners leads to the conclusion that any intellectual property rights to the R&D&I results as well as access rights to the results are allocated to the different partners of the collaboration and adequately reflect their respective interests, work packages, and financial and other contributions to the project.

<sup>(30)</sup> Cf. R&D&I Framework, Section 5.1.

<sup>(31)</sup> To classify the activities, you may refer to the Commission practice or the specific examples and explanations provided in the Frascati Manual on the Measurement of Scientific and technological Activities, proposed Standard Practice for Surveys on Research and Experimental Development (Organisation for Economic Cooperation and Development, 2002).

<sup>(32)</sup> For definitions see Section 2.2(e), (f), (g) of the R&D&I Framework.

<sup>(33)</sup> Cf. Section 5.1.4 of the R&D&I Framework.

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## 4.1.3. Aid intensities and bonuses

*The aid intensity is calculated on the basis of the eligible costs of the project. It must be established for each beneficiary of aid, including in a collaboration project <sup>(34)</sup>.*

(A) Basic intensities (without bonuses) <sup>(35)</sup>:

	Fundamental research	Industrial research	Experimental development
Maximum aid intensity			

(B) Bonuses:

Do the supported projects benefit from a bonus?

☐ yes ☐ no

*If yes, please specify below.*

— Is an SME bonus applied under the notified scheme?

☐ yes ☐ no

Specify the level of bonus applicable <sup>(36)</sup>: .....

— Is a bonus for effective collaboration between undertakings (i) or collaboration of an undertaking with a research organisation (ii) or (only for projects of industrial research) dissemination of results (iii) applied under the notified scheme?

☐ yes ☐ no

(i) If a bonus for an effective collaboration between at least two undertakings, which are independent of each other, is applied, please confirm that the following conditions are fulfilled:

☐ no single undertaking bears more than 70 % of the eligible costs of the collaboration project;

AND

☐ the project involves collaboration with at least one SME or the collaboration has a cross-border character, i.e. research and development activities are carried out in at least two different Member States.

Specify the level of bonus applicable <sup>(37)</sup>: .....

(ii) If a bonus for an effective collaboration between an undertaking and a research organisation, particularly in the context of coordination of national R&D policies, is applied, please confirm that the following conditions are fulfilled:

☐ the research organisation bears at least 10 % of the eligible costs;

AND

☐ the research organisation has the right to publish the result of the research projects insofar as they stem from research implemented by that organisation.

Specify the level of bonus applicable <sup>(38)</sup>: .....

<sup>(34)</sup> In the case of State aid for an R&D project being carried out in collaboration between research organisations and undertakings, the combined aid deriving from direct government support for a specific research project and, where they constitute aid, contributions from research organisations to that project may not exceed the applicable aid intensities for each benefiting undertaking.

<sup>(35)</sup> The aid intensity may not exceed 100 % for fundamental research, 50 % for industrial research and 25 % for experimental development.

<sup>(36)</sup> The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

<sup>(37)</sup> The aid intensity may be increased by 15 percentage points, but up to a maximum of 80 %.

<sup>(38)</sup> The aid intensity may be increased by 15 percentage points, but up to a maximum of 80 %. This bonus does not apply to the research organisation.



## ▼ M3

- (iii) If in the case of industrial research a bonus for wide dissemination of the results of the project is applied, please specify at least one of the following methods of wide dissemination:

- ☐ technical and scientific conferences;
- ☐ publication in scientific or technical journals;
- ☐ availability in open access repositories (databases where raw research data can be accessed by anyone);
- ☐ availability through free or open source software.

Specify the level of bonus applicable <sup>(39)</sup>: .....

- (C) Specify the total aid intensity of the projects supported under the notified scheme (taking into account the bonuses) (%): .....

#### 4.1.4. Special conditions for repayable advance <sup>(40)</sup>

- (A) Is the aid to the R&D projects granted in the form of a repayable advance?

- ☐ yes ☐ no

- (B) If yes, is the aid granted in the form of a repayable advance under the notified scheme expressed as gross grant equivalent <sup>(41)</sup>?

- ☐ yes ☐ no

If yes, what is the aid intensity of repayable advance expressed as gross grant equivalent <sup>(42)</sup> applicable under the notified scheme: .....

Furthermore, please provide the complete methodology applied AND the underlining verifiable data on which the above mentioned methodology has been based:

.....

.....

- (C) If the aid cannot be expressed in gross grant equivalent, what is the level of the repayable advance expressed as a percentage of the eligible costs: .....

In case the rates of repayable advance granted to the R&D project are higher than the rates indicated in Sections 5.1.2 and 5.1.3 (up to the maximum rates indicated in Section 5.1.5 of the R&D&I Framework, please):

- notify to the Commission the detailed information on the repayment in the case of success and define clearly what will be considered as a successful outcome of the research activities,

AND

- confirm the following:

- ☐ the measure provides that in case of successful outcome the advance is repaid with an interest rate at least equal to the applicable rate resulting from the application of the Commission notice on the method of setting the reference and discount rates <sup>(43)</sup>;
- ☐ in case of a success exceeding the outcome defined as successful, the Member State is entitled to request payments beyond payments of the advance amount including interest according to the reference rate foreseen by the Commission;
- ☐ in case of partial success, the Member State requires that the repayment secured is in proportion to the degree of success achieved.

<sup>(39)</sup> The aid intensity may be increased by 15 percentage points, but up to a maximum of 80 %.

<sup>(40)</sup> Cf. R&D&I Framework, Section 5.1.5.

<sup>(41)</sup> Gross grant equivalent of a repayable advance reflects the probability that the advance will be repaid by the beneficiaries.

<sup>(42)</sup> The gross grant equivalent must fulfil the conditions on maximum aid intensities laid down in Sections 5.1.2 and 5.1.3 of the R&D&I Framework.

<sup>(43)</sup> OJ C 273, 9.9.1997, p. 3. Also published under: [http://ec.europa.eu/comm/competition/state\\_aid/legislation/reference.html](http://ec.europa.eu/comm/competition/state_aid/legislation/reference.html)



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4.1.5. Special conditions for fiscal measures <sup>(44)</sup>

- (A) Is the aid to the R&D projects supported under the notified scheme granted in the form of a fiscal measure?

☐ yes ☐ no

If the aid for the R&D project is granted in the form of a fiscal measure, please provide evaluation studies in order to enable the Commission to assess the incentive effect of the R&D fiscal aid.

- (B) If yes, please specify how the aid intensities are calculated:

- ☐ on the basis of individual R&D project;
- ☐ as the ratio between the overall tax relief and the sum of all eligible R&D costs incurred in a period not exceeding three consecutive fiscal years;
- ☐ other: .....

Please provide details on the calculation method applied:

.....

.....

4.2. Aid for technical feasibility studies <sup>(45)</sup>

## 4.2.1. General conditions

The studies are preparatory to <sup>(46)</sup>:

- ☐ industrial research;
- ☐ experimental development.

## 4.2.2. Aid intensities

Specify the maximum aid intensity <sup>(47)</sup> (%) for SMEs: .....

Specify the maximum aid intensity <sup>(48)</sup> (%) for large companies: .....

*The aid intensity is calculated on the basis of cost of feasibility studies of the project.*

4.3. Aid for industrial property right costs for SMEs <sup>(49)</sup>

## 4.3.1. Conditions

Which stage of research <sup>(50)</sup> is concerned?

- ☐ fundamental research;
- ☐ industrial research;
- ☐ experimental development.

## 4.3.2. Eligible costs and aid intensities

- (A) Specify the eligible costs <sup>(51)</sup>:

- ☐ costs preceding the grant of the right in the first legal jurisdiction: .....
- ☐ translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdiction: .....
- ☐ costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings: .....

<sup>(44)</sup> Cf. R&D&I Framework, Section 5.1.6.

<sup>(45)</sup> Cf. R&D&I Framework, Section 5.2.

<sup>(46)</sup> To classify the activities, you may refer to the Commission practice or the specific examples and explanations provided in the Frascati Manual on the Measurement of Scientific and technological Activities, proposed Standard Practice for Surveys on Research and Experimental Development (Organisation for Economic Cooperation and Development, 2002); for definitions see Section 2.2(e), (f), (g) of the R&D&I Framework.

<sup>(47)</sup> For SMEs, the aid intensity may not exceed 75 % for studies preparatory to industrial research activities and 50 % for studies preparatory to experimental development activities.

<sup>(48)</sup> For large companies, the aid intensity may not exceed 65 % for studies preparatory to industrial research activities and 40 % for studies preparatory to experimental development activities.

<sup>(49)</sup> Cf. R&D&I Framework, Section 5.3.

<sup>(50)</sup> For definitions see Section 2.2(e), (f), (g) of the R&D&I Framework.

<sup>(51)</sup> For details see Section 5.3 (second paragraph) of the R&D&I Framework.

## ▼ M3

(B) Specify the maximum aid intensity (%) <sup>(52)</sup>: .....

4.4. *Aid for young innovative enterprises* <sup>(53)</sup> (for small enterprises)

Please confirm that:

(A) ☐ the beneficiaries are exclusively small enterprises as defined by Community legislation <sup>(54)</sup>, in existence for less than six years at the time when the aid is granted;

(B) ☐ the beneficiaries are innovative enterprises.

Please confirm that the compliance with this condition is ensured through:

☐ an evaluation carried out by an external expert demonstrating that the beneficiary will in the foreseeable future develop products, services or processes which are technologically new or substantially improved compared to the state of the art in its industry in the Community, and which carry a risk of technological or industrial failure;

OR

☐ the evidence that the R&D expenses of the beneficiary represent at least 15 % of its total operating expenses 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.

Please provide details on how this is implemented:

.....  
 .....

(C) Specify the maximum aid amount applicable under the notified scheme: .....

Please confirm that the aid for young innovative enterprises will not exceed:

☐ EUR 1 million in non-assisted areas;

☐ EUR 1,5 million in regions eligible for the derogation in Article 87(3)(a) of the EC Treaty;

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

(D) Please confirm that:

☐ the beneficiaries didn't receive aid for young innovative enterprises before and will receive this type of aid only once during the period in which they qualify as a young innovative enterprise.

(E) Do the enterprises benefit from a cumulation of aid?

☐ yes

☐ no

If yes, please indicate how the specific cumulation rules for young innovative enterprise aid (Section 5.4 of the R&D&I Framework) will be complied with.

.....  
 .....

4.5. *Aid for process and organisational innovation in services* <sup>(55)</sup>

4.5.1. General conditions

(A) To which type of innovation in service activities <sup>(56)</sup> does the notified scheme refer to?

☐ process innovation in service activities;

☐ organisational innovation in service activities.

<sup>(52)</sup> Maximum aid levels correspond to the same levels of aid as would have qualified as R&D aid in respect of the research activities which first led to the industrial property rights concerned.

<sup>(53)</sup> Cf. R&D&I Framework, Section 5.4.

<sup>(54)</sup> See footnote 20.

<sup>(55)</sup> Cf. R&D&I Framework, Section 5.5.

<sup>(56)</sup> For definitions see Section 2.2(i), (j) of the R&D&I Framework.

## ▼ M3

Please provide a detailed description of the innovation in service activities <sup>(57)</sup> (process and/or organisational):

.....

.....

.....

.....

(B) Please confirm that:

- ☐ the organisational innovation is related to the use and exploitation of Information and Communication Technologies (ICT) to change the organisation;
- ☐ the innovation is formulated as a project with an identified and qualified project manager, as well as identified project costs;
- ☐ the result of the aided project is the development of a standard, of a business model, methodology of concept, which can be systematically reproduced, possibly certified, and possibly patented;
- ☐ the process or organisational innovation is new or substantially improved compared to the state of the art in its industry in the Community;
- ☐ the process or organisational innovation projects entail a clear degree of risk;
- ☐ the aid is granted to large enterprises only if they collaborate with SMEs in the aided activity and that the collaborating SMEs incur at least 30 % of the total eligible costs.

Please provide details/evidence concerning all these elements:

.....

.....

#### 4.5.2. Eligible costs and aid intensities

(A) Please specify the eligible costs <sup>(58)</sup>:

	Eligible costs
Personnel costs	
Costs of instruments and equipment	
Costs for building and land	
Cost of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices	
Additional overheads incurred directly as a result of the research project	
Other operating expenses	

(B) Specify the maximum aid intensity <sup>(59)</sup> for large enterprises (%): .....

Specify the maximum aid intensity <sup>(60)</sup> for medium enterprises <sup>(61)</sup> (%): .....

Specify the maximum aid intensity <sup>(62)</sup> for small enterprises <sup>(63)</sup> (%): .....

*The aid intensity is calculated on the basis of the eligible costs of the projects.*

<sup>(57)</sup> In order to classify the activities, you may refer to the Commission practice or the specific definitions provided in the OSLO Manual, Guidelines for Collecting and Interpreting Innovation Data, 3rd Edition (Organisation For Economic Cooperation and Development, 2005).

<sup>(58)</sup> For details see Section 5.1.4. Please note that in the case of organisational innovation, the costs of instruments and equipment cover costs of ICT instruments and equipment only.

<sup>(59)</sup> The maximum aid intensity is 15 % of the eligible costs.

<sup>(60)</sup> The maximum aid intensity is 25 % of the eligible costs.

<sup>(61)</sup> See footnote No 20.

<sup>(62)</sup> The maximum aid intensity is 35 % of the eligible costs.

<sup>(63)</sup> Idem footnote No 46.

**▼ M3****4.6. Aid for innovation advisory services and for innovation support services <sup>(64)</sup> (for SMEs)****4.6.1. General conditions**

- (A) Specify the maximum aid amount (not exceeding EUR 200 000 per beneficiary within any three year period):
- (B) Please confirm that:
- ☐ if the service provider does not benefit from a national or European certification the aid will not cover more than 75 % of the eligible costs;
- ☐ the beneficiaries use the State 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).

Please provide details on how this will be ensured.

.....

.....

**4.6.2. Eligible costs**

- (A) What type of aid is granted?
- ☐ aid for innovation advisory services;
- ☐ aid for innovation support services.
- (B) If it is an aid for innovation advisory services, specify the eligible costs:
- ☐ 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: .....
- (C) If it is an aid for innovation support services, specify the eligible costs:
- ☐ office space: .....
- ☐ data banks: .....
- ☐ technical libraries services: .....
- ☐ market research: .....
- ☐ use of laboratory: .....
- ☐ quality labelling: .....
- ☐ testing and certification: .....

**4.6.3. Special conditions for a non-for-profit entity**

*If the service providers are non-for-profit entities, the aid may be given in the form of a reduced price, as the difference between the price paid and the market price (or a price which reflects full costs plus a reasonable margin).*

- (A) Is the aid given in the form of a reduced price?
- ☐ yes ☐ no

<sup>(64)</sup> Cf. R&D&I Framework, Section 5.6.

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If yes, provide evidence of the existence of a system ensuring transparency about the full costs of the innovation advisory and innovation support services provided, as well as about the price paid by the beneficiaries, so that the aid received can be measured and monitored.

.....

.....

4.7. *Aid for the loan of highly qualified personnel* <sup>(65)</sup> (for SMEs)

## 4.7.1. General conditions

(A) Where do the highly qualified personnel <sup>(66)</sup> come from?

☐ research organisations;

☐ large enterprises.

Provide details (if possible) on research organisations and on large enterprises.

.....

.....

(B) Please confirm that:

☐ the seconded personnel are not replacing other personnel;

☐ the seconded personnel are employed in a newly created function within the beneficiary undertaking.

Specify please this newly created function:

.....

.....

☐ the seconded personnel have been employed for at least two years in the research organisations or the large enterprises which are sending the personnel on secondment;

☐ the seconded personnel work on R&D&I activities within the SME receiving aid.

## 4.7.2. Eligible costs and aid intensities

(A) Specify the eligible costs:

☐ costs for borrowing and employing highly qualified personnel:

.....

☐ mobility allowance for the seconded personnel: .....

(B) ☐ Please confirm that consultancy costs (payment of the service rendered by the expert without employing the expert in the undertaking) are excluded from eligible costs of the aid for the loan of highly qualified personnel.

(C) Specify the maximum aid intensity <sup>(67)</sup> (%): .....

4.8. *Aid for innovation clusters* <sup>(68)</sup>

## 4.8.1. General conditions

(A) What type of aid is granted to the beneficiaries?

☐ investment aid;

☐ operating aid for cluster animation.

<sup>(65)</sup> Cf. R&D&I Framework, Section 5.7.

<sup>(66)</sup> For definition see Section 2.2. (k) of the R&D&I Framework.

<sup>(67)</sup> The maximum aid intensity is 50 % of the eligible costs, for a maximum of three years per undertaking and per person borrowed.

<sup>(68)</sup> Cf. R&D&I Framework, Section 5.8.

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(B) Please confirm that:

- ☐ the aid is exclusively granted to the legal entities operating the innovation clusters;
- ☐ the beneficiaries are in charge of managing the participation and access to the clusters' premises, facilities and activities.

Please provide details:

.....

.....

- ☐ access to the clusters' premises, facilities and activities is not restricted.

(C) Do the fees charged for using the cluster's facilities and for participating in the cluster's activities reflect their costs?

- ☐ yes ☐ no

If yes, please demonstrate how this is ensured:

.....

.....

If not, please provide details (especially with respect to the existence of aid within the meaning of Article 87(1) of the EC Treaty, see Section 3.1 of the R&amp;D&amp;I Framework):

.....

.....

(D) Please attach an analysis of the technological specialisation of the innovation cluster, existing regional potential, existing research capacity, presence of clusters in the Community with similar purposes and potential market volumes of the activities in the cluster:

.....

.....

## 4.8.2. Specific conditions concerning investment aid for cluster animation

(A) What type of investment is carried out?

- ☐ setting up of innovation clusters;
- ☐ expansion of innovation clusters;
- ☐ animation of innovation clusters.

(B) For which facilities is the aid granted?

- ☐ facilities for training and research centre;
- ☐ open-access research infrastructures, laboratory, testing facility;
- ☐ broadband network infrastructures.

(C) Specify the eligible costs:

- ☐ costs relating to investment in land: .....
- ☐ buildings: .....
- ☐ machinery: .....
- ☐ equipment: .....

(D) What is the basic aid intensity (%) <sup>(69)</sup>: .....

If applicable, what is the basic aid intensity for regions falling under Article 87(3)(a) of the EC Treaty:

- with less than 75 % of average EU-25 GDP per capita, outermost regions with higher GDP per capita and statistical effect regions (until 1 January 2011)(%) <sup>(70)</sup>: .....

<sup>(69)</sup> The maximum aid intensity is 15 % of the eligible costs.<sup>(70)</sup> The maximum aid intensity is 30 % of the eligible costs.

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— with less than 60 % of average EU-25 GDP per capita (%) <sup>(71)</sup>: .....

— with less than 45 % of average EU-25 GDP per capita (%) <sup>(72)</sup>: .....

If applicable, what is the basic aid intensity for statistical effect regions falling under Article 87(3)(c) of the EC Treaty from 1 January 2011 (%) <sup>(73)</sup>: .....

(E) Is any bonus granted to beneficiaries?

☐ yes ☐ no

*If yes, specify below:*

— Do you apply an SME bonus?

☐ yes ☐ no

Specify the level of bonus applicable to small enterprises <sup>(74)</sup>: .....

Specify the level of bonus applicable to medium-sized enterprises <sup>(75)</sup>: .....

— Do you apply a bonus for undertakings located in outermost regions?

☐ yes ☐ no

If yes, specify the level of bonus applicable to undertakings located in outermost regions:

— where their GDP per capita falls below 75 % of EU-25 GDP average (%) <sup>(76)</sup>: .....

— other outermost regions (%) <sup>(77)</sup>: .....

#### 4.8.3. Specific conditions concerning operating aid for cluster animation

(A) For how long is such aid granted: ..... years

If the aid is granted for a longer period than five years, please provide convincing evidence in order to justify such longer period <sup>(78)</sup>.

.....  
.....

(B) Is the aid degressive?

☐ yes ☐ no

(C) Specify the eligible costs:

☐ marketing of the cluster to recruit new companies to take part in the cluster: .....

☐ management of the cluster's open-access facilities: .....

☐ organisation of training programmes, workshops and conferences to support knowledge sharing and networking between the members of the cluster: .....

(D) Aid intensity:

— degressive aid (please specify degressive rates for each year) <sup>(79)</sup>: .....

— non-degressive aid (%) <sup>(80)</sup>: .....

<sup>(71)</sup> The maximum aid intensity is 40 % of the eligible costs.

<sup>(72)</sup> The maximum aid intensity is 50 % of the eligible costs.

<sup>(73)</sup> The maximum aid intensity is 20 % of the eligible costs.

<sup>(74)</sup> The aid intensity may be increased by maximum 20 percentage points for small enterprises.

<sup>(75)</sup> The aid intensity may be increased by maximum 10 percentage points for medium-sized enterprises.

<sup>(76)</sup> The aid intensity may be increased by maximum 20 percentage points.

<sup>(77)</sup> The aid intensity may be increased by maximum 10 percentage points.

<sup>(78)</sup> In any case, the period may never exceed 10 years.

<sup>(79)</sup> The intensity may amount 100 % for the eligible costs the first year but must have fallen in a linear fashion to zero by the end of the fifth year.

<sup>(80)</sup> The maximum aid intensity is 50 % of the eligible costs.

**▼ M3****5. Incentive effect and necessity of aid <sup>(81)</sup>****5.1. General conditions**

Please confirm that when granting the aid under the notified measure, it will be ensured that the R&D&I activities of individual beneficiaries will not commence prior to their aid application or granting decision in case of fiscal aid.

☐ yes

Please provide details on how the compliance with this condition will be ensured:

.....  
 .....

In case the aid is granted for projects of large enterprises, to SMEs if it exceeds EUR 7,5 million, for process and organisational innovation in services and for innovation clusters, please confirm that the incentive effect will be evaluated on the basis of at least one of the following indicators:

☐ increase in project size;

☐ increase in scope;

☐ increase in speed;

☐ increase in total amount spent on R&D&I;

☐ other: .....

Please provide details on how this evaluation will be carried out:

.....  
 .....

**6. Cumulation <sup>(82)</sup>**

(A) Is the aid granted under the notified scheme combined with other aid <sup>(83)</sup>?

☐ yes

☐ no

(B) If yes, please describe the cumulation rules applicable to the notified aid scheme:

.....  
 .....  
 .....

(C) Please specify how the respect of cumulation rules will be verified in the notified aid scheme:

.....  
 .....  
 .....

**7. Specific questions relating to agriculture and fisheries <sup>(84)</sup>**

(A) Does the R&D aid concern products listed in Annex I to the EC Treaty?

☐ yes

☐ no

If yes, specify the type of products:

.....  
 .....

<sup>(81)</sup> Cf. R&D&I Framework, Chapter 6.

<sup>(82)</sup> Cf. R&D&I Framework, Chapter 8.

<sup>(83)</sup> Please note that the aid for R&D&I shall not be cumulated with de minimis support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the R&D&I Framework.

<sup>(84)</sup> Cf. R&D&I Framework, Chapter 9.



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(B) If yes, please provide the answers to the following questions:

— is the aid of general interest to the particular sector or sub-sector concerned?

☐ yes ☐ no

If yes, provide evidence:

.....  
 .....

— is the information that research will be carried out, and with which goal published on Internet prior to the commencement of the research AND does the information published include an approximate date of the expected results and their place of publication on the Internet, as well as a mention that the result will be available at no cost?

☐ yes ☐ no

If yes, provide evidence and specify the Internet address:

.....  
 .....

— are the results of the research made available on Internet, for a period of at least five years AND can it be confirmed that the information on the Internet will be published no later than any which may be given to members of any particular organisation?

☐ yes ☐ no

If yes, provide evidence:

.....  
 .....

— is the aid granted directly to the researching institution or body AND does it exclude the direct granting of non-research related aid to a company producing, processing or marketing agricultural products, as well as the provision of price support to producers of such products?

☐ yes ☐ no

If yes, provide evidence:

.....  
 .....

*If the answers to all four conditions of Section B above are yes, the aid intensity up to 100 % can be allowed. If not, cases of R&D aid for products listed in Annex I to the EC Treaty are to be examined under the normal rules of the R&D&I Framework.*

(C) Specify the total aid intensity (%): .....

(D) Cooperation pursuant to Council Regulation (EC) No 1698/2005 on support for rural development by the EAFRD <sup>(85)</sup>

Has the cooperation been approved for Community co-financing under Article 29 of Regulation (EC) No 1698/2005 AND/OR is the State aid granted as additional financing pursuant to Article 89 of this Regulation under the same conditions and at the same intensity as the co-financing <sup>(86)</sup>?

☐ yes ☐ no

*If not, cases of R&D aid for products listed in Annex I to the EC Treaty are to be examined under the normal rules of the R&D&I Framework.*

<sup>(85)</sup> Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1), as amended by Regulation (EC) No 1463/2006 (OJ L 277, 9.10.2006, p. 1).

<sup>(86)</sup> Commission will allow State aid for cooperation pursuant to Article 29 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) if such cooperation has been approved for Community co-financing under that Article and/or the State aid is granted as additional financing pursuant to Article 89 of Regulation (EC) No 1698/2005 under the same conditions and at the same intensity as the co-financing.

▼ **M3****8. Reporting and monitoring <sup>(87)</sup>****8.1. Annual reports**

*Please note that this reporting obligation is without prejudice to the reporting obligation pursuant to Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 <sup>(88)</sup>.*

(A) Please undertake to submit annual reports on the implementation of the notified scheme to the Commission, containing all the elements listed below <sup>(89)</sup>:

- name of the beneficiary;
- aid amount per beneficiary;
- aid intensity;
- sectors of activity where the aided projects are undertaken.

☐ yes

(B) Please undertake to explain in the annual report for all aid granted under an approved scheme to large undertakings how the incentive effect has been respected for aid given to such undertakings <sup>(90)</sup>.

☐ yes

**8.2. Access to full text of schemes**

(A) Please undertake to publish the full text of the final aid schemes as approved by the Commission on the Internet.

☐ yes

Please provide the Internet address: .....

(B) Please confirm that the scheme as approved by the Commission will not be applied before the information is published on the Internet (as required under Section A above).

☐ yes

**8.3. Information sheets, monitoring**

(A) Please undertake, whenever aid for R&D&I is granted on the basis of aid schemes without falling under the duty for individual notification, and exceeds EUR 3 million <sup>(91)</sup>, to provide the Commission within 20 working days starting from the granting of the aid by the competent authority with the information requested in the standard form laid down in the Annex to the R&D&I Framework.

☐ yes

(B) Please undertake to maintain detailed records regarding the granting of aid, with all information necessary to establish that the eligible costs and maximum allowable aid intensity have been observed.

☐ yes

(C) Please undertake to ensure that detailed records referred to in Section B above are maintained for 10 years from the date on which the aid was granted.

☐ yes

(D) Please undertake to submit the records referred to in Section B above on request of the Commission.

☐ yes

**9. Other information**

Please give any other information you consider necessary to assess the measure(s) in question under the Community Framework for State aid for research, development and innovation.

<sup>(87)</sup> Cf. R&D&I Framework, Section 10.1.

<sup>(88)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

<sup>(89)</sup> As regards the specific reporting requirements for fiscal aid and clusters, please see Section 10.1.1 (third and fourth paragraphs) of the R&D&I Framework.

<sup>(90)</sup> Notably using the criteria specified in section 6 of the R&D&I Framework.

<sup>(91)</sup> If applicable, please provide an exchange rate used when answering this question.

## ▼ M3

## PART III.6.b

**SUPPLEMENTARY INFORMATION SHEET FOR RESEARCH AND DEVELOPMENT  
AND INNOVATION AID: INDIVIDUAL AID**

*This supplementary information sheet must be used for the notification of any individual aid covered by the Community framework for State aid for research and development and innovation (hereinafter the R&D&I Framework) <sup>(92)</sup>. It must also be used for individual aid for Research and Development to SMEs, which does not fall under a Block Exemption Regulation <sup>(93)</sup> or is subject to individual notification obligation as it exceeds the individual notification thresholds laid down in the block exemption. This notification sheet also covers the individual aid intended for the production, processing and marketing of agricultural products.*

**1. Basic characteristics of the notified measure**

*Please fill in the relevant parts of the notification form corresponding to the character of the notified measure. In particular, please note that **Section 8** is to be completed only if the notified measure is subject to a detailed assessment, i.e. only if condition(s) of **Section 7** are met. Please find below a basic guidance.*

- (A) Is the aid granted in order to promote the execution of an important project of common European interest?

☐ yes ☐ no

*If yes, please fill in **Section 4** (Compatibility of aid under Article 87(3)(b) of the EC Treaty) of this supplementary information sheet. Furthermore please fill in **Section 11** (Reporting and monitoring).*

- (B) If no, please specify the type of aid and fill in the appropriate subsections of **Section 5** (Compatibility of aid under Article 87(3)(c) of the EC Treaty) of this supplementary information sheet:

- ☐ Aid for R&D projects, fill in *Section 5.1*;
- ☐ Aid for technical feasibility studies, fill in *Section 5.2*;
- ☐ Aid for industrial property right costs for SMEs, fill in *Section 5.3*;
- ☐ Aid for young innovative enterprises, fill in *Section 5.4*;
- ☐ Aid for process and organisational innovation in services, fill in *Section 5.5*;
- ☐ Aid for innovations advisory services and for innovation support services, fill in *Section 5.6*;
- ☐ Aid for the loan of highly qualified personnel, fill in *Section 5.7*;
- ☐ Aid for innovation clusters, fill in *Section 5.8*.

*Furthermore, please fill in: **Section 6** (Incentive effect and necessity of aid) in order to verify the incentive effect, **Section 7** (Criteria triggering a detailed assessment) in order to verify if the notified aid is subject to the detailed assessment of **Section 8** (Additional information for detailed assessment) and **Section 11** (Reporting and monitoring).*

- (C) Does the aid involve research organisations <sup>(94)</sup>/innovation intermediaries?

☐ yes ☐ no

*If yes, fill in **Section 2 and/or 3** (Research organisations and innovation intermediaries and Indirect State aid to undertakings through publicly funded research organisations) of this supplementary information sheet.*

- (D) Can the aid be combined with other aid?

☐ yes ☐ no

*If yes, fill in **Section 9** (Cumulation) of this supplementary information sheet.*

<sup>(92)</sup> Community framework for State aid for research and development and innovation (OJ C 323, 30.12.2006, p. 1).  
<sup>(93)</sup> Currently 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 (OJ L 10, 13.1.2001, p. 33) as amended by Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63, 28.2.2004, p. 22) or any subsequent regulation replacing it.

<sup>(94)</sup> For definition see Section 2.2.(d) of the R&D&I Framework.

▼ **M3**

- (E) Does the R&D aid concern products listed in Annex I to the EC Treaty?

☐ yes ☐ no

*If yes, fill in **Section 10** (Specific questions related to agriculture and fisheries) of this supplementary information sheet.*

- (F) In case the notified individual aid is based on an approved scheme, please provide details concerning that scheme, including its publication reference (Internet address) and State aid registration number:

.....  
 .....

- (G) Please confirm that if the SME specific aid
- <sup>(96)</sup>
- /bonus is granted, the beneficiary complies with the SME definition as defined by the Community legislation
- <sup>(96)</sup>
- :

☐ yes

Please provide relevant information and evidence:

.....  
 .....

- (H) If the aid involves commissioning/purchasing of R&D activities/results from undertakings by the public authorities, are the providers selected in an open tender procedure
- <sup>(97)</sup>
- ?

☐ yes ☐ no

*If no, please note that such payments from the public authorities to undertakings would normally involve State aid.*

- (I) If applicable, please provide an exchange rate which has been used for the purposes of the notification: .....

- (J) All documents provided by the Member States as annexes to the notification form shall be numbered and document numbers shall be indicated in the relevant parts of this supplementary information sheet.

**2. Research organisations and innovation intermediaries as recipients of state aid <sup>(98)</sup>**

*If there are several research organisations or innovation intermediaries involved in the notified project, please provide the information below for each of them.*

**2.1. Public funding of non-economic activities**

- (A) Does the research organisation or non-for-profit innovation intermediary carry out an economic activity
- <sup>(99)</sup>
- (an activity consisting in offering goods and/or services on a given market)?

☐ yes ☐ no

If yes, please provide description of these activities: .....

.....  
 .....

- (B) If the same entity carries out activities of both economic and non-economic
- <sup>(100)</sup>
- nature, can the two kinds of activities and their costs and funding be clearly separated?

☐ yes ☐ no

If yes, provide details:

.....  
 .....

*If yes, please note that public funding of non-economic activities does not fall under Article 87(1) of the EC Treaty. If not, public funding of economic activities generally entails State aid.*

<sup>(95)</sup> I.e. measures under Sections 5.3, 5.4, 5.6 and 5.7 of this supplementary information sheet. Please note that the measure under Section 5.4 is limited to small enterprises.

<sup>(96)</sup> See footnote 20.

<sup>(97)</sup> Cf. R&D&I Framework, Section 2.1.

<sup>(98)</sup> Cf. R&D&I Framework, Section 3.1.

<sup>(99)</sup> For details see Section 3.1.1 of R&D&I Framework (footnote 24).

<sup>(100)</sup> For details see Section 3.1.1 (2nd and 3rd paragraph) of R&D&I Framework.

▼ **M3**2.2. *Public funding of economic activities*

Can the Member State prove that:

- the totality of the State funding has been passed on from the research organisation or not-for-profit innovation intermediary (carrying out economic activities) to the final recipients;

AND

- there is no advantage granted to the intermediary?

☐ yes

☐ no

Please provide details and evidence:

.....  
 .....

*If yes, please note that the intermediary organisations may not be recipient of State aid. As regards the aid to final recipients, normal State aid rules apply.*

3. **Indirect State aid to undertakings through publicly funded research organisations <sup>(101)</sup>**

*If there are more research organisations or innovation intermediaries involved in the notified project, please provide the information below for each of them.*

3.1. *Research on behalf of undertakings*

- (A) Is the supported project carried out by research organisations on behalf of undertakings?

☐ yes

☐ no

- (B) If yes, do the research organisations (acting as agent) render services to the undertakings (acting as principals) in situations, where:

- the agents receive payment of an adequate remuneration for their services,

☐ yes

☐ no

AND

- do the principals specify the terms and conditions of these services?

☐ yes

☐ no

Please provide details:

.....  
 .....

- (C) Do the research organisations provide their services at market price?

☐ yes

☐ no

If there is no market price, do the research organisations provide their services at a price which reflects full costs plus a reasonable margin?

☐ yes

☐ no

Please provide details:

.....  
 .....

*If a research organisation renders services and if the answer to one of the questions in Section C is yes, there will be normally no State aid passed to the undertakings through the research organisation.*

3.2. *Collaboration of undertakings and research organisations*

- (A) Is the collaboration project carried out jointly by undertakings and research organisations?

☐ yes

☐ no

If yes, provide details on the partnerships:

.....  
 .....

<sup>(101)</sup> Cf. R&D&I Framework, Section 3.2.



▼ **M3**

- (B) If yes, do the participating undertakings bear the full cost of the projects supported under the notified scheme?

☐ yes ☐ no

Are the results which do not give rise to intellectual property rights widely disseminated AND are any intellectual property rights which result from the activity of the research organisations fully allocated <sup>(102)</sup> to the research organisations?

☐ yes ☐ no

Do the research organisations receive from the participating undertakings compensation equivalent to the market price for the intellectual property rights <sup>(103)</sup> which result from the activity of the research organisations carried out in the project and which are transferred to the participating undertakings?

☐ yes ☐ no

Please provide details (please note that any contribution of the participating undertakings to the costs of the research organisations shall be deducted from the compensation):

.....  
 .....

- (C) If none of the answers to questions of Section B is yes, the Member State may rely on individual assessment of the collaboration projects <sup>(104)</sup>.

Please provide an individual assessment of the collaboration projects, taking into account the above mentioned elements. Please attach also the contractual agreements to the notification.

*If none of the answers to questions of Section B is yes and if the individual assessment of the collaboration projects does not lead to the conclusion that there is no State aid, the Commission will consider the full value of the contribution of the research organisation to the project as aid to undertakings.*

#### 4. **Compatibility of aid under article 87(3)(b) of the EC treaty**

*Aid for R&D&I to promote the execution of an important project <sup>(105)</sup> of common European interest may be considered to be compatible with the common market pursuant to Article 87(3)(b) of the EC Treaty.*

##### 4.1. *General conditions (cumulative)*

- (A) Please confirm that:

☐ the project contributes in a concrete, clear and identifiable manner to the Community interest <sup>(106)</sup>;

AND

☐ the advantage achieved by the objective of the project is not limited to one Member State or to the Member States implementing it, but extends to the Community as a whole <sup>(107)</sup>;

AND

☐ the project presents a substantive leap forward for the Community objectives.

Please provide details and evidence:

.....  
 .....

<sup>(102)</sup> For details see Section 3.2.2 (footnote 28) of the R&D&I Framework.

<sup>(103)</sup> For details see Section 3.2.2 (footnote 29) of the R&D&I Framework.

<sup>(104)</sup> There also may be no State aid where the assessment of the contractual agreement between the partners leads to the conclusion that any intellectual property rights to the R&D&I results as well as access rights to the results are allocated to the different partners of the collaboration and adequately reflect their respective interests, work packages, and financial and other contributions to the project.

<sup>(105)</sup> The Commission may also consider a group of projects as together constituting a project.

<sup>(106)</sup> Please note that the common European interest must be demonstrated in practical terms, e.g. it must be demonstrated that the project enables significant progress to be made towards achieving specific Community objectives.

<sup>(107)</sup> The fact that the project is carried out by undertakings in different countries is not sufficient.

**▼ M3**

(B) Specify the positive effects of the aid:

- ☐ important spill-overs for society;
- ☐ contribution of the measure to the improvement of the Community situation regarding R&D&I in the international context;
- ☐ creation of new markets;
- ☐ development of new technologies;
- ☐ other positive effects.

.....  
 .....

(C) Please provide the terms of implementation of the project (including participants, objectives) <sup>(108)</sup>:

.....  
 .....

(D) Please provide details and evidence illustrating that the aid is necessary to achieve the defined objective of common interest AND presents an incentive for the execution of the project <sup>(109)</sup>:

.....  
 .....

(E) Please provide details and evidence demonstrating that the project involves a high level of risk:

.....  
 .....

(F) Please provide details and evidence illustrating that the project is of great importance with respect to its character and its volume <sup>(110)</sup>:

.....  
 .....

#### 4.2. Description of the project

Please provide a detailed description of the project. For orientation please see Section 5.1 of this supplementary information sheet.

.....  
 .....

#### 5. Compatibility of aid under article 87(3)(c) of the EC treaty

*If there are several beneficiaries involved in the notified project, please provide the information below for each of them.*

##### 5.1. Aid for R&D projects <sup>(111)</sup>

##### 5.1.1. Research category <sup>(112)</sup>

(A) Please indicate which R&D stages <sup>(113)</sup> are supported under the notified aid measure:

- ☐ fundamental research;
- ☐ industrial research;
- ☐ experimental development.

<sup>(108)</sup> Please note that the projects must be clearly defined as regards these aspects.

<sup>(109)</sup> For orientation please see the criteria included in Section 6 of this supplementary information sheet.

<sup>(110)</sup> I.e. is meaningful with respect to its objective and is of substantial size.

<sup>(111)</sup> Cf. R&D&I Framework, Section 5.1.

<sup>(112)</sup> To classify the activities, you may refer to the Commission practice or the specific examples and explanations provided in the Frascati Manual on the Measurement of Scientific and technological Activities, proposed Standard Practice for Surveys on Research and Experimental Development (Organisation for Economic Cooperation and Development, 2002).

<sup>(113)</sup> For definitions see Section 2.2(e), (f), (g) of the R&D&I Framework.

## ▼ M3

- (B) If the R&D projects encompass different research categories, please list and qualify the different tasks as falling under the categories of fundamental research, industrial research or experimental development or as not falling under any of those categories at all.

.....

.....

## 5.1.2. Eligible costs

*All eligible costs must be allocated to a specific category of R&D <sup>(114)</sup>. Please specify the eligible costs and indicate their amount.*

	Fundamental research	Industrial research	Experimental development
Personnel costs			
Costs of instruments and equipment			
Costs for building and land			
Cost of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices			
Additional overheads incurred directly as a result of the research project			
Other operating expenses			

## 5.1.3. Aid intensities and bonuses

*The aid intensity is calculated on the basis of the eligible costs of the project. It must be established for each beneficiary of the aid, including in a collaboration project <sup>(115)</sup>.*

- (A) Basic intensities (without bonuses) <sup>(116)</sup>:

	Fundamental research	Industrial research	Experimental development
Maximum aid intensity			

<sup>(114)</sup> Cf. Section 5.1.4 of the R&D&I Framework. These eligible costs apply to aid for R&D projects (Section 5.1) research projects and to process and organisational innovation in services (Section 5.5).

<sup>(115)</sup> In the case of State aid for an R&D project being carried out in collaboration between research organisations and undertakings, the combined aid deriving from direct government support for a specific research project and, where they constitute aid, contributions from research organisations to that project may not exceed the applicable aid intensities for each benefiting undertaking.

<sup>(116)</sup> The aid intensity may not exceed 100 % for fundamental research, 50 % for industrial research and 25 % for experimental development.



## ▼ M3

## (B) Bonuses:

Are bonuses applied under the notified measure?

☐ yes
                         
 ☐ no
*If yes, please specify below:*

— Is an SME bonus applied?

☐ yes
                         
 ☐ no
Specify the level of bonus applicable <sup>(117)</sup>: .....

— Is a bonus for effective collaboration between undertakings (i) or collaboration of an undertaking with a research organisation (ii) or (only for projects of industrial research) dissemination of results (iii) applied under the notified aid measure?

☐ yes
                         
 ☐ no

(i) If a bonus for an effective collaboration between at least two undertakings, which are independent of each other, is applied, please confirm that the following conditions are fulfilled:

☐ no single undertaking bears more than 70 % of the eligible costs of the collaboration project;

AND

☐ the project involves collaboration with at least one SME or the collaboration has a cross-border character, i.e. research and development activities are carried out in at least two different Member States.
Specify the level of bonus applicable <sup>(118)</sup>: .....

(ii) If a bonus for an effective collaboration between an undertaking and a research organisation, particularly in the context of coordination of national R&amp;D policies, is applied, please confirm that the following conditions are fulfilled:

☐ the research organisation bears at least 10 % of the eligible costs;

AND

☐ the research organisation has the right to publish the result of the research projects in so far as they stem from research implemented by that organisation.
Specify the level of bonus applicable <sup>(119)</sup>: .....(iii) If in the case of industrial research a bonus for wide dissemination of the results of the project is applied, please specify at least one of the following methods of wide dissemination:
☐ technical and scientific conferences;

☐ publication in scientific or technical journals;

☐ availability in open access repositories (databases where raw research data can be accessed by anyone);

☐ availability through free or open source software.
Specify the level of bonus applicable <sup>(120)</sup>: .....

(C) Specify the total aid intensity of the projects supported under the notified aid measure (taking into account the bonuses) (%): .....

<sup>(117)</sup> The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

<sup>(118)</sup> The aid intensity may be increased by 15 percentages points, but up to a maximum of 80 %.

<sup>(119)</sup> The aid intensity may be increased by 15 percentages points, but up to a maximum of 80 %. This bonus does not apply to the research organisation.

<sup>(120)</sup> The aid intensity may be increased by 15 percentages points, but up to a maximum of 80 %.

▼ **M3**5.1.4. Special conditions for repayable advance <sup>(121)</sup>

(A) Is the aid to the R&D projects granted in the form of a repayable advance?

☐ yes

☐ no

(B) Is the aid granted in the form of a repayable advance under the notified measure expressed as gross grant equivalent <sup>(122)</sup>?

☐ yes

☐ no

If yes, what is the aid intensity of repayable advance expressed as gross grant equivalent <sup>(123)</sup>:

.....

Furthermore, please specify on the basis of which approved aid scheme <sup>(124)</sup> is the aid granted and provide details on the complete methodology applied in order to determine the gross grant equivalent, underlying verifiable data.

.....

.....

(C) If the aid cannot be expressed in gross grant equivalent, what is the level of the repayable advance expressed as a percentage of the eligible costs:

.....

In case the rates of repayable advance granted to the R&D project are higher than the rates indicated in Sections 5.1.2 and 5.1.3 (up to the maximum rates indicated in Section 5.1.5) of the R&D&I Framework, please:

— notify to the Commission the detailed information on the repayment in the case of success and define clearly what will be considered as a successful outcome of the research activities;

AND

— confirm the following:

☐ the measure provides that in case of successful outcome the advance is repaid with an interest rate at least equal to the applicable rate resulting from the application of the Commission notice on the method of setting the reference and discount rates <sup>(125)</sup>;

☐ in case of a success exceeding the outcome defined as successful, the Member State is entitled to request payments beyond payments of the advance amount including interest according to the reference rate foreseen by the Commission;

☐ in case of partial success, the Member State requires that the repayment secured is in proportion to the degree of success achieved.

5.1.5. Matching clause <sup>(126)</sup>

Is the matching clause used in this notified measure?

☐ yes

☐ no

*If yes, higher intensities than generally permissible may be authorised.*

If yes, provide details and evidence that competitors located outside the Community have received in the last three years or are going to receive, aid of an equivalent intensity for similar projects, programmes, research, development or technology:

.....

.....

<sup>(121)</sup> Cf. R&D&I Framework, Section 5.1.5.

<sup>(122)</sup> Gross grant equivalent of a repayable advance reflects the probability that the advance will be repaid by the beneficiaries.

<sup>(123)</sup> The gross grant equivalent must fulfil the conditions on maximum aid intensities laid down in Sections 5.1.2 and 5.1.3 of the R&D&I Framework.

<sup>(124)</sup> For details see Section 5.1.5 of the R&D&I Framework (2nd paragraph).

<sup>(125)</sup> OJ C 273, 9.9.1997, p. 3. Also published under: [http://ec.europa.eu/comm/competition/state\\_aid/legislation/reference.html](http://ec.europa.eu/comm/competition/state_aid/legislation/reference.html).

<sup>(126)</sup> Cf. R&D&I Framework, Section 5.1.7.

## ▼ M3

Do actual or potential direct or indirect distortions of international trade exist?

☐ yes ☐ no

If yes, provide evidence:

.....  
 .....

Provide also sufficient information to enable the Commission to assess the situation, in particular regarding the need to take account of the competitive advantage enjoyed by a third-country competitor:

.....  
 .....

## 5.2. Aid for technical feasibility studies <sup>(127)</sup>

### 5.2.1. General conditions

The studies are preparatory to <sup>(128)</sup>:

- ☐ industrial research;  
☐ experimental development.

### 5.2.2. Aid intensities

Specify the maximum aid intensity <sup>(129)</sup> (%): .....

*The aid intensity is calculated on the basis of cost of feasibility studies of the project.*

## 5.3. Aid for industrial property right costs for SMEs <sup>(130)</sup>

### 5.3.1. Conditions

Which stage of research <sup>(131)</sup> is concerned?

- ☐ fundamental research;  
☐ industrial research;  
☐ experimental development.

### 5.3.2. Eligible costs and aid intensities

(A) Specify the eligible costs <sup>(132)</sup> and indicate their amount:

- ☐ costs preceding the grant of the right in the first legal jurisdiction: .....  
 .....  
☐ translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdiction: .....  
 .....  
☐ costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings: .....  
 .....

(B) Specify the maximum aid intensity (%) <sup>(133)</sup>: .....

<sup>(127)</sup> Cf. R&D&I Framework, Section 5.2.

<sup>(128)</sup> To classify the activities, you may refer to the Commission practice or the specific examples and explanations provided in the Frascati Manual on the Measurement of Scientific and technological Activities, proposed Standard Practice for Surveys on Research and Experimental Development (Organisation for Economic Cooperation and Development, 2002); for definitions see Section 2.2(e), (f), (g) of the R&D&I Framework.

<sup>(129)</sup> For SMEs, the aid intensity may not exceed 75 % for studies preparatory to industrial research activities and 50 % for studies preparatory to experimental development activities; for large companies, the aid intensity may not exceed 65 % for studies preparatory to industrial research activities and 40 % for studies preparatory to experimental development activities.

<sup>(130)</sup> Cf. R&D&I Framework, Section 5.3.

<sup>(131)</sup> For definitions see Section 2.2(e), (f), (g) of the R&D&I Framework.

<sup>(132)</sup> For details see Section 5.3 (second paragraph) of the R&D&I Framework.

<sup>(133)</sup> Maximum aid levels correspond to the same levels of aid as would have qualified as R&D aid in respect of the research activities which first led to the industrial property rights concerned.

## ▼ M3

5.4. *Aid for young innovative enterprises* <sup>(134)</sup> (for small enterprises)

Please confirm that:

- (A) ☐ the beneficiary is a small enterprise as defined by Community legislation <sup>(135)</sup>, in existence for less than six years at the time when the aid is granted;

Please provide details and evidence:

.....

.....

- (B) ☐ the beneficiary is an innovative enterprise.

Please confirm that the compliance with this condition is ensured through:

- ☐ an evaluation carried out by an external expert demonstrating that the beneficiary will in the foreseeable future develop products, services or processes which are technologically new or substantially improved compared to the state of the art in its industry in the Community, and which carry a risk of technological or industrial failure;

OR

- ☐ the evidence that the R&D expenses of the beneficiary represent at least 15 % of its total operating expenses 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.

Please provide details on how this is implemented:

.....

.....

- (C) Specify the maximum aid amount applicable under the notified measure <sup>(136)</sup>: .....

- (D) Please confirm that:

- ☐ the beneficiary did not receive aid for young innovative enterprises before and will receive this type of aid only once during the period in which it qualifies as a young innovative enterprise.

- (E) Does the enterprise benefit from a cumulation of aid?

☐ yes ☐ no

If yes, please indicate how the specific cumulation rules for young innovative enterprise aid (Section 5.4 of the R&D&I Framework) will be complied with:

.....

.....

5.5. *Aid for process and organisational innovation in services* <sup>(137)</sup>

## 5.5.1. General conditions

- (A) To which type of innovation in service activities <sup>(138)</sup> does the notified measure refer?

- ☐ process innovation in service activities;
- ☐ organisational innovation in service activities.

Please provide a detailed description of the innovation in service activities <sup>(139)</sup> (process and/or organisational):

.....

.....

<sup>(134)</sup> Cf. R&D&I Framework, Section 5.4.

<sup>(135)</sup> See footnote 20.

<sup>(136)</sup> The aid may not exceed EUR 1 million in non-assisted areas; EUR 1,5 million in regions eligible for the derogation in Article 87(3)(a) of the EC Treaty; EUR 1,25 million in regions eligible for the derogation in Article 87(3)(c) of the EC Treaty.

<sup>(137)</sup> Cf. R&D&I Framework, Section 5.5.

<sup>(138)</sup> For definitions see Section 2.2(i), (j) of the R&D&I Framework.

<sup>(139)</sup> In order to classify the activities, you may refer to the Commission practice or the specific definitions provided in the OSLO Manual, Guidelines for Collecting and Interpreting Innovation Data, 3<sup>rd</sup> Edition (Organisation For Economic Cooperation and Development, 2005).

## ▼ M3

(B) Please confirm that:

- ☐ the organisational innovation is related to the use and exploitation of Information and Communication Technologies (ICT) to change the organisation;
- ☐ the innovation is formulated as a project with an identified and qualified project manager, as well as identified project costs;
- ☐ the result of the aided project is the development of a standard, of a business model, methodology of concept, which can be systematically reproduced, possibly certified, and possibly patented;
- ☐ the process or organisational innovation is new or substantially improved compared to the state of the art in its industry in the Community;
- ☐ the process or organisational innovation project entails a clear degree of risk;
- ☐ the aid is granted to large enterprise only if collaborates with SMEs in the aided activity and that the collaborating SMEs incur at least 30 % of the total eligible costs.

Please provide details/evidence for all these elements:

.....

.....

## 5.5.2. Eligible costs and aid intensities

(A) Please specify the eligible costs <sup>(140)</sup> and indicate their amount:

	Eligible costs
personnel costs	
costs of instruments and equipment	
costs for building and land	
cost of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices	
additional overheads incurred directly as a result of the research project	
other operating expenses	

(B) Specify the maximum aid intensity <sup>(141)</sup> (%): .....*The aid intensity is calculated on the basis of the eligible costs of the projects.*5.6. Aid for innovation advisory services and for innovation support services <sup>(142)</sup> (for SMEs)

## 5.6.1. General conditions

(A) Specify the maximum aid amount (not exceeding EUR 200 000 per beneficiary within any three year period): .....

(B) Please confirm that:

- ☐ if the service provider does not benefit from a national or European certification, the aid will not cover more than 75 % of the eligible costs;
- ☐ the beneficiaries use the State 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).

Please provide details on how this will be ensured:

.....

.....

<sup>(140)</sup> For details see Section 5.1.4 R&D&I Framework. Please note that in the case of organisational innovation, the costs of instruments and equipment cover costs of ICT instruments and equipment only.

<sup>(141)</sup> The maximum aid intensity is 15 % of the eligible costs for a large enterprise; 25 % of the eligible costs for a medium enterprise; 35 % of the eligible costs for a small enterprise.

<sup>(142)</sup> Cf. R&D&I Framework, Section 5.6.



▼ **M3**

## 5.6.2. Eligible costs

(A) What type of aid is granted?

- ☐ aid for innovation advisory services;
- ☐ aid for innovation support services.

(B) If it is an aid for innovation advisory services, specify the eligible costs and indicate their amount:

- ☐ 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: .....

(C) If it is an aid for innovation support services, specify the eligible costs and indicate their amount:

- ☐ office space: .....
- ☐ data banks: .....
- ☐ technical libraries services: .....
- ☐ market research: .....
- ☐ use of laboratory: .....
- ☐ quality labelling: .....
- ☐ testing and certification: .....

## 5.6.3. Special conditions for a non-for-profit entity

*If the service provider is a non-for-profit entity, the aid may be given in the form of a reduced price, as the difference between the price paid and the market price (or a price which reflects full costs plus a reasonable margin).*

Is the aid given in the form of a reduced price?

- ☐ yes ☐ no

If yes, provide evidence of the existence of a system ensuring transparency about the full costs of the innovation advisory and innovation support services provided, as well as about the price paid by the beneficiaries, so that the aid received can be measured and monitored.

.....

.....

5.7. Aid for the loan of highly qualified personnel <sup>(143)</sup> (for SMEs)

## 5.7.1. General conditions

(A) Where do the highly qualified personnel <sup>(144)</sup> come from?

- ☐ research organisations;
- ☐ large enterprises.

Provide details (if possible) on research organisations and on large enterprises.

.....

.....

<sup>(143)</sup> Cf. R&D&I Framework, Section 5.7.

<sup>(144)</sup> For definition see Section 2.2(k) of the R&D&I Framework.

▼ **M3**

(B) Please confirm that:

- ☐ the seconded personnel are not replacing other personnel;
- ☐ the seconded personnel are employed in a newly created function within the beneficiary undertaking.

Specify please this newly created function:

.....

.....

- ☐ the seconded personnel have been employed for at least two years in the research organisations or the large enterprises which are sending the personnel on secondment;
- ☐ that the seconded personnel work on R&D&I activities within the SME receiving aid.

#### 5.7.2. Eligible costs and aid intensities

(A) Specify the eligible costs and indicate their levels:

- ☐ costs for borrowing and employing highly qualified personnel: .....
- ☐ mobility allowance for the seconded personnel: .....

(B) ☐ please confirm that consultancy costs (payment of the service rendered by the expert without employing the expert in the undertaking) are excluded from eligible costs of the aid for the loan of highly qualified personnel.

(C) Specify the maximum aid intensity <sup>(145)</sup> (%): .....

#### 5.8. Aid for innovation clusters <sup>(146)</sup>

##### 5.8.1. General conditions

(A) What type of aid is granted to the beneficiary?

- ☐ investment aid;
- ☐ operating aid for cluster animation.

(B) Please confirm that:

- ☐ the aid is exclusively granted to the legal entity operating the innovation cluster;
- ☐ the beneficiary is in charge of managing the participation and access to the cluster's premises, facilities and activities;

Please provide details:

.....

.....

- ☐ access to the clusters' premises, facilities and activities is not restricted.

(C) Do the fees charged for using the cluster's facilities and for participating in the cluster's activities reflect their costs?

- ☐ yes ☐ no

If yes, please demonstrate how this is ensured:

.....

.....

If not, please provide details (especially with respect to the existence of aid within the meaning of Article 87(1) of the EC Treaty, see Section 3.1 of the R&D&I Framework):

.....

.....

(D) Please attach an analysis of the technological specialisation of the innovation cluster, existing regional potential, existing research capacity, presence of clusters in the Community with similar purposes and potential market volumes of the activities in the cluster:

.....

.....

<sup>(145)</sup> The maximum aid intensity is 50 % of the eligible costs, for a maximum of three years per undertaking and per person borrowed.

<sup>(146)</sup> Cf. R&D&I Framework, Section 5.8.



## ▼ M3

## 5.8.2. Specific conditions concerning investment aid for cluster animation

- (A) What type of investment is carried out?
- ☐ setting up of innovation clusters;
- ☐ expansion of innovation clusters;
- ☐ animation of innovation clusters.
- (B) For which facilities is the aid granted?
- ☐ facilities for training and research centre;
- ☐ open-access research infrastructures, laboratory, testing facility;
- ☐ broadband network infrastructures.
- (C) Specify the eligible costs and indicate their amount:
- ☐ costs relating to investment in land: .....
- ☐ buildings: .....
- ☐ machinery: .....
- ☐ equipment: .....
- (D) What is the basic aid intensity (%) <sup>(147)</sup>: .....
- (E) Is any bonus granted to the beneficiary?
- ☐ yes ☐ no
- If yes, specify below:*
- Do you apply an SME bonus?
- ☐ yes ☐ no
- Specify the level of the bonus <sup>(148)</sup>: .....
- Do you apply a bonus for undertakings located in outermost regions?
- ☐ yes ☐ no
- If yes, specify the level of bonus applicable to an undertaking located in outermost regions <sup>(149)</sup>: .....

## 5.8.3. Specific conditions concerning operating aid for cluster animation

- (A) For how long is such aid granted: ..... years
- If the aid is granted for a longer period than 5 years, please provide convincing evidence in order to justify such longer period <sup>(150)</sup>.
- .....
- .....
- (B) Is the aid degressive?
- ☐ yes ☐ no
- (C) Specify the eligible costs and indicate their amount:
- ☐ marketing of the cluster to recruit new companies to take part in the cluster: .....
- ☐ management of the cluster's open-access facilities: .....
- ☐ organisation of training programmes, workshops and conferences to support knowledge sharing and networking between the members of the cluster: .....

<sup>(147)</sup> The maximum aid intensity is 15 % of the eligible costs; for regions falling under Article 87(3)(a) of the EC Treaty the maximum aid intensity is the following: 30 % of the eligible costs for regions with less than 75 % of average EU-25 GDP per capita, outermost regions with higher GDP per capita and statistical effect regions (until 1 January 2011); 40 % for regions with less than 60 % of average EU-25 GDP per capita (%); 50 % for regions with less than 45 % of average EU-25 per capita. For statistical effect regions falling under Article 87(3)(c) of the EC Treaty from 1 January 2011 the maximum aid intensity is 20 % of the eligible costs.

<sup>(148)</sup> The aid intensity may be increased by maximum 20 percentage points for small enterprises and by maximum 10 percentage points for medium-sized enterprises.

<sup>(149)</sup> The aid intensity may be increased by maximum 20 percentage points for outermost regions where GDP per capita falls below 75 % of EU-25 average and by maximum 10 percentage points for other outermost regions.

<sup>(150)</sup> In any case, the period may never exceed 10 years.

## ▼ M3

- (D) Aid intensity:
- degressive aid (please specify degressive rates for each year) <sup>(151)</sup>: .....
  - non-degressive aid (%) <sup>(152)</sup>: .....

6. Incentive effect and necessity of aid <sup>(153)</sup>

## 6.1. General conditions

- (A) Has the R&D&I activity already commenced prior to the aid application by the beneficiary to the national authorities <sup>(154)</sup>?

☐ yes ☐ no

If yes, the Commission considers that the aid does not present an incentive for the beneficiary.

- (B) If no, specify the relevant dates:

— the R&D&I activity commenced on: ..... ,

— the aid application by the beneficiary was submitted to the national authorities on: .....

Please provide the relevant supporting documents.

## 6.2. Evaluation of the incentive effect

If the aid is granted for:

- process and organisational innovation in services,
- innovation clusters,
- R&D project for large undertakings,
- feasibility studies for large undertakings,
- R&D project for SMEs for aid exceeding EUR 7,5million,
- feasibility studies for SMEs for aid exceeding EUR 7,5million,

the Commission will require that the incentive effect is demonstrated by means of an evaluation. Go to the next questions.

Otherwise, the Commission considers that the incentive effect is automatically met for the measure at hand.

## 6.2.1. General conditions

*If it is necessary to demonstrate an incentive effect for several beneficiaries participating in the notified project, please provide the information below for each of them.*

*In order to verify that the planned aid will induce the aid recipient to change its behaviour so that it increases its level of R&D&I, the Commission requires an evaluation for the research categories in which it considers that the incentive effect is not automatically met (listed in Section 4.2 of this notification form).*

Please fill in the evaluation of the increased R&D&I activity (below), on the basis of an analysis comparing a situation without aid and a situation with aid being granted.

## 6.2.2. Criteria

- (A) Will the project size be increased?

☐ yes ☐ no

If yes, specify the type of increase:

- ☐ increase in the total project costs (without decreased spending by the beneficiary by a comparison with a situation without aid);
- ☐ increase in the number of people assigned to R&D&I activities;
- ☐ other type of increase: .....

Provide evidence of the relevant increases:

.....

.....

<sup>(151)</sup> The intensity may amount 100 % for the eligible costs the first year but must have fallen in a linear fashion to zero by the end of the fifth year.

<sup>(152)</sup> The maximum aid intensity is 50 % of the eligible costs.

<sup>(153)</sup> Cf. R&D&I Framework, Chapter 6.

<sup>(154)</sup> If the aid proposal is to grant aid for an R&D&I-project, this does not exclude that the potential beneficiary has already carried out feasibility studies which are not covered by the request for State aid.

▼ **M3**

(B) Will the scope be increased?

☐ yes ☐ no

If yes, specify the type of increase:

- ☐ increase in the number of the expected deliverables from the project;
- ☐ more ambitious project illustrated by a higher possibility of a scientific or technological breakthrough or a higher risk of failure;
- ☐ other kind of increase: .....

Provide evidence of the relevant increases:

.....

.....

(C) Will the project speed be increased?

☐ yes ☐ no

If yes, provide evidence that the project will be completed in a shorter time with the aid than without the aid:

.....

.....

(D) Will the total amount spent on R&amp;D&amp;I be increased?

☐ yes ☐ no

If yes, specify the type of increase:

- ☐ increase in total R&D&I spending by the aid beneficiary;
- ☐ changes in the committed budget for the project (without corresponding decrease in the budget of other projects);
- ☐ increase in R&D&I spending by the aid beneficiary as a proportion of total turnover;
- ☐ other type of increase:

.....

.....

Provide evidence for the relevant increases:

.....

.....

(E) The Member State can also demonstrate the presence of incentive effect through other relevant quantitative and/or qualitative criteria. Please provide details and evidence:

.....

.....

.....

**7. Criteria triggering a detailed assessment <sup>(155)</sup>**

*If the aid concerns an R&D&I project or a feasibility study, please fill in Section 7.1 below. If the aid is granted for process or organisational innovation in service activities or for innovation clusters, please go to Section 7.2 of this supplementary information sheet. Otherwise, no detailed assessment is required.*

**7.1. Projects and feasibility studies**(A) Eligible costs corresponding to fundamental research represent ... % of the total eligible costs (**ratio I**).If **ratio I** is superior to 50 %, does one undertaking receive an aid amount exceeding EUR 20 million <sup>(156)</sup> per project/feasibility study?☐ yes ☐ no<sup>(155)</sup> Cf. R&D&I Framework, Section 7.1.<sup>(156)</sup> If applicable, please provide an exchange rate used when answering this question.

## ▼ M3

- (B) Eligible costs corresponding to industrial research and feasibility studies preparatory to industrial research represent ... % of the total eligible costs (**ratio II**).

If **ratio I + II** is superior to 50 %, does one undertaking receive an aid amount exceeding EUR 10 million per project/feasibility study?

☐ yes ☐ no

- (C) If **ratio I + II** is inferior to 50 %, does one undertaking receive an aid amount exceeding EUR 7,5 million per project/feasibility study?

☐ yes ☐ no

If the answer to one of these three questions is yes, then the notified aid is subject to a detailed assessment and additional information should be provided in order to enable the Commission to carry out a detailed assessment (Section 8 of this supplementary information sheet).

7.2. *Process or organisational innovation in service activities and innovation clusters*

If the aid is granted for process or organisational innovation in service activities, does one undertaking receive an aid amount exceeding EUR 5 million per project?

☐ yes ☐ no

If the aid is granted for innovation clusters, does the cluster (legal entity operating the innovation cluster) receive an aid amount exceeding EUR 5 million?

☐ yes ☐ no

If yes, then the notified aid is subject to a detailed assessment and additional information should be provided in order to enable the Commission to carry out a detailed assessment (Section 8 of this supplementary information sheet).

*Please note that the Commission will carry out a detailed assessment also in all cases notified to the Commission following an obligation to notify individually as prescribed in the block exemption regulation.*

8. **Additional information for detailed assessment** <sup>(157)</sup>

*If there are several beneficiaries participating in the notified project subject to a detailed assessment, please provide the information below for each of them. This is without prejudice to the full description of the notified project, including all participants, in the previous sections of this supplementary information sheet.*

8.1. *General observations*

*The purpose of this detailed assessment is to ensure that high amounts of aid for R&D&I do not distort competition to an extent contrary to the common interest, but actually contribute to the common interest. This happens when the benefits of State aid in terms of additional R&D&I outweigh the harm for competition and trade.*

*Provisions below represent a guidance as to the type of information the Commission may require in order to carry out a detailed assessment. The guidance is intended to make the Commission's decisions and their reasoning transparent and foreseeable in order to create predictability and legal certainty.*

- (A) The Member States are in particular invited to rely on the information sources listed below. Please indicate if these supporting documents are attached to the notification:

- ☐ evaluations of past State aid schemes or measures;
- ☐ impact assessments made by the granting authority;
- ☐ risk assessments;
- ☐ financial reports;
- ☐ internal business plans;
- ☐ expert opinions;
- ☐ other studies related to R&D&I.

<sup>(157)</sup> Cf. R&D&I Framework, Chapter 7.

## ▼ M3

- (B) Similarly, please indicate the relevant positive effects of the notified measure and provide the supporting documents:

- ☐ net increase of R&D&I conducted by the undertaking;
- ☐ contribution of the measure to the global improvement of the sector concerned as regards the level of R&D&I;
- ☐ contribution of the measure to the improvement of the Community situation regarding R&D&I in the international context;
- ☐ other: .....

*For each of the sections below please provide the documents which are relevant for the notified measure. Member States are invited to provide any other elements that they consider useful for the assessment of the notified measure.*

8.2. *Existence of a market failure* <sup>(158)</sup>

- (A) Please identify the market failure(s) hampering R&D&I in the present case and justifying the need for State aid and provide the supporting documents:

- ☐ knowledge spillovers (positive externalities/public goods);
- ☐ imperfect and asymmetric information;
- ☐ coordination failures.

- (B) If State aid targets R&D&I projects or activities located in assisted areas, please provide information on:

- ☐ disadvantages caused by the peripherality and other regional specificities;
- ☐ specific local economic data, social and/or historic reasons for a low level of R&D&I activity in comparison with the relevant average data and/or situation at national and/or Community level as appropriate,;
- ☐ other relevant indicator showing an increased degree of market failure.

8.3. *Appropriate instrument* <sup>(159)</sup>

Please indicate on what basis the Member State decided to use a selective instrument such as State aid in order to increase R&D&I activities and provide supporting documents:

- ☐ impact assessment of the proposed measure;
- ☐ comparison with other policy options considered by the Member State;
- ☐ other: .....

8.4. *Incentive effect and analysis of the aid* <sup>(160)</sup>

- (A) Please specify the intended change in the behaviour of the beneficiary induced by the aid (e.g. new project triggered, size, scope or speed of a project enhanced) and provide supporting documents:

- .....
- .....
- furthermore, please provide a description by means of counterfactual analysis of the behaviour of the beneficiary with respect to the project if it had not received the aid:
- .....
- .....
- please describe why the aid is necessary in order to make the project under scrutiny more attractive than the project described by means of counterfactual analysis, i.e. the project to be carried out without the aid:
- .....
- .....

<sup>(158)</sup> Cf. R&D&I Framework, Section 7.3.1.

<sup>(159)</sup> Cf. R&D&I Framework, Section 7.3.2.

<sup>(160)</sup> Cf. R&D&I Framework, Section 7.3.3.

▼ **M3**

- (B) The following elements may be used for the purposes of demonstration of an incentive effect. Please specify those relevant for the notified measure and provide supporting documents:

- ☐ level of profitability;
- ☐ amount of investment and the time path of cash flows;
- ☐ level of risk involved in the research project <sup>(161)</sup>;
- ☐ continuous evaluation.

8.5. *Proportionality of the aid* <sup>(162)</sup>

- (A) If there were multiple (potential) candidates for undertaking the R&D&I project in the Member State, was the beneficiary selected in an open selection process?

- ☐ yes ☐ no

Please provide details and supporting documents:

.....

.....

- (B) Please explain how it is ensured that the aid is limited to the minimum necessary and provide supporting documents:

.....

.....

8.6. *Analysis of the distortion of competition and trade* <sup>(163)</sup>8.6.1. *Relevant markets and effects on trade*

- (A) When relevant, please describe the likely impact of the aid on competition in the innovation process <sup>(164)</sup>:

.....

.....

- (B) Please indicate whether the aid is likely to have impact on any product market.

- ☐ yes ☐ no

Please specify the product markets on which the aid is likely to have impact:

.....

.....

.....

- (C) For each of these markets please provide some indicative market share of the beneficiary:

.....

.....

For each of these markets please provide some indicative market shares of the other companies present in the market. If possible, please provide the associated Herfindahl-Hirschman Index (HHI):

.....

.....

- (D) Please describe the structure and dynamics of the relevant markets and provide supporting documents:

.....

.....

<sup>(161)</sup> Please note in this context that for State aid targeting R&D&I projects or activities located in assisted areas, the Commission will take into account disadvantages caused by the peripherality and other regional specificities, which negatively impact on the level of risk in the research project.

<sup>(162)</sup> Cf. R&D&I Framework, Section 7.3.4.

<sup>(163)</sup> Cf. R&D&I Framework, Section 7.4.

<sup>(164)</sup> The impact on competition in the innovation process will be relevant insofar as it has a foreseeable impact on the outcome of future product market competition. For details see Section 7.4 (third paragraph) of the R&D&I Framework.

▼ **M3**

- (E) If relevant, please provide information on the effects on trade (shift of trade flows and location of economic activity):

.....

.....

## 8.6.2. Distorting dynamics incentives

The following elements will be considered by the Commission in its analysis of effects of the aid on competitors' dynamic incentives to invest. Please, indicate those in relation to which supporting documents are provided:

- ☐ aid amount;
- ☐ closeness to the market/category of aid;
- ☐ open selection process;
- ☐ exit barriers;
- ☐ incentives to compete for a future market;
- ☐ product differentiation and intensity of competition.

## 8.6.3. Creating market power

The following elements will be considered by the Commission in its analysis of effects of the aid on beneficiary's market power. Please, indicate those in relation to which details and supporting documents are provided:

- ☐ market power of aid beneficiary and market structure;
- ☐ level of entry barriers;
- ☐ buyer power;
- ☐ selection process.

## 8.6.4. Maintaining inefficient market structures

Please specify if the aid is granted:

- ☐ in markets featuring overcapacity;
- ☐ in declining industries;
- ☐ in sensitive sectors.

Please provide details and supporting documents:

.....

.....

9. **Cumulation** <sup>(165)</sup>

- (A) Is the aid granted under the notified measure combined with other aid <sup>(166)</sup>?

☐ yes ☐ no

- (B) If yes, please describe the cumulation rules applicable to the notified aid measure:

.....

.....

.....

- (C) Please specify how the respect of cumulation rules will be verified under the notified aid measure:

.....

.....

.....

<sup>(165)</sup> Cf. R&D&I Framework, Chapter 8.

<sup>(166)</sup> Please note that the aid for R&D&I shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the R&D&I Framework.



▼ **M3****10. Specific questions relating to agriculture and fisheries <sup>(167)</sup>**

(A) Does the R&amp;D aid concern products listed in Annex I to the EC Treaty?

☐ yes ☐ no

If yes, specify the type of products:

.....

.....

(B) If yes, please provide the answers to the following questions:

— is the aid of general interest to the particular sector or sub-sector concerned?

☐ yes ☐ no

If yes, provide evidence:

.....

.....

— is the information that research will be carried out, and with which goal published on Internet prior to the commencement of the research AND does the information published include an approximate date of the expected results and their place of publication on the Internet, as well as a mention that the result will be available at no cost?

☐ yes ☐ no

If yes, provide evidence and specify the Internet address:

.....

.....

— are the results of the research made available on Internet, for a period of at least five years AND can it be confirmed that the information on the Internet will be published no later than any which may be given to members of any particular organisation?

☐ yes ☐ no

If yes, provide evidence:

.....

.....

— is the aid granted directly to the researching institution or body AND does it exclude the direct granting of non-research related aid to a company producing, processing or marketing agricultural products, as well as the provision of price support to producers of such products?

☐ yes ☐ no

If yes, provide evidence:

.....

.....

*If the answers to all four conditions of Section B above are yes, the aid intensity up to 100% can be allowed. If not, cases of R&D aid for products listed in Annex I to the EC Treaty are to be examined under the normal rules of the R&D&I Framework.*

(C) Specify the total aid intensity (%): .....

<sup>(167)</sup> Cf. R&D&I Framework, Chapter 9.

▼ **M3**

- (D) Cooperation pursuant to Regulation (EC) No 1698/2005 on support for rural development by the EAFRD <sup>(168)</sup>

Has the cooperation been approved for Community co-financing under Article 29 of Regulation (EC) No 1698/2005 AND/OR is the State aid granted as additional financing pursuant to Article 89 of this Regulation under the same conditions and at the same intensity as the co-financing <sup>(169)</sup>?

☐ yes ☐ no

*If not, cases of R&D aid for products listed in Annex I to the EC Treaty are to be examined under the normal rules of the R&D&I Framework.*

# 11. Reporting and monitoring <sup>(170)</sup>

## 11.1. Annual reports

*Please note that this reporting obligation is without prejudice to the reporting obligation pursuant to Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 <sup>(171)</sup>.*

Please undertake to submit annual reports on the implementation of the notified aid measure to the Commission, containing all the elements listed below <sup>(172)</sup>.

- name of the beneficiary;
- aid amount per beneficiary;
- aid intensity;
- sectors of activity where the aided project is undertaken.

☐ yes

## 11.2. Information sheets, monitoring

- (A) Please undertake to maintain detailed records regarding the granting of aid, with all information necessary to establish that the eligible costs and maximum allowable aid intensity have been observed.

☐ yes

- (B) Please undertake to ensure that detailed records referred to in Section A above are maintained for 10 years from the date on which the aid was granted.

☐ yes

- (C) Please undertake to submit the records referred to in Section A above on request of the Commission.

☐ yes

# 12. Other information

Please give any other information you consider necessary to assess the measure(s) in question under the Community Framework for State aid for research, development and innovation.

<sup>(168)</sup> Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1) as amended by Regulation (EC) no 1463/2006 (OJ L 277, 9.10.2006, p. 1).

<sup>(169)</sup> Commission will allow State aid for cooperation pursuant to Article 29 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) if such cooperation has been approved for Community co-financing under that Article and/or the State aid is granted as additional financing pursuant to Article 89 of Regulation (EC) No 1698/2005 under the same conditions and at the same intensity as the co-financing.

<sup>(170)</sup> Cf. R&D&I Framework, Section 10.1.

<sup>(171)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

<sup>(172)</sup> As regards the specific reporting requirements for clusters, please see Section 10.1.1 (fourth paragraph) of the R&D&I Framework.

## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COMMISSION

## COMMUNITY GUIDELINES ON STATE AID FOR ENVIRONMENTAL PROTECTION

(Text with EEA relevance)

(2008/C 82/01)

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## 1. INTRODUCTION

### 1.1. State aid policy and Energy Policy for Europe

- (1) The spring 2007 European Council called on Member States and EU institutions to pursue actions to develop a sustainable integrated European climate and energy policy. The Council stated among other things: 'Given that energy production and use are the main sources for greenhouse gas emissions, an integrated approach to climate and energy policy is needed to realise this objective. Integration should be achieved in a mutually supportive way. With this in mind, the Energy Policy for Europe (EPE) will pursue the following three objectives, fully respecting Member States' choice of energy mix and sovereignty over primary energy sources and underpinned by a spirit of solidarity amongst Member States:

- increasing security of supply,
- ensuring the competitiveness of European economies and the availability of affordable energy,
- promoting environmental sustainability and combating climate change.'

- (2) As a milestone in the creation of this Energy Policy for Europe, the European Council supported a comprehensive Energy Action Plan for the period 2007-2009 and invited in particular the Commission to submit the proposals requested in the Action Plan as speedily as possible. One of these proposals relates to the review of the Community guidelines on State aid for environmental protection.
- (3) The European Council made a firm independent commitment for the EU to achieve at least a 20 % reduction in greenhouse gas emissions by 2020 compared to 1990. It also stressed the need to increase energy efficiency in the EU so as to achieve the objective of saving 20 % of the EU's energy consumption compared to projections for 2020, and endorsed a binding target of a 20 % share of renewable energies in overall EU energy consumption by 2020 as well as a 10 % binding minimum target to be achieved by all Member States for the share of biofuels in overall EU transport petrol and diesel consumption by 2020.
- (4) These new guidelines constitute one of the instruments to implement the Action Plan and the environmental aspects of the energy- and climate change-related targets decided by the European Council.

### 1.2. State aid policy and environmental protection

- (5) In the 'State Aid Action Plan — Less and better targeted State aid: A roadmap for State aid reform 2005-2009' <sup>(1)</sup> (hereafter referred to as the 'State Aid Action Plan') the

Commission noted that State aid measures can sometimes be effective tools for achieving objectives of common interest. Under some conditions, State aid can correct market failures, thereby improving the functioning of markets and enhancing competitiveness. It can also help to promote sustainable development, irrespective of the correction of market failures <sup>(2)</sup>. The State Aid Action Plan also stressed that environmental protection can provide opportunities for innovation, create new markets and increase competitiveness through resource efficiency and new investment opportunities. Under some conditions, State aid can be conducive to these objectives, thus contributing to the core Lisbon strategy objectives of more sustainable growth and jobs. Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme <sup>(3)</sup> (hereafter referred to as the 'Sixth Environment Action Programme') identifies the priority areas for actions to protect the environment <sup>(4)</sup>.

- (6) The primary objective of State aid control in the field of environmental protection is to ensure that State aid measures will result in a higher level of environmental protection than would occur without the aid and to ensure that the positive effects of the aid outweigh its negative effects in terms of distortions of competition, taking account of the polluter pays principle (hereafter 'PPP') established by Article 174 of the EC Treaty.
- (7) Economic activities can harm the environment not least through pollution. In certain cases, in the absence of government intervention, undertakings can avoid bearing the full cost of the environmental harm arising from their activities. As a result, the market fails to allocate resources in an efficient manner, since the (negative) external effects of production are not taken into account by the producer, but are borne by society as a whole.
- (8) According to the PPP, these negative externalities can be tackled by ensuring that the polluter pays for its pollution, which implies full internalisation of environmental costs by the polluter. This is intended to ensure that the private costs (borne by the undertaking) reflect the true social costs of the economic activity. Full implementation of the PPP would thus lead to correction of the market failure. The PPP can be implemented either by setting mandatory environmental standards or by market-based instruments <sup>(5)</sup>. Some of the market-based instruments may involve the granting of State aid to all or some of the undertakings which are subject to them.

<sup>(2)</sup> See State Aid Action Plan, para. 10.

<sup>(3)</sup> OJ L 242, 10.9.2002, p. 1.

<sup>(4)</sup> The priority areas are: climate change, nature and biodiversity, environment and health and natural resources and waste. Health is not covered by these guidelines.

<sup>(5)</sup> With regard to the latter see the Green Paper on market-based instruments for environment and related policy purposes, 28 March 2007, COM(2007) 140 final.

<sup>(1)</sup> COM(2005) 107 final.

- (9) Although there are currently limits to the application of the PPP, this regulatory failure should not prevent Member States from imposing requirements for environmental protection that go beyond Community requirements and from reducing negative externalities to the greatest possible extent.
- (10) In order to increase the level of environmental protection, Member States may want to use State aid to create incentives on an individual level (at the level of the undertaking) to achieve a higher level of environmental protection than required by Community standards or to increase the environmental protection in the absence of Community standards. They may also set national standards or environmental taxation at a higher level than required by Community legislation or they may use environmental taxation to implement PPP unilaterally in the absence of Community legislation.
- (11) The Commission considers that it is necessary to revise the State aid guidelines on environmental protection in order to meet the objectives set out in the State Aid Action Plan, in particular to ensure better targeted aid, improved economic analysis and more effective procedures. Furthermore, the Commission considers it necessary to take into account developments in environmental policy and environmental technologies and to adjust the rules in the light of experience.
- (12) The Commission will apply these Guidelines in the assessment of environmental aid, thereby increasing legal certainty and the transparency of its decision-making. Aid for environmental protection will primarily be justified on the basis of Article 87(3)(c) of the EC Treaty. These Guidelines replace the Community guidelines on State aid for environmental protection <sup>(6)</sup> that came into force in 2001.
- (13) Guidelines are given for two types of assessments: a standard assessment for measures involving aid under a certain threshold or aid granted to installations with a production capacity below a certain threshold (Chapter 3) and a detailed assessment for measures involving aid above that threshold or aid granted to installations with a production capacity above that threshold as well as for aid granted to new plants producing renewable energy where the aid amount is based on a calculation of the external costs avoided (Chapter 5).
- (14) These Guidelines will be applied to all measures notified to the Commission (either because the measure is not covered by a block exemption regulation (hereafter 'BER') or a BER imposes an obligation to notify aid individually, or because the Member State concerned decides to notify a measure which could in principle have been exempted under a BER), as well as in the assessment of all non-notified aid after the publication of these Guidelines.
- 1.3. The balancing test and its application to aid for environmental protection**
- 1.3.1. *The State Aid Action Plan: less and better targeted aid, balancing test for the assessment of aid*
- (15) In the State Aid Action Plan, the Commission announced that 'to best contribute to the re-launched Lisbon Strategy for growth and jobs, the Commission will, when relevant, strengthen its economic approach to State aid analysis. An economic approach is an instrument to better focus and target certain State aid towards the objectives of the re-launched Lisbon Strategy'.
- (16) In assessing whether an aid measure can be deemed compatible with the common market, the Commission balances the positive impact of the aid measure in reaching an objective of common interest against its potentially negative side effects, such as distortion of trade and competition. The State Aid Action Plan, building on existing practice, has formalised this balancing exercise in what has been termed a 'balancing test' <sup>(7)</sup>. It operates in three steps; the first two steps address the positive effects of the State aid and the third addresses the negative effects and resulting balancing of the positive and negative effects. The balancing test is structured as follows:
- 1) Is the aid measure aimed at a well-defined objective of common interest? (for example: growth, employment, cohesion, environment, energy security). In the context of these Guidelines, the relevant common interest objective is the protection of the environment.
  - 2) Is the aid well designed to deliver the objective of common interest that is to say, does the proposed aid address the market failure or other objective?
    - a) is State aid an appropriate policy instrument?
    - b) is there an incentive effect, namely does the aid change the behaviour of undertakings?
    - c) is the aid measure proportional, namely could the same change in behaviour be obtained with less aid?
  - 3) Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

<sup>(6)</sup> OJ C 37, 3.2.2001, p. 3.

<sup>(7)</sup> Cf. State Aid Action Plan, para. 11 and 20, as elaborated in more detail in the Communication on innovation (COM(2005) 436 final 21.9.2005).



- (17) This balancing test is applicable to the design of State aid rules as well as to the assessment of cases.

1.3.2. *The objective of common interest addressed by the Guidelines*

- (18) The first indent of Article 2 of the Treaty on European Union stipulates that sustainable development is one of the objectives in the European Union. This should be based on economic prosperity, social cohesion and a high level of protection of the environment. Promoting environmental protection is thus an important objective of common interest. In addition, Article 6 of the EC Treaty mentions the need to integrate protection of the environment into all Community policies and Article 174(2) of the EC Treaty states that environment policy is to be based on the principles of precaution, prevention, rectifying pollution <sup>(8)</sup> at source and 'polluter pays'.

- (19) These Guidelines lay down the conditions for authorising the granting of State aid to address those market failures which lead to a sub-optimal level of environmental protection.

- (20) The most common market failure in the field of environmental protection is related to negative externalities. Undertakings acting in their own interest have no incentive to take the negative externalities arising from production into account either when they decide on a particular production technology or when they decide on the production level. In other words, the production costs that are borne by the undertaking are lower than the costs borne by society. Therefore undertakings have no incentive to reduce their level of pollution or to take individual measures to protect the environment.

- (21) Governments confronted with this market failure tend to use regulation in order to ensure that the negative externalities arising from production are accounted for. Through the introduction of standards, taxation, economic instruments and other regulation, the undertakings producing pollution have to pay for the cost to society of pollution in accordance with the PPP. Internalising these negative externalities will consequently raise the private costs borne by those undertakings, thereby negatively affecting their revenue. Moreover, since the generation of pollution is unevenly spread among industries and undertakings, the costs of any environmentally friendly regulation tend to be

differentiated, not only between undertakings, but also between Member States. Member States may furthermore have a different appreciation of the need to introduce high environmental targets.

- (22) In the absence of Community standards and market-based instruments fully reflecting the PPP level (regulatory failure), Member States may thus decide unilaterally to pursue a higher level of environmental protection. This may in turn create additional costs for the undertakings active in their territory. For that reason, in addition to regulation, Member States may use State aid as a positive incentive to achieve higher levels of environmental protection. They can do this in two ways:

— **positive individual incentives to reduce pollution and other negative impacts on the environment:**

First, Member States can create positive incentives on an individual level (at the level of the undertaking) to go beyond Community standards. In this case, the aid beneficiary reduces pollution because it receives aid to change its behaviour, and not because it has to pay for the costs of this pollution. The objective of State aid here is to address directly the market failure linked with the negative effects of pollution;

— **positive incentives to introduce national environmental regulation going beyond Community standards:**

Second, Member States can impose national regulation going beyond the Community standards. However, this may lead to additional costs for certain undertakings, and thus affect their competitive conditions. Moreover, such costs may not represent the same burden for all undertakings given their size, market position, technology and other specificities. In this case, State aid may be necessary, to lessen the burden on the most affected undertakings and thereby enable Member States to adopt national environmental regulation that is stricter than Community standards.

1.3.3. *Appropriate instrument*

- (23) There is a role for government intervention to ensure more adequate environmental protection. Regulation and market-based instruments are the most important tools to achieve environmental objectives. Soft instruments, such as voluntary eco-labels, and the diffusion of environmentally friendly technologies may also play an important role. However, even if finding the optimal mix of policy instruments can be complicated, the existence of market failures or political objectives does not automatically justify the use of State aid.

<sup>(8)</sup> This can include activities such as the release of chemical pollutants into the environment, or for instance physically altering the aquatic environment, and thereby causing disturbances of ecosystems or activities having a negative impact on the status of water resources.

(24) According to the PPP, the polluter should pay all the costs of its pollution, including the indirect costs borne by society. For this purpose, environmental regulation can be a useful instrument to increase the burden on the polluter. Respect for the PPP ensures, in theory, that the market failure linked to negative externalities will be rectified. Consequently, if the PPP were fully implemented, further government intervention would not be necessary to ensure a market-efficient outcome. The PPP remains the main rule and State aid is in fact a second-best option. Using State aid in the context of the PPP would relieve the polluter of the burden of paying the cost of its pollution. Therefore, State aid may not be an appropriate instrument in such cases.

(25) However, on account, in particular, of incomplete implementation of the PPP, the existing level of environmental protection is often considered to be unsatisfactory for the following reasons:

- a) first, the exact cost of pollution is not easy to establish. It is technically complicated to calculate the extra costs for society for all types of production, and it may sometimes be inefficient to take account of the fact that different producers have different levels of pollution if the associated administrative costs are very high. Different sensitivities towards changes in consumer prices (price elasticity) also play a role. Furthermore, the valuation of the cost of pollution can differ among individuals and societies, depending on societal choices as regards, for instance, the effect of current policies on future generations. In addition, some costs are difficult to express without some uncertainty in monetary terms, such as shorter life expectancy or environmental damage. There will therefore always be a degree of uncertainty involved in calculating the costs of pollution.
- b) second, raising the price of a series of (industrial) products too abruptly in order to internalise the cost of pollution may act as an external shock and create disturbances in the economy. Governments may therefore consider it more desirable to progress with moderation towards integrating the full price of pollution into certain production processes.

(26) In the context of an unsatisfactory level of environmental protection, State aid, although it does not resolve all the above-mentioned problems, may provide positive incentives for undertakings to carry out activities or make investments which are not mandatory and would otherwise not be undertaken by profit-seeking companies. In addition, State aid may be an appropriate instrument to enable Member States to adopt national environmental regulation going beyond Community standards, by lowering the burden on the undertakings most affected by that regulation, and thus making the regulation possible.

#### 1.3.4. *Incentive effect and necessity of aid*

(27) State aid for environmental protection must result in the recipient of the aid changing its behaviour so that the level of environmental protection will be higher than if the aid had not been granted. However, investments which increase the level of environmental protection may at the same time increase revenues <sup>(9)</sup> and/or decrease costs <sup>(10)</sup> and thus be economically attractive in their own right. Therefore, it needs to be verified that the investment concerned would not have been undertaken without any State aid.

(28) The objective is to be sure that undertakings would not, without the aid, engage in the same activity because of its intrinsic benefits. The incentive effect is identified through counterfactual analysis, comparing the levels of intended activity with aid and without aid. Correct identification of the counterfactual scenario is key to determining whether or not State aid has an incentive effect. It is also essential for the calculation of the extra investment or production costs incurred to achieve the higher level of environmental protection.

(29) Investment may be necessary in order to meet mandatory Community standards. Since the company would have to comply with those standards in any event, State aid to meet mandatory Community standards that are already in force cannot be justified.

#### 1.3.5. *Proportionality of the aid*

(30) Aid is considered to be proportional only if the same result could not be achieved with less aid. In addition, proportionality may also depend on the degree of selectivity of a measure.

(31) In particular, the aid amount must be limited to the minimum needed to achieve the environmental protection sought. Therefore, eligible costs for investment aid are based on the notion of the extra (net) cost necessary to meet the environmental objectives. This concept implies that, in order to establish how much aid can be granted, all the economic benefits which the investment gives the company must in principle be subtracted from the additional investment costs.

<sup>(9)</sup> More environmentally friendly production may result, for example, in more possibilities for recycling waste materials, thus generating additional revenues. It may also be possible to increase the price or the sales of products that are perceived as more environmentally-friendly and thus more appealing to consumers.

<sup>(10)</sup> More environmentally friendly production may result notably in reduced consumption of energy and input materials.

(32) However, it is difficult to fully take into account all economic benefits which a company will derive from an additional investment. For example, according to the methodology for calculating eligible costs set out in points 80 to 84, operating benefits are not taken into account beyond a certain initial period following the investment. Likewise, certain kinds of benefits which are not always easy to measure — such as the 'green image' enhanced by an environmental investment — are not taken into account in this context either. Consequently, in order for the aid to be proportionate, the Commission considers that the aid amount must normally be less than the eligible investment costs, see Annex. It is only in cases where investment aid is granted in a genuinely competitive bidding process on the basis of clear, transparent and non-discriminatory criteria — effectively ensuring that the aid is limited to the minimum necessary for achieving the environmental gain — that the aid amount may reach 100 % of the eligible investment cost. This is because under such circumstances it can be assumed that the respective bids reflect all possible benefits that might flow from the additional investment.

(33) Moreover, for some measures, it is not possible to calculate the amount of aid on the basis of the extra costs; this is the case for aid in the form of environmental tax exemptions or reductions and aid in the form of tradable permit schemes. In those cases, proportionality has to be ensured through conditions and criteria for granting the exemptions and reductions, which ensure that the beneficiary does not receive excessive advantages, and that the selectivity of the measure is limited to the strict minimum.

(34) The cost of achieving environmental protection is often higher for small and medium-sized enterprises in relative terms compared to the size of their activity. In addition, the ability of small and medium-sized enterprises to bear such costs is often restricted by capital market imperfections. For this reason, and in view of the reduced risk of serious distortions of competition when the beneficiary is a small or medium-sized enterprise, a bonus can be justified for such enterprises for some types of aid.

(35) In addition, Member States are encouraged to ensure cost-effectiveness in achieving environmental benefits, for example by choosing measures for which the external costs avoided are significant in relation to the amount of aid. However, since there is no direct link between the external costs avoided and the cost incurred by the undertaking, only in exceptional cases may external costs avoided be used as a basis to determine State aid amounts. Normally, in order to ensure an adequate incentive for the undertaking to change its behaviour, the aid amount must be linked directly to the cost borne by the undertaking.

#### 1.3.6. *Negative effects of environmental aid must be limited so that the overall balance is positive*

(36) If environmental State aid measures are well targeted to counterweigh only the actual extra costs linked to a higher level of environmental protection, the risk that the aid will

unduly distort competition is normally rather limited. Consequently, it is crucial that environmental State aid measures are well targeted. In cases where aid is not necessary or proportionate to achieve its intended objective it will harm competition. This may in particular be the case if aid leads to:

- a) maintaining inefficient firms afloat;
- b) distorting dynamic incentives/crowding out;
- c) creating market power or exclusionary practices;
- d) artificially altering trade flows or the location of production.

(37) In some cases, the purpose of the measure is to intervene in the functioning of the market with a view to favouring, to the overall benefit of the environment, certain environmentally friendly productions at the expense of other, more polluting ones. As a result of such measures, the producers of the environmentally friendly products concerned will be able to improve their market position in relation to competitors offering environmentally less beneficial products. In such cases, the Commission will take into account the overall environmental effect of the measure when looking at its negative impact on the market position, and thus on the profits, of non-aided firms. The lower the expected environmental effect of the measure in question, the more important the verification of its effect on market shares and profits of competing products.

#### 1.4. **Implementing the balancing test: legal presumptions and need for more detailed assessment**

(38) Without prejudice to Articles 4 to 7 of 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>(11)</sup>, the legal presumptions applied by the Commission differ according to the type of State aid measure notified.

(39) In Chapter 3 of these Guidelines, the Commission has identified a series of measures in respect of which it considers *a priori* that State aid will address a market failure hampering environmental protection or improve on the level of environmental protection. The Commission also sets out a series of conditions and parameters, which are intended to ensure that State aid actually has an incentive effect, is proportionate and has a limited negative impact on competition and trade. Chapter 3 thus contains parameters in respect of the aided activity, aid intensities and conditions attached to compatibility.

<sup>(11)</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).

(40) However, for aid amounts above certain thresholds as well as for certain specific situations, additional scrutiny is necessary, because of higher risks of distortion of competition and trade. The additional scrutiny will generally consist in further and more detailed factual analysis of the measure in accordance with Chapter 5. These measures will be declared compatible if the balancing test pursuant to Chapter 5 results in an overall positive evaluation. In the context of this analysis, no compatibility criteria will be presumed to be fulfilled at the outset. Tax exemptions and reductions from environmental taxes will be subject only to the assessment laid down in Chapter 4 <sup>(12)</sup>.

(41) As a result of this detailed assessment, the Commission may approve the aid, declare it incompatible with the common market or take a compatibility decision subject to conditions.

#### 1.5. Reasons for specific measures covered by these Guidelines

(42) The Commission has identified a series of measures for which State aid may, under specific conditions, be compatible with Article 87(3)(c) of the EC Treaty.

##### 1.5.1. *Aid for undertakings which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards*

(43) This type of aid provides individual incentives to companies to achieve higher environmental protection. Normally, an undertaking does not have an incentive to go beyond mandatory standards if the cost of doing so exceeds the benefit for the undertaking. In such cases State aid may be granted to give an incentive to undertakings to improve environmental protection. In accordance with the Community objective to support eco-innovation, more favourable treatment can be accepted for eco-innovation projects that address the double market failure linked to the higher risks of innovation, coupled with the environmental aspect of the project. Aid for eco-innovation thus aims to accelerate the market diffusion of eco-innovations.

##### 1.5.2. *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*

(44) Transport is responsible for a large share of overall greenhouse gas emissions (approximately 30 %), as well as for local pollution by dust, particulates, NO<sub>x</sub> and SO<sub>x</sub>. Hence, it is important to encourage clean modes of transport, both in order to fight global climate change and in order to reduce local pollution, in particular in cities. In this context, it is particularly important to encourage the acquisition of clean transport vehicles (including clean ships).

##### 1.5.3. *Aid for early adaptation to future Community standards*

(45) These Guidelines do not authorise aid to assist undertakings to comply with Community standards already in force, because such aid would not lead to a higher level of environmental protection. However, State aid may ensure significantly quicker implementation of newly adopted Community standards which are not yet in force and thereby contribute to reducing pollution at a faster pace than would have been the case without the aid. In such situations, State aid may therefore create individual incentives for enterprises to counterbalance the effects of the negative externalities linked to pollution.

##### 1.5.4. *Aid for environmental studies*

(46) Aid to companies for studies on investments aimed at achieving a level of environmental protection going beyond Community standards or increasing the level of environmental protection in the absence of Community standards, as well as studies on energy saving and production of renewable energy, addresses the market failure linked to asymmetric information. Often undertakings underestimate the possibilities and benefits related to energy saving and renewable energy, which leads to under-investment.

##### 1.5.5. *Aid for energy saving*

(47) This type of aid addresses the market failure linked to negative externalities by creating individual incentives to attain environmental targets for energy saving and for the reduction of greenhouse gas emissions. At Community level, in the Communication from the Commission to the European Council and the European Parliament — an Energy Policy for Europe <sup>(13)</sup> the aim has been set to achieve at least a 20 % reduction in greenhouse gas emissions by 2020 compared to 1990, as endorsed by the European Council of 8 and 9 March 2007. Furthermore, Member States are obliged to adopt and aim to achieve an overall national indicative energy savings target of 9 % over nine years in accordance with Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC <sup>(14)</sup>. State aid may be appropriate where the investments resulting in energy savings are not compulsory pursuant to applicable Community standards and where they are not profitable, that is to say where the cost of energy saving is higher than the related private economic benefit. In the case of small and medium-sized enterprises, more favourable support may be needed to take into account the fact that these enterprises often under-estimate the benefits related to energy savings over long periods, which leads to their under-investment in energy-saving measures.

<sup>(12)</sup> Aid granted in the form of fiscal aid in accordance with Chapter 3 will be subject to a detailed assessment if the thresholds in Chapter 5 are exceeded.

<sup>(13)</sup> COM(2007) 1 final.

<sup>(14)</sup> OJ L 114, 27.4.2006, p. 64.



1.5.6. *Aid for renewable energy sources*

(48) This type of aid addresses the market failure linked to negative externalities by creating individual incentives to increase the share of renewable sources of energy in total energy production. Increased use of renewable energy sources is one of the Community's environmental priorities as well as an economic and energy-related priority. It is expected to play an important role in meeting the targets for the reduction of greenhouse gas emissions. At Community level, in the Communication from the Commission to the European Council and the European Parliament — an energy policy for Europe the target has been set for renewable energy to account for 20 % of overall EU energy consumption by 2020. State aid may be justified if the cost of production of renewable energy is higher than the cost of production based on less environmentally friendly sources and if there is no mandatory Community standard concerning the share of energy from renewable sources for individual undertakings. The high cost of production of some types of renewable energy does not allow undertakings to charge competitive prices on the market and thus creates a market-access barrier for renewable energy. However, due to technological developments in the field of renewable energy and to gradually increasing internalisation of environmental externalities (resulting, for example, from Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control <sup>(15)</sup>, air quality legislation and the emissions trading scheme), the cost difference has shown a decreasing trend over the past years, thus reducing the need for aid.

(49) In addition, as highlighted in the Biofuel Progress Report <sup>(16)</sup>, biofuel promotion should benefit both security of supply and climate change policy in a sustainable way. Therefore, State aid may be an appropriate instrument only for those uses of renewable energy sources where the environmental benefit and sustainability is evident. More particularly, biofuels not 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>(17)</sup> will not be considered eligible for State aid. When designing their support systems, Member States may encourage the use of biofuels which give additional benefits — including the benefits of diversification offered by biofuels made from wastes, residues, cellulosic and ligno-cellulosic material — by taking due account of the different costs of producing

energy from traditional biofuels, on the one hand, and of those biofuels which give additional benefits, on the other hand.

(50) With regard 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. Therefore, they can play an important part in the overall energy mix. On the other hand, such installations might also have a negative impact, for example on water systems and biodiversity <sup>(18)</sup>.

1.5.7. *Aid for cogeneration and aid for district heating (DH)*

(51) These types of aid address market failure linked to negative externalities by creating individual incentives to meet environmental targets in the field of energy savings. Cogeneration of heat and electricity (hereafter 'CHP') is the most efficient way of producing electricity and heat simultaneously. By producing both electricity and heat together, less energy is wasted in production. The Community strategy outlined in the Commission's cogeneration strategy of 1997 sets an overall indicative target of doubling the share of electricity production from cogeneration to 18 % by 2010. Since then the importance of CHP for the EU energy strategy has been underlined by the adoption of Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC <sup>(19)</sup> and by a chapter on cogeneration in the Commission Action Plan for Energy Efficiency: Realising the Potential <sup>(20)</sup>. The latter document also points to the potential of waste heat, for example from industry or utilities, for useful applications, for example in district heating (hereafter 'DH'). Further, DH may be more energy-efficient than individual heating and may provide a significant improvement in urban air quality. Therefore, provided that DH is shown to be less polluting and more energy efficient in the generation process and the distribution of the heat, but more costly than individual heating, State aid can be granted with a view to giving incentives to attain environmental targets. However, as in the case of renewable energies, the progressive internalisation of environmental externalities in the costs of other technologies can be expected to reduce the need for aid by bringing about a gradual convergence of these costs with those of CHP and DH.

<sup>(15)</sup> OJ L 24, 29.1.2008, p. 8.

<sup>(16)</sup> COM(2006) 845 final.

<sup>(17)</sup> COM(2008) 19 final. Once the Directive has been adopted by the European Parliament and the Council, the Commission will apply the sustainability criteria in the final text.

<sup>(18)</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1). Directive as last amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1). In particular Article 4(7) lays down criteria in relation to allowing new modifications of bodies of water.

<sup>(19)</sup> OJ L 52, 21.2.2004, p. 50.

<sup>(20)</sup> COM(2006) 545 final.

1.5.8. *Aid for waste management*

- (52) This type of aid aims to give individual incentives to reach environmental targets linked to waste management <sup>(21)</sup>. The Sixth Environment Action Programme identifies waste prevention and management as one of the four top priorities. Its primary objective is to separate waste generation from economic activity, so that EU growth will not lead to more and more waste. In this context, State aid may be granted to the producer of the waste (under section 3.1.1) as well as to undertakings managing or recycling waste created by other undertakings (under section 3.1.9). However, the positive effects on the environment must be ensured, the PPP must not be circumvented and the normal functioning of secondary materials markets should not be distorted.

1.5.9. *Aid for the remediation of contaminated sites*

- (53) This type of aid is intended to create an individual incentive to counterbalance the effects of negative externalities, where it is not possible to identify the polluter and make it pay for repairing the environmental damage it has caused. In such cases, State aid may be justified if the cost of remediation is higher than the resulting increase in the value of the site.

1.5.10. *Aid for the relocation of undertakings*

- (54) This type of investment aid aims to create individual incentives to reduce negative externalities by relocating undertakings that create major pollution to areas where such pollution will have a less damaging effect, which will reduce external costs. In line with the precautionary principle, these Guidelines introduce the possibility of granting aid for the relocation of *high risk establishments* in accordance with Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances <sup>(22)</sup> (hereafter the 'Seveso II Directive'). Past accidents have shown that the location of an establishment covered by the Seveso II Directive is of crucial importance as regards both the prevention of accidents and limitation of the consequences of accidents on people and the environment. State aid may therefore be justified if the relocation is made for environmental reasons. To ensure that aid is not granted for relocation for other purposes, an administrative or judicial decision of a competent public authority or an agreement between the competent public authority and the undertaking to relocate the firm is required. The eligible costs must take into account any advantages that the firm may obtain due to the relocation.

<sup>(21)</sup> Waste management includes re-utilisation, recycling and recovery.

<sup>(22)</sup> OJ L 10, 14.1.1997, p. 13. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

1.5.11. *Aid involved in tradable permit schemes*

- (55) Tradable permit schemes may involve State aid in various ways, for example, when Member States grant permits and allowances below their market value and this is imputable to Member States. This type of aid may be used to target negative externalities by allowing market-based instruments targeting environmental objectives to be introduced. If the global amount of permits granted by the Member State is lower than the global expected needs of undertakings, the overall effect on the level of environmental protection will be positive. At the individual level of each undertaking, if the allowances granted do not cover the totality of expected needs of the undertaking, the undertaking must either reduce its pollution, thus contributing to the improvement of the level of environmental protection, or buy supplementary allowances on the market, thus paying a compensation for its pollution. To limit the distortion of competition, no over-allocation of allowances can be justified and provision must be made to avoid undue barriers to entry.

- (56) The criteria set out in point 55 form the basis for the Commission's assessment of situations arising during the trading period ending on 31 December 2012. With respect to situations arising during the trading period after that date, the Commission will assess the measures according to whether they are both necessary and proportional. Finally, this will inform the revision of these Guidelines taking into account, in particular, the new Directive on the EU CO<sub>2</sub> Emission Trading System, for the trading period after 31 December 2012.

1.5.12. *Aid in the form of reductions of or exemptions from environmental taxes*

- (57) Reductions of and exemptions from environmental taxes concerning certain sectors or categories of undertakings may make it feasible to adopt higher taxes for other undertakings, thus resulting in an overall improvement of cost internalisation, and to create further incentives to improve on environmental protection. Accordingly, this type of aid may be necessary to target negative externalities indirectly by facilitating the introduction or maintenance of relatively high national environmental taxation. For aid to be compatible, it must be shown that the exemptions or reductions are necessary for all the suggested categories of beneficiaries and that they are proportional in size. This is assumed to be the case if beneficiaries pay at least the Community minimum tax level set by the applicable Directive, if any. Otherwise, the necessity will depend on the extent to which the national tax impacts on production costs as well as on the possibility to pass on the tax to consumers and reduce profit margins. Proportionality will depend on the extent to which the beneficiaries can further reduce their consumption or emission, pay a part of the national tax or enter into environmental agreements to reduce pollution <sup>(23)</sup>.

<sup>(23)</sup> The Commission may re-evaluate the approach towards this kind of aid when Directive 2003/96/EC is reviewed.

## 2. SCOPE OF APPLICATION AND DEFINITIONS

### 2.1. Scope of application of the Guidelines

- (58) These Guidelines apply to State aid for environmental protection. They will be applied in accordance with other Community policies on State aid, other provisions of the Treaty establishing the European Community and the Treaty on European Union and legislation adopted pursuant to those Treaties.
- (59) These Guidelines apply to aid <sup>(24)</sup> to support environmental protection in all sectors governed by the EC Treaty. They also apply to those sectors which are subject to specific Community rules on State aid (steel processing, ship-building, motor vehicles, synthetic fibres, transport, coal agriculture and fisheries) unless such specific rules provide otherwise.
- (60) The design and manufacture of environmentally friendly products, machines or means of transport with a view to operating with fewer natural resources and action taken within plants or other production units with a view to improving safety or hygiene are not covered by these Guidelines.
- (61) For agriculture and fisheries, these Guidelines apply to aid for environmental protection in favour of undertakings active in the processing and marketing of products. For undertakings active in the processing and marketing of fisheries products, if the aid concerns expenses eligible under Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund <sup>(25)</sup>, the maximum aid rate allowed is the higher of the aid rate provided for in these Guidelines and the aid rate laid down in that Regulation. In the field of agricultural primary production, these Guidelines apply only to measures which are not already governed by the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 <sup>(26)</sup>, and in the field of fisheries and aquaculture primary production, they apply only where no specific provisions dealing with environmental aid exist.
- (62) The financing of environmental protection measures relating to air, road, railway, inland waterway and maritime transport infrastructure, including any project of common interest as identified in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network <sup>(27)</sup> is not covered by these Guidelines.
- (63) State aid for research, development and innovation in the environmental field is subject to the rules set out in the Community framework for State aid for research and development and innovation <sup>(28)</sup>. However, the market diffusion stage of eco-innovation (acquisition of an eco-innovation asset) is covered by these Guidelines.
- (64) The characteristics of aid for environmental training activities do not justify separate rules to those on aid for training activities generally, and the Commission will therefore examine such aid in accordance with 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>(29)</sup>.
- (65) Consultancy services play an important role in helping small and medium-sized enterprises to make progress in environmental protection. In particular, they can be used to conduct eco-audits or to evaluate the economic benefits of an environmentally friendly investment for the undertaking and thus give an incentive to those enterprises to undertake the investment supporting environmental protection. Aid to small and medium-sized enterprises for advisory/consultancy services in the environmental field may be granted under 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 for small and medium-sized enterprises <sup>(30)</sup>.
- (66) These Guidelines do not apply to stranded costs as defined in the Commission Communication relating to the methodology for analysing State aid linked to stranded costs <sup>(31)</sup>.
- (67) Furthermore, to the extent that the provisions relating to energy saving set out in section 3.1.5 are not applicable, these Guidelines do not apply to State aid to investments in infrastructure related to district heating, which will be assessed under Article 87(3)(c) of the EC Treaty.
- (68) In some Member States, companies may be subject to environmental taxes and, at the same time, participate in tradable permit schemes. The Commission has not gathered sufficient experience in assessing the compatibility of reductions of environmental taxes in such situations. Consequently, it is too early for the Commission to provide general guidance thereon. Instead, the assessment of such cases, to the extent that they constitute State aid within the meaning of Article 87(1) of the EC Treaty, will take place on the basis of Article 87(3)(c) of the EC Treaty.

<sup>(24)</sup> These guidelines do not discuss the concept of State aid, which derives from Article 87(1) of the EC Treaty and from the case law of the Court of Justice of the European Communities.

<sup>(25)</sup> OJ L 223, 15.8.2006, p. 1.

<sup>(26)</sup> OJ C 319, 27.12.2006, p. 1.

<sup>(27)</sup> OJ L 228, 9.9.1996, p. 1. Decision as last amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

<sup>(28)</sup> OJ C 323, 30.12.2006, p. 1.

<sup>(29)</sup> OJ L 10, 13.1.2001, p. 20. Regulation as last amended by Regulation (EC) No 1976/2006 (OJ L 368, 23.12.2006, p. 85). When the new block exemption regulation covering training aid is adopted, the new regulation will apply.

<sup>(30)</sup> OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1976/2006. When the new block exemption regulation covering aid to SMEs is adopted, the new regulation will apply.

<sup>(31)</sup> Adopted by the Commission on 26 July 2001 and communicated to Member States by letter ref. SG(2001) D/290869, 6 August 2001.



(69) Finally, some of the means to support fossil fuel power plants or other industrial installations equipped with CO<sub>2</sub> capture, transport and storage facilities, or individual elements of the Carbon Capture Storage chain, envisaged by Member States, could constitute State aid but, in view of the lack of experience, it is too early to lay down guidelines relating to the authorisation of any such aid. Given the strategic importance of this technology for the Community in terms of energy security, reduction of greenhouse gas emissions and achievement of its agreed long-term objective to limit climate change to 2 °C above pre-industrial levels and given also the Commission's stated support for the construction of industrial-scale demonstration plants up to 2015, provided that they are environmentally safe and contribute to environmental protection, the Commission will have a generally positive attitude towards State aid for such projects<sup>(32)</sup>. Projects could be assessed under Article 87(3)(c) of the EC Treaty or be eligible as important projects of common European interest under the conditions set out in Article 87(3)(b) of the Treaty and point 147 of these Guidelines.

## 2.2. Definitions

(70) For the purpose of these Guidelines the following definitions shall apply:

- 1) *environmental protection* means any action designed to remedy or prevent damage to physical surroundings or natural resources by a beneficiary's own activities, to reduce the risk of such damage or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy<sup>(33)</sup>;
- 2) *energy-saving measure* means any action which enables undertakings to reduce the amount of energy used in particular in their production cycle;
- 3) *Community standard* means
  - i) a mandatory Community standard setting the levels to be attained in environmental terms by individual undertakings<sup>(34)</sup>, or
  - ii) the obligation under Directive 2008/1/EC 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) *eco-innovation* means all forms of innovation activities resulting in or aimed at significantly improving environmental protection. Eco-innovation includes new production processes, new products or services, and new management and business methods, whose use or implementation is likely to prevent or substantially reduce the risks for the environment, pollution and other negative impacts of resources use, throughout the life cycle of related activities.

The following are not considered innovations:

- i) minor changes or improvements;
  - ii) an increase in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use;
  - iii) changes in business practices, workplace organisation or external relations that are based on organisational methods already in use in the undertaking;
  - iv) changes in management strategy;
  - v) mergers and acquisitions;
  - vi) ceasing to use a process;
  - vii) simple capital replacement or extension;
  - viii) changes resulting purely from changes in factor prices, customisation, regular seasonal and other cyclical changes;
  - ix) trading of new or significantly improved products;
- 5) *renewable energy sources* means the following renewable non-fossil energy sources: wind, solar, geothermal, wave, tidal, hydropower installations, biomass, land-fill gas, sewage treatment plant gas and biogases;
  - 6) *biomass* means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;
  - 7) *biofuels* means liquid or gaseous fuel for transport produced from biomass;
  - 8) *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>(35)</sup>;

<sup>(32)</sup> See Commission proposal for a Directive of the European Parliament and of the Council on the geological storage of carbon dioxide COM(2008) 18 final.

<sup>(33)</sup> See in particular the Sixth Environment Action Programme.

<sup>(34)</sup> Consequently, standards or targets set at Community level which are binding for Member States but not for individual undertakings are not deemed to be 'Community standards'.

<sup>(35)</sup> COM(2008) 19 final. Once the Directive has been adopted by the European Parliament and the Council, the Commission will apply the sustainability criteria in the final text.

- 9) *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;
- 10) *cogeneration* means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
- 11) *high-efficiency cogeneration* means cogeneration meeting the criteria of Annex III to Directive 2004/8/EC and satisfying the harmonised efficiency reference values established by Commission Decision 2007/74/EC of 21 December 2006 establishing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2004/8/EC of the European Parliament and of the Council <sup>(36)</sup>;
- 12) *district heating* means the supply of heat, either in the form of steam or hot water, from a central source of production through a transmission and distribution system to multiple buildings, for the purpose of heating;
- 13) *energy-efficient district heating* means district heating which, with regard to generation, either complies with the criteria for high-efficiency cogeneration or, in the case of heat-only boilers, meets the reference values for separate heat production laid down in Decision 2007/74/EC;
- 14) *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;
- 15) *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 Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity <sup>(37)</sup>;
- 16) *small and medium-sized enterprises* (hereafter 'SMEs'), *small enterprises* and *medium-sized enterprises* (or 'undertakings') mean such enterprises within the meaning of Regulation (EC) No 70/2001 or any regulation replacing it;
- 17) *large enterprises* and *large undertakings* means enterprises which are not within the definition of small and medium-sized enterprises;
- 18) *aid* means any measure fulfilling all the criteria laid down in Article 87(1) of the EC Treaty;
- 19) *aid intensity* means the gross aid amount expressed as a percentage of the eligible costs. All figures used must be taken before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount must be the grant equivalent of the aid. Aid payable in several instalments must be calculated at its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in a soft loan must be the reference rate applicable at the time of grant. The aid intensity is calculated per beneficiary;
- 20) *operating benefits* means, for the purposes of calculating eligible costs, in particular cost savings or additional ancillary production directly linked to the extra investment for environmental protection and, where applicable, benefits accruing from other support measures whether or not they constitute State aid (operating aid granted for the same eligible costs, feed-in tariffs or other support measures). By contrast, proceeds flowing from the sale by the undertaking of tradable permits issued under the European Trading System will not be deemed to constitute operating benefits;
- 21) *operating costs* means, for the purposes of calculating eligible costs, in particular additional production costs flowing from the extra investment for environmental protection;
- 22) *tangible assets* means, for the purposes of calculating eligible costs, 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;
- 23) *intangible assets* means, for the purposes of calculating eligible costs, spending on technology transfer through the acquisition of operating licences or of patented and non-patented know-how where the following conditions are complied with:

- i) the intangible asset concerned must be regarded as a depreciable asset,

<sup>(36)</sup> OJ L 32, 6.2.2007, p. 183.

<sup>(37)</sup> 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).

- ii) it must be purchased on market terms, from an undertaking in which the acquirer has no power of direct or indirect control,
- iii) it must be included in the assets of the undertaking, and remain in the establishment of the recipient of the aid and be used there for at least five years. This condition does not apply if the intangible asset is technically out of date. If it is sold during those five years, the yield from the sale must be deducted from the eligible costs and all or part of the amount of aid must, where appropriate, be reimbursed;

24) *internalisation of costs* means the principle that all costs associated with the protection of the environment should be included in the polluting undertakings' production costs;

25) *the polluter pays principle* means that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution, unless the person responsible for the pollution cannot be identified or cannot be held liable under Community or national legislation or may not be made to bear the costs of remediation. Pollution in this context is the damage caused by the polluter by directly or indirectly damaging the environment, or by creating conditions leading to such damage <sup>(38)</sup>, to physical surroundings or natural resources;

26) *polluter* means someone who directly or indirectly damages the environment or who creates conditions leading to such damage <sup>(39)</sup>;

27) *contaminated site* means a site where there is a confirmed presence, caused by man, of dangerous substances of such a level that they pose a significant risk to human health or the environment taking into account current and approved future use of the land.

### 3. COMPATIBILITY OF AID UNDER ARTICLE 87(3) OF THE EC TREATY

#### 3.1. Compatibility of aid under Article 87(3)(c) of the EC Treaty

- (71) State aid for environmental protection is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty if, on the basis of the balancing test, it leads to increased environmental protection activities without adversely affecting trading conditions to an extent

<sup>(38)</sup> Council Recommendation of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters (OJ L 194, 25.7.1975, p. 1).

<sup>(39)</sup> Recommendation of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters.

contrary to the common interest. In this context, the duration of aid schemes should be subject to reasonable time limits, without prejudice to the possibility for a Member State to re-notify a measure after the time limit set by the Commission decision has passed. Member States may support notifications of aid measures by rigorous evaluations of similar past aid measures demonstrating the incentive effect of the aid.

- (72) The measures described in points 73 to 146 may be found to be compatible under Article 87(3)(c).

#### 3.1.1. *Aid for undertakings which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards*

- (73) Investment aid enabling undertakings to go beyond Community standards for environmental protection or to increase the level of environmental protection in the absence of Community standards will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty provided that the conditions set out in points 74 to 84 and section 3.2 are fulfilled.

- (74) The aided investment must fulfil one of the following two conditions:

- a) the investment enables 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 standard, or
- b) the investment enables the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Community standards.

- (75) Aid may not be granted where improvements bring undertakings into compliance with Community standards already adopted and not yet in force <sup>(40)</sup>.

#### *Aid intensity*

- (76) The aid intensity must not exceed 50 % of the eligible investment cost as defined in points 80 to 84.

<sup>(40)</sup> However, aid for early adaptation to future standards and for the acquisition of new transport vehicles is possible under the conditions developed in sections 3.1.3 and 3.1.2.

(77) Where the investment aid is granted in a genuinely competitive bidding process on the basis of clear, transparent and non discriminatory criteria, effectively ensuring that the aid is limited to the minimum necessary for achieving the environmental gain, the aid intensity may amount to up to 100 % of the eligible investment cost as defined in points 80 to 84. Such a bidding process must be non-discriminatory and provide for the participation of a sufficient number of undertakings. In addition, the budget related to the bidding process must be a binding constraint in the sense that not all participants can receive aid. Finally, the aid must be granted on the basis of the initial bid submitted by the bidder, thus excluding subsequent negotiations.

(78) Where the investment concerns the acquisition of an eco-innovation asset or the launching of an eco-innovation project, the aid intensity may be increased by 10 percentage points, provided that following conditions are fulfilled:

- a) the eco-innovation asset or project must be new or substantially improved compared to the state of the art in its industry in the Community. The novelty could, for example, be demonstrated by the Member States on the basis of a precise description of the innovation and of market conditions for its introduction or diffusion, comparing it with state-of-the-art processes or organisational techniques generally used by other undertakings in the same industry;
- b) the expected environmental benefit must be significantly higher than the improvement resulting from the general evolution of the state of the art in comparable activities <sup>(41)</sup>;
- c) the innovative character of these assets or projects involves a clear degree of risk, in technological, market or financial terms, which is higher than the risk generally associated with comparable non-innovative assets or projects. This risk could be demonstrated by the Member State for instance in terms of: costs in relation to the undertaking's turnover, time required for the development, expected gains from the eco-innovation in comparison with the costs, probability of failure.

(79) Where the investment aid for undertakings going beyond Community standards or increasing the level of environmental protection in the absence of such Community standards is to be given to SMEs, the aid intensity may be

increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises, as set out in the table.

	Aid intensity for aid to undertakings going beyond Community standards or increasing the level of environmental protection in the absence of Community standards <i>except for eco-innovation</i>	Aid intensity for aid to undertakings going beyond Community standards or increasing the level of environmental protection in the absence of Community standards <i>in the field of eco-innovation</i>
Small enterprises	70 %	80 %
Medium-sized enterprises	60 %	70 %
Large enterprises	50 %	60 %

#### *Calculation of eligible costs — methodology*

(80) Eligible costs must be limited to the extra investment costs necessary to achieve a higher level of environmental protection than required by the Community standards and will be calculated in two steps. First, the cost of the investment directly related to environmental protection will be established by reference to the counterfactual situation, where appropriate. Second, operating benefits will be deducted and operating costs will be added.

(81) Identifying the part of the investment directly related to environmental protection:

- a) where the cost of investing in environmental protection can be easily identified in the total investment cost, this precise environmental protection-related cost constitutes the eligible costs <sup>(42)</sup>;
- b) in all other cases the extra investment costs must be established by comparing the investment with the counterfactual situation in the absence of State aid. The correct counterfactual is 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.

<sup>(41)</sup> When assessing point 78(b), if quantitative parameters can be used to compare eco-innovative activities with standard, non-innovative activities, 'significantly higher' means that the marginal improvement expected from eco-innovative activities, in terms of reduced environmental risk or pollution, or improved efficiency in energy or resources, should be at least twice as high as the marginal improvement expected from the general evolution of comparable non-innovative activities.

Where the proposed approach is not appropriate for a given case, or if no quantitative comparison is possible, the application file for State aid should contain a detailed description of the method used to assess this criterion, ensuring a standard comparable to that of the proposed method.

<sup>(42)</sup> This could be the case, for example, where an existing production process is up-graded and where the very parts which improve the environmental performance can be clearly identified.



(82) Identifying operating benefits/costs: eligible costs must, unless specified otherwise in this chapter, be calculated net of any operating benefits and operating costs related to the extra investment for environmental protection and arising during the first five years of the life of the investment concerned. This means that such operating benefits must be deducted and such operating costs may be added to the extra investment costs.

(83) The eligible investment may take the form of investment in tangible assets and/or in intangible assets.

(84) In the case of investments aiming at obtaining a level of environmental protection higher than Community standards the counterfactual should be chosen as follows:

a) **where the undertaking is adapting to national standards adopted in the absence of Community standards**, the eligible costs consist of the additional investment costs necessary to achieve the level of environmental protection required by the national standards;

b) **where the undertaking is adapting to, or goes beyond, national standards which are more stringent than the relevant Community standards or goes beyond Community standards**, the eligible costs 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 is not eligible;

c) **where no standards exist**, eligible costs 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.

3.1.2. *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*

(85) The general rules set out in points 73 to 84 apply to aid for undertakings improving on Community standards or increasing the level of environmental protection in the absence of Community standards in the transport sector. By derogation from point 75, aid for acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Community standards is permissible, when such acquisition occurs

before their entry into force and where the new Community standards, once mandatory, will not apply retroactively to already purchased vehicles.

(86) For retrofitting operations with an environmental protection objective in the transport sector the eligible costs are the total extra net costs involved according to the methodology of calculating eligible costs set out in points 80 to 84 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.

3.1.3. *Aid for early adaptation to future Community standards*

(87) Aid for complying with new Community standards which increase the level of environmental protection and are not yet in force will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty if the Community standards have been adopted, provided that the investment is implemented and finalised at least one year before the entry into force of the standard.

*Aid intensity*

(88) The maximum aid intensities are 25 % for small enterprises, 20 % for medium-sized enterprises and 15 % for large enterprises if the implementation and finalisation take place more than three years before the mandatory date of transposition or date of entry into force. The aid intensity is 20 % for small enterprises, 15 % for medium-sized enterprises and 10 % for large enterprises if the implementation and finalisation take place between one and three years before the mandatory date of transposition or date of entry into force.

	Aid intensity for aid for early adaptation to Community standards when the implementation and finalisation take place	
	More than three years before the entry into force of the standard	Between one and three years before the entry into force of the standard
Small enterprises	25 %	20 %
Medium-sized enterprises	20 %	15 %
Large Enterprises	15 %	10 %

*Eligible costs*

(89) Eligible costs must be limited to 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.

(90) Eligible costs must be calculated net of any operating benefits and operating costs related to the extra investment and arising during the first five years of the life of this investment, as set out in points 81, 82 and 83.

### 3.1.4. Aid for environmental studies

- (91) Aid to companies for studies directly linked to investments for the purposes of achieving standards under the conditions set out in section 3.1.1, of achieving energy saving under the conditions set out in section 3.1.5, of producing renewable energy under the conditions set out in section 3.1.6 will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty if the conditions set out in this chapter are fulfilled. This will also apply in cases where, following the findings of a preparatory study, the investment under investigation is not undertaken.

- (92) The aid intensity must not exceed 50 % of the costs of the study.
- (93) Where the study is undertaken on behalf of an SME, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises, as set out in the table.

	Environmental studies
Small enterprises	70 %
Medium-sized enterprises	60 %
Large enterprises	50 %

### 3.1.5. Aid for energy saving

- (94) Investment and/or operating aid enabling undertakings to achieve energy savings will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty, if the following conditions are fulfilled:

#### 3.1.5.1. Investment aid

##### Aid intensity

- (95) The aid intensity must not exceed 60 % of the eligible investment costs.
- (96) Where the investment aid for energy saving is to be given to SMEs, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises, as set out in the table.

	Aid intensity for energy saving
Small enterprises	80 %
Medium-sized enterprises	70 %
Large enterprises	60 %

- (97) Where the investment aid is granted in a genuinely competitive bidding process on the basis of clear, transparent and non discriminatory criteria, effectively ensuring that the aid is limited to the minimum necessary for achieving the maximum energy saving, the aid intensity may amount

to up to 100 % of the eligible investment cost as defined in point 98. Such a bidding process must be non-discriminatory and must provide for the participation of a sufficient number of undertakings. In addition, the budget related to the bidding process must be a binding constraint in the sense that not all participants can receive aid. Finally, the aid must be granted on the basis of the initial bid submitted by the bidder, thus excluding subsequent negotiations.

##### Eligible costs

- (98) Eligible costs must be limited to the extra investment costs necessary to achieve energy savings beyond the level required by the Community standards.

The calculation of extra costs must respect the following rules:

- the part of the investment directly related to energy saving* must be identified in accordance with the rules laid down in points 81 and 83 of these Guidelines;
- a level of energy saving higher than Community standards* must be identified in accordance with the rules laid down in point 84 of these Guidelines;
- identifying operating benefits/costs*: eligible costs must be calculated net of any operating benefits and operating 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 can 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.

#### 3.1.5.2. Operating aid

- (99) Operating aid for energy saving shall be granted only if the following conditions are met:

- the aid is limited to compensating for net extra production costs resulting from the investment, taking account of benefits resulting from energy saving<sup>(43)</sup>. In determining the amount of operating aid, any investment aid granted to the undertaking in question in respect of the new plant must be deducted from production costs;

<sup>(43)</sup> The concept of production costs must be understood as being net of any aid but inclusive of a normal level of profit.

b) the aid is subject to a limited duration of five years.

- (100) In the case of aid which is gradually reduced, the aid intensity must not exceed 100 % of the extra costs in the first year but must have fallen in a linear fashion to zero by the end of the fifth year. In the case of aid which does not decrease gradually, the aid intensity must not exceed 50 % of the extra costs.

### 3.1.6. Aid for renewable energy sources

- (101) Environmental investment and operating aid for the promotion of energy from renewable sources will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty, if the conditions in points 102 to 111 are fulfilled. State aid may be justified if there is no mandatory Community standard concerning the share of energy from renewable sources for individual undertakings. Aid for investment and/or operating aid for the production of biofuels shall be allowed only with regard to sustainable biofuels.

#### 3.1.6.1. Investment aid

##### *Aid intensity*

- (102) The aid intensity must not exceed 60 % of the eligible investment costs.
- (103) Where the investment aid for renewable energy sources is to be given to SMEs, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises, as set out in the table.

	Aid intensity for renewable energy sources
Small enterprises	80 %
Medium-sized enterprises	70 %
Large enterprises	60 %

- (104) Where the investment aid is granted in a genuinely competitive bidding process on the basis of clear, transparent and non discriminatory criteria, effectively ensuring that the aid is limited to the minimum necessary for delivering maximum renewable energy, the aid intensity may amount to up to 100 % of the eligible investment cost as defined in points 105 and 106. Such a bidding process must be non-discriminatory and must provide for the participation of a sufficient number of undertakings. In addition, the budget related to the bidding process must be a binding constraint in the sense that not all participants can receive aid. Finally, the aid must be granted on the basis of the initial bid submitted by the bidder, thus excluding subsequent negotiations.

##### *Eligible costs*

- (105) For renewable energy, eligible investment costs must be limited to the extra investment 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.

- (106) Eligible costs must be calculated net of any operating benefits and operating costs related to the extra investment for renewable sources of energy and arising during the first five years of the life of this investment, as set out in points 81, 82 and 83.

#### 3.1.6.2. Operating aid

- (107) Operating aid for the production of renewable energy may be justified in order to cover the difference between the cost of producing energy from renewable energy sources and the market price of the form of energy concerned. That applies to the production of renewable energy for the purposes of subsequently selling it on the market as well as for the purposes of the undertaking's own consumption.

- (108) Member States may grant aid for renewable energy sources as follows:

#### (109) Option 1

- a) Member States may grant operating aid to compensate for the difference between the cost of producing energy from renewable sources, including depreciation of extra investments for environmental protection, and the market price of the form of energy concerned. Operating aid may then be granted until the plant has been fully depreciated according to normal accounting rules. Any further energy produced by the plant will not qualify for any assistance. However, the aid may also cover a normal return on capital.
- b) Where aid is granted in accordance with point (a) any investment aid granted to the undertaking in question in respect of the new plant must be deducted from production costs when determining the amount of operating aid. When notifying aid schemes to the Commission, Member States must state the precise support mechanisms and in particular the methods of calculating the amount of aid.
- c) Unlike most other renewable sources of energy, biomass requires relatively low investment costs, but higher operating costs. The Commission will, therefore, be amenable to operating aid for the production of renewable energy from biomass exceeding the amount of investment where Member States can show that the aggregate costs borne by the undertakings after plant depreciation are still higher than the market prices of the energy.



(110) **Option 2**

- a) Member States may also grant support for renewable energy sources by using market mechanisms such as green certificates or tenders. These market mechanisms allow all renewable energy producers to benefit indirectly from guaranteed demand for their energy, at a price above the market price for conventional power. The price of these green certificates is not fixed in advance but depends on supply and demand.
- b) Where the market mechanisms constitute State aid, they may be authorised by the Commission if Member States can show that support is essential to ensure the viability of the renewable energy sources concerned, does not in the aggregate result in overcompensation and does not dissuade renewable energy producers from becoming more competitive. The Commission will authorise such aid systems for a period of ten years.

(111) **Option 3**

Furthermore, Member States may grant operating aid in accordance with the provisions set out in point 100.

3.1.7. *Aid for cogeneration*

- (112) Environmental investment and operating aid for cogeneration will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty, provided that the cogeneration unit satisfies the definition of high-efficiency cogeneration set out in point 70(11), and provided that for investment aid:

- (a) a new cogeneration unit will overall make primary energy savings compared to separate production as defined by Directive 2004/8/EC and Decision 2007/74/EC;
- (b) improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit will result in primary energy savings compared to the original situation.

- (113) For operating aid, an existing cogeneration must satisfy both the definition of high-efficiency cogeneration set out in point 70(11) and the requirement that there are overall primary energy savings compared to separate production as defined by Directive 2004/8/EC and Decision 2007/74/EC.

3.1.7.1. *Investment aid**Aid intensity*

- (114) The aid intensity must not exceed 60 % of the eligible investment costs.
- (115) Where the investment aid for cogeneration is to be given to SMEs, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises, as set out in the table.

	Aid intensity for high-efficiency cogeneration
Small enterprises	80 %
Medium-sized enterprises	70 %
Large enterprises	60 %

- (116) Where the investment aid is granted in a genuinely competitive bidding process on the basis of clear, transparent and non discriminatory criteria, effectively ensuring that the aid is limited to the minimum necessary for achieving the maximum energy saving, the aid intensity may amount to up to 100 % of the eligible investment cost as defined in points 117 and 118. Such a bidding process must be non-discriminatory and must provide for the participation of a sufficient number of companies. In addition, the budget related to the bidding process must be a binding constraint in a sense that not all participants can receive aid. Finally, the aid must be granted on the basis of the initial bid submitted by the bidder, thus excluding subsequent negotiations.

*Eligible costs*

- (117) Eligible costs must be limited to the extra investment costs necessary to realise a high-efficiency cogeneration plant as compared to the reference investment.
- (118) Eligible costs must be calculated net of any operating benefits and operating costs related to the extra investment and arising during the first five years of the life of this investment, as set out in points 81 to 83.

3.1.7.2. *Operating aid*

- (119) Operating aid for high-efficiency cogeneration may be granted in accordance with the rules for operating aid for renewable energy laid down in section 3.1.6.2:
- a) to undertakings distributing electric power and heat to the public where the costs of producing such electric power or heat exceed its market price. The decision as to whether the aid is necessary will take account of the costs and revenue resulting from the production and sale of the electric power or heat;
- b) for the industrial use of the combined production of electric power and heat where it can be shown that the production cost of one unit of energy using that technique exceeds the market price of one unit of conventional energy. The production cost may include the plant's normal return on capital, but any gains by the undertaking in terms of heat production must be deducted from production costs.

3.1.8. *Aid for energy-efficient district heating*

- (120) Environmental investment aid in energy-efficient district heating installations <sup>(44)</sup> will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty, provided that it leads to primary energy savings and that the beneficiary district heating installation satisfies the definition of energy-efficient district heating set out in point 70(13) and that:
- the combined operation of the generation of heat (as well as electricity in the case of cogeneration) and the distribution of heat will result in primary energy savings; or
  - the investment is meant for the use and distribution of waste heat for district heating purposes.

*Aid intensity*

- (121) The aid intensity for district heating installations must not exceed 50 % of the eligible investment costs. If the aid is intended solely for the generation part of a district heating installation, energy-efficient district heating installations using renewable sources of energy or cogeneration will be covered by the rules set out in sections 3.1.6 and 3.1.7 respectively.
- (122) Where the investment aid for energy-efficient district heating is to be given to SMEs, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises, as set out in the table.

	Aid intensity for energy-efficient district heating using conventional sources of energy
Small enterprises	70 %
Medium-sized enterprises	60 %
Large enterprises	50 %

- (123) Where the investment aid is granted in a genuinely competitive bidding process on the basis of clear, transparent and non discriminatory criteria, effectively ensuring that the aid is limited to the minimum necessary for achieving the maximum energy saving, the aid intensity may amount to up to 100 % of the eligible investment cost as defined in points 124 and 125. Such a bidding process must be non-discriminatory and must provide for the participation of a sufficient number of undertakings. In addition, the budget related to the bidding process must be a binding constraint in the sense that not all participants can receive aid. Finally, the aid must be granted on the basis of the initial bid submitted by the bidder, thus excluding subsequent negotiations.

<sup>(44)</sup> To the exclusion of district heating infrastructure the financing of which does not fall within the scope of the present Guidelines but which will be assessed only under Article 87(3)(c).

*Eligible costs*

- (124) Eligible costs must be limited to the extra investment costs necessary to realise an investment leading to energy-efficient district heating as compared to the reference investment.
- (125) Eligible costs must be calculated net of any operating benefits and operating costs related to the extra investment and arising during the first five years of the life of this investment, as set out in points 81 to 83.

3.1.9. *Aid for waste management*

- (126) Environmental investment aid for the management of waste of other undertakings, including activities of re-utilisation, recycling and recovery, will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty, provided that such management is in accordance with the hierarchical classification of the principles of waste management <sup>(45)</sup> and is in accordance with the conditions set out in point 127.
- (127) Investment aid for waste management shall be granted only if each of the following conditions are met:
- the investment is aimed at reducing pollution generated by other undertakings ('polluters') and does not extend to pollution generated by the beneficiary of the aid;
  - the aid does not indirectly relieve the polluters from a burden that should be borne by them under Community law, or from a burden that should be considered a normal company cost for the polluters;
  - the investment goes beyond the 'state of the art' <sup>(46)</sup> or uses conventional technologies in an innovative manner;
  - the materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner;

<sup>(45)</sup> Classification given in the Communication from the Commission on the review of the Community Strategy for Waste Management (COM(96) 399 final, 30.7.1996). In that communication, the Commission stresses that waste management is a priority objective for the Community in order to reduce the risks to the environment. The concept of waste treatment must be looked at from three angles: re-utilisation, recycling and recovery. Waste whose production is unavoidable must be treated and eliminated without danger. In its Communication on a Thematic Strategy for the prevention and recycling of waste (COM(2005) 666), the Commission reiterated its commitment to these principles and allows for concrete measures towards promoting prevention, such as eco-design of processes and products or incentives to SMEs to put in place waste prevention measures, and recycling.

<sup>(46)</sup> 'State of the art' shall mean a process in which the use of a waste product to manufacture an end product is economically profitable normal practice. Where appropriate, the concept of 'state of the art' must be interpreted from a Community technological and common market perspective.

- e) the investment does not merely increase demand for the materials to be recycled without increasing collection of those materials.

#### *Aid intensity*

- (128) The aid intensity must not exceed 50 % of the eligible investment costs.
- (129) Where the investment aid for waste management is to be given to SMEs, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises, as set out in the table.

	Aid intensity for waste management
Small enterprises	70 %
Medium-sized enterprises	60 %
Large enterprises	50 %

#### *Eligible costs*

- (130) Eligible costs must be limited to the extra investment costs necessary to realise an investment leading to waste management and borne by the beneficiary compared to the reference investment, that is to say, a conventional production not involving waste management with the same capacity. The cost of such reference investment must be deducted from the eligible cost.
- (131) Eligible costs must be calculated net of any operating benefits and operating costs related to the extra investment for waste management and arising during the first five years of the life of this investment <sup>(47)</sup>, as set out in points 81 to 83.

#### *3.1.10. Aid for the remediation of contaminated sites*

- (132) Investment aid to undertakings repairing environmental damage by remediating contaminated sites will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty <sup>(48)</sup> provided that it leads to an improvement of environmental protection. The environmental damage concerned covers damage to the quality of the soil or of surface water or groundwater.

Where the polluter is clearly identified, that person must finance the remediation in accordance with the 'polluter pays' principle, and no State aid may be granted. In this

context, 'polluter' refers to the person liable under the law applicable in each Member State, without prejudice to the adoption of Community rules in the matter.

Where the polluter is not identified or cannot be made to bear the costs, the person responsible for the work may receive aid.

#### *Aid intensity*

- (133) Aid for the remediation of contaminated sites may amount to up to 100 % of the eligible costs.

The total amount of aid may under no circumstances exceed the actual expenditure incurred by the undertaking.

#### *Eligible costs*

- (134) The eligible costs are equal to the cost of the remediation work less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, ranks as eligible investment in the case of the remediation of contaminated sites

#### *3.1.11. Aid for the relocation of undertakings*

- (135) Investment aid for relocation of undertakings to new sites for environmental protection reasons will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty provided that the following conditions are met:

- the change of location must be dictated by environmental protection or prevention grounds and must have been ordered by the administrative or judicial decision of a competent public authority or agreed between the undertaking and the competent public authority;
- the undertaking must comply with the strictest environmental standards applicable in the new region where it is located.

- (136) The beneficiary can be:

- an undertaking established in an urban area or in a special area of conservation designated under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora <sup>(49)</sup>, which lawfully carries out (that is to say, it complies with all legal requirements including all environmental standards applicable to it) an activity that creates major pollution and must, on account of that location, move from its place of establishment to a more suitable area; or

<sup>(47)</sup> If the investment is concerned solely with environmental protection without any other economic benefits, no additional reduction will be applied in determining the eligible costs.

<sup>(48)</sup> Remediation work carried out by public authorities on their own land is not as such subject to Article 87 of the Treaty. Problems of State aid may, however, arise if the land is sold after remediation at a price below its market value. In this respect, the Commission Communication on State aid elements in sales of land and buildings by public authorities (OJ C 209, 10.7.1997, p. 3) is still applicable.

<sup>(49)</sup> OJ L 206, 22.7.1992, p. 7. Directive as last amended by Directive 2006/105/EC (OJ L 363, 20.12.2006, p. 368).

- b) an establishment or installation falling within the scope of the Seveso II Directive.

#### *Aid intensity*

- (137) The aid intensity must not exceed 50 % of the eligible investment costs. The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises, as set out in the table.

	Aid intensity for relocation
Small enterprises	70 %
Medium-sized enterprises	60 %
Large enterprises	50 %

#### *Eligible costs*

- (138) In order to determine the amount of eligible costs in the case of relocation aid, the Commission will take into account, in particular:

- a) the following benefits:
- i) the yield from the sale or renting of the plant or land abandoned;
  - ii) the compensation paid in the event of expropriation;
  - iii) any other gains connected with the transfer of the plant, notably gains resulting from an improvement, on the occasion of the transfer, in the technology used and accounting gains associated with better use of the plant;
  - iv) investments relating to any capacity increase;
- b) the following costs:
- i) the costs connected with the purchase of land or the construction or purchase of new plant of the same capacity as the plant abandoned;
  - ii) any penalties imposed on the undertaking for having terminated the contract for the renting of land or buildings, if the administrative or judicial decision ordering the change of location results in the early termination of this contract.

#### *3.1.12. Aid involved in tradable permit schemes*

- (139) Tradable permit schemes may involve State aid in various ways, for example when permits and allowances are granted for less than their market value and such granting is imputable to Member States.

- (140) State aid involved in tradable permit schemes may be declared compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty, provided that the conditions in points (a) to (d) of this point and point 141 are fulfilled. By derogation point 141 does not apply for the trading period ending on 31 December 2012 for tradable permit schemes in accordance with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC <sup>(50)</sup> (hereafter 'EU ETS') <sup>(51)</sup>:

- a) the tradable permit schemes must be set up in such a way as to achieve environmental objectives beyond those intended to be achieved on the basis of Community standards that are mandatory for the undertakings concerned;
- b) the allocation must be carried out in a transparent way, based on objective criteria and on data sources of the highest quality available, and the total amount of tradable permits or allowances granted to each undertaking for a price below their market value must not be higher than its expected needs as estimated for the situation in absence of the trading scheme;
- c) the allocation methodology must not favour certain undertakings or certain sectors, unless this is justified by the environmental logic of the scheme itself or where such rules are necessary for consistency with other environmental policies;
- d) in particular, new entrants shall not in principle receive permits or allowances on more favourable conditions than existing undertakings operating on the same markets. Granting higher allocations to existing installations compared to new entrants should not result in creating undue barriers to entry.

- (141) The Commission will assess the necessity and the proportionality of State aid involved in a tradable permit scheme according to the following criteria:

- a) the choice of beneficiaries must be based on objective and transparent criteria, and the aid must be granted in principle in the same way for all competitors in the same sector/relevant market if they are in a similar factual situation;
- b) full auctioning must lead to a substantial increase in production costs for each sector or category of individual beneficiaries;

<sup>(50)</sup> OJ L 275, 25.10.2003, p. 32. Directive as last amended by Directive 2004/101/EC (OJ L 338, 13.11.2004, p. 18).

<sup>(51)</sup> The Commission has assessed the State aid involved in the National Allocation Plans under the EU ETS for the trading period ending on 31 December 2012 on the basis of the criteria set out in point 140.



- c) the substantial increase in production costs cannot be passed on to customers without leading to important sales reductions. This analysis may be conducted on the basis of estimations of *inter alia* the product price elasticity of the sector concerned. These estimations will be made in the relevant geographic market. To evaluate whether the cost increase from the tradable permit scheme cannot be passed on to customers, estimates of lost sales as well as their impact on the profitability of the company may be used;
- d) it is not possible for individual undertakings in the sector to reduce emission levels in order to make the price of the certificates bearable. Irreducible consumption may be demonstrated by providing the emission levels derived from best performing technique in the European Economic Area (hereafter 'EEA') and using it as a benchmark. Any undertaking reaching the best performing technique can benefit at most from an allowance corresponding to the increase in production cost from the tradable permit scheme using the best performing technique, and which cannot be passed on to customers. Any undertaking having a worse environmental performance shall benefit from a lower allowance, proportionate to its environmental performance.

### 3.2. Incentive effect and necessity of aid

- (142) State aid must have an incentive effect. State aid for environmental protection must result in the aid recipient changing its behaviour so that the level of environmental protection is increased.
- (143) The Commission considers that aid does not present an incentive effect for the beneficiary in all cases in which the project has already started prior to the aid application by the beneficiary to the national authorities.
- (144) If the aided project has not started before the aid application, the requirement of incentive effect is presumed to be automatically met for all categories of aid granted to an SME, except in cases where the aid must be assessed in accordance with the detailed assessment in chapter 5.
- (145) For all other aided projects, the Commission will require that the incentive effect is demonstrated by the notifying Member State.
- (146) To demonstrate the incentive effect, the Member State concerned must prove that without the aid, that is to say, in the counterfactual situation, the more environmentally friendly alternative would not have been retained. For this purpose, the Member State concerned must provide information demonstrating:
  - a) that the counterfactual situation is credible;

- b) that the eligible costs have been calculated in accordance with the methodology set out in points 81, 82 and 83, and
- c) that the investment would not be sufficiently profitable without aid, due account being taken of the benefits associated with the investment without aid, including the value of tradable permits which may become available to the undertaking concerned following the environmentally friendly investment.

### 3.3. Compatibility of aid under Article 87(3)(b) of the EC Treaty

- (147) Aid to promote the execution of important projects of common European interest which are an environmental priority may be considered compatible with the common market according to Article 87(3)(b) of the EC Treaty provided that the following conditions are fulfilled:
  - a) the aid proposal concerns a project which is specific and clearly defined in respect of the terms of its implementation including its participants, its objectives and effects and the means to achieve the objectives. The Commission may also consider a group of projects as together constituting a project;
  - b) the project must be in the common European interest: the project must contribute in a concrete, exemplary and identifiable manner to the Community interest in the field of environmental protection, such as by being of great importance for the environmental strategy of the European Union. The advantage achieved by the objective of the project must not be limited to the Member State or the Member States implementing it, but must extend to the Community as a whole. The project must present a substantive contribution to the Community objectives. The fact that the project is carried out by undertakings in different Member States is not sufficient;
  - c) the aid is necessary and presents an incentive for the execution of the project, which must involve a high level of risk;
  - d) the project is of great importance with regard to its volume: it must be substantial in size and produce substantial environmental effects.
- (148) In order to allow the Commission to properly assess such projects, the common European interest must be demonstrated in practical terms: for example, it must be demonstrated that the project enables significant progress to be made towards achieving specific environmental objectives of the Community.
- (149) The Commission will consider notified projects more favourably if they include a significant own contribution of the beneficiary to the project. It will equally consider more favourably notified projects involving undertakings from a significant number of Member States.

(150) When the aid is considered to be compatible with the common market in accordance with Article 87(3)(b) of the EC Treaty, the Commission may authorise aid at higher rates than otherwise laid down in these Guidelines.

#### 4. AID IN THE FORM OF REDUCTIONS OF OR EXEMPTIONS FROM ENVIRONMENTAL TAXES

(151) Aid in the form of reductions of or exemptions from environmental taxes will be considered compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty provided that it contributes at least indirectly to an improvement of the level of environmental protection and that the tax reductions and exemptions do not undermine the general objective pursued.

(152) In order to be approved under Article 87 of the EC Treaty, reductions of or exemptions from harmonised taxes, in particular those harmonised through Directive 2003/96/EC, must be compatible with the relevant applicable Community legislation and comply with the limits and conditions set out therein.

(153) Aid in the form of tax reductions and exemptions from harmonised environmental taxes is considered to be compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty for a period of 10 years provided the beneficiaries pay at least the Community minimum tax level set by the relevant applicable Directive <sup>(52)</sup>.

(154) Aid in the form of reductions of or exemptions from environmental taxes other than those referred to in point 153 <sup>(53)</sup> is considered to be compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty for a period of 10 years provided that the conditions set out in points 155 to 159 are fulfilled.

(155) When analysing tax schemes which include elements of State aid in the form of reductions of or exemptions from such tax, the Commission will analyse in particular the necessity and proportionality of the aid and its effects at the level of the economic sectors concerned.

(156) For this purpose the Commission will rely on information provided by Member States. Information should include, on the one hand, the respective sector(s) or categories of beneficiaries covered by the exemptions/reductions and, on the other hand, the situation of the main beneficiaries in each sector concerned and how the taxation may contribute to environmental protection. The exempted sectors should be properly described and a list of the largest beneficiaries for each sector should be provided (considering notably turnover, market shares and size of the tax base). For each sector, information should be provided as to the best performing techniques within the EEA regarding the reduction of the environmental harm targeted by the tax.

<sup>(52)</sup> See point 70(15).

<sup>(53)</sup> For example, reductions of or exemptions from taxes which are not covered by Community legislation or which are below the Community minimum tax level.

(157) In addition, aid in the form of reductions of or exemptions from environmental taxes must be necessary and proportional.

(158) The Commission will consider the aid to be necessary if the following cumulative conditions are met:

- a) the choice of beneficiaries must be based on objective and transparent criteria, and the aid must be granted in principle in the same way for all competitors in the same sector/relevant market <sup>(54)</sup> if they are in a similar factual situation;
- b) the environmental tax without reduction must lead to a substantial increase in production costs for each sector or category of individual beneficiaries <sup>(55)</sup>;
- c) the substantial increase in production costs cannot be passed on to customers without leading to important sales reductions. In this respect, Member States may provide estimations of *inter alia* the product price elasticity of the sector concerned in the relevant geographic market <sup>(56)</sup> as well as estimates of lost sales and/or reduced profits for the companies in the sector/category concerned.

(159) The Commission will consider the aid to be proportional if one of the following conditions is met:

- a) the scheme lays down criteria ensuring that each individual beneficiary pays a proportion of the national tax level which is broadly equivalent to the environmental performance of each individual beneficiary compared to the performance related to the best performing technique within the EEA. Under the aid scheme any undertaking reaching the best performing technique can benefit, at most, from a reduction corresponding to the increase in production costs from the tax, using the best performing technique, and which cannot be passed on to customers. Any undertaking having a worse environmental performance shall benefit from a lower reduction, proportionate to its environmental performance;
- b) aid beneficiaries pay at least 20 % of the national tax, unless a lower rate can be justified in view of a limited distortion of competition;

<sup>(54)</sup> As defined in the Commission notice on the definition of the relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5).

<sup>(55)</sup> With regard to energy products and electricity, 'energy-intensive business' as defined in Article 17(1)(a) of Directive 2003/96/EC shall be regarded as fulfilling this criterion as long as that provision remains in force.

<sup>(56)</sup> As defined in the Commission notice on the definition of the relevant market for the purposes of Community competition law.

- c) the reductions or exemptions are conditional on the conclusion of agreements between the Member State and the recipient undertakings or associations of undertakings whereby the undertakings or associations of undertakings commit themselves to achieve environmental protection objectives which have the same effect as if point (a) or (b) or the Community minimum tax level were applied. Such agreements or commitments may relate, among other things, to a reduction in energy consumption, a reduction in emissions or any other environmental measure and must satisfy the following conditions:
- i) the substance of the agreements must be negotiated by each Member State and must specify in particular the targets and fix a time schedule for reaching the targets;
  - ii) Member States must ensure independent <sup>(57)</sup> and timely monitoring of the commitments concluded in these agreements;
  - iii) these agreements must be revised periodically in the light of technological and other developments and stipulate effective penalty arrangements applicable if the commitments are not met.
- ii) *operating aid for energy saving*: where the aid amount exceeds EUR 5 million per undertaking for five years;
- iii) *operating aid for the production of renewable electricity and/or combined production of renewable heat*: when the aid is granted to renewable electricity installations in sites where the resulting renewable electricity generation capacity exceeds 125 MW;
- iv) *operating aid for the production of biofuel*: when the aid is granted to a biofuel production installation in sites where the resulting production exceeds 150 000 t per year;
- v) *operating aid for cogeneration*: where aid is granted to cogeneration installation with the resulting cogeneration electricity capacity exceeding 200 MW. Aid for the production of heat from cogeneration will be assessed in the context of notification based on electricity capacity.

## 5. COMPATIBILITY OF AID SUBJECT TO A DETAILED ASSESSMENT

### 5.1. Measures subject to a detailed assessment

(160) In order to enable the Commission to carry out a more detailed assessment of any substantial amounts of aid granted under authorised schemes and to decide whether such aid is compatible with the common market, Member States must notify it in advance of any individual case of investment or operating aid granted under an authorised scheme or individually where the aid satisfies the following conditions <sup>(58)</sup>:

- a) **for measures covered by a BER**: all cases notified to the Commission pursuant to a *duty to notify aid individually* as prescribed in the BER;
- b) **for individual measures covered by these Guidelines** <sup>(59)</sup>: all the following cases:
  - i) *investment aid*: where the aid amount exceeds EUR 7.5 million for one undertaking (even if part of an approved aid scheme);

<sup>(57)</sup> It is irrelevant for these purposes whether the monitoring is done by a public or a private body.

<sup>(58)</sup> This also applies irrespective of whether the individual beneficiary benefits at the same time from a tax exemption or reduction assessed under chapter 4.

<sup>(59)</sup> Tax exemptions and reductions from environmental taxes falling under chapter 4 of these guidelines will not be subject to a detailed assessment. However, aid granted in accordance with chapter 3 in the form of fiscal aid will be subject to a detailed assessment if the thresholds in this point are exceeded.

(161) Member States may grant operating aid to new plants producing renewable energy on the basis of a calculation of the external costs avoided. Where this method is used to determine the aid amount, the measure must be notified and be subject to detailed assessment, regardless of the thresholds in point 160(b)(iii). The external costs avoided represent a monetary quantification of the additional socio-environmental damage that society would experience if the same quantity of energy were produced by a production plant operating with conventional forms of energy. They will be calculated on the basis of the difference between, on the one hand, the external costs produced and not paid by renewable energy producers and, on the other hand, the external costs produced and not paid by non-renewable energy producers. To carry out these calculations, the Member State will have to use a method of calculation that is internationally recognised and has been validated by the Commission. It will have to provide among other things a reasoned and quantified comparative cost analysis, together with an assessment of competing energy producers' external costs, so as to demonstrate that the aid does genuinely compensate for external costs avoided.

(162) In any event, the amount of aid granted to producers that exceeds the amount of aid resulting from option 1 set out in point 109 for operating aid for renewable sources of energy must be reinvested by the firms in renewable sources of energy in accordance with section 3.1.6.1.



(163) Provided that Member States ensure full cooperation and supply adequate information in a timely manner, the Commission will use its best endeavours to conduct the investigation in a timely manner. Member States are invited to provide all the elements that they consider useful for the assessment of the case. The Member States may, in particular, rely on evaluations of past State aid schemes or measures, impact assessments made by the granting authority and other studies related to environmental protection.

(164) The detailed assessment is a proportionate assessment, depending on the distortion potential of the case. Accordingly, the fact that a detailed assessment is carried out does not necessarily mean that a formal investigation procedure needs to be opened, although this may be the case for certain measures.

## 5.2. Criteria for economic assessment of individual cases

(165) The detailed assessment will be conducted on the basis of the positive and negative elements specified in sections 5.2.1 and 5.2.2 which will be used in addition to the criteria set out in Chapter 3. The aid intensities set out therein must in any event not be exceeded. Furthermore, the detailed assessment will be conducted on the basis of the specific positive and negative elements, when they are relevant for the type or form of aid.

### 5.2.1. Positive effects of the aid

(166) The fact that the aid induces undertakings to pursue environmental protection which they would not otherwise have pursued constitutes the main positive element to be taken into consideration when assessing the compatibility of the aid.

#### 5.2.1.1. Existence of a market failure

(167) The Commission will in general not question whether there are negative externalities related to certain types of conduct or the use of certain goods which have harmful effects on the environment. However, the Commission will verify whether the State aid is targeted at this market failure by having a substantial impact on environmental protection. In this context, the Commission will pay attention in particular to the expected contribution of the measure to environmental protection (in quantifiable terms) and the level of environmental protection targeted, as compared to existing Community standards and/or standards in other Member States.

(168) The Commission will also examine the considerations that may justify aid for adapting to national standards going beyond Community standards. The Commission will take into account in particular the nature, type and location of the main competitors of the aid beneficiary, the cost of implementation of the national standards (or tradable permit schemes) for the aid beneficiary had no aid been given, and the comparative costs of implementation of those standards for the main competitors of the aid beneficiary.

### 5.2.1.2. Appropriate instrument

(169) Account will be taken of whether State aid is an appropriate instrument to obtain the objective of environmental protection, given that other less distortive instruments may achieve the same results and since State aid may breach the PPP.

(170) In its compatibility analysis, the Commission will in particular take account of any impact assessment of the proposed measure which the Member State may have made, including considerations of using policy options other than State aid, and take account of evidence that the PPP will be respected.

### 5.2.1.3. Incentive effect and necessity of aid

(171) State aid must always have an incentive effect, when it is provided for environmental purposes, that is to say it must result in the recipient changing its behaviour to increase the level of environmental protection. Aid cannot be considered necessary solely because the level of environmental protection is increased. The advantages of new investments or production methods are normally not limited to their environmental effects.

(172) In addition to the calculation of extra costs outlined in Chapter 3, the Commission will take into account the following elements in its analysis:

a) **counterfactual situation:** evidence must be provided about the specific action(s) that would not have been taken by the undertaking without the aid, for instance, a new investment, a more environmentally friendly production process and/or a new product that is more environmentally friendly;

b) **expected environmental effect linked to the change in behaviour:** at least one of the following elements must be present:

i) *increase in the level of environmental protection:* reduction of a specific type of pollution that would not be reduced without the aid;

ii) *increase in speed of the implementation of future standards:* reduction in pollution starting at an earlier point in time owing to the aid;

c) **production advantages:** if there are other advantages linked to the investment in terms of increased capacity, productivity, cost reductions or quality, the incentive effect is normally lower. This is in particular the case if the benefits over the life time of the investment are substantial, possibly to the extent that the extra environmental costs can be recouped even without aid;

- d) **market conditions:** in some markets, notably due to product image and the labelling of production methods, there may be competitive pressure to maintain a high level of environmental protection. If there is evidence that the level of environmental protection resulting from the aid goes beyond the normal behaviour in the market, it is more likely that the aid has an incentive effect;
- e) **possible future mandatory standards:** if there are negotiations at Community level to introduce new or higher mandatory standards which the measure concerned would seek to target, the incentive effect of aid is normally lower;
- f) **level of risk:** if there is a particular risk that the investment will be less productive than expected, the incentive effect of aid will normally be higher;
- g) **level of profitability:** if the level of profitability of the action pursued is negative over the time horizon by which the investment is fully depreciated or the operating aid is intended to be in force, account being taken of all the advantages and risks identified in this point, aid will normally have an incentive effect.

(173) Where the undertaking is adapting to a national standard going beyond Community standards or adopted in the absence of Community standards, the Commission will verify that the aid beneficiary would have been affected substantially in terms of increased costs and would not have been able to bear the costs associated with the immediate implementation of national standards.

#### 5.2.1.4. Proportionality of the aid

(174) The Member State should provide evidence that the aid is necessary, that the amount is kept to the minimum and that the selection process is proportional. In its analysis the Commission will consider the following elements:

- a) **accurate calculation of the eligible costs:** evidence that the eligible costs are indeed limited to the extra costs necessary to achieve the level of environmental protection;
- b) **selection process:** the selection process should be conducted in a non-discriminatory, transparent and open manner, without unnecessarily excluding companies that may compete with projects to address the same environmental objective. The selection process should lead to the selection of beneficiaries that can address the environmental objective using the least amount of aid or in the most cost-effective way;
- c) **aid limited to the minimum:** evidence that the aid amount does not exceed the expected lack of profitability including a normal return over the time horizon for which the investment is fully depreciated.

#### 5.2.2. Analysis of the distortion of competition and trade

(175) In assessing the negative effects of the aid measure, the Commission will focus its analysis of the distortions of competition on the foreseeable impact the environmental aid has on competition between undertakings in the product markets affected <sup>(60)</sup>.

(176) If the aid is proportional, notably if the calculation of the extra investment or operating costs has taken into account all advantages to the undertaking, the negative impact of the aid is likely to be limited. However, as mentioned in section 1.3.6 even where aid is necessary and proportional for the specific undertaking to increase the environmental protection, the aid may result in a change in behaviour of the beneficiary which distorts competition. A profit-seeking undertaking will normally only increase the level of environmental protection beyond mandatory requirements if it considers that this will result at least marginally in some sort of advantage for the undertaking.

(177) As a starting point, the Commission will assess the likelihood that the beneficiary will be able to increase or maintain sales as a result of the aid. The Commission will in particular consider the following elements:

- a) **reduction in or compensation of production unit costs:** if the new equipment <sup>(61)</sup> will lead to reduced costs per unit produced compared to the situation without the aid or if the aid compensates a part of the operating cost, it is likely that the beneficiary will increase its sales. The more price elastic the product, the greater the competition distortion;
- b) **more environmentally friendly production process:** if the beneficiary obtains a more environmentally friendly production process and if it is common through labelling or image to differentiate the product towards consumers on the basis of the level of environmental protection, it is likely that the beneficiary can increase its sales. The greater the consumer preference for environmental product characteristics, the greater the competition distortion;

<sup>(60)</sup> A number of markets may be affected by the aid, because the impact of the aid may not be restricted to the market corresponding to the activity that is supported but may extend to other markets, which are connected to that market either because they are upstream, downstream or complementary, or because the beneficiary is already present on them or may be so present in the near future.

<sup>(61)</sup> The calculation of extra costs may not fully capture all operating benefits, since the benefits are not deducted over the life time of the investment. In addition, certain types of benefits, for example linked to increased productivity and increased production with unaltered capacity, may be difficult to take into account.

- c) **new product:** if the beneficiary obtains a new or higher quality product it is likely that it will increase its sales and possibly gain a 'first mover' advantage. The greater the consumer preference for environmental product characteristics, the greater the competition distortion.

#### 5.2.2.1. Dynamic incentives/crowding out

- (178) State aid for environmental protection may be used strategically to promote innovative environmentally friendly technologies with the aim of giving domestic producers a 'first mover' advantage. Consequently, the aid may distort the dynamic incentives and crowd out investments in the specific technology in other Member States and lead to a concentration of this technology in one Member State. This effect is higher the more competitors reduce their innovative effort as compared to the no-aid counterfactual.

- (179) In its analysis, the Commission will consider the following elements:

- a) **amount of aid:** the higher the amount of aid, the more likely it is that part of the aid can be used to distort competition. This is in particular the case if the aid amount is high compared to the size of the general activity of the beneficiary;
- b) **frequency of aid:** if an undertaking receives aid repeatedly, it is more likely that this will distort dynamic incentives;
- c) **duration of the aid:** if operating aid is granted for a long period, this is more likely to distort competition;
- d) **gradual decrease of aid:** if operating aid is reduced over time, the undertaking will have an incentive to improve efficiency and the distortion of dynamic incentives will therefore be reduced over time;
- e) **readiness to meet future standards:** if the aid will enable the undertaking concerned to meet new Community standards expected to be adopted in the foreseeable future, the aided investment will reduce the costs of investments that the undertaking would have had to make in any event;
- f) **level of the regulatory standards in relation to the environmental objectives:** the lower the level of mandatory requirements the higher the risk that aid to go beyond mandatory requirements is not necessary and will crowd out investments or be used in a way that distorts dynamic incentives;

- g) **risk of cross-subsidisation:** where the undertaking produces a wide range of products or produces the same product using a conventional and an environmentally friendly process, the risk of cross-subsidisation is higher;

- h) **technological neutrality:** where a measure focuses on one technology only, the risk of distorting dynamic incentives is higher;

- i) **competing innovation:** where foreign competitors develop competing technologies (innovation competition), the more likely the aid will distort dynamic incentives.

#### 5.2.2.2. Maintaining inefficient firms afloat

- (180) State aid for environmental protection may be justified as a transitional mechanism to move towards a full allocation of environmentally negative externalities. It should not be used to grant unnecessary support to undertakings which are unable to adapt to more environmentally friendly standards and technologies because of their low levels of efficiency. In its analysis, the Commission will consider the following elements:

- a) **type of beneficiaries:** where the beneficiary has a relatively low level of productivity and is in poor financial health, it is more likely that the aid will contribute to artificially maintaining the undertaking in the market;
- b) **overcapacity in the sector targeted by the aid:** in sectors where there is **overcapacity**, the risk is higher that investment aid will sustain the overcapacity and maintain inefficient market structures;
- c) **normal behaviour in the sector targeted by the aid:** if other undertakings in the sector have reached the same level of environmental protection without aid, it is more likely that the aid will serve to maintain inefficient market structures. Thus, the weaker the evidence that PPP is respected by the beneficiary and the greater the fraction of external environmental cost internalised by the beneficiary's competitors, the more significant the competition distortion;
- d) **relative importance of the aid:** the greater the reduction/compensation to variable production costs, the greater the **competition** distortion;

- e) **selection process:** if the selection process is conducted in a non-discriminatory, transparent and open manner it is less likely that the aid will contribute to artificially maintaining the undertaking in the market. The more extensive (in terms of relevant market coverage) and the more competitive (in terms of auctioning/procurement) the allocation of a subsidy, the lower the competition distortion;
- f) **selectivity:** if the measure under which the aid is granted covers a relatively high number of potential beneficiaries, if it covers all undertakings in the relevant market and if it does not exclude companies that could address the same environmental objective, it is less likely that the aid will maintain inefficient firms in the market.
- c) **product differentiation and price discrimination:** the aid may have the negative effect of facilitating product differentiation and price discrimination by the aid recipient, to the detriment of consumers;
- d) **buyer power:** where there are strong buyers in the market, it is less likely that an aid beneficiary with market power can increase prices vis-à-vis the strong buyers. Thus, the stronger the buyer power the less likely it is that the aid will harm consumers.

#### 5.2.2.4. Effects on trade and location

#### 5.2.2.3. Market power/exclusionary behaviour

(181) Aid for environmental protection given to a beneficiary may be used to strengthen or maintain its market power in the given product market. The Commission will assess the market power of the beneficiary concerned before the aid is granted, and the change in market power which can be expected as a result of the aid. Aid for environmental protection given to a beneficiary with substantial market power may be used by this beneficiary to strengthen or maintain its market power, by further differentiating its products or excluding rivals. The Commission is unlikely to identify competition concerns related to market power in markets where each aid beneficiary has a market share below 25 % and in markets whose Herfindahl-Hirschman Index of market concentration is below 2 000.

(182) In its analysis, the Commission will consider the following elements:

- a) **market power of aid beneficiary and market structure:** Where the recipient is already dominant on the affected market<sup>(62)</sup>, the aid measure may reinforce this dominance by further weakening the competitive constraint that competitors can exert on the recipient undertaking;
- b) **new entry:** where the aid concerns product markets or technologies that compete with products where the aid recipient is an incumbent and has market power, the aid may be used strategically to prevent new entry. Thus, if the aid is not available to potential new entrants, the risk that the aid distorts competition is higher;

(183) State aid for environmental protection may result in some territories benefiting from more favourable production conditions, notably because of comparatively lower production costs as a result of the aid or because of higher production standards achieved through the aid. This may result in companies re-locating to the aided territories, or to displacement of trade flows towards the aided area.

(184) Consequently, the aid will shift profits to the Member State in the product market concerned by the aid as well as in input markets.

(185) In its analysis, the Commission will consider whether there is evidence that the beneficiary had considered other locations for its investment, in which case it is more likely that the aid significantly distorts competition.

#### 5.2.3. Balancing and decision

(186) In the light of these positive and negative elements, the Commission will balance the effects of the measure and determine whether the resulting distortions adversely affect trading conditions to an extent contrary to the common interest. Ideally, the positive effects and the negative effects should be expressed using the same referential (for example external cost avoided versus the loss of competitor's profits in monetary unit).

(187) In general, the higher the environmental benefit and the more clearly it is established that the aid amount is limited to the minimum necessary, the more likely a positive appraisal. On the other hand, the larger the indication that the aid will significantly distort competition, the less likely a positive appraisal. If the expected positive effects are extensive and the distortions are likely to be very significant, the appraisal will depend on the extent to which the positive effects are considered to outweigh the negative effects.

<sup>(62)</sup> A number of markets may be affected by the aid, because the impact of the aid may not be restricted to the market corresponding to the activity that is supported but may extend to other markets, which are connected to that market either because they are upstream, downstream or complementary, or because the beneficiary is already present on them or may be present in the near future.



(188) The Commission may raise no objections to the notified aid measure without initiating the formal investigation procedure or, following the formal investigation procedure laid down in Article 6 of Regulation (EC) No 659/1999, may decide to close the procedure with a decision in accordance with Article 7 of that Regulation. Where it takes a conditional decision within the meaning of Article 7(4) of that Regulation, it may, for instance, consider attaching the following conditions, which must reduce the resulting distortions or effect on trade and be proportionate:

- a) **lower aid intensities** than the maximum intensities allowed in Chapter 3;
- b) **separation of accounts** in order to avoid cross-subsidisation from one market to another market, when the beneficiary is active in multiple markets;
- c) **additional requirements to be met to improve the environmental effect** of the measure;
- d) **no discrimination** against other potential beneficiaries (reduced selectivity).

## 6. CUMULATION

(189) The aid ceilings fixed under these Guidelines shall apply regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community.

(190) Aid authorised under these Guidelines may not be combined with other State aid within the meaning of Article 87(1) of the EC Treaty or with other forms of Community financing if such overlapping results in an aid intensity higher than that laid down in these Guidelines. However, where the expenditure eligible for aid for environmental protection is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable aid ceiling under the applicable rules.

(191) Aid for environmental protection must not be cumulated with *de minimis* aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that fixed in these Guidelines.

## 7. FINAL PROVISIONS

### 7.1. Annual reporting

(192) In accordance with the requirements of Regulation (EC) No 659/1999 and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(63)</sup>, Member States must submit annual reports to the Commission.

<sup>(63)</sup> OJ L 140, 30.4.2004, p. 1. Regulation as last amended by Regulation (EC) No 1935/2006 (OJ L 407, 30.12.2006, p. 1).

(193) Beyond the requirements stipulated in those provisions, annual reports for environmental aid measures must contain, for each approved scheme, the following information as regards large undertakings:

- the names of the beneficiaries,
- the aid amount per beneficiary,
- the aid intensity,
- a description of the objective of the measure and of what type of environmental protection it is intended to promote,
- the sectors of activity where the aided projects are undertaken,
- an explanation of how the incentive effect has been respected, notably using the indicators and criteria mentioned in Chapter 5.

(194) In the case of tax exemptions or reductions, the Member State need provide only the legislative and/or regulatory text(s) establishing the aid and details of the categories of undertakings benefiting from tax reductions or exemptions and the sectors of the economy most affected by those tax exemptions/reductions.

(195) The annual reports will be published on the internet site of the Commission.

### 7.2. Transparency

(196) The Commission considers that further measures are necessary to improve the transparency of State aid in the Community. In particular, it is necessary to ensure that the Member States, economic operators, interested parties and the Commission itself have easy access to the full text of all applicable environmental aid schemes.

(197) This can easily be achieved through the establishment of linked internet sites. For this reason, when examining environmental aid schemes, the Commission will systematically require the Member State concerned to publish the full text of all final aid schemes on the internet and to communicate the internet address of the publication to the Commission. The scheme must not be applied before the information is published on the internet.

### 7.3. Monitoring and evaluation

(198) Member States must ensure that detailed records regarding the granting of aid for all environmental measures are maintained. Such records, which must contain all information necessary to establish that the eligible costs and maximum allowable aid intensity have been observed, must be maintained for 10 years from the date on which the aid was granted and be provided to the Commission upon request.

- (199) The Commission will ask Member States to provide this information in order to carry out an evaluation of these Guidelines four years after their publication <sup>(64)</sup>.

#### 7.4. Appropriate measures

- (200) The Commission herewith proposes to Member States, on the basis of Article 88(1) of the EC Treaty, the following appropriate measures concerning their respective existing environmental aid schemes:

Member States should amend, where necessary, such schemes in order to bring them into line with these Guidelines within 18 months after their publication, with the following exceptions:

- i) Member States should amend, where necessary, schemes concerning aid in the form of tax reduction or exemption covered by Directive 2003/96/EC before 31 December 2012;
  - ii) the new thresholds mentioned in point 160 for individual projects will apply as from the first day following the publication of these Guidelines in the *Official Journal of the European Union*;
  - iii) the duty to provide more detailed annual reports will apply to aid granted under existing aid schemes as of 1 January 2009.
- (201) The Member States are invited to give their explicit unconditional agreement to these proposed appropriate measures within two months from the date of publication of these Guidelines in the *Official Journal of the European Union*. In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.

#### 7.5. Application, validity and revision

- (202) These Guidelines will be applied from the first day following their publication in the *Official Journal of the European Union* and will replace the Community Guidelines on State aid for environmental protection of 3 February 2001 <sup>(65)</sup>.
- (203) These Guidelines will be applicable until 31 December 2014. After consulting the Member States, the Commission may amend them before that date on the basis of important competition policy or environmental policy considerations or in order to take account of other Community policies or international commitments. Such amendments might in particular be necessary in the light of future international agreements in the area of climate change and future European climate change legislation. Four years after the date of their publication, the Commission will undertake an evaluation of these Guidelines based on factual information and the results of wide consultations conducted by the Commission on the basis, notably, of data provided by the Member States. The results of the evaluation will be made available to the European Parliament, the Committee of the Regions and the European Economic and Social Committee and to the Member States.
- (204) The Commission will apply these Guidelines to all notified aid measures in respect of which it is called upon to take a decision after the Guidelines are published in the *Official Journal*, even where the projects were notified prior to their publication. This includes individual aid granted under approved aid schemes and notified to the Commission pursuant to an obligation to notify such aid individually.
- (205) In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid <sup>(66)</sup>, the Commission will apply, in the case of non-notified aid,
- a) these Guidelines, if the aid was granted after their publication;
  - b) the guidelines applicable when the aid was granted, in all other cases.

<sup>(67)</sup> In that process, Member States may want to assist the Commission by providing their own ex post assessment of schemes and individual measures.

<sup>(68)</sup> OJ C 37, 3.2.2001, p. 3.

<sup>(69)</sup> OJ C 119, 22.5.2002, p. 22.

## ANNEX

TABLE ILLUSTRATING THE AID INTENSITIES FOR INVESTMENT AID AS A PART OF ELIGIBLE COSTS

	Small enterprise	Medium-sized enterprise	Large enterprise
Aid for undertakings going beyond Community standards or increasing the level of environmental protection in the absence of Community standards	70 % 80 % if eco-innovation 100 % if bidding process	60 % 70 % if eco-innovation 100 % if bidding process	50 % 60 % if eco-innovation 100 % if bidding process
Aid for environmental studies	70 %	60 %	50 %
Aid for early adaptation to future Community standards			
— more than 3 years	25 %	20 %	15 %
— between 1 and 3 years	20 %	15 %	10 %
before the entry into force			
Aid for waste management	70 %	60 %	50 %
Aid for renewable energies	80 % 100 % if bidding process	70 % 100 % if bidding process	60 % 100 % if bidding process
Aid for energy saving Aid for cogeneration installations	80 % 100 % if bidding process	70 % 100 % if bidding process	60 % 100 % if bidding process
Aid for district heating using conventional energy	70 % 100 % if bidding process	60 % 100 % if bidding process	50 % 100 % if bidding process
Aid the remediation of contaminated sites	100 %	100 %	100 %
Aid for relocation of undertakings	70 %	60 %	50 %



## ANNEX

## PART III.10

## SUPPLEMENTARY INFORMATION SHEET ON STATE AID FOR ENVIRONMENTAL PROTECTION

*This supplementary information sheet must be used for the notification of any aid covered by the Community Guidelines on State aid for environmental protection (thereinafter the Environmental aid guidelines) <sup>(1)</sup>. It must also be used for individual aid for environmental protection which does not fall under any block exemption or is subject to individual notification obligation as it exceeds the individual notification thresholds laid down in the block exemption.*

**1. Basic characteristics of the notified measure**

*Please fill in the relevant parts of the notification form corresponding to the character of the notified measure. Please find below a basic guidance.*

(A) Please specify the type of aid and fill in the appropriate subsections of **Section 3** (Compatibility of aid under Article 87(3)(c) of the EC Treaty) of this supplementary information sheet:

- ☐ Aid for undertakings which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards, fill in Section 3.1
- ☐ 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, fill in Section 3.1
- ☐ Aid for SMEs for early adaptation to future Community standards, fill in Section 3.2
- ☐ Aid for environmental studies, fill in Section 3.3
- ☐ Aid for energy saving, fill in Section 3.4
- ☐ Aid for renewable energy sources, fill in Section 3.5
- ☐ Aid for the cogeneration, fill in Section 3.6
- ☐ Aid for energy-efficient district heating, fill in Section 3.7
- ☐ Aid for waste management, fill in Section 3.8
- ☐ Aid for the remediation of contaminated sites, fill in Section 3.9
- ☐ Aid for the relocation of undertakings, fill in Section 3.10
- ☐ Aid involved in tradable permit schemes, fill in Section 3.11
- ☐ Aid in the form of reductions of or exemptions from environmental taxes, fill in Section 6.

Furthermore, please fill in: **Section 4** (Incentive effect and necessity of aid), **Section 7** (Criteria triggering a detailed assessment), **Section 8** (Additional information for detailed assessment) <sup>(2)</sup>, and **Section 10** (Reporting and monitoring).

<sup>(1)</sup> OJ C 82, 1.4.2008, p. 1. For details concerning the use of this supplementary notification sheet in agriculture and fisheries sectors see Section 2.1 (points 59 and 61) of the Environmental aid guidelines.

<sup>(2)</sup> Please note that Sections 4, 7 and 8 do not have to be filled in, in the case of tax exemptions and reductions from environmental taxes falling under Chapter 4 of the Environmental aid guidelines.

(B) Please explain the main characteristics (objective, likely effects of the aid, aid instrument, aid intensity, beneficiaries, budget etc.) of the notified measure.

(C) Can the aid be combined with other aid?

☐ yes ☐ no

If yes, fill in **Section 9** (Cumulation) of this supplementary information sheet.

(D) Is the aid granted in order to promote the execution of an important project of common European interest?

☐ yes ☐ no

If yes, please fill in **Section 5** (Compatibility of aid under Article 87(3)(b) of the EC Treaty) of this supplementary information sheet.

(E) In case the notified individual aid is based on an approved scheme, please provide details concerning that scheme (case number, title of the scheme, date of Commission approval):

.....  
 .....

(F) Please confirm that if the aid/bonus for small enterprises is granted, the beneficiaries comply with the definition for small enterprises as defined by the Community legislation:

☐ yes

(G) Please confirm that if the aid/bonus for medium enterprises is granted, the beneficiaries comply with the definition for medium enterprises as defined by the Community legislation:

☐ yes

(H) If applicable, please indicate the exchange rate which has been used for the purposes of the notification:

.....  
 .....

(I) Please number all documents provided by the Member States as annexes to the notification form and indicate the document numbers in the relevant parts of this supplementary information sheet.

## 2. Objective of the aid

(A) In the light of the objectives of common interest addressed by the Environmental aid guidelines (Section 1.2) please indicate the environmental objectives pursued by the notified measure. Please give a detailed description of each distinct type of aid to be granted under the notified measure:

.....  
 .....

(B) If the notified measure has already been applied in the past please indicate its results in terms of environmental protection (please indicate the relevant case number and date of Commission approval and, if possible, attach national evaluation reports on the measure):

.....  
 .....

- (C) If the measure is new, please indicate the expected results and the period over which they will be achieved:

.....  
 .....

### 3. Compatibility of aid under Article 87(3)(c) of the EC Treaty

*If there are several beneficiaries involved in the project notified as individual aid, please provide the information below for each of them.*

#### 3.1. Aid for undertakings which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards <sup>(3)</sup>

##### 3.1.1. Nature of the supported investments, applicable standards

- (A) Please specify if the aid is granted for:

- ☐ investments enabling the beneficiary to increase the level of environmental protection resulting from its activities by improving on the applicable Community standards <sup>(4)</sup>, irrespective of the presence of mandatory national standards that are more stringent than the Community standard;

or

- ☐ investments enabling the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Community standards.

- (B) Please provide details, including, where applicable, information on the relevant Community standards:

.....  
 .....

- (C) If the aid is granted for reaching the national standard exceeding the Community standards, please indicate the applicable national standards and attach a copy:

.....  
 .....

##### 3.1.2. Aid intensities and bonuses

*In the case of aid schemes, the aid intensity must be calculated for each beneficiary of aid.*

- (A) What is the maximum aid intensity applicable to the notified measure <sup>(5)</sup>? .....

- (B) Is the aid granted in a genuinely competitive bidding process <sup>(6)</sup>?

- ☐ yes ☐ no

If yes, please provide details of the competitive process and attach a copy of the tender notice or its draft:

.....  
 .....

<sup>(3)</sup> Cf. Environmental aid guidelines, Section 3.1.1.

<sup>(4)</sup> Please note that aid may not be granted where improvements bring companies into line with Community standards already adopted and not yet in force.

<sup>(5)</sup> The maximum aid intensity is 50 % of the eligible investment cost.

<sup>(6)</sup> For details of the genuinely competitive bidding process required, see point 77 of the Environmental aid guidelines.

## (C) Bonuses:

Do the supported projects benefit from a bonus?

☐ yes ☐ no

If yes, please specify below.

— Is an SME bonus applied under the notified measure?

☐ yes ☐ no

If yes, please specify the level of bonus applicable <sup>(7)</sup>: .....

— Is the bonus for eco-innovation <sup>(8)</sup> applied under the notified measure?

☐ yes ☐ no

If yes, please describe how the following conditions are fulfilled:

- ☐ the eco-innovation asset or project is new or substantially improved compared to the state of the art in its industry in the Community;
- ☐ the expected environmental benefit is significantly higher than the improvement resulting from the general evolution of the state of the art in comparable activities;
- ☐ the innovative character of these assets or projects involves a clear degree of risk, in technological, market or financial terms, which is higher than the risk generally associated with comparable non-innovative assets or projects.

Please provide details demonstrating the compliance with the abovementioned conditions:

.....  
 .....

Specify the level of bonus applicable <sup>(9)</sup>: .....

(D) In case of an aid scheme, specify the total aid intensity of the projects supported under the notified scheme (taking into account the bonuses) (%): .....

3.1.3. Eligible costs <sup>(10)</sup>

(A) Please confirm that the eligible costs are limited to the extra investment costs necessary to achieve a higher level of environmental protection than required by the Community standards:

☐ yes

(B) Please further confirm that:

- ☐ the precise environmental protection related cost constitutes the eligible costs, if the cost of investing in environmental protection can be easily identified;

or

- ☐ the extra investment costs are established by comparing the investment with the counterfactual situation in the absence of aid, i.e. the reference investment <sup>(11)</sup>;

and

- ☐ the eligible costs are calculated net of any operating benefits and operating costs related to the extra investment for environmental protection and arising during the first five years of the life of the investment concerned.

<sup>(7)</sup> The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

<sup>(8)</sup> Cf. for details see point 78 of the Environmental aid guidelines.

<sup>(9)</sup> The aid intensity may be increased by 10 percentage points.

<sup>(10)</sup> For details see points 80 to 84 of the Environmental aid guidelines.

<sup>(11)</sup> The correct counterfactual is 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. See point 81(b) of the Environmental aid guidelines.

(C) What form do the eligible costs take?

- ☐ investments in tangible assets;
- ☐ investments in intangible assets.

(D) In case of investments in tangible assets please indicate the form(s) of investments concerned:

- ☐ investments in land which are strictly necessary in order to meet environmental objectives;
- ☐ investments in buildings intended to reduce or eliminate pollution and nuisances;
- ☐ investments in plant and equipment intended to reduce or eliminate pollution and nuisances;
- ☐ investments to adapt production methods with a view to protecting the environment.

(E) In case of investments in intangible assets (technology transfer through the acquisition of operating licenses or of patented and non-patented know how) please confirm that any such intangible asset satisfies the following conditions:

- ☐ it is regarded as a depreciable asset;
- ☐ it is purchased on market terms, from an undertaking from which the acquirer has no power of direct or indirect control,
- ☐ it is included in the assets of the undertaking, and remains in the establishment of the recipient of the aid and is used there for at least five years <sup>(12)</sup>.

Furthermore, please confirm that if the intangible asset is sold during those five years:

- ☐ the yield from the sale will be deducted from the eligible costs;
- and
- ☐ all or part of the amount of aid will, where appropriate, be reimbursed.

(F) In case of investments aiming at obtaining a level of environmental protection higher than Community standards, please confirm the relevant statements:

- ☐ if the undertaking is adapting to national standards adopted in the absence of Community standards, the eligible costs consist of the additional investment costs necessary to achieve the level of environmental protection required by the national standards;
- ☐ if the undertaking is adapting to or goes beyond national standards which are more stringent than the relevant Community standards or goes beyond Community standards, the eligible costs consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards <sup>(13)</sup>;
- ☐ if no standards exist, the eligible costs 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;

(G) For aid schemes, please provide a detailed calculation methodology, by reference to the counterfactual situation, which will be applied to all individual aid grants based on the notified scheme, and provide the relevant evidence:

.....  
.....  
.....

<sup>(12)</sup> Please note that this condition does not apply if the intangible asset is technically out of date.

<sup>(13)</sup> Please note that the cost of investments needed to reach the level of protection required by the Community standards is not eligible.

For individual aid measures, please provide a detailed calculation of the eligible costs of the notified investment project, by reference to the counterfactual situation, and provide relevant evidence:

.....

.....

.....

.....

.....

3.1.4. Specific rules on 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 <sup>(14)</sup>

*In the case of 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, in addition to sections 3.1.-3.1.3:*

- (A) Please confirm that new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Community standards have been acquired before their entry into force and that the Community standards, once mandatory, do not apply retroactively to already purchased vehicles.

☐ yes

Please provide details:

.....

.....

- (B) For retrofitting operations with an environmental protection objective in the transport sector, please confirm that:

☐ the existing means of transport are upgraded to environmental standards that were not yet in force at the date of the entry into operation of those means of transport;

or

☐ the means of transport are not subject to any environmental standards.

3.2. Aid for early adaptation to future Community standards <sup>(15)</sup>

3.2.1. Basic conditions

- (A) Please confirm that the investment is implemented and finalised at least one year before the entry into force of the standard.

☐ yes ☐ no

If yes, in the case of aid schemes, please provide details on how compliance with this condition is ensured:

.....

.....

If yes, in the case of individual aid please provide details and relevant evidence:

.....

.....

- (B) Please provide details of the relevant Community standards, including the dates relevant for ensuring compliance with condition (A):

.....

.....

<sup>(14)</sup> Cf. Environmental aid guidelines, Section 3.1.2.

<sup>(15)</sup> Cf. Environmental aid guidelines, Section 3.1.3.



### 3.2.2. Aid intensities

What is the basic aid intensity applicable to the notified measure?

- for small enterprises <sup>(16)</sup>: .....
- for medium-sized enterprises <sup>(17)</sup>: .....
- for large enterprises <sup>(18)</sup>: .....

### 3.2.3. Eligible costs

(A) Please confirm that the eligible costs are limited to 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:

- ☐ yes

(B) Please further confirm that:

- ☐ the precise environmental protection related cost constitutes the eligible costs, if the cost of investing in environmental protection can be easily identified;

or

- ☐ the extra investment costs are established by comparing the investment with the counterfactual situation in the absence of aid, i.e. the reference investment <sup>(19)</sup>;

and

- ☐ eligible costs are calculated net of any operating benefits and operating costs related to the extra investment for environmental protection and arising during the first five years of the life of the investment concerned.

(C) What form do the eligible costs take?

- ☐ investments in tangible assets
- ☐ investments in intangible assets

(D) In case of investments in tangible assets please indicate the form(s) of investments concerned:

- ☐ investments in land which are strictly necessary in order to meet environmental objectives;
- ☐ investments in buildings intended to reduce or eliminate pollution and nuisances;
- ☐ investments in plant and equipment intended to reduce or eliminate pollution and nuisances;
- ☐ investments to adapt production methods with a view to protecting the environment.

<sup>(16)</sup> The maximum aid intensity is 25 % if the implementation and finalisation take place more than three years before the mandatory date of transposition or date of entry into force and 20 % if the implementation and the finalisation take place between one and three years before the mandatory date of transposition or date of entry into force.

<sup>(17)</sup> The maximum aid intensity is 20 % if the implementation and finalisation take place more than three years before the mandatory date of transposition or date of entry into force and 15 % if the implementation and the finalisation take place between one and three years before the mandatory date of transposition or date of entry into force.

<sup>(18)</sup> The maximum aid intensity is 15 % if the implementation and finalisation take place more than three years before the mandatory date of transposition or date of entry into force and 10 % if the implementation and the finalisation take place between one and three years before the mandatory date of transposition or date of entry into force.

<sup>(19)</sup> The correct counterfactual is the cost of a technically comparable investment that provides a lower degree of environmental protection and that would credibly be realised without aid. See point 81(b) of the Environmental aid guidelines.

- (E) In case of investments in intangible assets (technology transfer through the acquisition of operating licenses or of patented and non-patented know how) please confirm that any such intangible asset satisfies the following conditions:

- ☐ it is regarded as a depreciable asset;
- ☐ it is purchased on market terms, from an undertaking from which the acquirer has no power of direct or indirect control,
- ☐ it is included in the assets of the undertaking, and remains in the establishment of the recipient of the aid and is used there for at least five years <sup>(20)</sup>.

Furthermore, please confirm that if the intangible asset is sold during those five years:

- ☐ the yield from the sale will be deducted from the eligible costs;
- and
- ☐ all or part of the amount of aid will, where appropriate, be reimbursed.

- (F) For aid schemes, please provide a detailed calculation methodology, by reference to the counterfactual situation, which will be applied to all individual aid grants based on the notified scheme, and provide the relevant evidence:

.....  
 .....  
 .....  
 .....  
 .....

For individual aid measures, please provide a detailed calculation of the eligible costs of the notified investment project, by reference to the counterfactual situation, and provide relevant evidence:

.....  
 .....  
 .....  
 .....  
 .....

### 3.3. *Aid for environmental studies* <sup>(21)</sup>

#### 3.3.1. Studies directly linked to investments aiming at achieving standards which go beyond Community standards, or increase the level of environmental protection in the absence of Community standards

- (A) Please confirm if the aid is granted for studies directly linked to investments for the purposes of achieving standards which go beyond Community standards, or increase the level of environmental protection in the absence of Community standards.

- ☐ yes                      ☐ no

If yes, please specify which of the following purposes the investment serves:

- ☐ it enables the beneficiary to increase the level of environmental protection resulting from its activities by improving on the applicable Community standards, irrespective of the presence of mandatory national standards that are more stringent than the Community standard;
- or
- ☐ it enables the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Community standards.

<sup>(20)</sup> Please note that this condition does not apply if the intangible asset is technically out of date.

<sup>(21)</sup> Cf. Environmental aid guidelines, Section 3.1.4.

- (B) Please provide details, including, where applicable, the information on the relevant Community standards:

.....  
.....

- (C) If the aid is granted for studies directly linked to investments aiming at reaching national standards which go beyond Community standards, please indicate the applicable national standards and attach a copy:

.....  
.....

- (D) Please describe the types of studies that will be supported:

.....  
.....  
.....  
.....  
.....

### 3.3.2. Studies directly linked to investments for the purposes of achieving energy saving

Please confirm that the aid is granted for studies directly linked to investments for the purposes of achieving energy saving.

☐ yes ☐ no

If yes, please provide evidence on how the purpose of the relevant investment complies with the definition of energy savings as laid down in point 70(2) of the Environmental aid guidelines:

.....  
.....

### 3.3.3. Studies directly linked to investments of producing renewable energy

- (A) Please confirm if the aid is granted for studies directly linked to investments for the purposes of producing renewable energy.

☐ yes ☐ no

If yes, please provide evidence on how the purpose of the relevant investment complies with the definition of production from renewable energy sources, as laid down in point 70(5) and (9) of the Environmental aid guidelines:

.....  
.....

- (B) Please specify the type(s) of renewable energy sources which are intended to be supported under the investment linked to the environmental study and provide details:

.....  
.....

### 3.3.4. Aid intensities and bonuses

- (A) What is the maximum aid intensity applicable to the notified measure <sup>(22)</sup>?

.....

<sup>(22)</sup> The maximum aid intensity is 50 % of the costs of the study.

(B) Is an SME bonus applied under the notified measure?

☐ yes ☐ no

If yes please specify the level of bonus applicable <sup>(23)</sup>: .....

### 3.4. Aid for energy saving <sup>(24)</sup>

#### 3.4.1. Basic conditions

(A) Please confirm that the notified measure complies with the definition of energy savings in point 70(2) of the Environmental aid guidelines.

☐ yes

(B) Please specify the type(s) of the supported measures leading to energy saving, as well as the level of energy saving to be attained, and provide details:

.....  
 .....

#### 3.4.2. Investment aid

##### 3.4.2.1. Aid intensities and bonuses

(A) What is the basic aid intensity applicable to the notified measure <sup>(25)</sup>: .....

(B) Bonuses:

— Is an SME bonus applied under the notified measure?

☐ yes ☐ no

If yes, please specify the level of bonus applicable <sup>(26)</sup>: .....

(C) Is the aid granted in a genuinely competitive bidding process <sup>(27)</sup>?

☐ yes ☐ no

If yes, please provide details regarding the competitive process and attach a copy of the tender notice or its draft:

.....

(D) In case of an aid scheme, specify the total aid intensity of the projects supported under the notified scheme (taking into account the bonuses) (%):

.....  
 .....

##### 3.4.2.2. Eligible costs <sup>(28)</sup>

(A) As regards the calculation of the eligible costs, please confirm that the eligible costs are limited to the extra investment costs necessary to achieve energy savings beyond the level required by the Community standards:

☐ yes

<sup>(23)</sup> When the aid is undertaken on behalf of an SME, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

<sup>(24)</sup> Cf. Environmental aid guidelines, Section 3.1.5.

<sup>(25)</sup> The maximum aid intensity is 60 % of the eligible investment costs.

<sup>(26)</sup> The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

<sup>(27)</sup> For details of the genuinely competitive bidding process required, see point 97 of the Environmental aid guidelines.

<sup>(28)</sup> For details see point 98 of the Environmental aid guidelines.

(B) Please further clarify whether:

- ☐ the precise energy saving related cost constitutes the eligible costs, in case the costs of investing in energy saving can be easily identified;

or

- ☐ the part of the investment directly related to energy saving is established by comparing the investment with the counterfactual situation in the absence of aid, i.e. the reference investment <sup>(29)</sup>;

and

- ☐ eligible costs are calculated net of any operating benefits and operating 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 <sup>(30)</sup>.

(C) In the case of investment aid for achieving a level of energy saving higher than Community standards, please confirm which one of the following statements is applicable:

- ☐ if the undertaking is adapting to national standards adopted in the absence of Community standards, the eligible costs consist of the additional investment costs necessary to achieve the level of environmental protection required by the national standards;
- ☐ if the undertaking is adapting to or goes beyond national standards which are more stringent than the relevant Community standards or goes beyond Community standards, the eligible costs consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards <sup>(31)</sup>;
- ☐ if no standards exist, the eligible costs 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;

(D) What form do the eligible costs take?

- ☐ investments in tangible assets;
- ☐ investments in intangible assets.

(E) In the case of investments in tangible assets please indicate the form(s) of investments concerned:

- ☐ investments in land which are strictly necessary in order to meet environmental objectives;
- ☐ investments in buildings intended to reduce or eliminate pollution and nuisances;
- ☐ investments in plant and equipment intended to reduce or eliminate pollution and nuisances;
- ☐ investments to adapt production methods with a view to protecting the environment.

(F) In the case of investments in intangible assets (technology transfer through the acquisition of operating licenses or of patented and non-patented know how) please confirm that any such intangible asset satisfies the following conditions:

- ☐ it is regarded as a depreciable asset;

<sup>(29)</sup> The correct counterfactual is the cost of a technically comparable investment that provides a lower degree of environmental protection and that would credibly be realised without aid. See point 81(b) of the Environmental aid guidelines.

<sup>(30)</sup> Please note that for large undertakings, this period can be reduced to the first three years of the life of the investment, where the depreciation time of the investment can be demonstrated not to exceed three years.

<sup>(31)</sup> Please note that the cost of investments needed to reach the level of protection required by the Community standards is not eligible.

- ☐ it is purchased on market terms, from an undertaking from which the acquirer has no power of direct or indirect control,
- ☐ it is included in the assets of the undertaking, and remains in the establishment of the recipient of the aid and is used there for at least five years <sup>(32)</sup>.

Furthermore, please confirm that if the intangible asset is sold during those five years:

- ☐ the yield from the sale will be deducted from the eligible costs;
- and
- ☐ all or part of the aid amount will be, where appropriate, reimbursed.

- (G) For aid schemes, please provide a detailed calculation methodology, by reference to the counterfactual situation <sup>(33)</sup>, which will be applied to all individual aid grants based on the notified scheme, and provide the relevant evidence:

.....  
 .....  
 .....  
 .....  
 .....

If the notification concerns an individual aid measure, please provide a detailed calculation of the eligible costs of the notified investment project, by reference to the counterfactual situation, and provide relevant evidence:

.....  
 .....  
 .....  
 .....  
 .....

### 3.4.3. Operating aid

- (A) Please provide information/calculations demonstrating that the aid is limited to compensating for net extra production costs resulting from the investment taking account of benefits resulting from energy saving <sup>(34)</sup>:

.....  
 .....

- (B) What is the duration of the operating aid measure <sup>(35)</sup>? .....

- (C) Is the aid degressive?

☐ yes ☐ no

What is the aid intensity of the:

— degressive aid (please indicate the degressive rates for each year) <sup>(36)</sup>: .....

— non-degressive aid <sup>(37)</sup>: .....

<sup>(32)</sup> Please note that this condition does not apply if the intangible asset is technically out of date.

<sup>(33)</sup> See point 81(b) of the Environmental aid guidelines.

<sup>(34)</sup> Please note that any investment aid granted to the undertaking in respect of the new plant must be deducted from production costs.

<sup>(35)</sup> Please note that the duration must be limited to maximum five years.

<sup>(36)</sup> The aid intensity must not exceed 100 % of the extra costs in the first year, but must have fallen in a linear fashion to zero by the end of the fifth year.

<sup>(37)</sup> The maximum aid intensity is 50 % of the extra costs.

3.5. *Aid for renewable energy sources* <sup>(38)</sup>

## 3.5.1. Basic conditions

- (A) Please confirm that the aid is granted exclusively for the promotion of renewable energy sources as defined by the Environmental aid guidelines <sup>(39)</sup>.

☐ yes ☐ no

- (B) In the case of biofuel promotion, please confirm that the aid is granted exclusively for the promotion of sustainable biofuels within the meaning of those guidelines.

☐ yes ☐ no

- (C) Please specify the type(s) of renewable energy sources <sup>(40)</sup> supported under the notified measure and provide details:

.....  
 .....

## 3.5.2. Investment aid

## 3.5.2.1. Aid intensities and bonuses

- (A) What is the basic aid intensity applicable to each renewable energy source supported by the notified measure <sup>(41)</sup>: .....

- (B) Is an SME bonus applied under the notified measure?

☐ yes ☐ no

If yes, please specify the level of bonus applicable <sup>(42)</sup>: .....

- (C) Is the aid granted in a genuinely competitive bidding process <sup>(43)</sup>?

☐ yes ☐ no

If yes, please provide details of the competitive process and attach a copy of the tender notice or its draft:

.....

- (D) In the case of an aid scheme, specify the total aid intensity of the projects supported under the notified scheme (taking into account the bonuses) (%):

.....  
 .....

3.5.2.2. Eligible costs <sup>(44)</sup>

- (A) Please confirm that the eligible costs are limited to the extra investment 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;

☐ yes

- (B) Please further confirm that:

- ☐ the precise renewable energy related cost constitutes the eligible costs, in case the cost of investing renewable energy can be easily identified;

or

<sup>(38)</sup> Cf. Environmental aid guidelines, Section 3.1.6.

<sup>(39)</sup> See point 70(5) to (9) of the Environmental aid guidelines.

<sup>(40)</sup> Please note that aid for investment and/or operating aid for the production of biofuels shall be allowed only with regard to sustainable biofuels.

<sup>(41)</sup> The maximum aid intensity is 60 % of the eligible investment costs.

<sup>(42)</sup> The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

<sup>(43)</sup> For details of the genuinely competitive bidding process required, see point 104 of the Environmental aid guidelines.

<sup>(44)</sup> For details see points 105 and 106 of the Environmental aid guidelines.



- ☐ the extra investment costs are established by comparing the investment with the counterfactual situation in the absence of aid, i.e. the reference investment <sup>(45)</sup>;

and

- ☐ eligible costs are calculated net of any operating benefits and costs related to the extra investment for renewable sources of energy and arising during the first five years of the life of the investment concerned.

(C) What form do the eligible costs take?

- ☐ investments in tangible assets;
- ☐ investments in intangible assets.

(D) In the case of investments in tangible assets, please indicate the form(s) of investments concerned:

- ☐ investments in land which are strictly necessary in order to meet environmental objectives;
- ☐ investments in buildings intended to reduce or eliminate pollution and nuisances;
- ☐ investments in plant and equipment intended to reduce or eliminate pollution and nuisances;
- ☐ investments to adapt production methods with a view to protecting the environment.

(E) In the case of investments in intangible assets (technology transfer through the acquisition of operating licenses or of patented and non-patented know how) please confirm that any such intangible asset satisfies the following conditions:

- ☐ it is regarded as a depreciable asset;
- ☐ it is purchased on market terms, from an undertaking from which the acquirer has not power of direct or indirect control;
- ☐ it is included in the assets of the undertaking, and remains in the establishment of the recipient of the aid and is used there for at least five years <sup>(46)</sup>.

Furthermore, please confirm that if the intangible asset is sold during those five years:

- ☐ the yield from the sale will be deducted from the eligible costs;
- and
- ☐ all or part of the aid amount will be, where appropriate, reimbursed.

(F) For aid schemes, please provide a detailed calculation methodology, by reference to the counterfactual situation, which will be applied to all individual aid grants based on the notified scheme, and provide the relevant evidence:

.....  
 .....  
 .....  
 .....  
 .....

<sup>(45)</sup> The correct counterfactual is the cost of a technically comparable investment that provides a lower degree of environmental protection and that would credibly be realised without aid. See point 81(b) of the Environmental aid guidelines.

<sup>(46)</sup> Please note that this condition does not apply if the intangible asset is technically out of date.

For individual aid measures, please provide a detailed calculation of the eligible costs of the notified investment project, by reference to the counterfactual situation, and provide relevant evidence:

.....

.....

.....

.....

.....

### 3.5.3. Operating aid

Following the choice of the operating aid assessment option <sup>(47)</sup>, please fill in the relevant part of the section below.

#### 3.5.3.1. Option 1

(A) Please provide for the duration of the notified measure the following information demonstrating that the operating aid is granted in order to cover the difference between the cost of producing energy from renewable sources and the market price of the form of energy concerned:

— detailed analysis of the cost of producing energy from each of the relevant renewable sources <sup>(48)</sup>:

.....

.....

— detailed analysis of the market price of the form of energy concerned:

.....

.....

(B) Please demonstrate that the aid will be granted only until the plant has been fully depreciated according to normal accounting rules <sup>(49)</sup> and provide a detailed analysis of the depreciation of each type <sup>(50)</sup> of the investments for environmental protection:

.....

.....

For aid schemes, please specify how the compliance with this condition will be ensured:

.....

.....

For individual aid, please provide a detailed analysis demonstrating that this condition is fulfilled:

.....

.....

(C) When determining the amount of operating aid, please demonstrate how any investment aid granted to the undertaking in question in respect of a new plant is deducted from production costs:

.....

.....

<sup>(47)</sup> For details on Option 1 see point 109 of the Environmental aid guidelines, for Option 2 see point 110 of the Environmental aid guidelines and for Option 3 see point 111 of the Environmental aid guidelines.

<sup>(48)</sup> For aid schemes the information can be provided in the form of a (theoretical) calculation example (preferably with the amounts in net present values). The production costs should at least be specified separately for each type of renewable energy source. Specific information may also be useful for different plant capacities and for different types of production installation where the cost structure varies significantly (for example for land-based and/or off-shore wind power).

<sup>(49)</sup> Please note that any further energy produced by the plant will not qualify for any assistance. However, the aid may also cover a normal return on capital.

<sup>(50)</sup> The depreciation should at least be specified separately for each type of renewable energy source (preferably with the amounts in net present values). Specific information may also be useful for different plant capacities and land-based and/or off-shore windpower.

(D) Does the aid also cover a normal return on capital?

☐ yes ☐ no

If yes, please provide details and the information/calculations showing the rate of the normal return and give reasons why the chosen rate is appropriate:

.....  
 .....

(E) For aid for the production of renewable energy from biomass, where the operating aid would exceed the amount of investment, please provide data/evidence (based on calculation examples for aid schemes or detailed calculation for individual aid) demonstrating that the aggregate costs borne by the undertakings after plant depreciation are still higher than the market prices of the energy:

.....  
 .....

(F) Please specify the precise support mechanisms (taking into account the requirements described above) and, in particular, the methods of calculating the amount of aid:

— for aid schemes based on a (theoretical) example of an eligible project:

.....  
 .....

Furthermore, please confirm that the calculation methodology described above will be applied to all individual aid grants based on the notified aid scheme:

☐ yes

— for individual aid please provide a detailed calculation of the aid amount (taking into account the requirements described above):

.....  
 .....

(G) What is the duration of the notified measure?

.....  
 .....

It is the practice of the Commission to limit its authorisation to 10 years. If yes, could you please undertake to re-notify the measure within a period of 10 years?

☐ yes ☐ no

### 3.5.3.2. Option 2

(A) Please provide a detailed description of the green certificate or tender system (including, *inter alia*, the information on the level of discretionary powers, the role of the administrator, the price determination mechanism, the financing mechanism, the penalty mechanism and re-distribution mechanism):

.....  
 .....

(B) What is the duration of the notified measure <sup>(51)</sup>?

.....  
 .....

(C) Please provide data/calculations showing that the aid is essential to ensure the viability of the renewable energy sources:

.....  
 .....

<sup>(51)</sup> Please note that the Commission can authorise such notified measure for a period of 10 years.

- (D) Please provide data/calculations showing that the aid does not in the aggregate result in overcompensation for renewable energy:

.....  
 .....

- (E) Please provide information/calculations showing that the aid does not dissuade renewable energy producers from becoming more competitive:

.....  
 .....

### 3.5.3.3. Option 3 <sup>(52)</sup>

- (A) What is the duration of the operating aid measure <sup>(53)</sup>? .....

- (B) Please provide for the duration of the notified measure the following information demonstrating that the operating aid is granted to compensate for the difference between the cost of producing energy from renewable sources and the market price of the form of energy concerned:

- detailed analysis of the cost of producing energy from each of the relevant renewable sources <sup>(54)</sup>:

.....  
 .....

- detailed analysis of the market price of the form of energy concerned:

.....  
 .....

- (C) Is the aid degressive?

☐ yes ☐ no

What is the aid intensity of the:

- degressive aid (please indicate the degressive rates for each year) <sup>(55)</sup>:

.....;

- non-degressive aid <sup>(56)</sup>: .....

### 3.6. Aid for cogeneration <sup>(57)</sup>

#### 3.6.1. Basic conditions

Please confirm that the aid for cogeneration is granted exclusively to cogeneration units satisfying the definition of high efficiency cogeneration as set out in point 70(11) of the Environmental aid guidelines:

☐ yes ☐ no

#### 3.6.2. Investment aid

Please confirm that:

- ☐ the new cogeneration unit will overall make primary energy savings compared to separate production as defined by Directive 2004/8/EC and Commission Decision 2007/74/EC.

<sup>(52)</sup> Member States may grant operating aid in accordance with the provisions set out in point 100 of the Environmental aid guidelines.

<sup>(53)</sup> Please note that the duration must be limited to maximum five years.

<sup>(54)</sup> For aid schemes the information can be provided in the form of a (theoretical) calculation example (preferably with the amounts in net present values). The production costs should at least be specified separately for each type of renewable energy source. Specific information may also be useful for different plant capacities and land-based and/or off-shore wind power.

<sup>(55)</sup> The aid intensity must not exceed 100 % of the extra costs in the first year, but must have fallen in a linear fashion to zero by the end of the fifth year.

<sup>(56)</sup> The maximum aid intensity is 50 % of the extra costs.

<sup>(57)</sup> Cf. Environmental aid guidelines, Section 3.1.7.

- ☐ the improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit will result in primary energy savings compared to the original situation.

Please provide details and evidence demonstrating the compliance with the above mentioned conditions:

.....  
 .....

### 3.6.2.1. Aid intensities and bonuses

(A) What is the basic aid intensity applicable to the notified measure <sup>(58)</sup>? .....

(B) Bonuses:

— Is an SME bonus applied under the notified measure?

☐ yes ☐ no

If yes, please specify the level of bonus applicable <sup>(59)</sup>: .....

(C) Is the aid granted in a genuinely competitive bidding process <sup>(60)</sup>?

☐ yes ☐ no

If yes, please provide details of the competitive process and attach a copy of the tender notice or its draft:

.....

(D) In case of an aid scheme, specify the total aid intensity of the projects supported under the notified scheme (taking into account the bonuses) (%):

.....

.....

### 3.6.2.2. Eligible costs <sup>(61)</sup>

(A) Please confirm that the eligible costs are limited to the extra investment costs necessary to realise a high efficiency cogeneration plant:

☐ yes

(B) Please further confirm that:

☐ the precise cogeneration related cost constitutes the eligible costs, if the cost of investing in cogeneration can be easily defined;

or

☐ the extra investment costs directly related to cogeneration are established by comparing the investment with the counterfactual situation in the absence of aid, i.e. the reference investment <sup>(62)</sup>;

and

☐ eligible costs are calculated net of any operating benefits and operating costs related to the extra investment and arising during the first five years of the life of the investment concerned.

<sup>(58)</sup> The maximum aid intensity is 60 % of the eligible investment costs.

<sup>(59)</sup> The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

<sup>(60)</sup> For details of the genuinely competitive bidding process required, see point 116 of the Environmental aid guidelines.

<sup>(61)</sup> For details see points 117 and 118 of the Environmental aid guidelines.

<sup>(62)</sup> The correct counterfactual is the cost of a technically comparable investment that provides a lower degree of environmental protection and that would credibly be realised without aid. See point 81(b) of the Environmental aid guidelines.

(C) What form do the eligible costs take?

- ☐ investments in tangible assets;
- ☐ investments in intangible assets.

(D) In the case of investments in tangible assets, please indicate the form(s) of investments concerned:

- ☐ investments in land which are strictly necessary in order to meet environmental objectives;
- ☐ investments in buildings intended to reduce or eliminate pollution and nuisances;
- ☐ investments in plant and equipment intended to reduce or eliminate pollution and nuisances;
- ☐ investments to adapt production methods with a view to protecting the environment.

(E) In the case of investments in intangible assets (technology transfer through the acquisition of operating licenses or of patented and non-patented know how) please confirm that any such intangible asset satisfies the following conditions:

- ☐ it is regarded as a depreciable asset;
- ☐ it is purchased on market terms, from an undertaking from which the acquirer has not power of direct or indirect control,
- ☐ it is included in the assets of the undertaking, and remains in the establishment of the recipient of the aid and is used there for at least five years <sup>(63)</sup>.

Furthermore, please confirm that if the intangible asset is sold during those five years:

- ☐ the yield from the sale will be deducted from the eligible costs;
- and
- ☐ all or part of the aid amount will be, where appropriate, reimbursed.

(F) For aid schemes, please provide a detailed calculation methodology, by reference to the counterfactual situation, which will be applied to all individual aid grants based on the notified scheme, and provide the relevant evidence:

.....  
.....  
.....  
.....  
.....

For individual aid measures, please provide a detailed calculation of the eligible costs of the notified investment project, by reference to the counterfactual situation, and provide relevant evidence:

.....  
.....  
.....  
.....  
.....

<sup>(63)</sup> Please note that this condition does not apply if the intangible asset is technically out of date.

## 3.6.3. Operating aid

- (A) Please confirm that the existing cogeneration unit satisfies both the definition of high-efficiency cogeneration set out in point 70(11) of the Environmental aid guidelines and the requirement that there are overall primary savings compared to separate production as defined by Directive 2004/8/EC and Decision 2007/74/EC:

☐ yes

- (B) Please confirm further that the operating aid for high efficiency cogeneration is granted exclusively to:

- ☐ undertakings distributing electric power and heat to the public, where the costs of producing such electric power or heat exceed its market price <sup>(64)</sup>;
- ☐ for the industrial use of the combined production of electric power and heat where it can be shown that the production cost of one unit of energy using that technique exceeds the market price of one unit of conventional energy <sup>(65)</sup>.

Please provide details and evidence that the relevant condition(s) is/are complied with:

.....

.....

## 3.6.3.1. Option 1

- (A) Please provide the following information demonstrating that the operating aid is granted in order to cover the difference between the cost of producing energy in cogeneration units and the market price of the form of energy concerned:

— detailed analysis of the cost of producing energy in cogeneration units <sup>(66)</sup>:

.....

.....

— detailed analysis of the market price of the form of energy concerned:

.....

.....

- (B) Please demonstrate that the aid will be granted only until the plant has been fully depreciated according to normal accounting rules <sup>(67)</sup> and provide a detailed analysis of the depreciation of each type of the investments for environmental protection:

.....

.....

For aid schemes, please specify how the compliance with this condition will be ensured:

.....

.....

For individual aid, please provide a detailed analysis demonstrating that this condition is fulfilled:

.....

.....

<sup>(64)</sup> The decision as to whether the aid is necessary will take account of the costs and revenue resulting from the production and sale of the electric power or heat.

<sup>(65)</sup> The production cost may include the plant's normal return on capital, but any gains by the undertaking in terms of heat production must be deducted from production costs.

<sup>(66)</sup> For aid schemes the information can be provided in the form of an (theoretical) calculation example.

<sup>(67)</sup> Please note that any further energy produced by the plant will not qualify for any assistance. However, the aid may also cover a normal return on capital.



- (C) When determining the amount of operating aid, please demonstrate how any investment aid granted to the undertaking in question in respect of a new plant is deducted from production costs:

.....  
 .....

- (D) Does the aid also cover a normal return on capital?

☐ yes ☐ no

If yes, please provide details and information/calculations showing the rate of normal return and give reasons why the chosen rate is appropriate:

.....  
 .....

- (E) For aid supporting biomass-based CHP units, if the operating aid would exceed the amount of investment, please provide data/evidence (based on calculation examples for aid schemes or detailed calculation for individual aid) demonstrating that the aggregate costs borne by the undertakings after plant depreciation are still higher than the market prices of the energy:

.....  
 .....

- (F) Please specify the precise support mechanisms (taking into account the requirements described above) and in particular the methods of calculating the amount of aid:

— for aid schemes based on a (theoretical) example of an eligible project:

.....  
 .....

Furthermore, please confirm that the calculation methodology describe above will be applied to all individual aid grants based on the notified aid scheme:

☐ yes

— for individual aid please provide a detailed calculation of the amount of aid (taking into account the requirements described above):

.....  
 .....

- (G) What is the duration of the notified measure?

.....  
 .....

It is the Commission practice to limit its decisions to 10 years. If yes, could you please undertake to re-notify the measure within a period of 10 years?

☐ yes ☐ no

### 3.6.3.2. Option 2

- (A) Please provide a detailed description of the certificate or tender system (including , *inter alia*, the information on the level of discretionary powers, the role of the administrator, the price determination mechanism):

.....  
 .....

(B) What is the duration of the notified measure <sup>(68)</sup>? .....

.....

(C) Please provide data/calculations showing that the aid is essential to ensure the viability of the production of energy in cogeneration plants:

.....

(D) Please provide data/calculations showing that the aid does not in the aggregate result in overcompensation for energy produced in cogeneration plants:

.....

(E) Please provide information/calculations showing that the aid does not dissuade producers of energy in cogeneration from becoming more competitive:

.....

### 3.6.3.3. Option 3

(A) What is the duration of the operating aid measure <sup>(69)</sup>? .....

(B) Please provide for the duration of the notified measure the following information demonstrating that the operating aid is granted in order to compensate for the difference between the cost of producing energy in cogeneration plants and the market price of the form of energy concerned:

— detailed analysis of the cost of producing energy in cogeneration plants:

.....

— detailed analysis of the market price of the form of energy concerned:

.....

(C) Is the aid degressive?

☐ yes ☐ no

What is the aid intensity of the:

— degressive aid (please indicate the degressive rates for each year) <sup>(70)</sup>:

.....;

— non-degressive aid <sup>(71)</sup>: .....

### 3.7. Aid for energy efficient district heating <sup>(72)</sup>

#### 3.7.1. Basic conditions

Please confirm that:

☐ the environmental investment aid in energy-efficient district heating installations leads to primary energy savings

and

<sup>(68)</sup> Please note that the Commission can authorise such notified measure for a period of 10 years.

<sup>(69)</sup> Please note that the duration must be limited to maximum five years.

<sup>(70)</sup> The aid intensity must not exceed 100 % of the extra costs in the first year, but must have fallen in a linear fashion to zero by the end of the fifth year.

<sup>(71)</sup> The maximum aid intensity is 50 % of the extra costs.

<sup>(72)</sup> Cf. Environmental aid guidelines, Section 3.1.8.

- ☐ the beneficiary district heating installation satisfies the definition of energy efficient district heating set out in point 70(13) of the Environmental aid guidelines

and

- ☐ the combined operation of the generation of heat (as well as electricity in the case of cogeneration) and the distribution of heat will result in primary energy savings

or

- ☐ the investment is meant for the use and distribution of waste heat for district heating purposes.

In the case of aid schemes, please provide details on how compliance with this condition is ensured:

.....  
 .....

In the case of individual aid, please provide details and relevant evidence:

.....  
 .....

### 3.7.2. Aid intensities and bonuses

(A) What is the basic aid intensity applicable to the notified measure <sup>(73)</sup>? .....

(B) Is an SME bonus applied under the notified measure?

- ☐ yes ☐ no

If yes, please specify the level of bonus applicable <sup>(74)</sup>: .....

(C) Is the aid granted in a genuinely competitive bidding process <sup>(75)</sup>?

- ☐ yes ☐ no

If yes, please provide details of the competitive process and attach a copy of the tender notice or its draft:

.....

(D) In case of an aid scheme, specify the total aid intensity of the projects supported under the notified scheme (taking into account the bonuses) (%):

.....

### 3.7.3. Eligible costs <sup>(76)</sup>

(A) Please confirm that the eligible costs are limited to the extra investment costs necessary to realise an investment leading to energy-efficient district heating as compared to the reference investment:

- ☐ yes

(B) Please further confirm that:

- ☐ the precise energy efficient district heating related cost constitutes the eligible costs, if the costs of investing in environmental protection can be easily identified;

or

<sup>(73)</sup> The maximum aid intensity is 50 % of the eligible costs. If the aid is intended solely for the generation part of a district heating installation, energy-efficient district heating installations using renewable sources of energy or cogeneration, the maximum aid intensity is 60 % of the eligible costs.

<sup>(74)</sup> The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

<sup>(75)</sup> For details of the genuinely competitive bidding process required, see point 123 of the Environmental aid guidelines.

<sup>(76)</sup> For details see points 124 and 125 of the Environmental aid guidelines.

- ☐ the extra investment costs are established by comparing the investment with the counterfactual situation in the absence of aid, i.e. the reference investment <sup>(77)</sup>;

and

- ☐ eligible costs are calculated net of any operating benefits and operating costs related to the extra investment and arising during the first five years of the life of the investment concerned.

(C) What form do the eligible costs take?

- ☐ investments in tangible assets;
- ☐ investments in intangible assets.

(D) In the case of investments in tangible assets, please indicate the form(s) of investments concerned:

- ☐ investments in land which are strictly necessary in order to meet environmental objectives;
- ☐ investments in buildings intended to reduce or eliminate pollution and nuisances;
- ☐ investments in plant and equipment intended to reduce or eliminate pollution and nuisances;
- ☐ investments to adapt production methods with a view to protecting the environment.

(E) In the case of investments in intangible assets (technology transfer through the acquisition of operating licenses or of patented and non-patented know how), please confirm that any such intangible asset satisfies the following conditions:

- ☐ it is regarded as a depreciable asset;
- ☐ it is purchased on market terms, from an undertaking from which the acquirer has not power of direct or indirect control,
- ☐ it is included in the assets of the undertaking, and remains in the establishment of the recipient of the aid and is used there for at least five years <sup>(78)</sup>.

Furthermore, please confirm that if the intangible asset is sold during those five years:

- ☐ the yield from the sale will be deducted from the eligible costs;
- and
- ☐ all or part of the aid amount will be, where appropriate, reimbursed.

(F) For aid schemes, please provide a detailed calculation methodology, by reference to the counterfactual situation, which will be applied to all individual aid grants based on the notified scheme, and provide the relevant evidence:

.....

.....

.....

.....

.....

<sup>(77)</sup> The correct counterfactual is the cost of a technically comparable investment that provides a lower degree of environmental protection and that would credibly be realised without aid. See point 81(b) of the Environmental aid guidelines.

<sup>(78)</sup> Please note that this condition does not apply if the intangible asset is technically out of date.

For individual aid measures, please provide a detailed calculation of the eligible costs of the notified investment project, by reference to the counterfactual situation, and provide relevant evidence:

.....

.....

.....

.....

.....

### 3.8. *Aid for waste management* <sup>(79)</sup>

#### 3.8.1. General conditions

Please confirm that the following conditions are met:

- ☐ the aid is granted for the management of waste of other undertakings, including activities of re-utilisation, recycling and recovery, which is in accordance with the hierarchical classification of the principles of waste management <sup>(80)</sup>.
- ☐ the investment is aimed at reducing pollution generated by other undertakings (polluters) and does not extend to pollution generated by the beneficiary of the aid;
- ☐ the aid does not indirectly relieve the polluters from a burden that should be borne by them under Community law, or from a burden that should be considered as a normal company cost for the polluters;
- ☐ the investment goes beyond the “state of the art” <sup>(81)</sup> or uses conventional technologies in an innovative manner;
- ☐ the treated materials would otherwise be disposed of, or be treated in a less environmentally friendly manner;
- ☐ the investment does not merely increase demand for the materials to be recycled without increasing collection of those materials.

Furthermore, please provide details and evidence demonstrating compliance with the above mentioned conditions:

.....

.....

.....

.....

.....

#### 3.8.2. Aid intensities

(A) What is the basic aid intensity applicable to the notified measure <sup>(82)</sup>? .....

(B) Is the SME bonus applied under the notified measure?

- ☐ yes      ☐ no

If yes, please specify the level of bonus applicable <sup>(83)</sup>: .....

(C) In case of an aid scheme, specify the total aid intensity of the projects supported under the notified scheme (taking into account the bonuses) (%):

.....

.....

<sup>(79)</sup> Cf. Environmental aid guidelines, Section 3.1.9.

<sup>(80)</sup> Classification given in the Communication from the Commission on the review of the Community Strategy for Waste Management (COM(96) 399 final, 30.7.1996). For details see footnote 45 of the Environmental aid guidelines.

<sup>(81)</sup> For a definition see footnote 46 of the Environmental aid guidelines.

<sup>(82)</sup> The maximum aid intensity is 50 % of the eligible investment costs.

<sup>(83)</sup> The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

### 3.8.3. Eligible costs <sup>(84)</sup>

(A) Please confirm that the eligible costs are limited to the extra investment costs necessary to realise an investment leading to waste management and borne by the beneficiary compared to the reference investment, i.e. a conventional production not involving waste management with the same capacity:

☐ yes

(B) Please further confirm that:

☐ the precise waste management related costs constitute the eligible costs, if the cost of investing in waste management can be easily defined;

or

☐ the extra investment costs are established by comparing the investment with the counterfactual situation in the absence of aid, i.e. the reference investment <sup>(85)</sup>;

and

☐ the cost of such reference investment is deducted from the eligible costs;

☐ eligible costs are calculated net of any operating benefits and operating costs related to the extra investment for waste management and arising during the first five years of the life of the investment concerned.

(C) What form do the eligible costs take?

☐ investments in tangible assets;

☐ investments in intangible assets.

(D) In the case of investments in tangible assets, please indicate the form(s) of investments concerned:

☐ investments in land which are strictly necessary in order to meet environmental objectives;

☐ investments in buildings intended to reduce or eliminate pollution and nuisances;

☐ investments in plant and equipment intended to reduce or eliminate pollution and nuisances;

☐ investments to adapt production methods with a view to protecting the environment.

(E) In the case of investments in intangible assets (technology transfer through the acquisition of operating licenses or of patented and non-patented know how), please confirm that any such intangible asset satisfies the following conditions:

☐ it is regarded as a depreciable asset;

☐ it is purchased on market terms, from an undertaking from which the acquirer has not power of direct or indirect control,

☐ it is included in the assets of the undertaking, and remains in the establishment of the recipient of the aid and is used there for at least five years <sup>(86)</sup>.

Furthermore, please confirm that if the intangible asset is sold during those five years:

☐ the yield from the sale will be deducted from the eligible costs;

and

☐ all or part of the amount of the aid will, where appropriate, be reimbursed.

<sup>(84)</sup> For details, see points 130 and 131 of the Environmental aid guidelines.

<sup>(85)</sup> The correct counterfactual is the cost of a technically comparable investment that provides a lower degree of environmental protection and that would credibly be realised without aid. See point 81(b) of the Environmental aid guidelines.

<sup>(86)</sup> Please note that this condition does not apply if the intangible asset is technically out of date.

- (F) For aid schemes, please provide a detailed calculation methodology, by reference to the counterfactual situation, which will be applied to all individual aid grants based on the notified scheme, and provide the relevant evidence:

.....

.....

.....

.....

.....

For individual aid measures, please provide a detailed calculation of the eligible costs of the notified investment project, by reference to the counterfactual situation, and provide relevant evidence:

.....

.....

.....

.....

.....

### 3.9. *Aid for the remediation of contaminated sites* <sup>(87)</sup>

#### 3.9.1. General conditions

Please confirm that the following conditions are fulfilled:

- ☐ the investment aid to undertakings repairing environmental damage by remediating contaminated sites <sup>(88)</sup>, leads to an improvement of environmental protection.

Please describe in detail the relevant improvement of the environmental protection, including, if applicable or available, information on the site, the type of contamination, a description of the activity that caused the contamination, and the proposed remediation procedure:

.....

.....

- ☐ the polluter <sup>(89)</sup> responsible for the contamination of the site can not be identified or cannot be made to bear the costs.

Please provide details and evidence demonstrating the compliance with the above mentioned condition:

.....

.....

#### 3.9.2. Aid intensities and eligible costs

- (A) What is the basic aid intensity applicable to the notified measure <sup>(90)</sup>? .....

- (B) Please confirm that the total amount of aid will under no circumstances exceed the actual cost of the remediation work:

☐ yes

- (C) Please specify the cost of the remediation work <sup>(91)</sup>:

.....

.....

<sup>(87)</sup> Cf. Environmental aid guidelines, Section 3.1.10.

<sup>(88)</sup> The environmental damage concerned covers damage to the quality of the soil or of surface water or groundwater.

<sup>(89)</sup> In this context, "polluter" refers to the person liable under the law applicable in each Member State, without prejudice to the adoption of Community rules in the matter.

<sup>(90)</sup> The aid may amount up to 100 % of the eligible costs.

<sup>(91)</sup> All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, ranks as eligible investment in the case of the remediation of contaminated sites.



(D) Please confirm that the increase in the value of the land is deducted from the eligible costs:

☐ yes

Please provide details on how this is ensured:

.....  
 .....

(E) For aid schemes, please provide a calculation methodology, in line with the above mentioned principles, which will be applied to all individual aid grants based on the notified scheme and provide relevant evidence:

.....  
 .....  
 .....  
 .....  
 .....

For individual aid measures, please provide a detailed calculation of the eligible costs of the notified investment project, complying with the above mentioned principles, and provide relevant evidence:

.....  
 .....  
 .....  
 .....  
 .....

### 3.10. *Aid for relocation of undertakings* <sup>(92)</sup>

#### 3.10.1. General conditions

(A) Please confirm that:

- ☐ the change of location is dictated by environmental protection or prevention grounds and has been ordered by the administrative or judicial decision of a competent public authority or agreed between the undertaking and the competent public authority;
- ☐ the undertaking complies with the strictest environmental standards applicable in the new region where it is located.

Please provide details and evidence demonstrating compliance with the above mentioned conditions:

.....  
 .....

(B) Please confirm that the beneficiary:

- ☐ is an undertaking established in an urban area or in a special area of conservation designated under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora <sup>(93)</sup>, which lawfully carries out an activity that creates major pollution and must, on account of this location, move from its place of establishment to a more suitable area;
- or
- ☐ is an establishment or installation falling within the scope of Seveso II Directive <sup>(94)</sup>.

<sup>(92)</sup> Cf. Environmental aid guidelines, Section 3.1.11.

<sup>(93)</sup> OJ L 206, 22.7.1992, p. 7.

<sup>(94)</sup> Council Directive 96/82/EC on the control of major-accidents hazards involving dangerous substances OJ L 10, 14.1.1997, p. 13.

Please provide details and evidence:

.....  
 .....

### 3.10.2. Aid intensities and eligible costs

(A) What is the basic aid intensity applicable to the notified measure <sup>(95)</sup>? .....

(B) Is an SME bonus applied under the notified measure?

☐ yes ☐ no

If yes, please specify the level of bonus applicable <sup>(96)</sup>: .....

(C) Please provide details and the relevant evidence (if applicable) on the following elements linked to the relocation aid:

(a) benefits:

— the yield from the sale or renting of the plant or land abandoned:

.....  
 .....

— the compensation paid in the event of expropriation:

.....  
 .....

— any other gains connected with the transfer of the plant, notably gains resulting from an improvement, on the occasion of the transfer, in the technology used and accounting gains associated with better use of the plant:

.....  
 .....

— investments relating to any capacity increase:

.....  
 .....

— other potential benefits:

.....  
 .....

(b) costs:

— the costs connected with the purchase of land or the construction of purchase of new plant of the same capacity as the plant abandoned:

.....  
 .....

— any penalties imposed on the undertaking for having terminated the contract for the renting of land or buildings, if the administrative or judicial decision ordering the change of location results in the early termination of this contract:

.....  
 .....

<sup>(95)</sup> The maximum aid intensity is 50 % of the eligible investment costs.

<sup>(96)</sup> The aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

— other potential costs:

.....  
 .....

- (D) For aid schemes, please provide a calculation methodology (e.g. based on a theoretical example) for eligible costs/aid amount, including the benefit/cost elements mentioned in point C, which will be applied to all individual aid grants based on the notified scheme:

.....  
 .....  
 .....  
 .....  
 .....

For individual aid measures, please provide a detailed calculation of the eligible costs/aid amount of the notified investment project, including the benefit/cost elements mentioned in point C, and provide the relevant evidence:

.....  
 .....  
 .....  
 .....  
 .....

### 3.11. Aid involved in tradable permit schemes <sup>(97)</sup>

- (A) Please describe in detail the tradable permit scheme, including, *inter alia*, the objectives, the granting methodology, the authorities/entities involved, the role of the State, the beneficiaries and the procedural aspects:

.....  
 .....  
 .....  
 .....  
 .....

- (B) Please explain how:

- ☐ the tradable permit scheme is set up in such a way as to achieve environmental objectives beyond those intended to be achieved on the basis of Community standards that are mandatory for the undertakings concerned:

.....  
 .....  
 .....

- ☐ the allocation is carried out in a transparent way and based on objective criteria and on data sources of the highest quality available:

.....  
 .....

- ☐ the total amount of tradable permits or allowances granted to each undertaking for a price below their market value is not higher than its expected needs as estimated for the situation in absence of the trading scheme:

.....  
 .....

<sup>(97)</sup> Cf. Environmental aid guidelines, Section 3.1.12.

- ☐ the allocation methodology does not favour certain undertakings or certain sectors;

In case the allocation methodology favours certain undertakings or certain sectors, please explain how this is justified by the environmental logic of the scheme itself or is necessary for consistency with other environmental policies:

.....  
.....

Furthermore, please explain how:

- ☐ new entrants shall not in principle receive permits or allowances on more favourable conditions than existing undertakings operating on the same markets:

.....  
.....

- ☐ granting higher allocations to existing installations compared to new entrants should not result in creating undue barriers to entry:

.....  
.....

Please provide details and evidence demonstrating compliance with the above mentioned conditions:

.....  
.....

(C) Please confirm that the following criteria <sup>(98)</sup> are respected by the scheme:

- ☐ the choice of beneficiaries is based on objective and transparent criteria and the aid is granted in principle in the same way for all competitors in the same sector/relevant market if they are in a similar factual situation;

and

- ☐ full auctioning leads to a substantial increase in production costs for each sector or category of individual beneficiaries;

and

- ☐ the cost increase from the tradable permit scheme can not be passed on to customers without leading to important sales reductions <sup>(99)</sup>;

and

- ☐ the best performing technique in the EEA was used as a benchmark for the level of the allowance granted.

Please provide details demonstrating how these criteria are applied:

.....  
.....

<sup>(98)</sup> Please note that these criteria do not apply for the trading period ending on 31 December 2012 for tradable permit schemes in accordance with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

<sup>(99)</sup> This analysis may be conducted on the basis of estimations of, *inter alia*, the product price elasticity of the sector concerned. These estimations will be made in the relevant geographic market. Estimates of lost sales as well as their impact on the profitability of the company may be used.

#### 4. Incentive effect and necessity of aid <sup>(100)</sup>

##### 4.1. General conditions

- (A) Has/have the supported project(s) started prior to the submission of the application for the aid by the beneficiary/beneficiaries to the national authorities?

☐ yes ☐ no

If yes, the Commission considers that the aid does not present an incentive for the beneficiary <sup>(101)</sup>.

- (B) If no, specify the relevant dates:

— The environmental project commenced on: .....

— The aid application by the beneficiary was submitted to the national authorities on: .....

Please provide the relevant supporting documents.

##### 4.2. Evaluation of the incentive effect

If the aid is granted to

— non-SMEs,

— SMEs but must be assessed in accordance with the detailed assessment,

the Commission will require that the incentive effect is demonstrated by means of an evaluation. Go to the next questions. Otherwise, the Commission considers that the incentive effect is automatically met for the measure at hand.

##### 4.2.1. General conditions

*If it is necessary to demonstrate an incentive effect for several beneficiaries participating in the notified project, please provide the information below for each of them.*

*In order to demonstrate the incentive effect, the Commission requires an evaluation by the Member State in order to prove that without the aid, i.e. in the counterfactual situation, the more environmentally friendly alternative would not have been retained. Please fill in the information below*

##### 4.2.2. Criteria

- (A) Please demonstrate how the counterfactual situation is credible:

.....  
 .....

- (B) Have the eligible costs been calculated in accordance with the methodology set out in points 81, 82 and 83 of the Environmental aid guidelines?

☐ yes ☐ no

Please provide details and evidence demonstrating the methodology used:

.....  
 .....

<sup>(100)</sup> Cf. the Environmental aid guidelines, Section 3.2.

<sup>(101)</sup> See point 143 of the Environmental aid guidelines.

(C) Would the investment have been sufficiently profitable without the aid?

- ☐ yes ☐ no

Please provide details and evidence of the relevant profitability <sup>(102)</sup>:

.....  
 .....

## 5. Compatibility of aid under Article 87(3)(b) of the EC Treaty

*Aid for environmental protection to promote the execution of an important project <sup>(103)</sup> of common European interest may be considered to be compatible with the common market pursuant to Article 87(3)(b) of the EC Treaty.*

### 5.1. General conditions (cumulative)

(A) Please provide details and evidence of the terms of implementation of the notified project, including its participants, its objectives and its effects and the means to achieve the objectives <sup>(104)</sup>:

.....  
 .....

(B) Please confirm that:

- ☐ the project is in the common European interest <sup>(105)</sup>: it contributes in a concrete, exemplary and identifiable manner to the Community interest in the field of environmental protection <sup>(106)</sup>;

and

- ☐ the advantage achieved by the objective of the project is not limited to one Member State or to the Member States implementing it, but extends to the Community as a whole <sup>(107)</sup>;

and

- ☐ the project makes a substantive contribution to the Community objectives.

Please provide details and evidence:

.....  
 .....

(C) Please provide details and evidence illustrating that the aid is necessary AND presents an incentive for the execution of the project:

.....  
 .....

(D) Please provide details and evidence demonstrating that the project involves a high level of risk:

.....  
 .....

(E) Please provide details and evidence illustrating that the project is of great importance with regard to its volume <sup>(108)</sup>:

.....  
 .....

<sup>(102)</sup> Due account being taken of the benefits associated with the investment without aid, including the value of tradable permits which may become available to the undertaking concerned following the environmentally friendly investment.

<sup>(103)</sup> The Commission may also consider a group of projects as together constituting a project.

<sup>(104)</sup> Please note that the projects must be specific and clearly defined as regards these aspects.

<sup>(105)</sup> Please note that the common European interest must be demonstrated in practical terms, for example it must be demonstrated that the project enables significant progress to be made towards achieving specific environmental Community objectives.

<sup>(106)</sup> Such as by being of great importance for the environmental strategy of the European Union.

<sup>(107)</sup> The fact that the project is carried out by undertakings in different Member States is not sufficient.

<sup>(108)</sup> Please note that it must be substantial in size and produce substantial environmental effects.

- (F) Please indicate the beneficiary's own contribution <sup>(109)</sup> to the project:

.....  
 .....

- (G) Please list the Member States from which the undertakings involved in the notified project come <sup>(110)</sup>.

.....  
 .....

## 5.2. Description of the project

Please provide a detailed description of the project, including, *inter alia*, structure/organisation, beneficiaries, budget, amount of aid, aid intensity <sup>(111)</sup>, investments concerned and eligible costs. For guidance, please see Section 3 of this supplementary information sheet.

.....  
 .....

## 6. Aid in the form of reductions of or exemptions from environmental taxes

### 6.1. General conditions

- (A) Please explain how the tax reductions or exemptions contribute indirectly to an improvement of the level of the environmental protection and motivate why the tax reductions and exemptions do not undermine the general objective pursued:

.....  
 .....

- (B) For reductions of or exemptions from harmonised taxes at Community level, please confirm that:

- ☐ the aid is granted for a maximum period of 10 years;

and

- ☐ the beneficiaries pay at least the Community minimum tax level set by the relevant applicable directive <sup>(112)</sup>.

Please provide for each category of beneficiaries evidence regarding the payable minimum tax level (rate actually paid preferably in EUR and in the same units as the applicable Community legislation):

.....  
 .....

- ☐ they are compatible with the relevant applicable Community legislation and comply with the limits and conditions set out therein:

Please refer to the relevant provision(s) and provide the relevant evidence:

.....  
 .....

- (C) For reductions of or exemptions from environmental taxes which have not been harmonised or for those which have been harmonised but beneficiaries pay less than the Community minimum tax level, please confirm that the aid is granted for a maximum period of 10 years:

- ☐ yes ☐ no

<sup>(109)</sup> Please note that the Commission will consider the notified projects more favourably if they include a significant own contribution of the beneficiary to the projects.

<sup>(110)</sup> Please note that the Commission will consider the notified projects more favourably if they involve undertakings from a significant number of Member States.

<sup>(111)</sup> Please note that the Commission may authorise aid at higher rates than otherwise laid down in the Environmental aid guidelines.

<sup>(112)</sup> "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 Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).



Furthermore, please provide the following:

- a detailed description of the exempted sector(s):  
.....  
.....
- information for each sector, as to the best performing techniques within the EEA regarding the reduction of the environmental harm targeted by the tax:  
.....  
.....
- a list of the 20 largest beneficiaries covered by the exemptions/reductions as well as a detailed description of their situation, in particular their turnover, their market shares and the size of the tax base:  
.....  
.....

#### 6.2. *Necessity of the aid*

Please confirm that:

- ☐ the choice of beneficiaries is based on objective and transparent criteria and the aid is granted in principle in the same way for all competitors in the same sector/relevant market if they are in a similar factual situation

and

- ☐ the environmental tax without reduction would lead to a substantial increase in production cost for each sector or category of individual beneficiaries <sup>(113)</sup>;

and

- ☐ without the aid the substantial increase in production costs would lead to important sales reductions if it would be passed on to customers <sup>(114)</sup>.

Please provide evidence related to the above mentioned conditions:

.....  
.....

#### 6.3. *Proportionality of the aid*

Please specify which one of the following conditions is met:

- (A) Does the scheme lay down criteria ensuring that each individual beneficiary pays a proportion of the national tax level which is broadly equivalent to the environmental performance of each individual beneficiary compared to the performance related to the best performing technique within the EEA?

☐ yes                      ☐ no

Please provide details and evidence demonstrating the compliance with this condition:

.....  
.....

- (B) Are aid beneficiaries paying at least 20 % of the national tax?

☐ yes                      ☐ no

<sup>(113)</sup> With regard to energy products and electricity "energy-intensive business" as defined in Article 17(1)(a) of Directive 2003/96/EC shall be regarded as fulfilling this criterion as long as that provision remains in force.

<sup>(114)</sup> In this respect, Member States may provide estimations of, *inter alia*, the product price elasticity of the sector concerned in the relevant geographic market as well as estimates of lost sales and/or reduced profits for the companies in the sector/category concerned.

If no, please demonstrate how a lower rate can be justified in view of a limited distortion of competition:

.....  
 .....

(C) Are the reductions or exemptions conditional on the conclusion of agreements between the Member State and the recipient undertakings or associations of undertakings?

☐ yes ☐ no

If yes, please provide details and evidence illustrating that the undertakings or associations of undertakings commit themselves to achieve environmental protection objectives which have the same effect as (i) the taxation linked to environmental performance <sup>(115)</sup>, or (ii) 20 % of the national tax <sup>(116)</sup> or (iii) if the Community minimum tax level is applied.:

.....  
 .....

Please further confirm that:

- ☐ the substance of the agreements has been negotiated by the Member State and specifies the targets and fixes a time schedule for reaching targets;
- ☐ the Member State ensures independent and timely monitoring of the commitments concluded in these agreements;
- ☐ these agreements will be revised periodically in the light of technological and other developments and stipulate effective penalty arrangements applicable if the commitments are not met.

Specify per sector the targets and time schedule and describe the monitoring and review mechanisms (for example by whom and with what periodicity) as well as the penalty mechanism:

.....  
 .....

#### 7. **Criteria triggering a detailed assessment** <sup>(117)</sup>

Please indicate if the notified measure falls within the following categories of aid:

- ☐ for measures covered by a Block Exemption Regulation, the case was notified to the Commission pursuant to a duty to notify aid individually as prescribed in the BER;
- ☐ investment aid, where the aid amount exceeds EUR 7,5 million for one undertaking, (even if part of an approved aid scheme);
- ☐ operating aid for energy saving, where the aid amount exceeds EUR 5 million per undertaking for five years;
- ☐ operating aid for the production of renewable electricity and/or combined production of renewable heat, when the aid is granted to renewable electricity installations in sites where the resulting renewable electricity generation capacity exceeds 125 MW;
- ☐ operating aid for the production of biofuel, when the aid is granted to a biofuel production installation in sites, where the resulting production exceeds 150 000 t per year;

<sup>(115)</sup> Meaning the same effect as if the scheme laid down criteria ensuring that each individual beneficiary pays a proportion of the national tax level which is broadly equivalent to the environmental performance of each beneficiary compared to the performance related to the best performing technique within the EEA, see point 159(a) of the Guidelines.

<sup>(116)</sup> Unless a lower rate can be justified in view of a limited distortion of competition, see point 159(b) of the Guidelines.

<sup>(117)</sup> Cf. Environmental aid guidelines. Section 5.1.

- operating aid for cogeneration, where aid is granted to cogeneration installation with the resulting cogeneration electricity capacity exceeding 200 MW <sup>(118)</sup>
- operating aid granted to new plants producing renewable energy on the basis of a calculation of the external costs avoided <sup>(119)</sup>.

In this case please provide a reasoned and quantified comparative cost analysis, together with an assessment of competing energy producers' external costs, so as to demonstrate that the aid does genuinely compensate for external costs avoided <sup>(120)</sup>.

If the notified measure falls within at least one of these aid categories, it is subject to a detailed assessment and additional information should be provided in order to enable the Commission to carry out a detailed assessment (Section 8 of this supplementary information sheet).

## 8. Additional information for detailed assessment <sup>(121)</sup>

*If there are several beneficiaries participating in the notified project subject to a detailed assessment, please provide the information below for each of them. This is without prejudice to the full description of the notified project, including participants, in the previous sections of this supplementary sheet.*

### 8.1. General observations

*The purpose of this detailed assessment is to ensure that high amounts of aid for environmental protection do not distort competition to an extent contrary to the common interest, but actually contribute to the common interest. This happens when the benefits of State aid in terms of additional environmental benefits outweigh the harm for competition and trade <sup>(122)</sup>.*

*The detailed assessment is conducted on the basis of the positive and negative elements which are specified in Sections 5.2.1 and 5.2.2 of the Environmental aid guidelines and they apply in addition to the criteria set out in Chapter 3 of the Environmental aid guidelines.*

*Provisions below represent a guidance as to the type of information the Commission may require in order to carry out a detailed assessment. The guidance is intended to make the Commission's decisions and their reasoning transparent and foreseeable in order to create predictability and legal certainty. Member States should provide all the elements that they consider useful for the assessment of the case.*

The Member States are in particular invited to rely on the information sources listed below. Please indicate if these supporting documents are attached to the notification:

- evaluations of past State aid schemes or measures;
- impact assessments made by the granting authority;
- other studies related to the environmental protection.

### 8.2. Existence of a market failure <sup>(123)</sup>

- (A) Please identify the expected contribution of the measure to environmental protection (in quantifiable terms) and provide the supporting documents:

.....  
 .....

<sup>(118)</sup> Please note that aid for the production of heat from cogeneration will be assessed in the context of notification based on electricity.

<sup>(119)</sup> For details see point 161 of the Environmental aid guidelines.

<sup>(120)</sup> Please note that in order to calculate external avoided costs, the method of calculation used has to be internationally recognised and validated by the Commission. Please further note that in any event, the amount of aid granted to producers that exceeds the amount of aid resulting from option 1 (cf. point 109 of the Environmental aid guidelines) for operating aid for renewable sources of energy must be reinvested by the firms in renewable sources of energy in accordance with section 3.1.6.1.

<sup>(121)</sup> Cf. Environmental aid guidelines, Section 5.2.

<sup>(122)</sup> For details on detailed assessment and balancing the positive and negative elements see Section 1.3, 5.2.1 (points 166 to 174) and 5.2.2 (points 175 to 188).

<sup>(123)</sup> Cf. Environmental aid guidelines, Section 5.2.1.1.

- (B) Please identify the level of environmental protection targeted, as compared to existing Community standards and/or standards in other Member States and provide the supporting documents:

.....  
 .....

- (C) In the case of the aid for adapting to national standards going beyond the Community standards, please provide the following information and (if relevant) supporting documents:

- ☐ nature, type and location of the main competitors of the aid beneficiary:

.....  
 .....  
 .....

- ☐ the cost of implementation of the national standard (respectively tradable permit schemes) for the aid beneficiary had no aid been given:

.....  
 .....  
 .....

- ☐ the comparative costs of implementation of those standards for the main competitors of the aid beneficiary:

.....  
 .....  
 .....

### 8.3. *Appropriate instrument* <sup>(124)</sup>

Please indicate on what basis the Member State decided to use a selective instrument such as State aid in order to increase environmental protection and provide supporting documents:

- ☐ impact assessment of the proposed measure;
- ☐ comparative analysis of other policy options considered by the Member State;
- ☐ evidence that the polluter pays principle is respected;
- ☐ others: .....

### 8.4. *Incentive effect and necessity of the aid* <sup>(125)</sup>

*In addition to the calculation of extra costs outlined in Chapter 3 of the Environmental aid guidelines please specify the elements listed below.*

- (A) Please provide evidence of the specific action(s) <sup>(126)</sup> that would not have been taken by the undertaking without the aid (counterfactual situation) and provide supporting documents:.

.....  
 .....

- (B) At least one of the following elements must be present for the purposes of demonstration of the expected environmental effect linked to the change in behaviour. Please specify those relevant for the notified measure and provide supporting documents.

- ☐ increase in level of environmental protection;
- ☐ increase in speed of the implementation of future standards

<sup>(124)</sup> Cf. Environmental aid guidelines, Section 5.2.1.2.

<sup>(125)</sup> Cf. Environmental aid guidelines, Section 5.2.1.3.

<sup>(126)</sup> For instance, a new investment, a more environmentally friendly production process and/or a new product that is more environmentally friendly.

(C) The following elements may be used for the purposes of demonstration of an incentive effect. Please specify those relevant for the notified measure, and provide supporting documents <sup>(127)</sup>:

- ☐ production advantages;
- ☐ market conditions;
- ☐ possible future mandatory standards (if there are ongoing negotiations at Community level to introduce new or higher mandatory standards which the measure concerned would seek to target);
- ☐ level of risk;
- ☐ level of profitability

(D) In the case of aid granted to undertakings adapting to a national standard or going beyond Community standards or adopted in the absence of Community standards, please provide the information and supporting documents showing that the aid beneficiary would have been affected substantially in terms of increased costs and would not have been able to bear the costs associated with the immediate implementation of national standards:

.....  
 .....

#### 8.5. *Proportionality of the aid* <sup>(128)</sup>

(A) Please provide an accurate calculation of the eligible costs demonstrating that they are indeed limited to the extra costs necessary to achieve the level of environmental protection:

.....  
 .....

(B) Were the beneficiaries selected in an open selection process?

- ☐ yes      ☐ no

Please provide details <sup>(129)</sup> and supporting documents:

.....  
 .....

(C) Please explain how it is ensured that the aid is limited to the minimum necessary and provide supporting documents:

.....  
 .....

#### 8.6 *Analysis of the distortion of competition and trade* <sup>(130)</sup>

##### 8.6.1. Relevant markets and effects on trade

(A) Please indicate whether the aid is likely to have impact on competition between undertakings in any product market.

- ☐ yes      ☐ no

Please specify the product markets on which the aid is likely to have impact <sup>(131)</sup>:

.....  
 .....

<sup>(127)</sup> For details on different types of advantages see Section 5.2.1.3 (point (172) of the Environmental aid guidelines.

<sup>(128)</sup> Cf. Environmental aid guidelines, Section 5.2.1.4.

<sup>(129)</sup> For example information on how non-discrimination, transparency, openness are ensured.

<sup>(130)</sup> For details on negative effects of the aid measure see Section 5.2.2.

<sup>(131)</sup> For details see footnote 60 of the Environmental aid guidelines.

- (B) For each of these markets please provide some indicative market share of the beneficiary:

.....  
 .....

For each of these markets please provide some indicative market shares of the other companies present in the market. If possible, please provide the associated Herfindahl-Hirschman Index (HHI):

.....  
 .....

- (C) Please describe the structure and dynamics of the relevant markets and provide supporting documents:

.....  
 .....

- (D) If relevant, please provide information on the effects on trade (shift of trade flows and location of economic activity):

.....  
 .....

- (E) The following elements will be considered by the Commission when assessing the likelihood that the beneficiary may increase or maintain sales as a result of the aid. Please indicate those in relation to which supporting documents are provided <sup>(132)</sup>:

- ☐ reduction in or compensation of production unit costs.
- ☐ more environmentally friendly production process.
- ☐ new product.

#### 8.6.2. Dynamic incentives/crowding out

The following elements will be considered by the Commission in its analysis of effects of the aid on competitors' dynamic incentives to invest <sup>(133)</sup>. Please indicate those in relation to which supporting documents are provided:

- ☐ amount of the aid;
- ☐ frequency of the aid;
- ☐ duration of the aid;
- ☐ gradual decrease of the aid;
- ☐ readiness to meet future standards;
- ☐ level of the regulatory standards in relation to the environmental objectives;
- ☐ the risk of cross subsidisation;
- ☐ technological neutrality;
- ☐ competing innovation.

#### 8.6.3. Maintaining inefficient firms afloat <sup>(134)</sup>

The following elements will be considered by the Commission in its analysis of effects of the aid in order to prevent avoid unnecessary support to undertakings, which are unable to adapt to more environmentally friendly standards and technologies because of their low levels of efficiency <sup>(135)</sup>. Please, indicate those in relation to which details and supporting documents are provided:

- ☐ type of beneficiaries.

<sup>(132)</sup> For details see point 177 of the Environmental aid guidelines.

<sup>(133)</sup> For details see points 178 and 179 of the Environmental aid guidelines.

<sup>(134)</sup> For details see Section 5.2.2.2 of the Environmental aid guidelines.

<sup>(135)</sup> For details see Section 5.2.2.2. of the Environmental aid guidelines.

- ☐ overcapacity in the sector targeted by the aid.
- ☐ normal behaviour in the sector targeted by the aid.
- ☐ relative importance of the aid.
- ☐ selection process.
- ☐ selectivity.

#### 8.6.4. Market power/exclusionary behaviour <sup>(136)</sup>

The following elements will be considered by the Commission in its analysis of effects of the aid on beneficiary's market power. Please, indicate those in relation to which details and supported documents are provided:

- ☐ market power of aid beneficiary and market structure
- ☐ new entry;
- ☐ product differentiation and price discrimination
- ☐ buyer power

#### 8.6.5. Effects on trade and location <sup>(137)</sup>

Please provide evidence that the aid was not decisive for the choice of location for the investment:

.....  
 .....

### 9. Cumulation <sup>(138)</sup>

(A) Is the aid granted under the notified measure combined with other aid <sup>(139)</sup>?

- ☐ yes      ☐ no

(B) If yes, please describe the cumulation rules applicable to the notified aid measure:

.....  
 .....  
 .....  
 .....  
 .....

(C) Please specify how the respect of cumulation rules will be verified under the notified aid measure:

.....  
 .....  
 .....  
 .....  
 .....

<sup>(136)</sup> For details see Section 5.2.2.3. of the Environmental aid guidelines.

<sup>(137)</sup> For details see Section 5.2.2.4. of the Environmental aid guidelines.

<sup>(138)</sup> Cf. Environmental aid guidelines, Chapter 6.

<sup>(139)</sup> Please note that aid for environmental protection must not be cumulated with *de minimis* aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that fixed in the Environmental aid guidelines.



**10. Reporting and monitoring <sup>(140)</sup>****10.1. Annual reports**

*Please note that this reporting obligation is without prejudice to the reporting obligation pursuant to Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 <sup>(141)</sup>.*

Please undertake to submit annual reports on the implementation of the notified environmental aid measure to the Commission, which shall contain for each approved scheme as regards large undertakings, all the elements listed below:

- names of the beneficiaries;
  - aid amount per beneficiary;
  - aid intensity;
  - description of the objective of the measure and of what type of environmental protection it is intended to promote;
  - sectors of activity where the aided projects are undertaken;
  - explanation of how the incentive effect has been respected.
- ☐ yes

In case of tax exemptions or reductions, please undertake to submit annual reports containing the elements listed below:

- legislative and/or regulatory text(s) establishing the aid;
  - specification of the categories of undertakings benefiting from tax reductions or exemptions;
  - specification of sectors of the economy most affected by these tax exemptions/reductions.
- ☐ yes

**10.2. Monitoring and evaluation**

- (A) Please undertake to maintain detailed records regarding the granting of aid, with all information necessary to establish that the eligible costs and maximum allowable aid intensity have been observed.

☐ yes

- (B) Please undertake to ensure that detailed records referred to in Section A above are maintained for 10 years from the date on which the aid was granted.

☐ yes

<sup>(140)</sup> Cf. Environmental aid guidelines, Section 7.1, 7.2 and 7.3.

<sup>(141)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

(C) Please undertake to submit the records referred to in Section A above on request of the Commission.

☐ yes

11. **Other information**

Please give any other information you consider necessary to assess the measure(s) in question under the Environmental aid guidelines.'

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**COMMUNITY GUIDELINES ON STATE AID TO PROMOTE RISK CAPITAL INVESTMENTS IN  
SMALL AND MEDIUM-SIZED ENTERPRISES**

(2006/C 194/02)

(Text with EEA relevance)

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## 1 INTRODUCTION

### 1.1 Risk capital as a Community objective

Risk capital relates to the equity financing of companies with perceived high-growth potential during their early growth stages. The demand for risk capital typically comes from companies with growth potential that do not have sufficient access to capital markets, while the offer of risk capital comes from investors ready to take high risk in exchange of potentially above average returns from the equity invested.

In its Communication to the Spring European Council, Working together for growth and jobs — A new start for the Lisbon strategy <sup>(1)</sup>, the Commission has recognised the insufficient level of risk capital available for start-up, innovative young businesses. The Commission has taken initiatives, like the Joint European Resources for Micro- to Medium Enterprises (JEREMIE) which is a joint initiative of the Commission and the European Investment Fund to tackle the lack of risk capital for small and medium-sized enterprises in some regions. Building on the experience gained with the financial instruments under the multiannual programme for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises (MAP) adopted by Council Decision 2000/819/EC <sup>(2)</sup> the Commission has proposed a High Growth and Innovative SME Facility (GIF) under the Competitiveness and Innovation Programme (CIP), which is currently being adopted and will cover the period 2007-2013 <sup>(3)</sup>. The Facility will increase the supply of equity to innovative SMEs by investing on market terms into venture capital funds focused on SMEs in their early stages and in the expansion phase.

<sup>(1)</sup> COM(2005) 24.

<sup>(2)</sup> OJ L 333, 29.12.2000, p. 84. Decision as last amended by Decision No 1776/2005/EC of the European Parliament and of the Council (OJ L 289, 3.11.2005, p. 14).

<sup>(3)</sup> COM(2005) 121 final.

The Commission addressed the issue of risk capital financing in its Communication on 'Financing SME Growth- Adding European Value' adopted on 29 June 2006 <sup>(1)</sup>. The Commission has also stressed the importance of reducing and redirecting State aids to address market failures in order to increase economic efficiency and to stimulate research, development and innovation. In this context, the Commission has undertaken to reform the State aid rules, inter alia, with the aim of facilitating access to finance and risk capital.

In fulfilment of its commitment, the Commission published the 'State Aid Action Plan — Less and better targeted State aid: A roadmap for State aid reform 2005-2009 ("the State Aid Action Plan")' <sup>(2)</sup> in June 2005. The State Aid Action Plan has highlighted the importance of improving the business climate and facilitating the rapid start-up of new enterprises. In this context, the State Aid Action Plan announced the review of the Communication on State aid and risk capital <sup>(3)</sup> to tackle the market failures affecting the provision of risk capital to start-ups and young, innovative small and medium-sized enterprises ('SMEs'), in particular by increasing the flexibility of the rules contained in the Communication on State aid and risk capital.

While it is the primary role of the market to provide sufficient risk capital in the Community, there is an 'equity gap' in the risk capital market, a persistent capital market imperfection preventing supply from meeting demand at a price acceptable to both sides, which negatively affects European SMEs. The gap concerns mainly high-tech innovative and mostly young firms with high growth potential. However, a wider range of firms of different ages and in different sectors with smaller growth potential that cannot find financing for their expansion projects without external risk capital may also be affected.

The existence of the equity gap may justify the granting of State aid in certain limited circumstances. If properly targeted, State aid in support of risk capital provision can be an effective means to alleviate the identified market failures in this field and to leverage private capital.

These guidelines replace the Communication on State aid and risk capital by setting out the conditions under which State aid supporting risk capital investments may be considered compatible with the common market. The guidelines explain the conditions under which State aid is present in accordance with Article 87(1) of the EC Treaty and the criteria that the Commission will apply in the compatibility assessment of the risk capital measures in accordance with Article 87(3) of the EC Treaty.

## 1.2 Experience in the field of State aid to risk capital

These guidelines have been prepared in the light of the experience gained in the application of the Communication on State aid and risk capital. Comments from public consultations of Member States and stakeholders on the revision of the Communication on State aid and risk capital, on the State aid Action Plan and on the Communication on State aid to innovation <sup>(4)</sup> have also been taken into account.

The experience of the Commission and the comments received in the consultations have shown that the Communication on State aid and risk capital has generally worked well in practice, but also revealed a need to increase the flexibility in the application of the rules and to adjust the rules to reflect the changed situation of the risk capital market. In addition, experience has shown that for some types of risk capital investments in some areas it was not always possible to fulfil the conditions set out in the Communication on State aid and risk capital, and, as a result, risk capital could not be adequately supported with State aid in these cases. Furthermore, experience has also shown a low overall profitability of the aided risk capital funds.

<sup>(1)</sup> COM(2006) 349.

<sup>(2)</sup> COM(2005) 107 final – SEC(2005) 795.

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

<sup>(4)</sup> COM(2005) 436 final.

To remedy these problems, these guidelines adopt a more flexible approach in certain circumstances so as to allow Member States to better target their risk capital measures to the relevant market failure. These guidelines also set out a refined economic approach for the assessment of the compatibility of risk capital measures with the EC Treaty. Under the Communication on State aid and risk capital the assessment of the compatibility of schemes was already based on a relatively sophisticated economic analysis focussing on the size of the market failure and the targeting of the measure. Hence, the Communication on State aid and risk capital already reflected the key focus of a refined economic approach. However, some fine-tuning was still needed in respect of some of the criteria to ensure that the measure better target the relevant market failure. In particular, the guidelines contain elements to ensure that profit-driven and professional investment decisions are strengthened in order to further encourage private investors to co-invest with the State. Finally, an effort has been made to provide clarity where the experience with the Communication on State aid and risk capital has shown that this was needed.

### 1.3 The balancing test for State aid supporting risk capital investments

#### 1.3.1 *The State Aid Action Plan and the balancing test*

In the State Aid Action Plan the Commission underlined the importance of strengthening the economic approach to State aid analysis. This translates into a balancing the potential positive effects of the measure in reaching an objective of common interest against its potential negative effects in terms of distortion of competition and trade. The balancing test, as outlined in the State Aid Action Plan, is composed of three steps, the first two relating to the positive effects and the last one to the negative effects and the resulting balance:

- (1) Is the aid measure aimed at a well-defined objective of common interest, such as growth, employment, cohesion and environment?
- (2) Is the aid well designed to deliver the objective of common interest, that is does the proposed aid address the market failure or other objective?
  - (i) Is State aid an appropriate policy instrument?
  - (ii) Is there an incentive effect, i.e. does the aid change the behaviour of firms and/or investors?
  - (iii) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (3) Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

The balancing test is equally relevant for the design of State aid rules and for the assessment of cases falling within their scope.

#### 1.3.2 *Market failures*

On the basis of the experience gained in applying the Communication on State aid and risk capital, the Commission considers that there is no general risk capital market failure in the Community. It does, however, accept that there are market gaps for some types of investments at certain stages of enterprises' development. These gaps result from an imperfect matching of supply and demand of risk capital and can generally be described as an equity gap.

The provision of equity finance, in particular to smaller businesses, presents numerous challenges both to the investor and to the enterprise invested in. On the supply side, the investor needs to make a careful analysis not merely of any collateral being offered (as is the case of a lender) but of the entire business strategy in order to estimate the possibilities of making a profit on the investment and the risks associated with it. The investor also needs to be able to monitor that the business strategy is well implemented by the enterprise's managers. The investor finally needs to plan and execute an exit strategy, in order to generate a risk-adjusted return on investment from selling its equity stake in the company in which the investment is made.

On the demand side, the enterprise must understand the benefits and risks associated with external equity investment to pursue the venture and to prepare sound business plans to secure the necessary resources and mentoring. Owing to a lack of internal capital or the collateral needed to obtain debt funding and/or a solid credit history, the enterprise may face very tight funding constraints. In addition, the enterprise must share control with an outside investor, who usually has an influence over company decisions in addition to a portion of the equity.

As a result, the matching of supply and demand of risk capital may be inefficient so that the level of risk capital provided in the market is too restricted, and enterprises do not obtain funding despite having a valuable business model and growth prospects. The Commission considers that the main source of market failure relevant to risk capital markets, which particularly affects access to capital by SMEs and companies at the early stages of their development and which may justify public intervention, relates to imperfect or asymmetric information.

Imperfect or asymmetric information may result notably in:

- (a) Transaction and agency costs: potential investors face more difficulties in gathering reliable information on the business prospects of an SME or a new company and subsequently in monitoring and supporting the enterprise's development. This is in particular the case for highly innovative projects or risky projects. Furthermore, small deals are less attractive to investment funds due to relatively high costs for investment appraisal and other transaction costs.
- (b) Risk aversion: investors may become more reluctant to provide risk capital to SMEs, the more the provision of risk capital is subject to imperfect or asymmetric information. In other words, imperfect or asymmetric information tends to exacerbate risk aversion.

### 1.3.3 *Appropriateness of the instrument*

The Commission considers that State aid to risk capital measures may constitute an appropriate instrument within the limits and conditions set out in these guidelines. However, it must be borne in mind that risk capital provision is essentially a commercial activity involving commercial decisions. In this context, more general structural measures not constituting State aid may also contribute to an increase in the provision of risk capital, such as promoting a culture of entrepreneurship, introducing a more neutral taxation of the different forms of SME financing (for example new equity, retained earnings and debt), fostering market integration, and easing regulatory constraints, including limitations on investments by certain types of financial institutions (for example, pension funds) and administrative procedures for setting up companies.

### 1.3.4 *Incentive effect and necessity*

State aid for risk capital must result in a net increase in the availability of risk capital to SMEs, in particular by leveraging investments by private investors. The risk of 'dead weight', or lack of incentive effect, means that some enterprises funded through publicly supported measures would have obtained finance on the same terms even in the absence of State aid (crowding out). There is evidence of this happening, although such evidence is inevitably anecdotal. In those circumstances public resources are ineffective.

The Commission considers that aid in the form of risk capital satisfying the conditions laid down in these guidelines ensures the presence of an incentive effect. The need to provide incentives depends on the size of the market failure related to the different types of measures and beneficiaries. Therefore different criteria are expressed in terms of size of investment tranches per target enterprise, degree of involvement of private investors, and consideration of notably the size of the company and the business stage financed.



### 1.3.5 Proportionality of aid

The need to provide incentives depends on the size of the market failure related to the different types of measures, beneficiaries and development stage of the SMEs. A risk capital measure is well designed if the aid is necessary in all its elements to create the incentives to provide equity to SMEs in their seed, start-up and early stages. State aid will be inefficient if it goes beyond what is needed to induce more risk capital provision. In particular, to ensure that aid is limited to the minimum, it is crucial that there is significant private participation and that the investments are profit-driven and are managed on a commercial basis.

### 1.3.6 Negative effects and overall balance

The EC Treaty requires the Commission to control State aid within the Community. This is why the Commission has to be vigilant in order to ensure that measures are well targeted and to avoid severe distortions of competition. When deciding whether the grant of public funds for measures designed to promote risk capital is compatible with the common market, the Commission will seek to limit as far as possible the following categories of risk:

- (a) the risk of 'crowding out'. The presence of publicly supported measures may discourage other potential investors from providing capital. This could, over the longer term, further discourage private investment in young SMEs and thus end up widening the equity gap, while at the same time creating the need for additional public funding;
- (b) the risk that advantages to the investors and/or investment funds create an undue distortion of competition in the venture capital market relative to their competitors that do not receive the same advantages;
- (c) the risk that an oversupply of public risk capital for target enterprises not invested according to a commercial logic could help inefficient firms stay afloat and could cause an artificial inflation of their valuations, making it all the less attractive for private investors to supply risk capital to these firms.

## 1.4 Approach for State aid control in the area of risk capital

Provision of risk capital funding to enterprises cannot be linked to the traditional concept of 'eligible costs' used for State aid control, which relies on certain specified costs for which aid is allowed and the setting of maximum aid intensities. The diversity of possible models for risk capital measures devised by Member States also means that the Commission is not in a position to define rigid criteria by which to determine whether such measures are compatible with the common market. The assessment of risk capital therefore implies a departure from the traditional way in which State aid control is carried out.

However, since the Communication on State aid and risk capital has proved to work well in practice in the area of risk capital, the Commission has decided to continue and thereby ensure continuity with the approach of the Communication.

## 2 SCOPE AND DEFINITIONS

### 2.1 Scope

These guidelines only apply to risk capital schemes targeting SMEs. They are not intended to constitute the legal basis for declaring an ad hoc measure providing capital to an individual enterprise compatible with the common market.

Nothing in these guidelines should be taken to call into question the compatibility of State aid measures which meet the criteria laid down in any other guidelines, frameworks or regulations adopted by the Commission.

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

Risk capital measures must specifically exclude the provision of aid to enterprises:

- (a) in difficulty, within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup>;
- (b) in the shipbuilding <sup>(2)</sup>, coal <sup>(3)</sup> and steel industry <sup>(4)</sup>.

These Guidelines do not apply to aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity, as well as aid contingent upon the use of domestic in preference to imported goods.

## 2.2 Definitions

For the purposes of these guidelines, the following definitions shall apply:

- (a) **‘equity’** means ownership interest in a company, represented by the shares issued to investors;
- (b) **‘private equity’** means private (as opposed to public) equity investment in companies not listed on a stock-market, including venture capital, replacement capital and buy-outs;
- (c) **‘quasi-equity investment instruments’** means instruments whose return for the holder (investor/lender) is predominantly based on the profits or losses of the underlying target company, are unsecured in the event of default. This definition is based on a substance over form approach;
- (d) **‘debt investment instruments’** means loans and other funding instruments which provide the lender/investor with a predominant component of fixed minimum remuneration and are at least partly secured. This definition is based on a substance over form approach;
- (e) **‘seed capital’** means financing provided to study, assess and develop an initial concept, preceding the start-up phase;
- (f) **‘start-up capital’** means financing provided to companies, which have not sold their product or service commercially and are not yet generating a profit, for product development and initial marketing;
- (g) **‘early-stage capital’** means seed and start-up capital;
- (h) **‘expansion capital’** means financing provided for the growth and expansion of a company, 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;
- (i) **‘venture capital’** means investment in unquoted companies by investment funds (venture capital funds) that, acting as principals, manage individual, institutional or in-house money and includes early-stage and expansion financing, but not replacement finance and buy-outs;

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

<sup>(2)</sup> For the purpose of these Guidelines, the definitions laid down in the Framework on State aid to shipbuilding OJ C 317, 30.12.2003, p. 11, apply.

<sup>(3)</sup> For the purpose of these Guidelines, ‘coal’ means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal laid down by the United Nations Economic Commission for Europe.

<sup>(4)</sup> For the purpose of these Guidelines, the definition laid down in Annex I in the Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13) applies.

- (j) **‘replacement capital’** means the purchase of existing shares in a company from another private equity investment organisation or from another shareholder or shareholders. Replacement capital is also called secondary purchase;
- (k) **‘risk capital’** means equity and quasi-equity financing to companies during their early-growth stages (seed, start-up and expansion phases), including informal investment by business angels, venture capital and alternative stock markets specialised in SMEs including high-growth companies (hereafter referred to as investment vehicles);
- (l) **‘risk capital measures’** means schemes to provide or promote aid in the form of risk capital;
- (m) **‘Initial Public Offering’ (‘IPO’)** means the process of launching the sale or distribution of a company’s shares to the public for the first time;
- (n) **‘follow-on investment’** means an additional investment in a company subsequent to an initial investment;
- (o) **‘buyout’** means the purchase of at least a controlling percentage of a company’s equity from the current shareholders to take over its assets and operations through negotiation or a tender offer;
- (p) **‘exit strategy’** means a strategy for the liquidation of holdings by a venture capital or private equity fund according to 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);
- (q) **‘small and medium-sized enterprises’ (‘SMEs’)** means small enterprises and medium-sized enterprises within the meaning 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>(1)</sup> or any Regulation replacing that Regulation;
- (r) **‘target enterprise or company’** means an enterprise or company in which an investor or investment fund is considering investing;
- (s) **‘business angels’** means wealthy private individuals who invest directly in young new and growing unquoted business (seed finance) and provide them with advice, usually in return for an equity stake in the business, but may also provide other long-term finance;
- (t) **‘assisted areas’** means regions falling within the scope of the derogations contained in Article 87(3)(a) or (c) of the EC Treaty;

### 3 APPLICABILITY OF ARTICLE 87(1) IN THE FIELD OF RISK CAPITAL

#### 3.1 General applicable texts

There are already a number of published Commission texts which provide interpretation on whether individual measures fall within the definition of State aid and which may be relevant to risk capital measures. These include the 1984 communication on government capital injections <sup>(2)</sup>, the 1998 notice on the application of the State aid rules to measures relating to direct business taxation <sup>(3)</sup> and the notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees <sup>(4)</sup>. The Commission will continue to apply these texts, when assessing whether risk capital measures constitute State aid.

<sup>(1)</sup> OJ L 10, 13.1.2001, p. 33; Regulation as last amended by Regulation (EC) No 1040/2006 (OJ L 187, 8.7.2006, p. 8).

<sup>(2)</sup> Bulletin EC 9-1984, reproduced in ‘Competition law in the European Communities’, Volume IIA, p. 133.

<sup>(3)</sup> OJ C 384, 10.12.1998, p. 3.

<sup>(4)</sup> OJ C 71, 11.3.2000, p. 14.

### 3.2 Presence of aid at three levels

Risk capital measures often involve complex constructions devised to promote risk capital because the public authorities create incentives for one set of economic operators (investors) in order to provide finance to another set (target SMEs). Depending on the design of the measure, and even if the intention of the public authorities may be only to provide benefits to the latter group, enterprises at either or both levels may benefit from State aid. Moreover, in most cases the measure provides for the creation of a fund or other investment vehicle which has an existence separate from that of the investors and the enterprises in which the investment is made. In such cases it is also necessary to consider whether the fund or vehicle can be considered to be an enterprise benefiting from State aid.

In this context, funding with resources, which are not State resources within the meaning of Article 87(1) of the EC Treaty, is considered to be provided by private investors. This is, in particular, the case for funding by the European Investment Bank and the European Investment fund.

The Commission will take into account the following specific factors in determining whether State aid is present at each of the different levels <sup>(1)</sup>.

**Aid to investors.** Where a measure allows private investors to effect equity or quasi-equity investments into a company or set of companies on terms more favourable than public investors, or than if they had undertaken such investments in the absence of the measure, then those private investors will be considered to receive an advantage. Such advantage may take different forms, as specified in section 4.2 of these guidelines. This remains the case even if the private investor is persuaded by the measure to confer an advantage on the company or companies concerned. In contrast, the Commission will consider the investment to be effected *pari passu* between public and private investors, and thus not to constitute State aid, where its terms would be acceptable to a normal economic operator in a market economy in the absence of any State intervention. This is assumed to be the case only if public and private investors share exactly the same upside and downside risks and rewards and hold the same level of subordination, and normally where at least 50 percent of the funding of the measure is provided by private investors, which are independent from the companies in which they invest.

**Aid to an investment fund, investment vehicle and/or its manager.** In general, the Commission considers that an investment fund or an investment vehicle is an intermediary vehicle for the transfer of aid to investors and/or enterprises in which investment is made, rather than being a beneficiary of aid itself. However, measures such as fiscal measures or other measures involving direct transfers in favour of an investment vehicle or an existing fund with numerous and diverse investors with the character of an independent enterprise may constitute aid unless the investment is made on terms which would be acceptable to a normal economic operator in a market economy and therefore provide no advantage to the beneficiary. Likewise, aid to the fund's managers or the management company will be considered to be present if their remuneration does not fully reflect the current market remuneration in comparable situations. On the other hand, there is a presumption of no aid if the managers or management company are chosen through an open and transparent public tender procedure or if they do not receive any other advantages granted by the State.

**Aid to the enterprises in which investment is made.** In particular, where aid is present at the level of the investors, the investment vehicle or the investment fund, the Commission will normally consider that it is at least partly passed on to the target enterprises and thus that it is also present at their level. This is the case even where investment decisions are being taken by the managers of the fund with a purely commercial logic.

<sup>(1)</sup> It should, however, be noted that guarantees granted by the State in favour of investments in risk capital are more likely to include an element of aid to the investor than is the case with traditional loan guarantees, which are normally considered to constitute aid to the borrower rather than to the lender.

In cases where the investment is made on terms which would be acceptable to a private investor in a market economy in the absence of any State intervention the enterprises in which the investment is made will not be considered as aid recipients. For this purpose, the Commission will consider whether such investment decisions are exclusively profit-driven and are linked to a reasonable business plan and projections, as well as to a clear and realistic exit strategy. Also important will be the choice and investment mandate of the fund's managers or the management company as well as the percentage and degree of involvement of private investors.

### 3.3 De minimis amounts

Where all financing in the form of risk capital provided to beneficiaries is *de minimis* within the meaning of 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>(1)</sup> and Commission Regulation (EC) No 1860/2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors <sup>(2)</sup>, then it is deemed not to fall under Article 87(1) of the EC Treaty. In risk capital measures the application of the *de minimis* rule is made more complicated by difficulties in the calculation of the aid and also by the fact that measures may provide aid not only to the target enterprises but also to other investors. Where these difficulties can be overcome, however, the *de minimis* rule remains applicable. Therefore, if a scheme provides public capital only up to the relevant *de minimis* threshold to each enterprise over a three-year period, then it is certain that any aid to these enterprises and/or the investors is within the prescribed limits.

## 4 ASSESSMENT OF THE COMPATIBILITY OF RISK CAPITAL AID UNDER ARTICLE 87(3) (C) OF THE EC TREATY

### 4.1 General principles

Article 87(3)(c) of the EC Treaty provides that aid to facilitate the development of certain economic activities may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest. On the basis of the balancing test set out in section 1.3, the Commission will declare a risk capital measure compatible only if it concludes that the aid measure leads to an increased provision of risk capital without adversely affecting trading conditions to an extent contrary to the common interest. This section sets out a set of conditions under which the Commission will consider that aid in the form of risk capital is compatible with Article 87(3)(c).

Where the Commission is in possession of a complete notification which shows that all the conditions laid down in this section are met, it will try to make a rapid assessment of the aid within the time limits laid down 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>(3)</sup>. For certain types of measures which do not fulfil all the conditions set out in this section, the Commission will undertake a more detailed assessment of the risk capital measure as set out in detail in section 5.

Where there is also aid at the level of target enterprises and the provision of risk capital is linked to costs which are eligible for aid under another regulation or framework or other guidelines, that text may be applied to consider whether the aid is compatible with the common market.

<sup>(1)</sup> OJ L 10, 13.1.2001, p. 30.

<sup>(2)</sup> OJ L 325, 28.10.2004, p. 4.

<sup>(3)</sup> OJ L 83, 27.3.1999, p. 1.

## 4.2 Form of aid

The choice of form of an aid measure lies in general with the Member State and this applies equally to risk capital measures. However, the Commission's assessment of such measures will include whether they encourage market investors to provide risk capital to the target enterprises and are likely to result in investment decisions being taken on a commercial (that is, a profit-driven) basis, as further explained in section 4.3.

The Commission believes that the types of measure capable of producing this result include the following:

- (a) constitution of investment funds ('venture capital funds') in which the State is a partner, investor or participant, even if on less advantageous terms than other investors;
- (b) guarantees to risk capital investors or to venture capital funds against a proportion of investment losses, or guarantees given in respect of loans to investors/funds for investment in risk capital, provided the public cover for the potential underlying losses does not exceed 50 % of the nominal amount of the investment guaranteed;
- (c) other financial instruments in favour of risk capital investors or venture capital funds to provide extra capital for investment;
- (d) fiscal incentives to investment funds and/or their managers, or to investors to undertake risk capital investment.

## 4.3 Conditions for compatibility

To ensure that the incentive effect and the necessity of aid as set out in section 1.3.4 are present in a risk capital measure a number of indicators are relevant. The rationale is that State aid must target a specific market failure for the existence of which there is sufficient evidence. For this purpose, these guidelines lay down specific safe-harbour thresholds relating to tranches of investment in target SMEs in their early stages of business activity. Furthermore, so that aid is limited to the minimum necessary, it is crucial that aided investments into target SMEs are profit-driven and are managed on a commercial basis. The Commission will consider that the incentive effect, the necessity and proportionality of aid are present in a risk capital measure and that the overall balance is positive where all the following conditions are met.

Measures specifically involving investment vehicles will be assessed under section 5 of these guidelines and not under the conditions in this section.

### 4.3.1 *Maximum level of investment tranches*

The risk capital measure must provide for tranches of finance, whether wholly or partly financed through State aid, not exceeding EUR 1.5 million per target SME over each period of twelve months.

### 4.3.2 *Restriction to seed, start-up and expansion financing*

The risk capital measure must be restricted to provide financing up to the expansion stage for small enterprises, or for medium-sized enterprises located in assisted areas. It must be restricted to provide financing up to the start-up stage for medium-sized enterprises located in non-assisted areas.

### 4.3.3 *Prevalence of equity and quasi-equity investment instruments*

The risk capital measure must provide at least 70 % of its total budget in the form of equity and quasi-equity investment instruments into target SMEs. In assessing the nature of such instruments, the Commission will have regard to the economic substance of the instrument rather than to its name and the qualification attributed to it by the investors. In particular, the Commission will take into account the degree of risk in the target company's venture borne by the investor, the potential losses borne by the investor, the predominance of profit-dependent remuneration versus fixed remuneration, and the level of subordination of the investor in the event of the company's bankruptcy. The Commission may also take into account the treatment applicable to the investment instrument under the prevalent domestic legal, regulatory, financial, and accounting rules, if these are consistent and relevant for the qualification.

#### 4.3.4 *Participation by private investors*

At least 50 % of the funding of the investments made under the risk capital measure must be provided by private investors, or for at least 30 % in the case of measures targeting SMEs located in assisted areas.

#### 4.3.5 *Profit-driven character of investment decisions*

The risk capital measure must ensure that decisions to invest into target companies are profit-driven. This is the case where the motivation to effect the investment is based on the prospects of a significant profit potential and constant assistance to target companies for this purpose.

This criterion is considered to be met if all the following conditions are fulfilled:

- (a) the measures have significant involvement of private investors as described in section 4.3.4, providing investments on a commercial basis (that is, only for profit) directly or indirectly in the equity of the target enterprises; and
- (b) a business plan exists for each investment containing details of product, sales and profitability development and establishing the *ex ante* viability of the project; and
- (c) a clear and realistic exit strategy exists for each investment.

#### 4.3.6 *Commercial management*

The management of a risk capital measure or fund must be effected on a commercial basis. The management team must behave as managers in the private sector, seeking to optimise the return for their investors. This criterion is considered to be present where all the following conditions are fulfilled:

- (a) there is an agreement between a professional fund manager or a management company 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 market investors are represented in decision-making, such as through an investors' or advisory committee; and
- (c) best practices and regulatory supervision apply to the management of funds.

#### 4.3.7 *Sectoral focus*

To the extent that many private sector funds focus on specific innovative technologies or even sectors (such as health, information technology, biotechnology) the Commission may accept a sectoral focus for risk capital measures, provided the measure falls within the scope of these guidelines as set out in section 2.1.

### 5 COMPATIBILITY OF RISK CAPITAL AID MEASURES SUBJECT TO A DETAILED ASSESSMENT

This section applies to risk capital measures which do not satisfy all the conditions laid down in section 4. A more detailed compatibility assessment based on the balancing test outlined in section 1.3 is necessary for these measures due to the need to ensure the targeting of the relevant market failure and due to the higher risks of potential crowding-out of private investors and of distortion of competition.



The analysis of compatibility of the measures with the EC Treaty will be based on a number of positive and negative elements. No single element is determinant, nor can any set of elements be regarded as sufficient on its own to ensure compatibility. In some cases their applicability, and the weight attached to them, may depend on the form of the measure.

Member States will have to provide all the elements and the evidence they consider useful for the assessment of a measure. The level of evidence required and the Commission assessment will depend on the features of each case and will be proportionate to the level of market failure tackled and to the risk of crowding out private investment.

### 5.1 Aid measures subject to a detailed assessment

The following types of risk capital measures not complying with one or more of the conditions set out in section 4 will be subject to a more detailed assessment given the less obvious evidence of a market failure and the higher potential for crowding out of private investment and/or distortion of competition.

#### (a) *Measures providing for investment tranches beyond the safe-harbour threshold of EUR 1.5 million per target SME over each period of twelve months*

The Commission is aware of the constant fluctuation of the risk capital market and of the equity gap over time, as well as of the different degree by which enterprises are affected by the market failure depending on their size, on their stage of business development, and on their economic sector. Therefore, the Commission is prepared to consider declaring risk capital measures providing for investment tranches exceeding the threshold of EUR 1.5 million per enterprise per year compatible with the common market, provided the necessary evidence of the market failure is submitted.

#### (b) *Measures providing finance for the expansion stage for medium-sized enterprises in non-assisted areas*

The Commission recognises that certain medium-sized enterprises in non-assisted areas may have insufficient access to risk capital even in their expansion stage despite the availability of finance to enterprises having a significant turnover and/or total balance. Therefore, the Commission is prepared to consider declaring measures partly covering the expansion stage of medium-sized enterprises compatible with the common market in certain cases, provided the necessary evidence is submitted.

#### (c) *Measures providing for follow-on investments into target companies that already received aided capital injections to fund subsequent financing rounds even beyond the general safe-harbour thresholds and the companies' early-growth financing*

The Commission recognises the importance of follow-on investments into target companies that already received aided capital injections in their early stages to finance financing rounds even beyond the maximum safe-harbour investment tranches and the companies' early-growth financing up to the exit of the initial investment. This may be necessary to avoid dilution of the public participation in these financing rounds while ensuring continuity of financing for the target enterprises so that both public and private investors can fully benefit from the risky investments. In these circumstances and taking into account the specificities of the targeted sector and enterprises, the Commission is prepared to consider declaring follow-on investment compatible with the common market provided the amount of this investment is consistent with the initial investment and with the size of the fund.

(d) ***Measures providing for a participation by private investors below 50 % in non-assisted areas or below 30 % in assisted areas***

In the Community the level of development of the private risk capital market varies to a significant extent in the various Member States. In some cases, it might be difficult to find private investors, and therefore the Commission is prepared to consider declaring measures with a private participation below the thresholds set out in section 4.3.4 compatible with the common market, if Member States submit the necessary evidence.

This problem may be even greater for risk capital measures targeting SMEs in assisted areas. In these cases there may be an additional shortage of capital available for them given their remote location from venture capital centres, the lower population density, and the increased risk-aversion of private investors. These SMEs may also be affected by demand-side issues such as the difficulty in drawing up a viable, investment-ready business proposition, a more limited equity culture, and particular reluctance to lose management control as a result of venture capital intervention.

(e) ***Measures providing seed capital to small enterprises which may foresee (i) less or no private participation by private investors, and/or (ii) predominance of debt investment instruments as opposed to equity and quasi-equity***

The market failures affecting enterprises in their seed stage are more pronounced due to the high degree of risk involved by the potential investment and the need to closely mentor the entrepreneur in this crucial phase. This is also reflected by the reluctance and near absence of private investors to provide seed capital, which implies no or very limited risk of crowding-out. Furthermore, there is reduced potential for distortion of competition due to the significant distance from the market of these small-size enterprises. These reasons may justify a more favourable stance of the Commission towards measures targeting the seed stage, also in light of their potentially crucial importance to generate growth and jobs in the Community.

(f) ***Measures specifically involving an investment vehicle***

An investment vehicle may facilitate the matching between investors and target SMEs for which it may therefore improve the access to risk capital. In case of market failures related to the enterprises targeted by the vehicle, the vehicle may not function efficiently without financial incentives. For instance, investors may not find the type of investments targeted by the vehicle attractive compared to investments of higher tranches of investments or investments in more established enterprises or more established market places, despite a clear potential for profitability of the target enterprises. Therefore, the Commission is prepared to consider declaring measures specifically involving an investment vehicle compatible with the common market, provided the necessary evidence for a clearly defined market failure is submitted.

(g) ***Costs linked to the first screening of companies in view of the conclusion of the investments, up to the due diligence phase ('scouting costs')***

Risk capital funds or their managers may incur 'scouting costs' in identifying SMEs, prior to the due diligence phase. Grants covering part of these scouting costs must encourage the funds or their managers to carry out more 'scouting' activities than would otherwise be the case. This may also be beneficial for the SMEs concerned, even if the search does not lead to an investment, since it enables those SMEs to acquire more experience with risk capital financing. These reasons may justify a more favourable stance of the Commission towards grants covering part of the scouting costs of risk capital funds or their managers, subject to the following conditions: The eligible costs must be limited to the scouting costs related to SMEs mainly in their seed or start-up stage, where such costs do not lead to investment, and the costs must exclude legal and administrative costs of the funds. In addition, the grant must not exceed 50 % of the eligible costs.

## 5.2 Positive effects of the aid

### 5.2.1 *Existence and evidence of market failure*

For risk capital measures envisaging investment tranches into target enterprises beyond the conditions laid down in section 4, in particular those providing for tranches above EUR 1.5 million per target SME over each period of twelve months, follow-on investments or financing of the expansion stage for medium-sized enterprises in non-assisted areas as well as for measures specifically involving an investment vehicle, the Commission will require additional evidence of the market failure being tackled at each level where aid may be present before declaring the proposed risk capital measure compatible with the common market. Such evidence must be based on a study showing the level of the 'equity gap' with regard to the enterprises and sectors targeted by the risk capital measure. The relevant information concerns the supply of risk capital and the fundraising capital, as well as the significance of the venture capital industry in the local economy. It should ideally be provided for periods of three to five years preceding the implementation of the measure and also for the future, on the basis of reasonable projections, if available. The evidence submitted could also include the following elements:

- (a) development of the fundraising over the past five years, also in comparison with the correspondent national and/or European averages;
- (b) the current overhang of money;
- (c) the share of government aided investment programs in the total venture capital investment over the preceding three to five years;
- (d) the percentage of new start-ups receiving venture capital;
- (e) the distribution of investments by categories of amount of investment;
- (f) a comparison of the number of business plans presented with the number of investments made by segment (amount of investment, sector, round of financing, etc.).

For measures targeting SMEs located in assisted areas, the relevant information must be supplemented by any other relevant evidence proving the regional specificities which justify the features of the measure envisaged. The following elements may be relevant:

- (a) estimation of the additional size of the equity gap caused by the peripherality and other regional specificities, in particular in terms of total amount of risk capital invested, number of funds or investment vehicles present in the territory or at a short distance, availability of skilled managers, number of deals and average and minimum size of deals if available;
- (b) specific local economic data, social and/or historic reasons for an underprovision of risk capital, in comparison with the relevant average data and/or situation at national and/or Community level as appropriate;
- (c) any other relevant indicator showing an increased degree of market failure.

Member States may resubmit the same evidence several times provided that the underlying market conditions have not changed. The Commission reserves the right to question the validity of the submitted evidence.

### 5.2.2 *Appropriateness of the instrument*

An important element in the balancing test is whether and to what extent State aid in the field of risk capital can be considered as an appropriate instrument to encourage private risk capital investment. This assessment is closely related to the assessment of the incentive effect and the necessity of aid, as set out in section 5.2.3.

In its detailed assessment, the Commission will take particular account of any impact assessment of the proposed measure which the Member State has made. Where the Member State has considered other policy options and the advantages of using a selective instrument such as State aid have been established and submitted to the Commission, the measures concerned are considered to constitute an appropriate instrument. The Commission will also assess evidence of other measures taken or to be taken to address the 'equity gap' notably *ex post* evaluations and both supply and demand side issues affecting the targeted SMEs, to see how they would interact with the proposed risk capital measure.

#### 5.2.3 *Incentive effect and necessity of aid*

The incentive effect of the risk capital aid measures plays a crucial role in the compatibility assessment. The Commission believes that the incentive effect is present for measures meeting all the conditions in section 4. However, as for the measures covered in this section the presence of the incentive effect becomes less obvious. Therefore, the Commission will also take into account the following additional criteria showing the profit-driven character of investment decisions and the commercial management of the measure, where relevant.

##### 5.2.3.1 Commercial management

In addition to the conditions laid down in section 4.3.6 the Commission will consider it positively that the risk capital measure or fund is managed by professionals from the private sector or by independent professionals chosen according to a transparent, non-discriminatory procedure, preferably an open tender, with proven experience and a track record in capital market investments ideally in the same sector(s) targeted by the fund, as well as an understanding of the relevant legal and accounting background for the investment.

##### 5.2.3.2 Presence of an investment committee

A further positive element would be the existence of an investment committee, independent of the fund management company and composed of independent experts coming from the private sector with significant experience in the targeted sector, and preferably also of representatives of investors, or independent experts chosen according to a transparent, non-discriminatory procedure, preferably an open tender. These experts would provide the managers or management company with analyses of the existing and the expected future market situation and would scrutinise and propose to them potential target enterprises with good investment prospects.

##### 5.2.3.3 Size of the measure/fund

The Commission will consider it positively where a risk capital measure has a budget for investments into target SMEs of a sufficient size to take advantage of economies of scale in administering a fund and the possibility of diversifying risk via a pool of a sufficient number of investments. The size of the fund should be such as to ensure the possibility of absorbing the transaction costs and/or financing the later more profitable financing stages of target companies. Larger funds will be considered positively also taking into account the sector targeted, and provided the risks of crowding-out private investment and distorting competition are minimised.

##### 5.2.3.4 Presence of business angels

For measures targeting seed capital, in view of the more pronounced level of market failure that can be perceived in this phase, the Commission will consider positively the direct or indirect involvement of business angels in investments in the seed stage. In such circumstances, it is therefore prepared to consider declaring measures compatible with the common market even if they foresee a predominance of debt instruments, including a higher degree of subordination of the State funds and a right of first profit for business angels or higher remuneration for their provision of capital and active involvement in the management of the measure/fund and/or of the target enterprises.

#### 5.2.4 Proportionality

Compatibility requires that the aid amount is limited to the minimum necessary. The way to achieve this aspect of proportionality will necessarily depend on the form of the measure in question. However in the absence of any mechanism to check that investors are not overcompensated, or a measure where the risk of losses is borne entirely by the public sector and/or where the benefits flow entirely to the other investors, the measure will not be considered proportionate.

The Commission will consider that the following elements positively influence the assessment of proportionality as they represent a best-practice approach:

- (a) **Open tender for managers.** A transparent, non-discriminatory open tender for the choice of the managers or management company ensuring the best combination of quality and value for money will be considered positively, as it will limit the cost (and possibly aid) level at the minimum necessary and will also minimise distortion of competition.
- (b) **Call for tender or public invitation to investors.** A call for tender for the establishment of any 'preferential terms' given to investors, or the availability of any such terms to other investors. This availability might take the form of a public invitation to investors at the launch of an investment fund or investment vehicle, or might take the form of a scheme (such as a guarantee scheme) which remained open to new entrants over an extended period.

#### 5.3 Negative effects of the aid

The Commission will balance the potential negative effects in terms of distortion of competition and risk of crowding-out private investment against the positive effects when assessing the compatibility of risk capital measures. These potentially negative effects will have to be analysed at each of the three levels where aid may be present. Aid to investors, to investment vehicles and to investment funds may negatively affect competition in the market for the provision of risk capital. Aid to target enterprises may negatively affect the product markets on which these enterprises compete.

##### 5.3.1 Crowding-out

At the level of the market for the provision of risk capital, State aid may result in crowding out private investment. This might reduce the incentives of private investors to provide funding for target SMEs and encourage them to wait until the State provides aid for such investments. This risk becomes more relevant, the higher the amount of an investment tranche invested into an enterprise, the larger the size of an enterprise, and the later the business stage, as private risk capital becomes progressively available in these circumstances.

Therefore, the Commission will require specific evidence regarding the risk of crowding-out for measures providing for larger investment tranches in target SMEs, for follow-on investments or for financing of the expansion stage in medium-sized enterprises in non-assisted areas or for measures with low participation by private investors or measures involving specifically an investment vehicle.

In addition, Member States will have to provide evidence to show that there is no risk of crowding-out, specifically concerning the targeted segment, sector and/or industry structure. The following elements may be relevant:

- (a) the number of venture capital firms/funds/investment vehicles present at national level or in the area in case of a regional fund and the segments in which they are active;

- (b) the targeted enterprises in terms of size of companies, growth stage, and business sector;
- (c) the average deal size and possibly the minimum deal size the funds or investors would scrutinise;
- (d) the total amount of venture capital available for the target enterprises, sector and stage targeted by the relevant measure.

#### 5.3.2 *Other distortions of competition*

As most target SMEs are recently established, at the level of the market where they are present, it is unlikely that these SMEs will have significant market power and thus that there will be a significant distortion of competition in this respect. However, it can not be excluded that risk capital measures might have the effect of keeping inefficient firms or sectors afloat, which would otherwise disappear. Furthermore, an over-supply of risk capital funding to inefficient enterprises may artificially increase their valuation and thus distort the risk capital market at the level of fund providers, which would have to pay higher prices to buy these enterprises. Sector specific aid may also maintain production in non-competitive sectors, whereas region-specific aid may build up an inefficient allocation of production factors between regions.

In its analysis of these risks, the Commission will examine, in particular, the following factors:

- (a) overall profitability of the firms invested in over time and prospects of future profitability
- (b) rate of enterprise failure targeted by the measure;
- (c) maximum size of investment tranche envisaged by the measure as compared to the turnover and costs of the target SMEs;
- (d) over-capacity of the sector benefiting from the aid.

#### 5.4 **Balancing and decision**

In the light of the above positive and negative elements, the Commission will balance the effects of the risk capital measure and determine whether the resulting distortions adversely affect trading conditions to an extent contrary to the common interest. The analysis in each particular case will be based on an overall assessment of the foreseeable positive and negative impact of the State aid. For that purpose the Commission will not use the criteria set out in these guidelines mechanically but will make an overall assessment of their relative importance.

The Commission may raise no objections to the notified aid measure without entering into the formal investigation procedure or, following the formal investigation procedure laid down in Article 6 of Regulation (EC) No 659/1999, it may close the procedure with a decision pursuant to Article 7 of that Regulation. If it adopts a conditional decision pursuant to Article 7(4) of Regulation (EC) No 659/1999 closing a formal investigation procedure, it may in particular attach the following conditions to limit the potential distortion of competition and ensure proportionality:

- (a) if higher thresholds of investment tranches per target enterprise are foreseen, it may lower the maximum amount proposed per investment tranche or set an overall maximum amount of finance per target enterprise;
- (b) if investments in the expansion stage in medium-sized enterprises in non-assisted areas are foreseen, it may limit investments predominantly to the seed and start-up stage and/or limit the investments to one or two rounds and/or limit the tranches to a maximum threshold per target enterprise;



- (c) if follow-on investment is foreseen, it may set specific limits to the maximum amount to be invested into each target enterprise, to the investment stage eligible for intervention, and/or to the period during which aid may be granted, having also regard to the sector concerned and to the size of the fund;
- (d) if a lower participation of private investors is foreseen, it may require a progressive increase of the participation of private investors over the life of the fund, having particular regard to the business stage, the sector, the respective levels of profit-sharing and subordination, and possibly the localisation in assisted areas of the target enterprises;
- (e) for measures providing seed capital only, it may require Member States to ensure that the State receives an adequate return on its investment commensurate with the risks incurred for these investments, in particular where the State finances the investment in the form of quasi-equity or debt instruments, the return on which should, for instance, be linked to potential rights of exploitation (for example, royalties) generated by intellectual property rights created as a result of the investment;
- (f) require a different balancing between respective profit- and loss-sharing arrangements and level of subordination between the State and private investors;
- (g) require more stringent commitments as regards cumulation of risk capital aid with aid granted under other State aid regulations or frameworks, by way of derogation from section 6.

## 6 CUMULATION

Where capital provided to a target enterprise under a risk capital measure covered by these guidelines is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents, the relevant aid ceilings or maximum eligible amounts will be reduced by 50 % in general and by 20 % for target enterprises located in assisted areas during the first three years of the first risk capital investment and up to the total amount received. This reduction does not apply to aid intensities provided for in the Community Framework for State aid for Research and Development <sup>(1)</sup> or any successor framework or block exemption regulation in this field.

## 7 FINAL PROVISIONS

### 7.1 Monitoring and reporting

Regulation (EC) No 659/1999 and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(2)</sup> require Member States to submit annual reports to the Commission.

In respect of risk capital measures the reports must contain a summary table with a breakdown of the investments effected by the fund or under the risk capital measure including a list of all the enterprise beneficiaries of risk capital measures. The report must also give a brief description of the activity of investments funds with details of potential deals scrutinised and of the transactions actually undertaken as well as the performance of investment vehicles with aggregate information about the amount of capital raised through the vehicle. The Commission may request additional information regarding the aid granted, to check whether the conditions of the Commission's decision approving the aid measure have been respected.

The annual reports will be published on the internet site of the Commission.

<sup>(1)</sup> OJ C 45, 17.2.1996, p. 5.

<sup>(2)</sup> OJ L 140, 30.4.2004, p. 1.



In addition, the Commission considers that further measures are necessary to improve the transparency of State aid in the Community. In particular, it appears necessary to ensure that the Member States, economic operators, interested parties and the Commission itself have easy access to the full text of all applicable risk capital aid schemes.

This can easily be achieved through the establishment of linked internet sites. For this reason, when examining risk capital aid schemes, the Commission will systematically require the Member State concerned to publish the full text of all final aid schemes on the internet and to communicate the internet address of the publication to the Commission.

The scheme must not be applied before the information is published on the internet.

Member States must maintain detailed records regarding the granting of aid for all risk capital measures. Such records must contain all information necessary to establish that the conditions laid down in the guidelines have been observed, notably as regards the size of the tranche, the size of the company (small or medium-sized), the development stage of the company (seed, start-up or expansion), its sector of activity (preferably at 4 digit level of the NACE classification) as well as information on the management of the funds and on the other criteria mentioned in these guidelines. This information must be maintained for 10 years from the date on which the aid is granted.

The Commission will ask Member States to provide this information in order to carry out an impact assessment of these guidelines three years after their entry into force.

## 7.2 Entry into force and validity

The Commission will apply these guidelines from the date of their publication in the *Official Journal of the European Union*. These guidelines will replace the 2001 Communication on State aid and risk capital

These guidelines will cease to be valid on 31 December 2013. After consulting Member States, the Commission may amend it before that date on the basis of important competition policy or risk capital policy considerations or in order to take account of other Community policies or international commitments. Where this would be helpful the Commission may also provide further clarifications of its approach to particular issues. The Commission intends to carry out a review of these guidelines three years after their entry into force.

The Commission will apply these guidelines to all notified risk capital measures in respect of which it must take a decision after the guidelines are published in the *Official Journal of the European Union*, even where the measures were notified prior to the publication of the guidelines.

In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ('*consecutio legis*')<sup>(1)</sup>, the Commission will apply the following in respect of non-notified aid:

- (a) these guidelines, if the aid was granted after their publication in the *Official Journal of the European Union*;
- (b) the Communication on State aid and risk capital in all other cases.

## 7.3 Appropriate Measures

The Commission hereby proposes to Member States, on the basis of Article 88(1) of the EC Treaty, the following appropriate measures concerning their respective existing risk capital measures.

Member States should amend, where necessary, their existing risk capital measures in order to bring them into line with these guidelines within twelve months after the publication of the guidelines.

The Member States are invited to give their explicit unconditional agreement to these proposed appropriate measures within two months from the date of publication of these guidelines. In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.

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<sup>(1)</sup> OJ C 119, 22.5.2002, p. 22.

▼ **M3**

## PART III.11

**SUPPLEMENTARY INFORMATION SHEET ON RISK CAPITAL AID**

This supplementary information sheet must be used for the notification of any aid scheme covered by the Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises <sup>(173)</sup>. Please note that if the scheme is covered by another framework or guidelines, the corresponding standard notification form for the relevant framework or guidelines should be used instead.

**1. Possible beneficiaries and scope of the aid measure****1.1. Who is involved in the scheme <sup>(174)</sup> (please tick one or more boxes as appropriate):**

- ☐ investors setting up a fund or providing equity in a company or a set of companies. Please specify the advantage(s) granted:

.....

.....

.....

Please specify possible selection criteria for the beneficiary (e.g. a call for tender or a public invitation):

.....

.....

.....

Are the investments effected *pari passu* between public and private investors?

- ☐ yes ☐ no

Please provide details:

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- ☐ investment fund or other investment vehicle and/or its manager. Please specify the advantage(s) granted:

.....

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Please specify possible selection criteria for the beneficiary (fund/investment vehicle and the management) and the way it has been selected (e.g. an open and transparent public tender procedure):

.....

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.....

Do the fund's managers or the management company receive a remuneration, which fully reflects the current market remuneration in comparable situations?

- ☐ yes ☐ no

If yes, please provide evidence and attach relevant documents:

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.....

<sup>(173)</sup> Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (OJ C 194, 18.8.2006, p. 2) thereafter 'the RCG'.

<sup>(174)</sup> For details see Section 3.2 of the RCG.

▼ **M3**

Is the fund involved in any other activities?

☐ yes ☐ no

If yes, please specify:

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☐ the target SMEs invested in. Please specify the advantage(s):

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.....

Please specify possible selection criteria for the beneficiary:

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.....

1.2. *Can you confirm that the risk capital <sup>(175)</sup> measure excludes <sup>(176)</sup>:*

— aid to enterprises in the shipbuilding, coal and steel industry?

☐ yes

— and aid to enterprises in difficulty?

☐ yes

1.3. *Can you confirm that the measure does not apply to aid to export to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity, as well as aid contingent upon the use of domestic in preference to imported goods <sup>(177)</sup>?*

☐ yes

**2. Form of aid: the size and time frame of the measure**

2.1. *The scheme envisages the following measure(s) and/or instrument(s) (please tick one or more boxes as appropriate) <sup>(178)</sup>:*

☐ constitution of an investment fund (i.e. venture capital <sup>(179)</sup> fund) in which the State is a partner, investor, or participant. Please specify:

.....

☐ guarantees where the public coverage for potential losses does not exceed 50 % of the nominal amount of the investment guaranteed to risk capital investors or to venture capital funds, or in respect of loans to investors or funds for investment in risk capital. Please specify:

.....

.....

.....

☐ other financial instruments in favour of risk capital investors or of venture capital funds to provide extra capital for investment. Please specify:

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.....

.....

<sup>(175)</sup> For definition of 'risk capital' and 'risk capital measures' see Section 2.2(k), (l) of the RCG.

<sup>(176)</sup> Cf. Section 2.1 of the RCG.

<sup>(177)</sup> Idem.

<sup>(178)</sup> Cf. Section 4.2 of the RCG.

<sup>(179)</sup> For definition see Section 2.2(i) of the RCG.

▼ **M3**

- ☐ fiscal incentives to investment funds and/or their managers or to investors to undertake risk capital investments. Please specify:

.....

.....

.....

- ☐ others. Please specify:

.....

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- 2.2. *What is the overall size of budget of the measure and in case of a fund what is the size of the fund? Please specify:*

.....

.....

.....

Is the measure to be co-financed by Community funds (European Social Fund, European Regional Development Fund, other)? Please specify:

.....

.....

.....

- 2.3 *What is the duration of the measure or in case of a fund in which time period can the fund commit itself to investment and for how long can the fund hold the investments? Please specify:*

.....

.....

.....

3. **General information about the design of the measure**

3.1. *Maximum tranches of investments per target SME <sup>(180)</sup>*

What is the total maximum size of the tranche of finance (including both, the public and private investments) per target enterprise over a period of 12 months. Please specify:

.....

.....

.....

Are the target enterprises in which the investments can be made, restricted to SMEs <sup>(181)</sup> and not to large companies?

☐ yes

3.2. *Restrictions to seed, start-up and expansion financing <sup>(182)</sup>*

Are the investments restricted to financing (please tick one or more boxes as appropriate):

- ☐ up to the seed stage for small enterprises;
- ☐ up to the seed stage for medium-sized enterprises;
- ☐ up to start-up stage for small enterprises;
- ☐ up to start-up stage for medium-sized enterprises;
- ☐ up to expansion stage for small enterprises;

<sup>(180)</sup> For details and restrictions see Section 4.3.1 of the RCG.

<sup>(181)</sup> For definition see Section 2.2(q) of the RCG.

<sup>(182)</sup> For details see Section 4.3.2 of the RCG. For definitions of 'seed', 'start-up' and 'expansion capital' see Section 2.2(e), (f) and (h) of the RCG.

## ▼ M3

☐ up to expansion stage for medium-sized enterprises located in assisted regions qualifying under Article 87(3)(a) of the EC Treaty and/or under Article 87(3)(c) of the EC Treaty;

☐ other restrictions. Please specify:

.....

.....

.....

Are the investments restricted to SMEs located in assisted regions qualifying under Article 87(3)(a) of the EC Treaty and/or under Article 87(3)(c) of the EC Treaty?

☐ yes ☐ no

3.3. *The composition of financing in the form of equity, quasi-equity and debt* <sup>(183)</sup>

Does the measure provide financing to SMEs in the form of equity <sup>(184)</sup>?

☐ yes ☐ no

If yes, please specify the details regarding the conditions on which the financing is invested (type of remuneration, level of subordination, securitisation, etc.):

.....

.....

.....

Does the measure provide financing to SMEs in the form of quasi-equity <sup>(185)</sup>?

☐ yes ☐ no

If yes, please specify the details regarding the conditions on which the financing is invested (type of remuneration, level of subordination, securitisation, etc.):

.....

.....

.....

Does the measure provide that at least 70 % of its total budget to SMEs is in the form of equity and quasi-equity investment instruments?

☐ yes ☐ no

Please specify the percentage of equity and quasi-equity, of the total budget:

.....

.....

.....

Does the measure provide financing to SMEs in the form of debt <sup>(186)</sup>?

☐ yes ☐ no

If yes, please specify the details regarding the conditions on which the debt is provided (type of remuneration, level of subordination, securitisation, etc.):

.....

.....

.....

Is the debt provided on market terms or is an aid element in the debt instrument authorised under an existing scheme, please specify:

.....

.....

.....

<sup>(183)</sup> For details and conditions see Section 4.3.3 of the RCG.

<sup>(184)</sup> For definition see Section 2.2(a) of the RCG.

<sup>(185)</sup> For definition see Section 2.2(c) of the RCG.

<sup>(186)</sup> For definition of 'debt' see Section 2.2(d) of the RCG.

▼ **M3**3.4. *Participation by private <sup>(187)</sup> investors <sup>(188)</sup>*

What percentage of funding of the investments in SMEs is provided directly or indirectly by private investors. Please specify:

.....

.....

.....

3.5. *Profit driven character of investment decisions <sup>(189)</sup>*

Does the measure ensure that at least 50 % of the funding of the investments is provided by private investors, or for at least 30 % in the case of measures targeting SMEs located in assisted areas <sup>(190)</sup>?

☐ yes ☐ no

Please provide details:

.....

.....

.....

Does the measure ensure that private investors invest on a commercial basis (that is only for profits) directly or indirectly in the equity of the target enterprises?

☐ yes ☐ no

Please provide details:

.....

.....

.....

Does the measure ensure that there is a business plan for each investment containing details of the product, sales and profitability development and establishing the ex ante viability of the project?

☐ yes ☐ no

Please provide details:

.....

.....

.....

Is there a clear and realistic exit strategy <sup>(191)</sup> for each investment?

☐ yes ☐ no

Please provide details:

.....

.....

.....

3.6. *Commercial management <sup>(192)</sup>*

Is there an agreement between a professional manager or a management company and participants in the fund which:

— provides that the manager's remuneration is linked to the performance?

☐ yes ☐ no

<sup>(187)</sup> For details concerning private investments/funding, see Section 2.2(b) and 3.2 (second paragraph) of the RCG.

<sup>(188)</sup> For details and conditions see Section 4.3.4 of the RCG.

<sup>(189)</sup> For details and conditions see Section 4.3.5 of the RCG.

<sup>(190)</sup> For definition see Section 2.2(t) of the RCG.

<sup>(191)</sup> For definition see Section 2.2(p) of the RCG.

<sup>(192)</sup> For details and conditions, see Section 4.3.6 of the RCG.

**▼ M3**

— sets out the objectives of the fund and proposed timing of investments?

☐ yes ☐ no

Please attach a copy of the agreement or an outline of the principles of the agreement.

Are private market investors represented in the decisionmaking, such as through an investors' advisory committee?

☐ yes ☐ no

If yes, please specify their role in the decisionmaking:

.....

.....

.....

Is there an application of best practice and regulatory supervision in the management of the fund?

☐ yes ☐ no

Please provide details:

.....

.....

.....

3.7. *Sectoral focus* <sup>(193)</sup>

Is the measure open to all sectors?

☐ yes ☐ no

If no, please specify the technologies or sectors and the underlying reason for the choice of these technologies or sectors:

.....

.....

.....

3.8. *Other information*

Please provide any further information considered relevant to clarify the answers above:

.....

.....

.....

4. **Establishing the need to conduct detailed assessment** <sup>(194)</sup>

Does the total maximum level of investment tranches (including both the public and private capital) exceed EUR 1,5 million per target SME over each period of 12 months?

☐ yes ☐ no

Does the measure provide financing up to the expansion stage for medium-sized enterprises in non-assisted areas?

☐ yes ☐ no

Does the measure provide for follow-on investments into target companies that already received aided capital injections to fund subsequent financing rounds even beyond the general safe-harbour thresholds and the companies' early-growth financing?

☐ yes ☐ no

<sup>(193)</sup> For details and conditions, see Section 4.3.7 of the RCG.

<sup>(194)</sup> Cf. Section 5.1 of the RCG.



**▼ M3**

Does the risk capital measure provide less than 70 % of its total budget in the form of equity and quasi-equity investment instruments into target SMEs?

☐ yes ☐ no

Does the measure provide less than 50 % of the funding of the investments provided by private investors for investments targeting SMEs in non-assisted areas or at least 30 % for SMEs in assisted areas?

☐ yes ☐ no

Does the measure provide seed capital to small enterprises which foresee (i) less or no private participation by private investors, and/or (ii) predominance of debt investment instruments as opposed to equity and quasi-equity?

☐ yes ☐ no

Does the measure specifically involve an investment vehicle (alternative stock markets specialised in SMEs including high-growth companies)?

☐ yes ☐ no

Does the measure cover costs linked to the first screening of companies (scouting costs)?

☐ yes ☐ no

Does the scheme envisage a measure(s) and/or instrument which is not covered by Section 4.2 of the RCG, i.e. necessitating that the fifth box others was ticked under Section 2.1 of this form, and is not explicitly referred to above?

☐ yes ☐ no

Does the measure involve any other element leading to non-compliance with one or more conditions set out in Section 4 of the RCG?

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

***If the answer to one or more of the questions in this section 4 is yes, please go to section 5, otherwise go to section 6.***

## 5. Additional information for the detailed assessment <sup>(195)</sup>

### 5.1. Positive effects of the aid

#### 5.1.1. Existence and evidence of market failure <sup>(196)</sup>

Please, attach supporting evidence of the presence of the market failure the measure is designed to tackle. In particular, for measures:

- providing tranches above EUR 1,5 million per target SME (including both, the public and private capital) over each period of twelve months,
- providing follow-on investments,
- financing of the expansion stage of medium-sized enterprises in non-assisted areas,
- specifically involving an investment vehicle.

The evidence must be based on a study showing the level of the equity gap with regard to the enterprises and sectors targeted by the risk capital measure. Please attach the study.

The relevant information concerns the supply of risk capital to SMEs and the capital raised by private investors, as well as the significance of the venture capital industry in the local economy. It should ideally be provided for periods of three to five years preceding the implementation of the measure and also for the future, on the basis of reasonable projections, if available. The evidence submitted could also include the following elements:

- development of the fundraising over the past five years, also in comparison with the correspondent national and/or European averages,

<sup>(195)</sup> For details on detailed assessment and balancing test see Sections 5(1) to (3) and 1.3 of the RCG.

<sup>(196)</sup> Cf. Section 5.2.1 of the RCG.

**▼ M3**

- the current overhang of money, i.e. the difference between the amount of funds raised by private investors for investments and the amount actually invested,
- the share of government aided investment programs in the total venture capital investment over the preceding three to five years,
- the percentage of new start-ups receiving venture capital,
- the distribution of investments provided by private market investors by categories of amount of investment,
- a comparison of the number of business plans presented with the number of investments made by segment (amount of investment, sector, round of financing, etc.),
- any other relevant indicator showing the existence of market failure.

For measures targeting SMEs located in assisted areas, the relevant information must be supplemented by any other relevant evidence as regards the regional specificities which justify the features of the measure envisaged. The following elements may be relevant:

- estimation of the additional size of the equity gap caused by the peripherality and other regional specificities, in particular in terms of total amount of risk capital invested, number of funds or investment vehicles present in the territory or at a short distance, availability of skilled managers, number of deals and average and minimum size of deals if available;
- specific local economic data, social and/or historic reasons for an underprovision of risk capital, in comparison with the relevant average data and/or situation at national and/or Community level as appropriate;
- any other relevant indicator showing an increased degree of market failure.

#### 5.1.2. Appropriateness of the instrument <sup>(197)</sup>

Is there an impact assessment of the measure?

☐ yes ☐ no

If yes, please attach a summary or the full text of the impact assessment.

Have other policy options to tackle the equity gap than State aid instruments been considered?

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

Have other policy initiatives been taken to address the supply and demand side issues leading to the equity gap affecting the targeted SMEs?

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

Are there evaluations of how these other policy initiatives will interact with the notified risk capital measure?

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

<sup>(197)</sup> Cf. Section 5.2.2 of the RCG.

**▼ M3****5.1.3. Incentive effect and necessity of aid <sup>(198)</sup>**

Is the risk capital measure or fund managed by professionals from the private sector?

☐ yes ☐ no

Is the measure managed by independent professionals chosen according to a transparent, non-discriminatory procedure, preferably an open tender?

☐ yes ☐ no

Will the management have a proven experience and a track record in capital market investments ideally in the same sector(s) targeted by the fund, as well as an understanding of the relevant legal and accounting background for the investment?

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

Is there an investment committee, independent of the fund management company and composed of independent experts coming from the private sector with significant experience in the targeted sector, and preferably also of representatives of investors, or independent experts chosen according to a transparent, non-discriminatory procedure, preferably an open tender?

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

Will the experts provide the managers or management company with analyses of the existing and the expected future market situation and would scrutinise and propose to them potential target enterprises with good investment prospects?

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

Please specify the size of budget/size of the fund:

.....

Please specify the estimated transaction costs:

.....

Will there be a direct involvement from business angels <sup>(199)</sup> in investments in the seed stage?

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

<sup>(198)</sup> Cf. Section 5.2.3 of the RCG.

<sup>(199)</sup> For definition see Section 2.2(s) of the RCG.

**▼ M3**

Are there other mechanisms in place to ensure an incentive effect and the necessity of aid?

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

#### 5.1.4. Proportionality <sup>(200)</sup>

Does the measure involve (Please tick one or more boxes as appropriate):

☐ open tender for managers or management company? Please specify:

.....

.....

.....

☐ call for tender or public invitation to investors? Please specify:

.....

.....

.....

☐ other mechanisms to ensure that management or investors are not overcompensated? Please specify:

.....

.....

.....

#### 5.2. *Negative effects of the aid*

##### 5.2.1. Crowding-out <sup>(201)</sup>

Please attach evidence as regards the risk of crowding-out of investments at the level of investors, funds and/or investment vehicles.

The following elements may for instance be relevant:

- the number of venture capital firms/funds/investment vehicles present at national level or in the area in case of a regional fund and the segments in which they are active,
- the targeted enterprises in terms of size of companies, growth stage, and business sector,
- the average deal size and possibly the minimum deal size the funds or investors would scrutinise,
- the total amount of venture capital available for the target enterprises, sector and stage targeted by the relevant measure.

If investments are not restricted to assisted regions and if they go beyond the start-up stage for medium-sized enterprises, is there a limit per enterprise on total funding through the measure.

☐ yes ☐ no

If yes, please specify:

.....

.....

.....

<sup>(200)</sup> Cf. Section 5.2.4 of the RCG.  
<sup>(201)</sup> Cf. Section 5.3.1 of the RCG.

**▼ M3**

For measures providing for follow-on investment, does the measure foresee specific limits to the maximum amount to be invested into each target SME, to the investment stage eligible for intervention, and/or to the period during which aid may be granted, having also regard to the sector concerned and to the size of the fund?

☐ yes

☐ no

If yes, please specify:

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.....

.....

Does the measure foresee a limitation related to the number of investment rounds per target SME or a maximum amount which can be invested in on target enterprise?

☐ yes

☐ no

If yes, please specify:

.....

.....

.....

If follow-on investment is foreseen, is there a maximum amount to be invested into each target SME, to the investment stage eligible for intervention, and/or to the period during which aid may be granted, having also regard to the sector concerned and to the size of the fund?

☐ yes

☐ no

If yes, please specify:

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.....

.....

If a lower participation of private investors is foreseen, is there a progressive increase of the participation of private investors over the life of the fund, having particular regard to the business stage, the sector, the respective levels of profit-sharing and subordination, and possibly the localisation in assisted areas of the target SMEs.

☐ yes

☐ no

If yes, please specify:

.....

.....

.....

For measures providing seed capital only, is there any mechanism ensuring that the State receives an adequate return on its investment commensurate with the risks incurred for these investments, in particular where the State finances the investment in the form of quasi-equity or debt instruments, the return on which should, for instance, be linked to potential rights of exploitation (for example, royalties) generated by intellectual property rights created as a result of the investment.

☐ yes

☐ no

If yes, please specify:

.....

.....

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▼ **M3****5.2.2. Other distortions of competition <sup>(202)</sup>**

What is the expected overall profitability of the firms invested in over time and prospects of future profitability? Please specify:

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.....

.....

What is the expected rate of enterprise failure targeted by the measure? Please specify:

.....

.....

.....

What is the total maximum size of investment tranche (including both the public and private investments) envisaged by the measure as compared to the turnover and costs of the target SMEs? Please specify:

.....

.....

.....

In case of sectoral focus of the measure, is there over-capacity of the sector benefiting from the aid? Please give a brief description of the economic situation in the sector(s):

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.....

.....

Are there any other mechanisms in place in order to limit the distortions of competition? Please specify:

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.....

**6. Cumulation of the aid <sup>(203)</sup>**

Can be the aid granted under the notified measure combined with other aid <sup>(204)</sup>?

☐ yes ☐ no

If yes, please provide the details (e.g. type of aid with which the aid granted under the notified measure is combined):

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.....

.....

If yes, please confirm the following:

The Member State undertakes to reduce the relevant aid ceilings or maximum eligible amounts by 50 % in general and by 20 % for target SMEs located in assisted areas during the first three years of the first risk capital investment and up to the total amount received, where the capital provided to a target enterprise under the risk capital measure is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents. This reduction does not apply to aid intensities provided for in the Community Framework for State aid for Research and Development <sup>(205)</sup> or any successor framework or block exemption regulation in this field.

☐ yes

<sup>(202)</sup> Cf. Section 5.3.2 of the RCG.

<sup>(203)</sup> Cf. Section 6 of the RCG.

<sup>(204)</sup> For cumulation of *de minimis* aid please see Article 2(5) of *de minimis* block exemption (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 (OJ L 389, 28.12.2006, p. 5).

<sup>(205)</sup> OJ C 45, 17.2.1996, p. 5.



▼ **M3****7. Monitoring <sup>(206)</sup>**

The Member State undertakes to submit annual reports to the Commission containing a summary table with a breakdown of the investments effected by a fund or under the risk capital measure including a list of all the enterprise beneficiaries of risk capital measures as well as a brief description of the activity of investments funds with details of potential deals scrutinised and of the transactions actually undertaken as well as the performance of investment vehicles with aggregate information about the amount of capital raised through the vehicle.

☐ yes

The Member State undertakes to publish the full text of the final aid schemes as approved by the Commission on the Internet and to communicate the Internet address of the publication to the Commission

☐ yes

The Member State undertakes to maintain for at least 10 years detailed records regarding the granting of aid for the risk capital measure containing all information necessary to establish that the conditions laid down in the RCG have been observed, notably as regards the size of the tranche, the size of the company (small or medium-sized), the development stage of the company (seed, start-up or expansion), its sector of activity (preferably at 4 digit level of the NACE classification) as well as information on the management of the funds and on the other criteria mentioned in these guidelines.

☐ yes

The Member State undertakes to submit the records referred to above on request of the Commission.

☐ yes

**8. Other information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the *Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises*.

<sup>(206)</sup> Cf. Section 7.1 of the RCG.



## COMMUNICATION FROM THE COMMISSION

## COMMUNITY GUIDELINES ON STATE AID FOR RESCUING AND RESTRUCTURING FIRMS IN DIFFICULTY

(2004/C 244/02)

(Text with EEA relevance)

## 1. INTRODUCTION

cases in the past and is among the most distortive types of State aid. Hence, the general principle of the prohibition of State aid as laid down in the Treaty should remain the rule and derogation from that rule should be limited.

1. The Commission adopted its original Community Guidelines on State aid for rescuing and restructuring firms in difficulty<sup>(1)</sup> in 1994. In 1997, the Commission added specific rules for agriculture<sup>(2)</sup>. A new version of the guidelines was adopted in 1999<sup>(3)</sup> and will expire on 9 October 2004.
  2. The Commission wishes through this version of the Guidelines, the text of which builds on previous versions, to make certain changes and clarifications prompted by a number of factors.
  3. First, in the light of conclusions of the meetings of the European Councils of Stockholm on 23 and 24 March 2001 and of Barcelona on 15 and 16 March 2002, which called on Member States to continue to reduce State aid as a percentage of gross domestic product while redirecting it towards more horizontal objectives of common interest including cohesion objectives, closer scrutiny of the distortion created by allowing aid for rescue and restructuring operations seems warranted. This is also consistent with the conclusions of the European Council held in Lisbon on 23 and 24 March 2000 aimed at increasing the competitiveness of the European economy.
  4. The exit of inefficient firms is a normal part of the operation of the market. It cannot be the norm that a company which gets into difficulties is rescued by the State. Aid for rescue and restructuring operations has given rise to some of the most controversial State aid cases in the past and is among the most distortive types of State aid. Hence, the general principle of the prohibition of State aid as laid down in the Treaty should remain the rule and derogation from that rule should be limited.
  5. The 'one time, last time' principle is further reinforced, to avoid the use of repeated rescue or restructuring aids to keep firms artificially alive.
  6. The 1999 guidelines made a distinction between rescue aid and restructuring aid, whereby rescue aid was defined as temporary assistance to keep an ailing firm afloat for the time needed to work out a restructuring and/or a liquidation plan. In principle, restructuring measures financed through State aid could not be undertaken during this phase. However, such strict distinction between rescue and restructuring has given rise to difficulties. Firms in difficulty may already need to take certain urgent structural measures to halt or reduce a worsening of the financial situation in the rescue phase. These guidelines therefore widen the concept of 'rescue aid' in order to allow the beneficiary to undertake urgent measures, even of a structural nature, such as an immediate closure of a branch or other form of abandonment of loss-making activities. Given the urgent character of such aids, the Member States should be given the opportunity to opt for a simplified procedure to obtain their approval.
  7. As regards restructuring aids, building on the 1994 guidelines, the 1999 guidelines continued to require a substantial contribution from the beneficiary to the restructuring. Within this revision, it is appropriate to reaffirm with greater clarity the principle that this contribution must be real and free of aid. The beneficiary's contribution has a twofold purpose: on the one hand, it will demonstrate that the markets (owners, creditors) believe in the feasibility of the return to viability within a reasonable time period. On the other hand, it will ensure that restructuring aid is limited to the minimum required to restore viability while limiting distortion of competition. In this respect the Commission will also request compensatory measures to minimise the effect on competitors.
- <sup>(1)</sup> OJ C 368, 23.12.1994, p. 12.  
<sup>(2)</sup> OJ C 283, 19.9.1997, p. 2. See also the footnote relating to the heading of Chapter 5.  
<sup>(3)</sup> OJ C 288, 9.10.1999, p. 2.

8. The provision of rescue or restructuring aid to firms in difficulty may only be regarded as legitimate subject to certain conditions. It may be justified, for instance, by social or regional policy considerations, by the need to take into account the beneficial role played by small and medium-sized enterprises (SMEs) in the economy or, exceptionally, by the desirability of maintaining a competitive market structure when the demise of firms could lead to a monopoly or to a tight oligopolistic situation. On the other hand, it would not be justified to keep a firm artificially alive in a sector with long-term structural overcapacity or when it can only survive as a result of repeated State interventions.

## 2. DEFINITIONS AND SCOPE OF THE GUIDELINES AND LINKS WITH OTHER TEXTS ON STATE AID

### 2.1. Meaning of 'a firm in difficulty'

9. There is no Community definition of what constitutes 'a firm in difficulty'. However, for the purposes of these Guidelines, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.

10. In particular, a firm is, in principle and irrespective of its size, regarded as being in difficulty for the purposes of these Guidelines in the following circumstances:

- (a) in the case of a limited liability company <sup>(1)</sup>, where more than half of its registered capital has disappeared <sup>(2)</sup> and more than one quarter of that capital has been lost over the preceding 12 months;
- (b) in the case of a company where at least some members have unlimited liability for the debt of the company <sup>(3)</sup>, 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;
- (c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

<sup>(1)</sup> This refers in particular to the types of company mentioned in the first subparagraph of Article 1(1) of Council Directive 78/660/EEC (OJ L 222, 14.8.1978, p. 11) as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).

<sup>(2)</sup> By analogy with the provisions of Article 17 of Council Directive 77/91/EEC (OJ L 26, 30.1.1977, p. 1) as last amended by the 2003 Act of Accession.

<sup>(3)</sup> This refers in particular to the types of company mentioned in the second subparagraph of Article 1(1) of Council Directive 78/660/EEC.

11. Even when none of the circumstances set out in point 10 are present, a firm may still be considered to be in difficulties, in particular where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value. In acute cases the firm may already have become insolvent or may be the subject of collective insolvency proceedings brought under domestic law. In the latter case, these Guidelines apply to any aid granted in the context of such proceedings which leads to the firm's continuing in business. In any event, a firm in difficulty is eligible only where, demonstrably, it cannot recover through its own resources or with the funds it obtains from its owners/shareholders or from market sources.

12. For the purposes of these Guidelines, a newly created firm is not eligible for rescue or restructuring aid even if its initial financial position is insecure. This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets. A firm will in principle be considered as newly created for the first three years following the start of operations in the relevant field of activity. Only after that period will it become eligible for rescue or restructuring aid, provided that:

- (a) it qualifies as a firm in difficulty within the meaning of these Guidelines, and
- (b) it does not form part of a larger business group <sup>(4)</sup> except under the conditions laid down in point 13.

13. A firm belonging to or being taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. Where a firm in difficulty creates a subsidiary, the subsidiary, together with the firm in difficulty controlling it, will be regarded as a group and may receive aid under the conditions laid down in this point.

<sup>(4)</sup> To determine whether a company is independent or forms part of a group, the criteria laid down in Annex I to Commission Regulation (EC) No 68/2001 (OJ L 10, 13.1.2001, p. 20), as amended by Regulation (EC) No 363/2004 (OJ L 63, 28.2.2004, p. 20) will be taken into account.

## 2.2. Definition of 'rescue and restructuring aid'

14. Rescue aid and restructuring aid are covered by the same set of guidelines, because in both cases the public authorities are faced with a firm in difficulty and the rescue and restructuring are often two parts of a single operation, even if they involve different processes.

15. Rescue aid is by nature temporary and reversible assistance. Its primary objective is to make it possible to keep an ailing firm afloat for the time needed to work out a restructuring or liquidation plan. The general principle is that rescue aid makes it possible temporarily to support a company confronted with an important deterioration of its financial situation reflected by an acute liquidity crisis or technical insolvency. Such temporary support should allow time to analyse the circumstances which gave rise to the difficulties and to develop an appropriate plan to remedy those difficulties. Moreover, the rescue aid must be limited to the minimum necessary. In other words, rescue aid offers a short respite, not exceeding six months, to a firm in difficulty. The aid must consist of reversible liquidity support in the form of loan guarantees or loans, with an interest rate at least comparable to those observed for loans to healthy firms and in particular the reference rates adopted by the Commission. Structural measures which do not require immediate action, such as, the irremediable and automatic participation of the State in the own funds of the firm, cannot be financed through rescue aid.

16. Once a restructuring or liquidation plan for which aid has been requested has been established and is being implemented, all further aid will be considered as restructuring aid. Measures which need to be implemented immediately to stem losses, including structural measures (for example, immediate withdrawal from a loss-making field of activity), can be undertaken with the rescue aid, subject to the conditions mentioned in Section 3.1 for individual aids and section 4.3 for aid schemes. Except where use is made of the simplified procedure set out in section 3.1.2, a Member State will need to demonstrate that such structural measures must be undertaken immediately. Rescue aid cannot normally be granted for financial restructuring.

17. Restructuring, on the other hand, will be based on a feasible, coherent and far-reaching plan to restore a firm's

long-term viability. Restructuring usually involves one or more of the following elements: the reorganisation and rationalisation of the firm's activities on to a more efficient basis, typically involving the withdrawal from loss-making activities, the restructuring of those existing activities that can be made competitive again and, possibly, diversification in the direction of new and viable activities. Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Restructuring operations within the scope of these Guidelines cannot, however, be limited to financial aid designed to make good past losses without tackling the reasons for those losses.

## 2.3. Scope

18. These Guidelines apply to firms in all sectors, except to those operating in the coal <sup>(1)</sup> or steel sector <sup>(2)</sup>, without prejudice to any specific rules relating to firms in difficulty in the sector concerned <sup>(3)</sup>. With the exception of point 79 <sup>(4)</sup>, they apply to the fisheries and aquaculture sector, subject to compliance with the specific rules laid down in the Guidelines for the examination of State aid to fisheries and aquaculture <sup>(5)</sup>. Chapter 5 contains some additional rules for agriculture.

## 2.4. Compatibility with the common market

19. Article 87(2) and (3) of the Treaty provide for the possibility that aid falling within the scope of Article 87(1) will be regarded as compatible with the common market. Apart from cases of aid envisaged by Article 87(2), in particular aid to make good the damage caused by natural disasters or exceptional occurrences, which are not covered here, the only basis on which aid for firms in difficulty can be deemed compatible is Article 87(3)(c). Under that provision the Commission has the power to authorise 'aid to facilitate the development of certain economic activities (...) where such aid does not adversely affect trading conditions to an extent contrary to the common interest.' In particular, this could be the case where the aid is necessary to correct disparities caused by market failures or to ensure economic and social cohesion.

<sup>(1)</sup> Article 3 of Council Regulation (EC) No 1407/2002 (OJ L 205, 2.8.2002, p. 1), as amended by the 2003 Act of Accession.

<sup>(2)</sup> Point 19 of the Communication from the Commission concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty (OJ C 152, 26.6.2002, p. 5). Point 1 of the communication from the Commission on rescue and restructuring aid and closure aid for the steel sector (OJ C 70, 19.3.2002, p. 21). Appropriate measures adopted in the context of the Multi-sectoral Framework on regional aid for large investment projects (OJ C 70, 19.3.2002, p. 8).

<sup>(3)</sup> Specific rules of this nature exist for the aviation sector (OJ C 350, 10.12.1994, p. 5).

<sup>(4)</sup> In other words, awards of aid to SMEs that do not fulfil the conditions set out in this point 0 may nevertheless be exempted from individual notification.

<sup>(5)</sup> OJ C 19, 20.1.2001, p. 7.

20. Given that its very existence is in danger, a firm in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured. Consequently, the Commission considers that aid to firms in difficulty may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the Community interest only if the conditions set out in these Guidelines are met. Where the firms which are to receive rescue or restructuring aid are located in assisted areas, the Commission will take the regional considerations referred to in Article 87(3)(a) and (c) of the Treaty into account as described in points 55 and 56.

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

22. The assessment of rescue or restructuring aid should not be affected by changes in the ownership of the business aided.

### 2.5. Recipients of previous unlawful aid

23. Where unlawful aid has previously been granted to the firm in difficulty, in respect of which the Commission has adopted a negative decision with a recovery order, and where no such recovery has taken place in compliance with Article 14 of 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>, the assessment of any rescue and restructuring aid to be granted to the same undertaking shall take into account, first, the cumulative effect of the old aid and of the new aid and, secondly, the fact that the old aid has not been repaid <sup>(2)</sup>.

### 3. GENERAL CONDITIONS FOR THE AUTHORISATION OF RESCUE AND/OR RESTRUCTURING AID NOTIFIED INDIVIDUALLY TO THE COMMISSION

24. This Chapter deals exclusively with aid measures that are notified individually to the Commission. Under certain conditions, the Commission may authorise rescue or restructuring aid schemes: those conditions are set out in Chapter 4.

### 3.1. Rescue aid

#### 3.1.1. Conditions

25. In order to be approved by the Commission, rescue aid as defined in point 15 must:

- (a) consist of liquidity support in the form of loan guarantees or loans <sup>(3)</sup>; in both cases, the loan must be granted at an interest rate at least comparable to those observed for loans to healthy firms, and in particular the reference rates adopted by the Commission; any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm;
- (b) be warranted on the grounds of serious social difficulties and have no unduly adverse spillover effects on other Member States;
- (c) be accompanied, on notification, by an undertaking given by the Member State concerned to communicate to the Commission, not later than six months after the rescue aid measure has been authorised, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated; in the case of non-notified aid the Member State must communicate, no later than six months after the first implementation of a rescue aid measure, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and /or that the guarantee has been terminated;
- (d) be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised; such an amount may include aid for urgent structural measures in accordance with point 16; the amount necessary should be based on the liquidity needs of the company stemming from losses; in determining that amount regard will be had to the outcome of the application of the formula set out in the Annex; any rescue aid exceeding the result of that calculation will need to be duly explained;
- (e) respect the condition set out in section 3.3 (one time, last time).

<sup>(1)</sup> OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

<sup>(2)</sup> Case C-355/95 P, *Textilwerke Deggendorf v Commission and others*, [1997] ECR I-2549.

<sup>(3)</sup> An exception may be made in the case of rescue aid in the banking sector, in order to enable the credit institution in question to continue temporarily carrying on its banking business in accordance with the prudential legislation in force (Directive 2000/12/EC of the European Parliament and of the Council, OJ L 126, 26.5.2000, p. 1). At any rate, aid granted in a form other than loan guarantees or loans fulfilling the conditions set out in point (a), should fulfil the general principles of rescue aid and cannot consist in structural financial measures related to the bank's own funds. Any aid granted in a form other than loan guarantees or loans fulfilling the conditions set out in point(a), will be taken into account when any compensatory measures under a restructuring plan are examined in accordance with points 38 to 42.



26. Where the Member State has submitted a restructuring plan within six months of the date of authorisation or, in the case of non-notified aid, of implementation of the measure, the deadline for reimbursing the loan or for putting an end to the guarantee is extended until the Commission reaches its decision on the plan, unless the Commission decides that such an extension is not justified.
27. Without prejudice to Article 23 of Regulation (EC) No 659/1999 and to the possibility of an action before the Court of Justice, in accordance with the second subparagraph of Article 88 (2) of the Treaty, the Commission will initiate proceedings under Article 88(2) of the Treaty if the Member State fails to communicate:
  - (a) a credible and substantiated restructuring plan or a liquidation plan, or
  - (b) proof that the loan has been reimbursed in full and/or that the guarantee has been terminated before the six-month deadline has expired,
28. In any event, the Commission may decide to initiate such proceedings, without prejudice to Article 23 of Regulation (EC) No 659/1999 and to the possibility of an action before the Court of Justice in accordance with the second subparagraph of Article 88(2) of the Treaty, if it considers that the loan or the guarantee has been misused, or that, after the six-month deadline has expired, the failure to reimburse the aid is no longer justified.
29. The approval of rescue aid does not necessarily mean that aid under a restructuring plan will subsequently be approved; such aid will have to be assessed on its own merits.

### 3.1.2. Simplified procedure

30. The Commission will as far as possible endeavour to take a decision within a period of one month in respect of rescue aids fulfilling all conditions set out in section 3.1.1 and the following cumulative requirements:
  - (a) the firm concerned satisfies at least one of the three criteria set out in point 10;
  - (b) the rescue aid is limited to the amount resulting from the application of the formula set out in the Annex and does not exceed EUR 10 million.

## 3.2. Restructuring aid

### 3.2.1. Basic principle

31. Aid for restructuring raises particular competition concerns as it can shift an unfair share of the burden of

structural adjustment and the attendant social and economic problems onto other producers who are managing without aid, and to other Member States. The general principle should therefore be to allow the grant of restructuring aid only in circumstances in which it can be demonstrated that it does not run counter to the Community interest. This will only be possible if strict criteria are met, and if it is certain that any distortions of competition will be offset by the benefits flowing from the firm's survival (for instance, where it is clear that the net effect of redundancies resulting from the firm's going out of business, combined with the effects on its suppliers, would exacerbate employment problems or, exceptionally, where the firm's disappearance would result in a monopoly or tight oligopolistic situation) and that, in principle, there are adequate compensatory measures in favour of competitors.

### 3.2.2. Conditions for the authorisation of aid

32. Subject to the special provisions for assisted areas, SMEs and the agricultural sector (see points 55, 56, 57, 59 and Chapter 5), the Commission will approve aid only under the following conditions:

#### *Eligibility of the firm*

33. The firm must qualify as a firm in difficulty within the meaning of these Guidelines (see points 9 to 13).

#### *Restoration of long-term viability*

34. The grant of the aid must be conditional on implementation of the restructuring plan which must be endorsed by the Commission in all cases of individual aid, except in the case of SMEs, as laid down in section 3.2.5.
35. The restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. Restructuring aid must therefore be linked to a viable restructuring plan to which the Member State concerned commits itself. The plan must be submitted in all relevant detail to the Commission and include, in particular, a market survey. The improvement in viability must derive mainly from internal measures contained in the restructuring plan; it may be based on external factors such as variations in prices and demand over which the company has no great influence, but only if the market assumptions made are generally acknowledged. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring.

36. The restructuring plan must describe the circumstances that led to the company's difficulties, thereby providing a basis for assessing whether the proposed measures are appropriate. It must take account, *inter alia*, of the present state of and future prospects for supply and demand on the relevant product market, with scenarios reflecting best-case, worst-case and intermediate assumptions and the firm's specific strengths and weaknesses. It must enable the firm to progress towards a new structure that offers it prospects for long-term viability and enables it to stand on its own feet.
37. The plan must provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital must be enough to enable the restructured firm to compete in the marketplace on its own merits. Where the firm's difficulties stem from flaws in its corporate governance system, appropriate adaptations will have to be introduced.

#### *Avoidance of undue distortions of competition*

38. In order to ensure that the adverse effects on trading conditions are minimized as much as possible, so that the positive effects pursued outweigh the adverse ones, compensatory measures must be taken. Otherwise, the aid will be regarded as 'contrary to the common interest' and therefore incompatible with the common market. The Commission will have regard to the objective of restoring the long-term viability in determining the adequacy of the compensatory measures.
39. These measures may comprise divestment of assets, reductions in capacity or market presence and reduction of entry barriers on the markets concerned. When assessing whether the compensatory measures are appropriate the Commission will take account of the market structure and the conditions of competition to ensure that any such measure does not lead to a deterioration in the structure of the market, for example by having the indirect effect of creating a monopoly or a tight oligopolistic situation. If a Member State is able to prove that such a situation would arise, the compensatory measures should be construed in such a way to avoid this situation.
40. The measures must be in proportion to the distortive effects of the aid and, in particular, to the size<sup>(1)</sup> and the relative importance of the firm on its market or markets. They should take place in particular in the market(s) where the firm will have a significant market position

after restructuring. The degree of reduction must be established on a case-by-case basis. The Commission will determine the extent of the measures necessary on the basis of the market survey attached to the restructuring plan and, where appropriate on the basis of any other information at the disposal of the Commission including that supplied by interested parties. The reduction must be an integral part of the restructuring as laid down in the restructuring plan. This principle applies irrespective of whether the divestitures take place before or after the granting of the State aid, as long as they are part of the same restructuring. Write-offs and closure of loss-making activities which would at any rate be necessary to restore viability will not be considered reduction of capacity or market presence for the purpose of the assessment of the compensatory measures. Such an assessment will take account of any rescue aid granted beforehand.

41. However, this condition will not normally apply to small enterprises, since it can be assumed that ad hoc aid to small enterprises does not normally distort competition to an extent contrary to the common interest, except where otherwise provided by rules on State aid in a particular sector or when the beneficiary is active in a market suffering from long-term overcapacity.

42. When the beneficiary is active in a market suffering from long-term structural overcapacity, as defined in the context of the Multisectoral framework on regional aid for large investments<sup>(2)</sup>, the reduction in the company's capacity or market presence may have to be as high as 100 %<sup>(3)</sup>.

#### *Aid limited to the minimum: real contribution, free of aid*

43. The amount and intensity of the aid must be limited to the strict minimum of the restructuring costs necessary to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs. Such assessment will take account of any rescue aid granted beforehand. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources, including the sale of assets that are not essential to the firm's survival, or from external financing at market conditions. Such contribution is a sign that the markets believe in the feasibility of the return to viability. Such contribution must be real, i.e., actual, excluding all future expected profits such as cash flow, and must be as high as possible.

<sup>(1)</sup> In this respect the Commission may also take into account whether the company in question is a medium-sized enterprise or a large one.

<sup>(2)</sup> OJ C 70, 19.3.2002, p. 8.

<sup>(3)</sup> In such cases, the Commission will only allow aid to alleviate the social costs of the restructuring, in line with section 3.2.6 and environmental aid to clean up polluted sites which might otherwise be abandoned.

44. The Commission will normally consider the following contributions <sup>(1)</sup> to the restructuring to be appropriate: at least 25 % in the case of small enterprises, at least 40 %, for medium-sized enterprises and at least 50 % for large firms. In exceptional circumstances and in cases of particular hardship, which must be demonstrated by the Member State, the Commission may accept a lower contribution.
45. To limit the distortive effect, the amount of the aid or the form in which it is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process. The Commission will accordingly examine the level of the firm's liabilities after restructuring, including the situation after any postponement or reduction of its debts, particularly in the context of its continuation in business following collective insolvency proceedings brought against it under national law <sup>(2)</sup>. None of the aid should go to finance new investment that is not essential for restoring the firm's viability.

*Specific conditions attached to the authorisation of aid*

46. In addition to the compensatory measures described in points 38 to 42, the Commission may impose any conditions and obligations it considers necessary in order to ensure that the aid does not distort competition to an extent contrary to the common interest, in the event that the Member State concerned has not given a commitment that it will adopt such provisions. For example, it may require the Member State:
- (a) to take certain measures itself (for example, to open up certain markets directly or indirectly linked to the company's activities to other Community operators with due respect to Community law);
  - (b) to impose certain obligations on the recipient firm;
  - (c) to refrain from granting other types of aid to the recipient firm during the restructuring period.

*Full implementation of restructuring plan and observance of conditions*

47. The company must fully implement the restructuring plan and must discharge any other obligations laid down in the Commission decision authorising the aid. The Commission will regard any failure to implement the plan or to fulfil the other obligations as misuse of the aid, without prejudice to Article 23 of Regulation (EC)

No 659/1999 and to the possibility of an action before the Court of Justice in accordance with the second subparagraph of Article 88(2) of the Treaty.

48. Where restructuring operations cover several years and involve substantial amounts of aid, the Commission may require payment of the restructuring aid to be split into instalments and may make payment of each instalment subject to:
- (i) confirmation, prior to each payment, of the satisfactory implementation of each stage in the restructuring plan, in accordance with the planned timetable; or
  - (ii) its approval, prior to each payment, after verification that the plan is being satisfactorily implemented.

*Monitoring and annual report*

49. The Commission must be put in a position to make certain that the restructuring plan is being implemented properly, through regular detailed reports communicated by the Member State concerned.
50. In the case of aid to large firms, the first of these reports will normally have to be submitted to the Commission not later than six months after approval of the aid. Reports will subsequently have to be sent to the Commission at least once a year, at a fixed date, until the objectives of the restructuring plan can be deemed to have been achieved. They must contain all the information the Commission needs in order to be able to monitor the implementation of the restructuring programme, the timetable for payments to the company and its financial position and the observance of any conditions or obligations laid down in the decision approving the aid. They must in particular include all relevant information on any aid for any purpose which the company has received, either on an individual basis or under a general scheme, during the restructuring period (see points 68 to 71). Where the Commission needs prompt confirmation of certain key items of information, for example, on closures or capacity reductions, it may require more frequent reports.
51. In the case of aid to SMEs, transmission each year of a copy of the recipient firm's balance sheet and profit-and-loss account will normally be sufficient, except where stricter conditions have been laid down in the decision approving the aid.

<sup>(1)</sup> See point 7. This minimum contribution must not contain any aid. This is not the case, for instance, where a loan carries an interest-rate subsidy or is backed by government guarantees containing elements of aid.

<sup>(2)</sup> See point 10(c).



### 3.2.3. Amendment of the restructuring plan

52. Where restructuring aid has been approved, the Member State concerned may, during the restructuring period, ask the Commission to agree to changes to the restructuring plan and the amount of the aid. The Commission may allow such changes where they meet the following conditions:

- (a) the revised plan must still show a return to viability within a reasonable time scale;
- (b) if the amount of the aid is increased, any requisite compensatory measures must be more extensive than those initially imposed;
- (c) if the proposed compensatory measures are smaller than those initially planned, the amount of the aid must be correspondingly reduced;
- (d) the new timetable for implementation of the compensatory measures may be delayed with respect to the timetable initially adopted only for reasons outside the company's or the Member State's control: if that is not the case, the amount of the aid must be correspondingly reduced.

53. If the conditions imposed by the Commission or the commitments given by the Member State are relaxed, the amount of aid must be correspondingly reduced or other conditions may be imposed.

54. Should the Member State introduce changes to an approved restructuring plan without duly informing the Commission, the Commission will initiate proceedings under Article 88(2) of the Treaty, as provided for by Article 16 of Regulation (EC) No 659/1999 (misuse of aid), without prejudice to Article 23 of Regulation (EC) No 659/1999 and to the possibility of an action before the Court of Justice in accordance with the second subparagraph of Article 88(2) of the Treaty.

### 3.2.4. Restructuring aid in assisted areas

55. Economic and social cohesion being a priority objective of the Community under Article 158 of the Treaty and other policies being required to contribute to this objective under Article 159<sup>(1)</sup>, the Commission must take the needs of regional development into account when assessing restructuring aid in assisted areas. The fact that an

<sup>(1)</sup> Article 159 of the EC Treaty provides, *inter alia*, that 'the formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement'.

ailing firm is located in an assisted area does not, however, justify a permissive approach to aid for restructuring: in the medium to long term it does not help a region to prop up companies artificially. Furthermore, in order to promote regional development it is in the regions own best interest to apply its resources to develop as soon as possible activities that are viable and sustainable. Finally, distortions of competition must be minimised even in the case of aid to firms in assisted areas. In this context, regard must also be had to possible harmful spill-over effects which could take place in the area concerned and other assisted areas.

56. Thus, the criteria listed in points 32 to 54 are equally applicable to assisted areas, even when the needs of regional development are considered. In assisted areas, however, and unless otherwise stipulated in rules on State aid in a particular sector, the conditions for authorising aid may be less stringent as regards the implementation of compensatory measures and the size of the beneficiary's contribution. If needs of regional development justify it, in cases in which a reduction of capacity or market presence appear to be the most appropriate measure to avoid undue distortions of competition, the required reduction will be smaller in assisted areas than in non-assisted areas. In those cases, which need to be demonstrated by the Member State concerned, a distinction will be drawn between areas eligible for regional aid under Article 87(3)(a) of the Treaty and those eligible under Article 87(3)(c) so as to take account of the greater severity of the regional problems in the former areas.

### 3.2.5. Aid for restructuring SMEs

57. Aid to small enterprises<sup>(2)</sup> tends to affect trading conditions less than that granted to medium-sized and large firms. This also applies to aid to help restructuring, so that the conditions laid down in points 32 to 54 are applied less strictly in the following respects:

- (a) the grant of restructuring aid to small enterprises will not usually be linked to compensatory measures (see point 41), unless this is otherwise stipulated in rules on State aid in a particular sector.
- (b) the requirements regarding the content of reports will be less stringent for SMEs (see points 49, 50 and 51).

<sup>(2)</sup> As defined in the Commission Recommendation 2003/361/EC (OJ L 124, 20.5.2003, p. 36). Until 31 December 2004, the relevant definition is to be found in the Commission Recommendation 96/280/EC (OJ L 107, 30.4.1996, p. 4).

58. However, the 'one time, last time' principle (section 3.3) applies in full to SMEs.

59. For SMEs the restructuring plan does not need to be endorsed by the Commission. However, the plan must meet the requirements laid down in points 35, 36 and 37 and be approved by the Member State concerned and communicated to the Commission. The grant of aid must be conditional on full implementation of the restructuring plan. The obligation to verify that these conditions are fulfilled lies with the Member State.

### 3.2.6. Aid to cover the social costs of restructuring

60. Restructuring plans normally entail reductions in or abandonment of the affected activities. Such retrenchments are often necessary in the interests of rationalisation and efficiency, quite apart from any capacity reductions that may be required as a condition for granting aid. Whatever the reason for them, such measures will generally lead to reductions in the company's workforce.

61. Member States' labour legislation may comprise general social security schemes under which redundancy benefits and early retirement pensions are paid direct to redundant employees. Such schemes are not to be regarded as State aid falling within the scope of Article 87(1) of the Treaty.

62. Besides direct redundancy benefit and early retirement provision for employees, general social support schemes frequently provide for the government to cover the cost of benefits which the company grants to redundant workers and which go beyond its statutory or contractual obligations. Where such schemes are available generally without sectoral limitations to any worker meeting predefined and automatic eligibility conditions, they are not deemed to involve aid under Article 87(1) for firms undertaking restructuring. On the other hand, if the schemes are used to support restructuring in particular industries, they may well involve aid because of the selective way in which they are used <sup>(1)</sup>.

63. The obligations a company itself bears under employment legislation or collective agreements with trade unions, to provide redundancy benefits and/or early

retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources. That being so, any contribution by the State to these costs must be counted as aid. This is true regardless of whether the payments are made direct to the firm or are administered through a government agency to the employees.

64. The Commission has no a priori objection to such aid when it is granted to firms in difficulty, for it brings economic benefits above and beyond the interests of the firm concerned, facilitating structural change and reducing hardship.

65. Besides meeting the cost of redundancy payments and early retirement, aid is commonly provided in connection with a particular restructuring scheme for training, counselling and practical help with finding alternative employment, assistance with relocation, and professional training and assistance for employees wishing to start new businesses. The Commission consistently takes a favourable view of such aid when it is granted to firms in difficulty.

66. The type of aid described in points 62 to 65 must be clearly identified in the restructuring plan, since aid for social measures exclusively for the benefit of redundant employees is disregarded for the purposes of determining the extent of the compensatory measures referred to in points 38 to 42.

67. In the common interest, the Commission will ensure in the context of the restructuring plan that social effects of the restructuring in Member States other than the one granting aid are kept to the minimum.

### 3.2.7. Need to inform the Commission of any aid granted to the recipient firm during the restructuring period

68. Where restructuring aid received by a large or medium-sized enterprise is examined under these Guidelines, the grant of any other aid during the restructuring period, even in accordance with a scheme that has already been authorised, is liable to influence the Commission's assessment of the extent of the compensatory measures required.

<sup>(1)</sup> In its judgment in Case C-241/94, (*France v Commission* [1996] ECR I-4551), (*Kimberly Clark Sopalin*), the Court of Justice confirmed that the system of financing on a discretionary basis by the French authorities, through the National Employment Fund, was liable to place certain firms in a more favourable situation than others and thus to qualify as aid within the meaning of Article 87(1) of the Treaty. (The Court's judgment did not call into question the Commission's conclusion that the aid was compatible with the common market).

69. Notifications of aid for restructuring a large or medium-sized enterprise must indicate all other aid of any kind which is planned to be granted to the recipient firm during the restructuring period, unless it is covered by the de minimis rule or by exemption regulations. The Commission shall take such aid into account when assessing the restructuring aid.
70. Any aid actually granted to a large or medium-sized enterprise during the restructuring period, including aid granted in accordance with an approved scheme, must be notified individually to the Commission to the extent that the latter was not informed thereof at the time of its decision on the restructuring aid.
71. The Commission shall ensure that the grant of aid under approved schemes is not liable to circumvent the requirements of these Guidelines.

### 3.3. 'One time, last time'

72. Rescue aid is a one-off operation primarily designed to keep a company in business for a limited period, during which its future can be assessed. It should not be possible to allow repeated granting of rescue aids that would merely maintain the status quo, postpone the inevitable and in the meantime shift economic and social problems on to other, more efficient producers or other Member States. Hence, rescue aid should be granted only once (one time, last time condition). In accordance with the same principle, in order to prevent firms from being unfairly assisted when they can only survive thanks to repeated State support, restructuring aid should be granted once only. Finally, if rescue aid is granted to a firm that has already received restructuring aid, it can be considered that the beneficiary's difficulties are of a recurrent nature and that repeated State interventions give rise to distortions of competition that are contrary to the common interest. Such repeated State interventions should not be permitted.
73. When planned rescue or restructuring aid is notified to the Commission, the Member State must specify whether the firm concerned has already received rescue or restructuring aid in the past, including any such aid granted before the date of application of these Guidelines and any unnotified aid<sup>(1)</sup>. If so, and where less than 10 years have elapsed since the rescue aid was granted or the restructuring period came to an end or implementation of the

restructuring plan has been halted (whichever is the latest), the Commission will not allow further rescue or restructuring aid. Exceptions to that rule are permitted in the following cases:

- (a) where restructuring aid follows the granting of rescue aid as part of a single restructuring operation;
- (b) where rescue aid has been granted in accordance with the conditions in section 0, and this aid was not followed by a State supported restructuring, if:
  - (i) the firm could reasonably be believed to be viable in the long-term following the granting of rescue aid, and
  - (ii) new rescue or restructuring aid becomes necessary after at least five years due to unforeseeable circumstances<sup>(2)</sup> for which the company is not responsible;
- (c) in exceptional and unforeseeable circumstances for which the company is not responsible.

In the cases set out in points (b) and (c), the simplified procedure mentioned in section 3.1.2 cannot be used.

74. The application of this rule will in no way be affected by any changes in ownership of the recipient firm following the grant of aid or by any judicial or administrative procedure which has the effect of putting its balance sheet on a sounder footing, reducing its liabilities or wiping out its previous debts where it is the same firm that is continuing in business.
75. Where a business group has received rescue or restructuring aid, the Commission will normally not allow further rescue or restructuring aid to the group itself or any of the entities belonging to the group unless 10 years have elapsed since the rescue aid was granted or the restructuring period came to an end or implementation of the restructuring plan has been halted, whichever is the latest. Where an entity belonging to a business group has received rescue or restructuring aid, the group as a whole as well as the other entities of the group remain eligible for rescue or restructuring aid (subject to compliance with the other provisions of these Guidelines), with the exception of the earlier beneficiary of the aid. Member States must ensure that no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.

<sup>(1)</sup> With regard to unnotified aid, the Commission will take account in its appraisal of the possibility that the aid could have been declared compatible with the common market other than as rescue or restructuring aid.

<sup>(2)</sup> An unforeseeable circumstance is one which could in no way be anticipated by the company's management when the restructuring plan was drawn up and which is not due to negligence or errors of the company's management or decisions of the group to which it belongs.

76. Where a firm takes over assets of another firm, and in particular one that has been the subject of one of the procedures referred to in point 74 or of collective insolvency proceedings brought under national law and has already received rescue or restructuring aid, the purchaser is not subject to the 'one time, last time' requirement, provided that the following cumulative conditions are met:

- (a) the purchaser is clearly separate from the old firm;
- (b) the purchaser has acquired the old firm's assets at market prices;
- (c) the winding-up or court-supervised administration and purchase of the old company are not merely devices aimed at evading application of the 'one time, last time' principle: the Commission may determine that this was the case if, for example, the difficulties encountered by the purchaser were clearly foreseeable when it took over the assets of the old company.

77. It should, however, be stressed here that, since it constitutes aid for initial investment, aid for the purchase of the assets cannot be authorised under these Guidelines.

#### 4. AID SCHEMES FOR SMES

##### 4.1. General principles

78. The Commission will authorise schemes for providing rescue and/or restructuring aid to small or medium-sized enterprises in difficulty only where the firms concerned correspond to the Community definition of SMEs. Subject to the following specific provisions, the compatibility of such schemes will be assessed in the light of the conditions set out in Chapters 2 and 3, with the exception of Section 3.1.2 which does not apply to aid schemes. Any aid which is granted under a scheme but does not meet any of those conditions must be notified individually and approved in advance by the Commission.

##### 4.2. Eligibility

79. Unless otherwise stipulated in rules on State aid in a particular sector, awards of aid under schemes authorised from the date of application of these Guidelines, to small or medium-sized enterprises will be exempted from individual notification only where the enterprise concerned meets at least one of the three criteria set out in point 10. Aid to enterprises that do not meet any of those three criteria must be notified individually to the Commission

so that it can assess whether they qualify as firms in difficulty. Aid to enterprises active in a market suffering from long-term structural overcapacity, irrespective of the size of the beneficiary, must also be notified individually to the Commission so that it can assess the application of point 42.

##### 4.3. Conditions for the authorisation of rescue aid schemes

80. In order to be approved by the Commission, rescue aid schemes must satisfy the conditions set out in points (a), (b), (d) and (e) of point 25. Furthermore, rescue aid may not be granted for more than six months, during which time an analysis must be made of the firm's position. Before the end of that period the Member State must either approve a restructuring plan or a liquidation plan, or demand reimbursement of the loan and the aid corresponding to the risk premium from the beneficiary.

81. Any rescue aid granted for longer than six months or not reimbursed after six months must be individually notified to the Commission.

##### 4.4. Conditions for the authorisation of restructuring aid schemes

82. The Commission will authorise restructuring aid schemes only if the grant of aid is conditional on full implementation by the recipient of a restructuring plan that has been approved by the Member State concerned and meets the following conditions:

- (a) restoration of viability: the criteria set out in points 34 to 37 apply;
- (b) avoidance of undue distortions of competition: since aid to small enterprises tends to distort competition less, the principle set out in points 38 to 42 does not apply unless it is otherwise stipulated in rules on State aid in a particular sector; schemes should nevertheless provide that recipient firms must not increase their capacity during the restructuring; for medium-sized enterprises points 38 to 42 apply;
- (c) aid limited to the minimum necessary: the principles set out in points 43, 44 and 45 apply;
- (d) amendment of the restructuring plan: any changes to the plan must comply with the rules set out in points 52, 53 and 54.



#### 4.5. Common conditions for the authorisation of rescue and/or restructuring aid schemes

83. Schemes must specify the maximum amount of aid that can be awarded to any one firm as part of an operation to provide rescue and/or restructuring aid, including where the plan is modified. Any aid exceeding that amount must be notified individually to the Commission. The maximum amount of aid granted for the combined rescue and restructuring aid of any one firm may not be more than EUR 10 million, including any aid obtained from other sources or under other schemes.

84. In addition, the 'one time, last time' principle must be respected. The rule laid down in section 3.3 applies.

85. Member States must also notify measures individually to the Commission where one firm takes over assets of another firm which has itself already received rescue or restructuring aid.

#### 4.6. Monitoring and annual reports

86. Points 49, 50 and 51 do not apply to aid schemes. However, it will be a condition of approval that reports are presented on the scheme's operation, normally on an annual basis, containing the information specified in the Commission's instructions on standardised reports <sup>(1)</sup>. The reports must also include a list of all beneficiary companies, indicating for each of them:

- (a) company name;
- (b) the company's sectoral code, using the NACE <sup>(2)</sup> three-digit sectoral classification codes;
- (c) number of employees;
- (d) annual turnover and balance sheet value;
- (e) amount of aid granted;
- (f) amount and form of the beneficiary's contribution;

<sup>(1)</sup> See Annex III. A and B (standardised reporting format for existing State aid) to Commission Regulation (EC) No 794/2004 of 21 April 2004 adopting provisions for the implementation of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

<sup>(2)</sup> Statistical classification of economic activities in the European Community, published by the Statistical Office of the European Communities.

(g) where appropriate, the form and the degree of the compensatory measures;

(h) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;

(i) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.

### 5. PROVISIONS APPLICABLE TO AID FOR RESTRUCTURING IN THE AGRICULTURAL SECTOR <sup>(3)</sup>

#### 5.1. Compensatory measures

87. Points 38 to 42, and 57 and 82(b) provide that the requirement for compensatory measures is not normally applied in the case of small enterprises, unless otherwise stipulated in sector-specific State aid rules. In the agricultural sector, the Commission will normally require compensatory measures, in accordance with the principles set out in points 38 to 42, to be carried out by all recipients of restructuring aid, whatever their size.

#### 5.2. Definition of excess capacity

88. For the purposes of these Guidelines, structural excess capacity in the agricultural sector will be defined by the Commission on a case-by-case basis taking account in particular of the extent and trend for the relevant product category over the past three years, of market stabilisation measures, especially export refunds and withdrawals from the market, of development of world market prices, and of the presence of sectoral limits in Community legislation.

#### 5.3. Eligibility for rescue and restructuring aid schemes

89. By way of derogation from point 79, the Commission may also exempt aid to SMEs from individual notification if the SME concerned does not meet at least one of the three criteria set out in point 10.

<sup>(3)</sup> This covers, for the purpose of these Guidelines, all operators involved in the primary production of agricultural products of Annex I to the Treaty (farming). Aid measures in favour of enterprises processing and marketing agricultural products are not covered by this Chapter. Aid to processing and marketing companies is to be assessed in line with the general rules of these Guidelines. Fisheries and aquaculture are not covered by this chapter.

#### 5.4. Capacity reductions

90. Where there is a structural excess of production capacity, the requirement of irreversibly reducing or closing capacity set out in points 38 to 42 applies. Open farmland may be re-used after 15 years following effective capacity closure. Until then, it has to be maintained in good agricultural and environmental condition for land no longer used for production purposes, in accordance with Article 5 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers <sup>(1)</sup>, and with the relevant implementation rules.

91. Where the aid measure is targeted on particular products or operators, the production capacity reduction must attain at least 10 % of that for which the restructuring aid is effectively granted. For measures not so targeted, the production capacity reduction must attain at least 5 %. For restructuring aid granted in less favoured areas <sup>(2)</sup>, the capacity reduction requirement will be reduced by two percentage points. The Commission will waive these capacity reduction requirements where the decisions to grant restructuring aid taken in favour of beneficiaries in a given sector over any consecutive 12-month period do not together involve more than 1 % of the production capacity of that sector in the Member State concerned. This rule may be applied at regional level in the case of an aid regime limited to a given region.

92. The requirement of irreversibly reducing capacity may be achieved at the relevant market level (not necessarily involving reductions by the beneficiaries of the restructuring aid). Subject to compliance with common agricultural policy provisions, Member States may choose whatever capacity reduction system they wish.

93. The Member State must demonstrate that the capacity reduction would be supplementary to any reduction which would be applied in the absence of the restructuring aid.

94. Where the capacity reduction is not sought at the level of the beneficiary of the aid, measures to achieve the reduc-

tion must be implemented no later than one year after the aid has been granted.

95. In order to ensure the effectiveness of the closure of capacity undertaken at the relevant market level, the Member State must give a commitment not to grant State aid for capacity increases in the sector concerned. This commitment shall remain in force for a period of five years from the date where the required capacity reduction actually has been achieved.

96. In determining eligibility for and amounts of restructuring aid, no account shall be taken of the burdens of compliance with Community quota and related provisions at the level of individual operators.

#### 5.5. 'One time, last time' condition

97. The principle that rescue or restructuring aid should be granted once only also applies to the agricultural sector. However, instead of the period of 10 years set out in section 3.3 a five-year period will apply.

#### 5.6. Monitoring and annual report

98. The rules set out in Chapters 3 and 4 apply to monitoring and annual reports in the agricultural sector, except for the obligation to supply a list of all aid beneficiaries and certain items of information on each of them (see point 86) Where recourse has been had to the provisions of points 90 to 96, the report must also include data showing the production capacity which has effectively benefited from restructuring aid and the capacity reduction achieved.

### 6. APPROPRIATE MEASURES AS REFERRED TO IN ARTICLE 88(1)

99. The Commission will propose, by separate letter, pursuant to Article 88(1) of the Treaty, that the Member States adopt appropriate measures as set out in points 100 and 101, with regard to their existing aid schemes. The Commission will make authorisation of any future scheme conditional on compliance with those provisions.

<sup>(1)</sup> OJ L 270, 21.10. 2003, p. 1. Regulation as last amended by Regulation (EC) No 864/2004 (OJ L 161, 30.4.2004, p. 48).

<sup>(2)</sup> As defined in Articles 13 and following of Council Regulation (EC) No 1257/1999 (OJ L 160, 26.6.1999, p. 80), as last amended by Regulation (EC) No 583/2004 (OJ L 91, 30.3.2004, p. 1).

100. Member States which have accepted the Commission's proposal must adapt their existing aid schemes which are to remain in operation after 9 October 2004 within six months in order to bring them into line with these Guidelines.
101. Member States must indicate their acceptance of these appropriate measures within one month following receipt of said letter proposing appropriate measures.

**7. DATE OF APPLICATION AND DURATION**

102. The Commission will apply these Guidelines with effect from 10 October 2004 until 9 October 2009.

103. Notifications registered by the Commission prior to 10 October 2004 will be examined in the light of the criteria in force at the time of notification.

104. The Commission will examine the compatibility with the common market of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 88(3) of the Treaty on the basis of these Guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Union*.

In all other cases it will conduct the examination on the basis of the Guidelines which apply at the time the aid is granted.



## ANNEX

Formula <sup>(1)</sup> to calculate maximum amount of rescue aid to qualify for the simplified procedure:

$$\frac{\text{EBIT}_t + \text{depreciation}_t + (\text{working capital}_t - \text{working capital}_{t-1})}{2}$$

The formula is based on the operating results of the company (EBIT, earnings before interest and taxes) recorded in the year before granting/notifying the aid (indicated as t). To this amount depreciation has been added. Then changes in working capital must be added to the total. The change in working capital is calculated as the difference between the current assets and current liabilities <sup>(2)</sup> for the latest closed accounting periods. Similarly, if there would be provisions at the level of the operating result, this will need to be clearly indicated and the result should not include such provisions.

The formula aims at estimating the negative operating cash flow of the company in the year preceding the application for the aid (or before the award of the aid in case of non-notified aids). Half of this amount should keep the company in business for a six-month period. Thus the result of the formula has to be divided by 2.

This formula can only be applied where the result is a negative amount.

In case the formula leads to a positive result, a detailed explanation will need to be submitted demonstrating that the firm is in difficulty as defined in points 10 and 11.

Example:

Earnings before interest and taxes (EUR million)	(12)	
Depreciation (EUR million)	(2)	
Balance sheet (EUR million)	December 31, X	December 31, XO
<i>Current assets</i>		
Cash or equivalents	10	5
Accounts receivable	30	20
Inventories	50	45
Prepaid expenses	20	10
Other current assets	20	20
Total current assets	130	100
<i>Current liabilities</i>		
Accounts payable	20	25
Accrued expenses	15	10
Deferred income	5	5
Total current liabilities	40	40
Working capital	90	60
Change in working capital	(30)	

<sup>(1)</sup> EBIT (earnings before interest and taxes as set out in the annual accounts of the year before the application, indicated as t) must be increased with depreciation in the same period plus the changes in working capital over a two-year period (year before the application and preceding year), divided by two to determine an amount over six months, i.e. normal period for permitting rescue aid.

<sup>(2)</sup> Current assets: liquid funds, receivables (client and debtor accounts), other current assets and prepaid expenses, inventories. Current liabilities: financial debt, trade accounts payable (supplier and creditor accounts) and other current liabilities, deferred income, other accrued liabilities, tax liabilities.

Maximum amount of rescue aid =  $[-12 + 2 + (-30)] / 2 = -\text{EUR } 20 \text{ million}$ .

As the outcome of the formula is higher than EUR 10 million, the simplified procedure described in point 30 cannot be used. If this limit is exceeded, the Member State should provide an explanation of how the future cash-flow needs of the company and the amount of rescue aid have been determined.

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**Commission Communication concerning the prolongation of the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty**

(2009/C 156/02)

The Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty <sup>(1)</sup> will expire on 9 October 2009 <sup>(2)</sup>.

Since their adoption in 2004, the Commission has applied these guidelines in numerous cases and experience has shown that they provide a sound basis for the control of this type of State aid.

The economic crisis has created a difficult and unstable economic situation. Having regard to the need to ensure continuity and legal certainty in the treatment of State aid to enterprises in financial difficulty, the Commission has decided to extend the validity of the existing Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty until 9 October 2012.

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<sup>(1)</sup> OJ C 244, 1.10.2004, p. 2-17.

<sup>(2)</sup> See paragraph 102 of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (OJ C 244, 1.10.2004, p. 15).

**CORRIGENDA****Corrigendum to the Commission communication concerning the prolongation of the Community guidelines on State aid for rescuing and restructuring firms in difficulty**

*(Official Journal of the European Union C 157 of 10 July 2009)*

*(2009/C 174/09)*

The text of the Commission communication published in the *Official Journal of the European Union* C 157 of 10 July 2009, p. 1, should be considered as null and void since an identical text has already been published in the *Official Journal of the European Union* C 156 of 9 July 2009, p. 3.

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## PART III.7.A

**SUPPLEMENTARY INFORMATION SHEET ON AID FOR RESCUING FIRMS IN DIFFICULTY:  
AID SCHEMES**

*This supplementary information sheet must be used for the notification of rescue aid schemes covered by the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup>.*

**1. Eligibility**

- 1.1. Is the scheme limited to firms that fulfil at least one of the eligibility criteria below:
- 1.1.1. Is the scheme limited to firms, where more than half their registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months?
- ☐ yes                      ☐ no
- 1.1.2. Are the firms unlimited companies, where more than half of their 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?
- ☐ yes                      ☐ no
- 1.1.3. Do the firms fulfil the criteria under domestic law for being the subject of collective insolvency proceedings?
- ☐ yes                      ☐ no
- 1.2. Is the scheme limited to rescuing small or medium-sized enterprises in difficulty which correspond to the Community definition of SMEs?
- ☐ yes                      ☐ no

**2. Form of aid**

- 2.1. Is the aid granted under the scheme in the form of a loan guarantee or loans?
- ☐ yes                      ☐ no
- 2.2. If yes, will the loan be granted at an interest rate at least comparable to those observed for loans to healthy firms, and in particular the reference rate adopted by the Commission?
- ☐ yes                      ☐ no
- Please provide detailed information.
- 2.3. Will the aid under the scheme be linked to loans that are to be reimbursed over a period of not more than 12 months after disbursement of the last instalment to the firm?
- ☐ yes                      ☐ no

**3. Other elements**

- 3.1. Will aid under the scheme be warranted on the grounds of serious social difficulties? Please justify.
- 3.2. Will aid under the scheme have no unduly adverse spillover effects on other Member States? Please justify.
- 3.3. Please explain why you think that the aid scheme is limited to the minimum necessary (i.e. is restricted to the amount needed to keep the firm in business for the period during which the aid is authorised. This should not go beyond a period of 6 months).
- 3.4. Do you undertake, within six months after granting the aid, to either approve a restructuring plan or a liquidation plan, or demand reimbursement of the loan and the aid corresponding to the risk premium from the beneficiary?
- ☐ yes                      ☐ no

Please specify the maximum amount of the aid that can be awarded to any one firm as part of the rescue operation:  
.....

- 3.5. Provide all relevant information on aid of any kind which may be granted to the firms eligible for receiving rescue aid during the same period of time.

**4. Annual report**

- 4.1. Do you undertake to provide reports, at least on an annual basis, on the scheme's operation, containing the information specified in the Commission's instructions on standardised reports?
- ☐ yes                      ☐ no

<sup>(1)</sup> Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 288, 9.10.1999, p. 2.

**▼B**

- 4.2. Do you undertake in such a report to include a list of beneficiary firms with at least the following information:
- (a) the company name;
  - (b) its sectoral code, using the NACE <sup>(1)</sup> two-digit sectoral classification codes;
  - (c) the number of employees;
  - (d) annual turnover and balance sheet value;
  - (e) the amount of aid granted;
  - (f) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;
  - (g) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.
- ☐ yes                      ☐ no

5. **Other Information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the guidelines on aid for rescuing and restructuring firms in difficulty.

PART III.7.B

**SUPPLEMENTARY INFORMATION SHEET ON AID FOR RESCUING FIRMS IN DIFFICULTY:  
INDIVIDUAL AID**

*This supplementary information sheet must be used for the notification of individual rescue aid covered by the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(2)</sup>.*

1. **Eligibility**

- 1.1. Is the firm a limited 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?
- ☐ yes                      ☐ no
- 1.2. Is the firm an unlimited 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 months?
- ☐ yes                      ☐ no
- 1.3. Does the firm fulfil the criteria under domestic law for being the subject of collective insolvency proceedings?
- ☐ yes                      ☐ no

If you have answered yes to any of the above questions, please attach the relevant documents (latest profit and loss account with balance sheet, or court decision opening an investigation into the company under national company law)

If you have answered no to all of the above questions, please submit evidence supporting that the firm is in difficulties, for it to be eligible for rescue aid.

- 1.4. When has the firm been created? .....
- 1.5. Since when is the firm operating? .....

<sup>(1)</sup> Statistical classification of economic activities in the European Community, published by the Statistical Office of the European Communities.

<sup>(2)</sup> Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 288, 9.10.1999, p. 2.

**▼ B**

- 1.6. Does the company belong to a larger business group?

☐ yes ☐ no

If you have answered yes, please submit full details about the group (organisation chart, showing the links between the group's members with details on capital and voting rights) and attach proof that the company's difficulties are its own and are not the result of an arbitrary allocation of costs within the group and that the difficulties are too serious to be dealt with by the group itself.

- 1.7. Has the firm (or the group to which it belongs) in the past received any rescue aid?

☐ yes ☐ no

If yes, please provide full details (date, amount, reference to previous Commission decision if applicable, etc.)

**2. Form of aid**

- 2.1. Is the aid in the form of a loan guarantee or loans? Copies of the relevant documents should be provided.

☐ yes ☐ no

- 2.2. If yes, is the loan granted at an interest rate at least comparable to those observed for loans to healthy firms, and in particular the reference rate adopted by the Commission?

☐ yes ☐ no

Please provide detailed information.

- 2.3. Is the aid linked to loans that are to be reimbursed over a period of not more than 12 months after disbursement of the last instalment to the firm?

☐ yes ☐ no

**3. Other elements**

- 3.1. Is the aid warranted on the grounds of serious social difficulties? Please justify.

- 3.2. Does the aid have no unduly adverse spillover effects on other Member States? Please justify.

- 3.3. Please explain why you think that the aid is limited to the minimum necessary (i.e. is restricted to the amount needed to keep the firm in business for the period during which the aid is authorised). This should be done on the basis of a liquidity plan for the 6 months ahead and on the basis of a comparison with operating costs and financial charges over the previous 12 months.

- 3.4. Do you undertake, not later than six months after the rescue aid measure has been authorised, to communicate to the Commission a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated?

☐ yes ☐ no

**4. Other Information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the guidelines on aid for rescuing and restructuring firms in difficulty.





## PART III.8.A

**SUPPLEMENTARY INFORMATION SHEET ON AID FOR RESTRUCTURING FIRMS IN DIFFICULTY:  
AID SCHEMES**

*This supplementary information sheet must be used for the notification of restructuring aid schemes covered by the Community Guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup>.*

**1. Eligibility**

1.1. Is the scheme limited to firms that fulfil at least one of the eligibility criteria below:

1.1.1. Is the scheme limited to firms, where more than half their registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months?

☐ yes ☐ no

1.1.2. Are the firms unlimited companies, where more than half of their capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding months?

☐ yes ☐ no

1.1.3. Do the firms fulfil the criteria under domestic law for being the subject of collective insolvency proceedings?

☐ yes ☐ no

1.2. Is the scheme limited to restructuring small or medium-sized enterprises in difficulty which correspond to the Community definition of SMEs?

☐ yes ☐ no

**2. Return to viability**

A restructuring plan must be implemented which must assure restoration of viability. At least the following information should be included:

2.1. Presentation of the different market assumptions arising from the market survey.

2.2. Analysis of the reason(s) why the firm has run into difficulty.

2.3. Presentation of the proposed future strategy for the firm and how this will lead to viability.

2.4. Complete description and overview of the different restructuring measures planned and their cost.

2.5. Timetable for implementing the different measures and the final deadline for implementing the restructuring plan in its entirety.

2.6. Information on the production capacity of the company, and in particular on utilisation of this capacity, capacity reductions.

2.7. Full description of the financial arrangements for the restructuring, including:

- Use of capital still available;
- Sale of assets or subsidiaries to help finance the restructuring;
- Financial commitment by the different shareholders and third parties (like creditors, banks);
- Amount of public assistance and demonstration of the need for that amount;

<sup>(1)</sup> Community Guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 288, 9.10.1999, p. 2.

**▼B**

2.8. Projected profit and loss accounts for the next five years with estimated return on capital and sensitivity study based on several scenarios;

2.9. Name(s) of the author(s) of the restructuring plan and date on which it was drawn up.

3. **Avoidance of undue distortion of competition**

Does the scheme provide that recipient firms must not increase their capacity during the restructuring plan?

☐ yes ☐ no

4. **Aid limited to the minimum necessary**

Describe how it will be assured that the aid granted under the scheme is limited to the minimum necessary.

5. **One time, Last time**

Is it excluded that recipient firms receive restructuring aid more than once over a period of ten years?

☐ yes ☐ no

All cases where this principle is not respected must be notified individually

6. **Amount of aid**

6.1. Please specify the maximum amount of the aid that can be awarded to any one firm as part of the restructuring operation: .....

6.2. Provide all relevant information on aid of any kind which may be granted to the firms eligible for receiving restructuring aid.

7. **Annual report**

7.1. Do you undertake to provide reports, at least on an annual basis, on the scheme's operation, containing the information specified in the Commission's instructions on standardised reports?

☐ yes ☐ no

7.2. Do you undertake in such report to include a list of beneficiary firms with at least the following information:

- (a) the company name;
- (b) its sectoral code, using the NACE <sup>(1)</sup> two-digit sectoral classification codes;
- (c) the number of employees;
- (d) annual turnover and balance sheet value;
- (e) the amount of aid granted;
- (f) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;
- (g) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.

☐ yes ☐ no

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<sup>(1)</sup> Statistical classification of economic activities in the European Community, published by the Statistical Office of the European Communities.

**▼ B****8. Other Information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the guidelines on aid for rescuing and restructuring firms in difficulty.

**PART III.8.B**

**SUPPLEMANTRY INFORMATION SHEET ON AID FOR RESTRUCTURING FIRMS IN DIFFICULTY:  
INDIVIDUAL AID**

*This supplementary information sheet must be used for the notification of individual restructuring aid covered by the Community Guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup>.*

**1. Eligibility**

- 1.1. Is the firm a limited 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?

☐ yes ☐ no

- 1.2. Is the firm an unlimited 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?

☐ yes ☐ no

- 1.3. Does the firm fulfil the criteria under domestic law for being the subject of collective insolvency proceedings?

☐ yes ☐ no

If you have answered yes on any of the above questions, please attach the relevant documents (latest profit and loss account with balance sheet, or court decision opening an investigation into the company under national company law)

If you have answered no to all of the above questions, please submit evidence supporting that the firm is in difficulties, for it to be eligible for restructuring aid.

- 1.4. When has the firm been created? .....

- 1.5. Since when is the firm operating? .....

- 1.6. Does the company belong to a larger business group?

☐ yes ☐ no

If you have answered yes, please submit full details about the group (organisation chart, showing the links between the group's members with details on capital and voting rights) and attach proof that the company's difficulties are its own and are not the result of an arbitrary allocation of costs within the group and that the difficulties are too serious to be dealt with by the group itself.

- 1.7. Has the firm (or the group to which it belongs) in the past received any restructuring aid?

☐ yes ☐ no

If yes, please provide full details (date, amount, reference to previous Commission decision if applicable, etc.)

<sup>(1)</sup> Community Guidelines on State aid for rescuing and restructuring firms in difficulty, JO C 288, 9.10.1999, p. 2. Please note that a specific form shall be used in case of aid for restructuring firms in the aviation sector (Part III.13.a) as well as in the agricultural sector (Part III. 12.p).

**▼ B****2. Restructuring plan**

- 2.1. Please supply a copy of the survey of the market(s) served by the firm in difficulty, with the name of the organisation which carried it out. The market survey must give in particular:
  - 2.1.1. A precise definition of the product and geographical market(s).
  - 2.1.2. The names of the company's main competitors with their shares of the world, Community or domestic market, as appropriate.
  - 2.1.3. The evolution of the company's market share in recent years.
  - 2.1.4. An assessment of total production capacity and demand at Community level, concluding whether or not there is excess capacity on the market.
  - 2.1.5. Community-wide forecasts for trends in demand, aggregate capacity and prices on the market over the five years ahead.
- 2.2. Please attach the restructuring plan. At least the following information should be included:
  - 2.2.1. Presentation of the different market assumptions arising from the market survey.
  - 2.2.2. Analysis of the reason(s) why the firm has run into difficulty.
  - 2.2.3. Presentation of the proposed future strategy for the firm and how this will lead to viability.
  - 2.2.4. Complete description and overview of the different restructuring measures planned and their cost.
  - 2.2.5. Timetable for implementing the different measures and the final deadline for implementing the restructuring plan in its entirety.
  - 2.2.6. Information on the production capacity of the company, and in particular on utilisation of this capacity, capacity reductions.
  - 2.2.7. Full description of the financial arrangements for the restructuring, including:
    - Use of capital still available;
    - Sale of assets or subsidiaries to help finance the restructuring;
    - Financial commitment by the different shareholders and third parties (like creditors, banks);
    - Amount of public assistance and demonstration of the need for that amount;
  - 2.2.8. Projected profit and loss accounts for the next five years with estimated return on capital and sensitivity study based on several scenarios;
  - 2.2.9. Name(s) of the author(s) of the restructuring plan and date on which it was drawn up.
- 2.3. Describe the compensatory measures proposed with a view to mitigating the distortive effects on competition at Community level.
- 2.4. Provide all relevant information on aid of any kind granted to the firm receiving restructuring aid, whether under a scheme or not, until the restructuring period comes to an end.

**3. Other Information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the guidelines on aid for rescuing and restructuring firms in difficulty.