

Community guidelines on State aid for small and medium-sized enterprises (SMEs)

(92/C 213/02)

(adopted by the Commission on 20 May 1992)

1. Introduction

1.1. The importance of the small and medium-sized enterprise (SME) sector in the economy has come to be increasingly recognized in recent years. The important role of SMEs is clear not only from a static, 'snapshot' view of the economy at any one time, in terms of the proportions of output and employment SMEs account for⁽¹⁾. It is also apparent, at several levels, from a dynamic picture of the economy over time. First, SMEs play a disproportionate role in employment creation, especially at times when large firms are shedding labour. Secondly, being more exposed to competition but at the same time more flexible and adaptable than large firms, SMEs tend to be in the forefront of innovation. Thirdly and as a consequence, SMEs are a major source of competition in markets — they keep markets 'contestable' — and act as the main motor of structural change and regeneration in the economy as a whole: they facilitate the shifts of economic resources from declining to expanding sectors. This is not to deny the importance of large firms. SMEs and big business are complementary. But SMEs are the lifeblood of any economy. They help to make the economy dynamic, whereas a lack of SME development leads to stagnation.

1.2. In some parts of the economy the SME sector is of particular importance. This is true, for instance, of the manufacturing industry in which subcontracting is playing an increasing role. Here, many large manufacturers are relying on subcontractors for a growing proportion of the value added in their products and the SMEs concerned are increasingly assuming responsibility for R&D in their particular specialization⁽²⁾. SMEs are also of fundamental importance for regional development.

1.3. While the vital importance of an 'enterprise culture' favourable to SME growth is generally accepted, so is the fact that, in the modern state, SMEs can face certain handicaps when compared to established large firms. For example, they have greater difficulty in raising finance. SMEs also suffer to a greater extent from burdens imposed by government. The compliance costs of small businesses with respect to government regulations on health and safety, financial accounting, etc., may be higher and the tax burden on them may be heavier, both in terms of the rates of tax they pay⁽³⁾ and the compliance costs of the tax system (e.g., collection of social security contributions and VAT).

1.4. The specific problems faced by SMEs and the external benefits they produce in the form of a more dynamic, innovative economy able to absorb structural change and to replace lost jobs both call for a degree of positive action by government to level the playing field and perhaps tip it slightly in their favour. This positive action must not aim to remove all risk, for risk is the essential spur to efficiency and competitiveness. It should mainly seek to establish an environment conducive to small business, an 'enterprise culture', through education and training and the simplification of regulatory requirements. The positive action to promote SMEs may also include financial incentives for start-ups and investment.

1.5. The Community is encouraging SMEs through its action programme⁽⁴⁾ and the various constituent measures under this programme, such as the Euro Info-Centres, BC-Net, the simplification and codification of Community legislation applicable to

⁽¹⁾ Firms employing less than 200 people, including sole proprietors, account for 62,7 % of total employment in the Community (European Commission: compilation of data collected in joint Statistical Office/DG XXIII project on SME statistics, December 1989; see also Commission: Enterprises in the European Community, Brussels — Luxembourg 1990).

⁽²⁾ See Commission communications to the Council COM(89) 402 — the development of subcontracting in the Community and SEC(91) 1286 — 'Towards a European market in subcontracting'.

⁽³⁾ Especially for unincorporated businesses, which are generally liable to income tax and may be taxed at the top marginal rate. In most Member States, this is higher than the corporate tax rate usually faced by incorporated businesses, whatever their size.

⁽⁴⁾ Council resolution of 3 November 1986 (OJ No C 287, 14. 11. 1986, p. 1).

SMEs, seed capital funds ⁽¹⁾, and action to promote innovation and technology transfer under the SPRINT-programme ⁽²⁾. National governments, too, are taking action to improve the business environment for SMEs, including some direct financial assistance. The general policy of the Commission towards State aid to promote SMEs has always been positive ⁽³⁾. It has authorized aid schemes for small business in the majority of the Member States. Such schemes are now increasing with the growing recognition of the importance of SMEs. At the same time, the increased risk of state aid distorting competition in the single European market and the need for greater economic and social cohesion, which has been reemphasized in the Treaty on European Union, call for a reduction in some types of general aid schemes that are not restricted to SMEs, in particular general investment incentives outside of regional development areas. This raises the question of the definition of SME. There is therefore an urgent need at the present time for the Commission to set out clearly its policy towards State aid for SMEs. This is the purpose of the present guidelines. They begin with the crucial question of definition and then deal with the various types and intensities of aid which the Commission will normally be prepared to authorize for this sector.

- 1.6. The guidelines apply to aid for SMEs in all sectors except those subject to special Community rules on State aid under the EEC or ECSC Treaties. For any aid to SMEs in such industries the relevant sectoral rules are applicable. Special rules are currently applicable in steel, shipbuilding, synthetic fibres, the motor industry, agriculture, fisheries, transport and the coal industry.

2. Definition

- 2.1. There is no single generally accepted definition of small to medium-sized firm. Different countries and different institutions within them use differing defi-

nitions. They sometimes distinguish small from medium-sized and sometimes not. This variation is often legitimate for it reflects widely varying situations and purposes (for example, VAT exemption, relaxation of regulatory requirements, eligibility for finance, or targeting of information campaigns) ⁽⁴⁾. This variety of definitions is mirrored in the various policies of the European Community towards SMEs, such as EIB and structural fund financing, simplification, information and competition policy ⁽⁵⁾. For the purposes of control of State aids, the definition of SME used by the Commission must meet a number of requirements. It must delimit the SME sector so that the bulk of the firms with the beneficial external effects and the handicaps described in paragraphs 1.1 to 1.3 above are included. It must not be so wide as to include many larger firms that do not necessarily have the beneficial external effects or the handicaps that are characteristic of the SME sector. Aid granted to larger firms on the basis of considerations mainly applicable to smaller enterprises would be more likely to distort competition and trade between Member States. Finally, if transparency is to be improved by the guidelines the definition of SME must be simple and straightforward to apply.

For most purposes there is no need for the guidelines to distinguish between small and medium-sized enterprises. However, such a distinction is necessary in the case of aid for near-market activities, such as investment. Here, aid to small companies can normally be expected to have a limited impact on intra-Community trade, whereas aid to medium-sized impact on intra-Community trade, whereas aid to medium-sized companies may well have a significant trade-distorting effect.

⁽¹⁾ Council resolutions of 30 June 1988 (OJ No C 197, 27. 7. 1988, p. 6) and of 27 May 1991 (OJ No C 146, 5. 6. 1991, p. 3) and Council Decision of 28 July 1989 (OJ No L 239, 16. 8. 1989, p. 33) as amended by Council of 18 June 1991 (OJ No L 175, 4. 7. 1991, p. 32) on improving the business environment and promoting the development of enterprises, especially SMEs.

⁽²⁾ Council Decision of 17 April 1989 (OJ No L 112, 25. 4. 1989, p. 2).

⁽³⁾ See in particular the policy statement in the *sixth report on Competition Policy* (1976), points 253-255.

⁽⁴⁾ See report to the Council on the definition of SMEs, SEC(92) 351 final of 29 April 1992, p. 2: 'There can be no absolute definition of SMEs. The question of the appropriate definition of SMEs is meaningful only in the context of a specific measure for which it is considered necessary to separate one category of enterprises from others for reasons of their "size". The criteria adopted for making this distinction necessarily depend on the aim pursued.'

⁽⁵⁾ See report to the Council on SME definitions.

2.2. In view of the foregoing requirements, 'SME' is defined for the purposes of these guidelines as an enterprise which

- has no more than 250 employees and
- either
 - an annual turnover not exceeding ECU 20 million, or
 - a balance sheet total not exceeding ECU 10 million, and
- is not more than 25 % owned by one or more companies not falling within this definition, except public investment corporations, venture capital companies or, provided no control is exercised, institutional investors.

Where it is necessary to distinguish between small and medium-sized companies, 'small' is defined as an enterprise which

- has no more than 50 employees and
- either
 - an annual turnover not exceeding ECU 5 million, or
 - a balance sheet total not exceeding ECU 2 million, and
- is not more than 25 % owned by one or more companies not falling within this definition, except public investment corporations, venture capital companies or, provided no control is exercised, institutional investors.

The three criteria are cumulative, i.e., a firm is only considered to be an 'SME' or a 'small' enterprise, as the case may be, if it fulfils the independence condition, does not exceed the workforce limit and does not exceed at least one of the other limits for either turnover or balance sheet total. The workforce limits are the same as in the fourth company law Directive on annual accounts⁽¹⁾. The turnover limits of ECU 20 and 5 million and the balance sheet total limit for SMEs of ECU 10 million are 25 % higher than in the fourth Directive, currently ECU 16, 4 and 8 million

respectively. However, this rounding-up is necessary to compensate for the fact that the workforce limit is always applicable along with one of the two financial limits, whereas under the fourth Directive observance of the two financial limits alone is sufficient for the firm to qualify for the favourable treatment provided for by the Directive. The independence criterion of not more than 25 % ownership by a larger firm is based on the practice in many Member States where 25 % is taken as the threshold level for possible control. While clearly not so precise as the criteria for a parent-subsidiary relationship in the seventh Directive on consolidated accounts⁽²⁾ which determine whether certain legal obligations apply, the criterion is sufficient, for present purposes, for indicating the approximate degree of independence required from beneficiaries of SME aid, and the Member States are free to apply more stringent and, in any event, more detailed criteria. Stakes held by public investment corporations or venture capital companies do not normally change the character of a firm from that of an SME, and so can be disregarded. The same applies to stakes held by institutional investors such as pension funds and insurance companies, which usually maintain an 'arms-length' relationship with the company invested in.

3. Applicability of the State aid rules

3.1. Article 92 (1) of the Treaty prohibits, subject to possible exceptions, government financial assistance to specific enterprises or industries that distort or threaten to distort competition and affect trade between Member States. State aid to SMEs normally fulfils the criteria of Article 92 (1). It confers an advantage on particular enterprises, unlike general measures which benefit firms throughout the economy, and it can affect intra-Community trade as many SMEs export part of their output to other Member States and in most industries domestic production by SMEs reduces the potential for imports from elsewhere in the Community.

3.2. *De minimis*

However, it is also clear that while all financial assistance to enterprises alters competitive conditions to some extent, not all aid has a

⁽¹⁾ OJ No L 222, 14. 8. 1978, p. 11 as last amended in OJ No L 317, 16. 11. 1990, p. 57.

⁽²⁾ OJ No L 193, 18. 7. 1983, p. 1.

perceptible impact on trade and competition between Member States. This is so especially of aid provided in very small amounts, mainly though not exclusively to SMEs, and often under schemes run by local or regional authorities.

In the interests of administrative simplification for the benefit of SMEs, it is desirable that aid up to a certain absolute amount, below which Article 92 (1) can be said not to apply, should no longer be subject to prior notification to the Commission under Article 93 (3). On past experience, this *de minimis* figure can be set at payments of ECU 50 000 to any one firm in respect of a given broad type of expenditure (e.g., investment, training) over a three-year period. In future, therefore, one-off payments of aid of up to ECU 50 000, in respect of a given type of expenditure and schemes under which the amount of aid a given firm may receive in respect of a given type of expenditure over a three-year period is limited to that figure, will no longer be considered notifiable under Article 93 (3), provided that it is an express condition of the award or scheme that any further aid the same firm may receive in respect of the same type of expenditure from other sources or under other schemes does not take the total aid the firm receives above the ECU 50 000 limit. While there will be no limit on the size of company which can benefit from such a *de minimis* facility, it will obviously be primarily of interest to smaller companies. It should be noted that the facility is not available in the sectors subject to special rules listed in paragraph 1.6 above.

3.3. SME aid falling within Article 92 (1)

In cases where State aid for SMEs falls under Article 92 (1) because it can have a perceptible impact on interstate trade and competition, it may be eligible for exemption. The broadest exemption clause is Article 92 (3) (c), under which the Commission has discretion to allow aid that facilitates the development of certain economic activities or of certain economic areas in so far as trading conditions are not adversely affected to an extent contrary to the common interest.

In view of the positive externalities associated with SMEs, their importance for particular sectors of industry and for regional development, and the specific problems they face, there can be no doubt that State aid for SMEs 'facilitates the development of certain economic activities or of certain economic areas'.

The question remains whether State aid for SMEs affects trading conditions to an extent contrary to the common interest. This depends on the type and intensity of the aid. Aid for activities that are relatively distant from the marketplace, such as assistance for obtaining consultancy help to improve general management, affects trade only indirectly and to a comparatively small degree. Aid for near-market activities such as investment arguably affects trade less when it is granted to SMEs than when the beneficiaries are large firms. This is because the sales of individual SMEs are less than those of large firms, a factor accentuated by the often lower turnover per employee in the case of SMEs, and because SMEs are particularly numerous in industries in which there is relatively little intra-Community trade (e.g., construction, certain food manufacturing, retailing, many services). Even so, the effect of investment aid on trade may rise significantly at the 'medium-sized' end of the SME range. Subject to the above, and provided certain acceptable intensities of aid are not exceeded, the effect of SME aid on trading conditions will generally not be so great as to be against the interests of the Community, especially if the positive externalities of SME activity are taken into account.

3.4. Conclusion

It can be concluded that, besides aid that can safely be regarded as falling outside Article 92 (1) (*de minimis*), aid for SMEs up to certain intensities according to the type of aid involved is generally eligible for exemption under Article 92 (3) (c) and that the Commission is therefore justified in expressing a general presumption in favour of the compatibility of such aid with the common market.

4. Generally acceptable intensities of aid for SMEs

It is the practice of the Commission to regard State aid for the following purposes and at the following

intensities as eligible for exemption under Article 92 (3) (c) where SMEs, as defined above, are concerned.

4.1. *Aid for general investment*

The Commission now takes the view that general investment aid schemes, i.e., schemes offering aid for investment regardless of size of company and location, are incompatible with the common market and can no longer be allowed. The reasons for this approach are twofold. First, investment is a normal business expense that is in a firm's own interest and therefore in normal circumstances should not require government assistance. If incentives are given for such a near-market activity in an increasingly integrated market such as we now have in the Community, this aid will tend to distort competition and lead to misallocations of resources.

Secondly, generally available investment aid will operate against the objective of increasing economic and social cohesion in the Community. When investment aid is available in non-assisted areas in the more prosperous parts of the Community, it reduces the attractiveness of the incentives offered in assisted areas, especially in the less developed regions.

The same arguments apply to some extent to generally available aid for investment by SMEs, at least at the 'medium-sized' end of the SME range. For medium-sized companies, the anticompetitive and 'anti-cohesion' arguments against investment aid in non-assisted areas probably outweigh the SME development arguments in favour of such aid. If investment aid is available in non-assisted areas even for the largest SMEs, this not only involves a danger of distortion of competition, but also reduces the incentive for SMEs to invest in disadvantaged areas, as the gap between the levels of aid available for SMEs in non-assisted areas of the centrally located, more prosperous Member States and in the assisted areas of both the central Member States and the less prosperous peripheral Member States (which often cannot afford to offer the maximum level of aid theoretically available) may be quite small. While the risk of such a perverse effect

may be low for very small companies, it obviously rises as the company gets larger.

The Commission is required to combat such side-effects. The new Article 130b of the EEC Treaty on which the Community Heads of State or Government have agreed in the Treaty on European Union states: '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 130a (economic and social cohesion) and shall contribute to their achievement'.

Therefore, subject to the exception indicated below for areas designated for assistance under Objective 2 or 5b of the Structural Funds, the Commission has decided to allow investment aid outside of national assisted areas (i.e., areas designated under national regional development schemes independent of the Structural Funds) only up to the levels of 15 % gross ⁽¹⁾ for small companies, as defined above, and 7,5 % gross for other SMEs, i.e. those in the 'medium-sized' category.

In national assisted areas the Commission will allow SMEs (whether small or medium-sized) to receive, on top of the prevailing rate of regional aid authorized by the Commission, an extra 10 percentage points gross of investment aid in Article 92 (3) (c) areas and an extra 15 percentage points gross in Article 92 (3) (a) areas ⁽²⁾. However, in Article 92 (3) (c) areas the combination of regional and SME aid will be subject to an overall ceiling of 30 % net and in Article 92 (3) (a) areas 75 % net. The resulting matrix of rates (see appended table) is designed to allow the highest aid levels in the areas of greatest need and to preserve a differential between aided and unaided regions for all but the smallest companies.

⁽¹⁾ I.e., the nominal (before-tax) value of grants and the discounted before-tax value of interest subsidies as a proportion of the investment cost. Net figures are after tax.

⁽²⁾ See Commission's notice on the method of applying Article 92 (3) (a) and (c) to regional aid schemes (OJ No C 212, 12. 8. 1988, p. 2). It should be noted that the lists of (a) and (c) areas appended to the Notice are no longer up-to-date.

The aid ceiling resulting from the combination of regional aid and SME aid in assisted areas will apply regardless of whether the aid is entirely provided from national sources or is cofinanced by the Community from the structural funds, especially ERDF.

Some parts of the Community are designated as eligible for aid from the structural funds under Objective 2 or 5b⁽¹⁾ but are not nationally assisted areas. In such areas, too, the Commission has agreed that up to the end of 1993 SMEs (whether small or medium-sized) may receive aid for investment up to a certain level to be decided in relation to each scheme.

The permissible maximum intensities apply to aid in all forms.

4.2. *Aid for environmental protection investment*

Under the Framework for Environmental Aid⁽²⁾ investment for environmental protection purposes such as pollution control, CO₂ reduction, protection of the ozone layer, etc., is accorded more favourable treatment than general investment. This applies regardless of the location and size of company, but SMEs in assisted areas can of course claim the rate of aid available (regional and SME supplement) for general investment, which in most cases will be higher than the 15 % net currently allowed under the Environmental Aid Framework and will not be subject to the same strict conditions.

4.3. *Aid for consultancy help, training and dissemination of knowledge*

For help and advice by outside consultants or for training provided to new or established small or medium-sized businesses and their staff, in management, financial matters, new technology (especially information technology), pollution control, protection of intellectual property rights or similar fields, or in assessing the feasibility of new ventures, aid of up to 50 % gross is generally accepted. However, each scheme will be judged on

its merits, with particular reference to the distance of the activity from the marketplace, any cash limits on the aid per firm, possibilities of cumulation, and other relevant factors. In certain exceptional circumstances the Commission may allow aid of more than 50 %. Aid for general information campaigns in particular can be assisted up to a higher intensity as the financial benefit to the individual firm is relatively small.

4.4. *Aid for R&D*

For R&D, aid of up to 10 percentage points higher than that allowed for large firms may be authorized for SMEs under national R&D aid schemes, as provided in the guidelines for R&D aid⁽³⁾.

4.5. *Aid for other purposes*

The majority of the aid schemes notified to the Commission for SMEs fall into the above categories. The Commission may, however, be prepared to authorize aid for other justified means of SME promotion, such as encouraging cooperation.

5. **Accelerated clearance procedure for SME aid schemes**

The Commission has stated that it will normally not object to aid schemes for SMEs as defined in paragraph 2.2 above when the aid is low in intensity or amount, namely either

- not more than 7,5 % gross of the investment cost if the scheme is for investment, or
- not more than ECU 3 000 per job created if the scheme is for job creation, or

⁽¹⁾ See Commission's Decisions of 21 March 1989 (as extended) and 10 May 1989 (OJ No L 112, 25. 4. 1989, p. 19 and OJ No L 198, 12. 7. 1989, p. 1).

⁽²⁾ Communication to the Member States, annexed to letter ref. SG(87) D/3795 of 23 March 1987.

⁽³⁾ OJ No C 83, 11. 4. 1986, p. 2.

— not more than ECU 200 000 in total if the scheme is not for investment or job creation,

and when aid under the scheme cannot be combined with other aid so as to exceed these limits.

For aid schemes falling within one of the above three categories, the Commission has introduced a special rapid clearance procedure. This procedure and the favourable presumption in favour of such aid will continue to apply for new SME aid schemes. The accelerated procedure will also continue to be applied to modifications ⁽¹⁾ of authorized existing schemes, for SMEs or otherwise. Unlike *de minimis* aids (see paragraph 3.2 above), aids eligible for accelerated clearance will continue to be subject to notification.

6. Notification, existing authorizations, duration and review of guidelines

6.1. Except insofar as aid schemes classed as *de minimis* are concerned, these guidelines do not affect the obligation of Member States under Article 93 (3) of the EEC Treaty to notify all aid schemes for SMEs and all alterations of such schemes.

6.2. The guidelines are without prejudice to schemes that have already been authorized when the guidelines are published, subject, however, to the possibility of review under Article 93 (1).

6.3. The Commission will follow these guidelines in its assessment of aid schemes for SMEs for three years from the date of their publication. Before the end of that period it will review the operation of the guidelines.

⁽¹⁾ Namely, extension in time, increase in the budget by up to 20 %, a combination of these two, or tightening up of eligibility conditions.

AUTHORIZABLE RANGE OF AID FOR SMEs, BY SIZE OF COMPANY AND LOCATION
(not applicable to sectors subject to special Community rules on State aid)

Category/purpose of aid	Company size			Balance sheet total (ECU million)	Aid allowed		Notes
	Employees	Turnover (ECU million)	no limit		Non-assisted areas	Assisted areas	
'De minimis'	no limit	no limit	no limit	no limit	ECU 50 000 in total per type of expenditure over three-year period		no notification required
Accelerated procedure	≤ 250	≤ 20	≤ 10	≤ 10	7,5 % gross investment aid or ECU 3 000 per job or ECU 200 000 in total		notification required
Investment aid other than 'de minimis' and that qualifying for accelerated procedure and environmental aid	≤ 50	≤ 5	≤ 2	≤ 10	15 % gross (except in non-assisted Objective 2 or 5b areas, where until end 1993 intensities to be set on a case-by-case basis)	Authorized regional aid ceiling + — 10 % gross (Article 92 (3) (c)) (absolute ceiling: 30 % net)	Normal procedure
	≤ 250	≤ 20	≤ 10		7,5 % gross (except in non-assisted Objective 2 or 5b areas, where until end 1993 intensities to be set on a case-by case basis)	— 15 % gross (Article 92 (3) (a)) (absolute ceiling: 75 % net)	
Aid for consultancy help, training, etc. ('soft' aids)	≤ 250	≤ 20	≤ 10	≤ 10	50 % of cost of consultancy, etc.		Normal procedure except if 'de minimis' or qualifying for accelerated procedure