The Committee of the Regions welcomes the Commission’s intention of concentrating on cases with a particularly strong impact on the internal market and thus moving towards greater prioritisation in aid procedures, which will reduce the burden on all concerned - Commission, Member States and regional and local authorities.

— points out that a suitable starting point for focusing on aid with actual and significant internal market relevance could be to clarify the criterion of impact on cross-border trade and the notion of undertaking;

— calls for account to be taken of the fact that, while payments in respect of activities of a purely local nature may be categorised legally as state aid, they can have a limited impact on trade between Member States;

— calls for a higher threshold for the de minimis regulation, and an increase in the separate de minimis threshold values for services of general economic interest (SGEIs), as well as broadening of the horizontal categories in the enabling regulation and broadening and clarification in the block exemption regulation as options for achieving the Commission’s target in the framework of this modernisation initiative;
I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

General comments

1. welcomes the Commission’s recognition that the rules on state aid have developed into a fragmented and complex legal framework, involving a significant administrative burden for all concerned, unrelated to the extent of the internal market impact;

2. therefore calls for clear simplification of the rules on aid and for them to focus on essential cases, improvement in their practical application and acceleration/reduction of procedures;

3. therefore welcomes the European Commission’s announcement that it will streamline the rules and clarify important concepts;

4. welcomes the Commission’s intention of concentrating on cases with a particularly strong impact on the internal market and thus moving towards greater prioritisation in aid procedures, which will reduce the burden on all concerned - Commission, Member States and regional and local authorities;

5. points out that a suitable starting point for focusing on aid with actual and significant internal market relevance could be to clarify the criterion of impact on cross-border trade and the notion of undertaking;

6. calls on the European Commission to clarify the conditions under which an obstacle to trade between Member States is deemed to exist and when an activity is considered to have no internal market relevance;

7. calls for account to be taken of the fact that, while payments in respect of activities of a purely local nature may be categorised legally as state aid, they can have a limited impact on trade between Member States;

8. proposes that, if these compensatory payments do not fall under a general exemption, the alternative of a simplified procedure should at least be considered;

9. calls for the notion of undertaking to be clarified by means of a clearer demarcation between the commercial and non-commercial areas - e.g. using criteria - and the joint drafting of national lists by the Member States and the Commission. Whilst the abstract criteria would also take account of dynamic developments, the jointly drafted lists would provide legal certainty for the established areas. This would make things easier for local and regional bodies as well as for the Commission;

10. if this approach is rejected, suggests as an alternative that the conditions for the presumed existence of economic activity in these areas be more closely defined;

11. believes that the social, cultural and educational sectors as well as non-economic services of general interest would typically not fall within the notion of undertaking;

12. stresses that not every case of aid which is very limited in size and scope should be notified to the European Commission and that the Member States themselves should take on responsibility for the application of the law on aid (e.g. through exemptions or de minimis rules);

13. calls for a higher threshold for the de minimis regulation, and an increase in the separate de minimis threshold values for services of general economic interest (SGEIs), as well as broadening of the horizontal categories in the enabling regulation and broadening and clarification in the block exemption regulation as options for achieving the Commission’s target in the framework of this modernisation initiative;

14. stresses the need for clearer demarcation between the general aid provisions subject to this modernisation on the one hand, and the aid rules for SGEIs (Almunia package) on the other, particularly with a view to borderline cases, in which categorisation as a service of this kind is not clear-cut;
Greater consideration of the Europe 2020 objectives

15. welcomes the greater focus on the Europe 2020 objectives. This initiative must not, however, ultimately result in more voluminous and complicated rules for public authorities rather than the intended simplification;

16. stresses the importance of the regional aid guidelines for local and regional authorities, as they determine which sectors of enterprise may receive support and in which areas. In this connection local and regional authorities should have discretion for supporting enterprises independently of their size in eligible regions too;

17. stresses the need for the option of flexible support geared to local conditions where there is a specific need for support measures, in the light of demographic change or permanent natural handicaps, particularly in rural areas or mountain regions;

18. calls for more scope to develop regionally tailored development strategies and support measures and for the option of regional and local budgets to be made available;

19. points out that the revision of regional guidelines for 2014-2020 concerning state aid must not lead to unjustified disparities between Member States regarding population ceilings and that in future account must be taken of large corporations in all areas;

20. therefore welcomes the Integrated Territorial Investment instrument, which opens up scope for local policy-shaping and makes the deployment of cross-cutting investment possible;

21. welcomes the fact that the European Commission is striving for a more integrated approach and improved coordination of support measures;

22. welcomes the opportunity for combining support instruments and cross-fund financing and the related improvement in the sustainable use of regional support funds;

23. in this context and in view of the revision of the Regional State Aid Guidelines, calls for State aid for SGEI which, in accordance with the Decision of 20 December 2011 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, are considered compatible, in principle, with the Treaty and at the same time eligible for co-funding by the Structural Funds, not to be included or to be included at a very low rate when calculating ceilings for the intensity of regional aid. This clarification should be made either in the amended version of the Regional State Aid Guidelines or through a communication on State aid applicable to the Structural Funds co-funding SGEI;

24. urges the Commission to recognise that irrespective of public entrustment, public financing of public infrastructure projects should not be considered State aid;

25. highlights the importance of clarifying the applicability of the State aid regime to infrastructure, in light of the problems involved in interpreting the General Court judgment of 24 March 2011 on Freistaat Sachsen and Land Sachsen-Anhalt (T-443/08) and Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH (T-455/08) v the European Commission, which has resulted in considerable delays in the ex ante verification of around 200 infrastructure projects funded by the Structural Funds;

Simplification of aid rules

26. supports the Commission’s intention of publishing a communication providing a summary of the interpretation of the concept of state aid by decisions and case law, and of applying this concept uniformly;

27. urges that the interpretative communications themselves create no additional need for interpretation. The use of indeterminate legal concepts should be completely avoided;

28. supports the Commission’s intention of tightening up the multiplicity of secondary law and “soft law” texts relating to aid (regulations, communications, guidelines etc.) and, where appropriate, combining these;

29. opposes the inclusion by the European Commission of additional quality and efficiency considerations in the compatibility assessment. Quality and efficiency criteria which further restrict the discretion of local and regional aid providers in principle do not fall within the Commission’s area of responsibility, as defined in the competition chapter of the TFEU. Decisions on quality and efficiency must be left to the local authorities in the interests of local scope for action;

30. notes that the steadily increasing reporting requirements for national bodies involve an enormous amount of red tape, both for the Member States and the Commission;

31. calls, particularly in view of the EU’s aim of reducing red tape, for the introduction of a system of random sampling, enabling across-the-board reporting to be dropped completely below a certain financial threshold;
Revision of the legislative texts

32. Four legislative texts are being revised in the process of modernising EU aid law with a view to the setting of stronger priorities:

a) Revision of the Commission's de minimis Regulation

Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 (107 TFEU) and 88 (108 TFEU) of the Treaty to de minimis aid

33. welcomes the Commission's intention of allowing the Member States more discretion with regard to de minimis aid. This should, however, apply generally and not just to aid involving small amounts. This would on the one hand significantly facilitate the Commission's work; at the same time local bodies would benefit, as the national level is closer to local government needs than the Commission;

34. calls for the threshold set by the general de minimis regulation to be increased from EUR 200 000 to at least EUR 500 000 over a period of three tax years in line with the Commission's justified efforts to focus more on cases of particular relevance to the internal market;

35. points out that the separate de minimis regulation for SGEIs, with its higher threshold values, was drawn up in awareness of, and in contrast to, the lower threshold values of the general de minimis regulation;

36. calls therefore for a clear increase in the threshold value for these services vis-à-vis the general de minimis threshold value, in order to take account of the special features of SGEIs and their special position in the overall structure;

37. points out that the CoR, in the context of the Almunia package, has already called for an SGEI de minimis threshold value of EUR 800 000 per year, and it now reiterates that call;

38. calls for the provisions of the SGEI de minimis regulation also to apply to the general de minimis regulation with respect to aid granted in a form other than that of a subsidy (e.g. guarantees);

39. therefore calls for the specific ceiling for individual aid granted on the basis of guarantees to be increased, by analogy with the de minimis regulation for SGEIs, to EUR 3.75 m. This is particularly relevant with a view to the prohibition in the SGEI de minimis regulation on combining this kind of aid with other sources of aid in respect of the same eligible costs;

b) Revision of the Council enabling Regulation

Council Regulation (EC) No 994/1998 of 7 May 1998 on the application of Articles 92 (112 TFEU) and 93 (113 TFEU) of the Treaty establishing the European Community to certain categories of horizontal State aid

40. welcomes the Commission's planned measures amending the Council's enabling regulation to make other/more categories of aid compatible with the internal market and thus exempted from the reporting requirement;

41. also welcomes the Commission's announcement that the following types of aid are to be exempted from the reporting requirement:

   — aid granted to culture,

   — aid to make good the damage caused by natural disasters,

   — aid to (partly) EU-funded projects such as JESSICA, and

   — others;

42. proposes that the social, educational and health areas, provided they do not involve commercial or profit-seeking activities, broadband provision and animal disease counter measures be included in the "others" category;

43. calls for the relationship between these horizontal exemptions and the exemption decision for SGEIs to be further clarified;

c) Revision of the Commission's General Block Exemption Regulation

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 (107 TFEU) and 88 (108 TFEU) of the Treaty (General Block Exemption Regulation)

44. welcomes the measures announced for the revision and extension of the general block exemption regulation in the aid categories covered by the revised enabling regulation, with a view to a reduced administration burden for local and regional authorities;

45. calls for the extension of block exemption to include the social, educational, health and broadband areas in line with the horizontal extension in the enabling regulation;
46. stresses that, in the area of education, non-government school and adult education should in particular be covered by the exemption, insofar as it does not come under the aid rules for SGEIs;

47. stresses that the same should apply to health services provided by specialised departments or clinics, and to non-commercial social services provided by charitable associations and care homes for the elderly (as distinct from residential facilities);

48. draws attention to the Digital Agenda and the EU’s objective of making basic broadband services available to all Europeans by 2013;

49. notes that the conditions for the construction of high-performance broadband networks of this kind in rural areas will not arise without aid, and stresses that aid rules should therefore not unnecessarily impede the development of broadband networks in rural areas. Rural areas should be protected against digital exclusion;

50. stresses that particular account should also be taken here of the advantages deriving, when establishing broadband infrastructure, from the emergence of a downstream market for broadband services;

51. regrets that the draft revised broadband guidelines submitted by the European Commission do not take account of repeated calls for significant streamlining and simplification of the rules;

52. calls on the European Commission to ensure that, by including the development of broadband in the block exemption regulation, across-the-board development of broadband can be made possible even in more sparsely populated regions, where revenues cannot be expected to cover the full cost of introducing the technology and operating costs;

53. calls for the extension of block exemption to include animal disease counter measures, in line with the horizontal extension in the enabling regulation, particularly in regard to providing facilities for the case of an epidemic outbreak;

54. welcomes the fact that extension of exemptions will give the Member States greater responsibility and ‘welcomes the Member States’ increased responsibility for monitoring aid in general;

55. stresses that this should not reduce the burden on the Commission at the cost of a steadily increasing burden on the Member States resulting from numerous reporting and documentation requirements and precise and detailed conditions for making use of the new facilities etc.;

56. therefore considers it essential that the Commission’s ex-post control rights not be further extended and that responsibility actually be delegated to the Member State. National aid control bodies must not be misused by the DG Competition as a kind of authority responsible for preliminary checks, at least not in cases where the power of decision remains with the Commission;

57. rejects the Commission’s idea of transferring national aid controls to independent authorities (e.g. competition authorities), as the decision on how to organise aid controls at national level resides solely with the Member States and not with the Commission. For the same reason the possibility of the Commission carrying out its own investigations is rejected;

d) Revision of the Council Procedural Regulation


58. welcomes the simplification of the provisions of the procedural regulation;

59. rejects the establishment of new Commission investigative powers vis à vis companies, e.g. using market information tools, thus bypassing the Member States. This would mean the transfer of national competences to the European level.

Brussels, 29 November 2012.

The President
of the Committee of the Regions
Ramón Luis VALCÁRCEL SISO