

Article 4

It shall remain in force for five years.

Entry into force and period of validity

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

2. At the end of the period of validity of this Regulation, aid schemes falling under this Regulation shall continue to benefit from it during an adjustment period of six months.

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

Done at Brussels, . . .

For the Commission

. . .

Member of the Commission

DRAFT COMMISSION REGULATION ON THE APPLICATION OF ARTICLES 87 AND 88 OF THE EC TREATY TO TRAINING AID

(2000/C 89/07)

Invitation to submit comments on the draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to training aid.

Interested parties may submit their comments within one month of the date of publication of this draft Regulation to:

European Commission
Directorate-General for Competition
Directorate G
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 296 98 13.

Draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to training aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having published a draft of this Regulation ⁽²⁾,

Having regard to the Treaty establishing the European Community,

Having consulted the Advisory Committee on State Aid,

Whereas:

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ⁽¹⁾, and in particular point (a)(iv) of Article 1(1) thereof,

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

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 89, 28.3.2000, p. 8.

- (2) The Commission has applied Articles 87 and 88 of the Treaty to training aid in numerous decisions and has also stated its policy, most recently in the Community framework on training aid⁽¹⁾. In the light of the Commission's considerable experience in applying those Articles to training aid, it is appropriate, with a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, that the Commission should make use of the powers conferred by Regulation (EC) No 994/98.
- (3) In order to establish a transparent and coherent policy for all sectors, it is appropriate that the scope of this Regulation be as broad as possible and include the agricultural sector.
- (4) This Regulation should exempt any individual aid that meets all the relevant requirements of this Regulation, and any aid scheme, provided that any aid that could be granted under such scheme meets all the relevant requirements of this Regulation. With a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, aid schemes and individual grants, outside any aid scheme, should contain an express reference to this Regulation.
- (5) In order to eliminate differences that might give rise to distortions of competition, in order to facilitate coordination between different Community and national initiatives concerning small and medium-sized enterprises, and for reasons of administrative clarity and legal certainty, the definition of 'small and medium-sized enterprises' used in this Regulation should be that laid down in the Annex to Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises⁽²⁾.
- (6) In order to determine whether or not aid is compatible with the common market pursuant to this Regulation, it is necessary to take into consideration the aid intensity and thus the aid amount expressed as a grant equivalent. Calculation of the grant equivalent of aid payable in several instalments, and calculation of aid in the form of a soft loan, require the use of market interest rates prevailing at the time of grant. With a view to a uniform, transparent and simple application of the State aid rules, the market rates for the purposes of this Regulation should be deemed to be the reference rates, provided that, in the case of a soft loan, the loan is backed by normal security and does not involve abnormal risk. The reference rates should be those, which are periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Communities* and on the Internet.
- (7) Training usually has positive external effects for society as a whole since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of European industry and plays an important role in employment strategy. In view of the fact that enterprises in the Community generally under-invest in the training of their workers, State aid might help to correct this market imperfection and therefore can be considered under certain conditions to be compatible with the common market and therefore exempted from prior notification.
- (8) In order to ensure that State aid is limited to the minimum necessary to obtain the Community objective which market forces alone would not make possible, the permissible intensities of exempted aid should be modulated according to the type of training provided, the size of the enterprise and its geographical location.
- (9) General training provides transferable qualifications and substantially improves the employability of the trained worker. Aid for this purpose has less distortive effects on competition, so that higher intensities of aid can be considered compatible with the common market and exempted from prior notification. Specific training, on the other hand, which mainly benefits the enterprise, involves a greater risk of distortion of competition so that the intensity of aid which can be considered compatible and exempted from prior notification should be much lower.
- (10) In view of the handicaps with which SMEs are confronted and the higher relative costs that they have to bear when they invest in the training of their workers, the intensities of aid exempted by this Regulation should be increased for SMEs.
- (11) In assisted areas under Article 87(3)(a) and (c) of the Treaty, training has a relatively greater external impact, since there is a substantial under-investment in training in those regions and a higher unemployment rate. Consequently, the intensities of aid exempted by this Regulation should be increased for those areas.
- (12) The characteristics of training in the maritime transport sector justify a specific approach for that sector.
- (13) It is appropriate that large amounts of aid remain subject to an individual assessment by the Commission before they are put into effect. Accordingly, aid amounts exceeding a fixed amount, which should be set at EUR 1 000 000, are excluded from the exemption provided for in this Regulation and remain subject to the requirements of Article 88(3) of the Treaty.
- (14) Whereas this Regulation should not exempt aid cumulated with other State aid, including aid granted by national, regional and local authorities, or Community assistance, when such cumulation exceeds the thresholds fixed in this Regulation.

⁽¹⁾ OJ C 343, 11.11.1998, p. 10.

⁽²⁾ OJ L 107, 30.4.1996, p. 4.

- (15) Whereas, in order to ensure transparency and effective monitoring in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard format in which Member States should provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme is implemented or an individual aid outside such schemes is granted, with a view to publication in the *Official Journal of the European Communities*. For the same reasons, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation. For the purposes of the annual reports to be submitted to the Commission by Member States, it is appropriate for the Commission to establish its specific requirements, including, in view of the wide availability of the necessary technology, information in computerised form.
- (16) Having regard to the Commission's experience and in particular the frequency with which it is generally necessary to revise State aid policy, it is appropriate to limit the period of application of this Regulation to five years. Should this Regulation expire without being extended, aid schemes already exempted by this Regulation should continue to be exempted for six months in accordance with Article 4 of Regulation (EC) No 994/98,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

Without prejudice to special Community regulations or directives under the EC Treaty governing the granting of training aid in specific sectors, this Regulation applies to aid in all sectors, including the activities relating to the production, processing and marketing of products listed in Annex I of the Treaty.

Article 2

Definitions

For the purpose of this Regulation:

- (a) 'aid' shall mean any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
- (b) 'small and medium-sized enterprises' shall mean enterprises as defined in Annex I;
- (c) 'large enterprises' shall mean enterprises not coming under the definition of SME as defined in Annex I;
- (d) 'specific training' shall mean training involving tuition directly and principally applicable to the employee's present or future position in the assisted firm and providing qualifications which are not or only to a limited extent transferable to other firms or fields of work;
- (e) 'general training' shall mean training involving tuition which is not applicable only or principally to the employee's present or future position in the assisted firm, but which provides qualifications that are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee. Training shall be considered 'general' if, for example:
- it is jointly organised by different independent enterprises, or if employees of different enterprises may avail themselves of the training,
 - it is recognised, certified or validated by public authorities or bodies or by other bodies or institutions on which a Member State or the Community has conferred the necessary powers;
- (f) 'aid intensity' shall mean the aid amount expressed as a percentage of the project's eligible costs. All figures used shall be taken before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid. Aid payable in several instalments shall be discounted to its value at the time 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.

Article 3

Preliminary conditions for exemption

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

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

- (a) any aid that could be awarded under such scheme fulfils all the conditions of this Regulation;
- (b) the scheme provides that all aid awarded under it must also fulfil all the conditions of this Regulation;
- (c) the scheme contains an express reference to this Regulation, by citing its full title and publication reference in the *Official Journal of the European Communities*.

Article 4

Exempted training aid

1. Aid schemes and individual aid for training must fulfil the conditions laid down in paragraphs 2 to 6.

2. Where the aid is granted for specific training, its intensity shall not exceed 25 % for large enterprises and 35 % for small and medium-sized enterprises.

These intensities shall be increased by five percentage points for enterprises in areas which qualify for regional aid pursuant to Article 87(3)(c) of the Treaty and by 10 percentage points for enterprises in areas which qualify for regional aid pursuant to Article 87(3)(a) of the Treaty.

3. Where the aid is granted for general training, its intensity shall not exceed 50 % for large enterprises and 70 % for small and medium-sized enterprises.

These intensities shall be increased by five percentage points for enterprises in areas which qualify for regional aid pursuant to Article 87(3)(c) of the Treaty and by 10 percentage points for enterprises in areas which qualify for regional aid pursuant to Article 87(3)(a) of the Treaty.

4. In cases where the aid project involves both specific and general training components which cannot be separated for the calculation of the aid intensity, and in cases where the specific or general character of the training aid project cannot be established, the intensities applicable to specific training pursuant to paragraph 2 shall apply.

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

- the trainee shall not be an active member of the crew but shall be supernumerary on board; and
- the training shall be carried out on board ships entered on Community registers.

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

- (a) trainers' personnel costs;
- (b) trainers' and trainees' travel expenses;
- (c) other current expenses such as materials and supplies;
- (d) depreciation of tools and equipment, to the extent that they are used exclusively for the training project;

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

(f) trainees' personnel costs up to the amount of the total of the other eligible costs referred to in (a) to (e). Only the hours during which the trainees actually participate in the training, after deduction of any productive hours or of their equivalent, may be taken into account.

The eligible costs shall be supported by documentary evidence, which shall be transparent and itemised.

Article 5

Large individual aid grants

The exemption provided for in Article 4 shall not apply if the amount of aid granted for a single training aid project exceeds EUR 1 000 000.

Article 6

Cumulation

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

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

Article 7

Transparency and monitoring

1. On implementation of an aid scheme, or grant of individual aid outside any scheme, exempted by this Regulation, Member States shall, within 10 working days, forward to the Commission, with a view to its publication in the *Official Journal of the European Communities*, a summary of the information regarding such aid scheme or individual aid according to the model laid down in Annex II.

2. Member States shall maintain detailed records regarding the aid schemes exempted by this Regulation, the individual aid granted under those schemes, and the individual aid exempted by this Regulation that is granted outside any existing aid scheme. Such records shall contain all information necessary to establish that the conditions for exemption, as laid down in this Regulation, are fulfilled. Member States shall keep a record regarding an individual aid for 10 years from the date on which it was granted, and regarding an aid scheme, for 10 years from the date on which the last individual aid was granted under such scheme. On written request, the Member State concerned shall provide the Commission, within a period of 20 working days or such longer period as may be fixed in the request, with all the information which the Commission considers necessary

to assess whether the conditions of this Regulation have been complied with.

3. Member States shall compile a report on the application of this Regulation in respect of each whole or part calendar year during which this Regulation applies, in the form laid down in Annex III, also in computerised form. Member States shall provide the Commission with such report no later than three months after the expiry of the period to which the report relates. For aid awarded to projects of allegedly general training, the report shall in particular include documentary evidence regarding the designation of the training involved as 'general'.

Article 8

Entry into force and period of validity

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

It shall remain in force for five years.

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

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

Done at Brussels, . . .

For the Commission

. . .

Member of the Commission

ANNEX I

Definition of small and medium-sized enterprises

(extract from the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4))

Article 1

1. Small and medium-sized enterprises, hereinafter referred to as 'SMEs', are defined as enterprises which:
 - have fewer than 250 employees, and
 - have either,
 - an annual turnover not exceeding ECU 40 million, or
 - an annual balance-sheet total not exceeding ECU 27 million,
 - conform to the criterion of independence as defined in paragraph 3.
2. Where it is necessary to distinguish between small and medium-sized enterprises, the 'small enterprise' is defined as an enterprise which:
 - has fewer than 50 employees and
 - have either,
 - an annual turnover not exceeding ECU 7 million, or
 - an annual balance-sheet total not exceeding ECU 5 million,
 - conforms to the criterion of independence as defined in paragraph 3.
3. Independent enterprises are those which are not owned as to 25 % or more of the capital or the voting rights by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprises whichever may apply. This threshold may be exceeded in the following two cases:
 - if the enterprise is held by public investment corporations, venture capital companies or institutional investors, provided no control is exercised either individually or jointly;

- if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25 % or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.
4. In calculating the thresholds referred to in paragraphs 1 and 2, it is therefore necessary to cumulate the relevant figures for the beneficiary enterprise and for all the enterprises that it directly or indirectly controls through possession of 25 % or more of the capital or of the voting rights.
5. Where it is necessary to distinguish micro-enterprises from other SMEs, these are defined as enterprises having fewer than 10 employees.
6. Where, at the final balance-sheet date, an enterprise exceeds or falls below the employee thresholds of financial ceilings, this is to result in its acquiring or losing the status of 'SME', 'medium-sized enterprise', 'small enterprise' or 'micro-enterprise' only if the phenomenon is repeated over two consecutive financial years.
7. The number of persons employed corresponds to the number of annual working units (AWU), that is to say, the number of full-time workers employed during one year with part-time and seasonal workers being fractions of AWU. The reference year to be considered is that of the last approved accounting period.
8. The turnover and balance-sheet total thresholds are those of the last approved 12-month accounting period. In the case of newly established enterprises whose accounts have not yet been approved, the thresholds to apply shall be derived from a reliable estimate made in the course of the financial year.

ANNEX II

Form of summary information to be provided whenever an aid scheme exempted by this Regulation is implemented and whenever an individual aid exempted by this Regulation is granted outside any aid scheme

Member State (Region):

Date of implementation (aid scheme) or grant (individual aid):

Name and address of responsible authority:

Title of aid scheme implemented or name of beneficiary granted individual aid:

Objective of aid (specific training/general training):

Legal basis:

Annual budget:

Maximum aid intensity:

Duration ⁽¹⁾ in years and months:

Other information (optional):

⁽¹⁾ Time-limit until which aid may be granted on the basis of the scheme.

ANNEX III

Form of periodic report to be provided to the Commission**Joint annual reporting format on existing State aid under the EC Treaty, subsidies under the WTO Agreement on subsidies and countervailing measures (SCM Agreement)**

EXPLANATORY NOTE

Member States are advised to use these formats for their reporting obligations to the Commission under Article 88(1) of the EC Treaty and under group exemption regulations adopted on the basis of Council Regulation (EC) No 994/98. The formats are adapted to the two requirements and should be used instead of the format which was sent to the Member States by letter of 22 February 1994. As regards the notification obligations imposed by Article 25 ASCM, the agreed WTO format should continue to be used. The reports should also be provided in computerised form.

Existing State aid and exempted aid schemes

The information exclusively reserved for the Commission on existing State aid and exempted aid schemes is contained in Section A of the joint format. This section can be filled in in any official language of the Union.

WTO ASCM

The information required under Article 25 ASCM and which will be copied on behalf of the Member States to the WTO is contained in the Section B of the joint format. This part has to be filled in in one of the official languages of the WTO which are English, French and Spanish.

SECTION A: Information under Article 88(1) of the EC Treaty on the aid scheme (Information contained in this section A will not be transmitted to the WTO and can be filled in in any official language of the European Union).

A.1. FORMAT OF DETAILED ANNUAL REPORT

(not applicable)

A.2. FORMAT OF SIMPLIFIED ANNUAL REPORT TO BE SUBMITTED FOR ALL EXISTING SCHEMES NOT REPORTED UNDER A.1 AND FOR ALL EXEMPTED AID

For new aid schemes covered by the accelerated clearance procedure or schemes with an annual budget of not more than EUR 5 million, give only the information requested in points 1, 2.1, 2.2.1 and 2.2.2 (very simplified report).

1. Name of scheme in original language
2. Expenditure under scheme

Separate figures should be provided for each aid instrument in the scheme (e.g. grant, low interest loans, guarantees). Provide figures on expenditure or commitments, revenue losses and other financial factors relevant to the granting of aid (e.g. period of loan, interest subsidies, default rates on loans net of sums recovered, default payments on guarantees net of premium income and sums recovered).

For exempted general training aid, documentary evidence should be given regarding the qualification of the training as general.

These expenditure figures should be provided on the following basis:

- 2.1. For year n, provide expenditure forecasts or estimated revenue losses due to tax expenditure.
 - 2.2. For year n-1, indicate:
 - 2.2.1. Expenditure committed, or estimated revenue losses due to tax expenditure, for new assisted projects and actual payments for new and current projects
 - 2.2.2. Number of new recipients and number of new projects assisted, together with estimated number of jobs created or maintained.
 - 2.2.3. (not applicable)
 - 2.2.4. (not applicable)
 3. Changes (administrative or other) introduced during the year.
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