Commission notice on the *de minimis* rule for State aid

(96/C 68/06)

(Text with EEA relevance)

Article 92 (1) of the EC Treaty imposes a general ban, subject to certain exceptions, on 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods ... in so far as it affects trade between Member States'. Clearly, any financial assistance given by the State to one firm distorts or threatens to distort, to a greater or lesser extent, competition between that firm and its competitors which have received no such aid; but not all aid has an appreciable effect on trade and competition between Member States. This is particularly true where the amount of aid involved is small. And it is small amounts of aid which are usually — but not always — granted to SMEs, mainly under schemes administered by local or regional authorities.

In 1992, in an effort to reduce the administrative burden on the Member States and on the Commission itself — which ought to be left to concentrate its resources on cases of real importance to the Community — and in order to simplify matters for SMEs, the Commission introduced what is known as a *de minimis* rule: this sets a threshold figure below which Article 92 (1) can be said not to apply, so that a measure need no longer be notified in advance to the Commission under Article 93 (3) [1]. It has since become clear that the rule as then stated does not cover some aid measures which quite clearly do not threaten to distort competition and trade between Member States to any perceptible degree; and it has proved difficult to establish that the conditions laid down are being met, particularly where aid of this kind is combined with aid under other schemes approved by the Commission. The Commission has accordingly decided to amend the *de minimis* rule as follows:

- the ceiling for aid covered by the *de minimis* rule will now be ECU 100 000 over a three-year period beginning when the first *de minimis* aid is granted [2],
- the ceiling will apply to the total of all public assistance considered to be *de minimis* aid and will not affect the possibility of the recipient obtaining other aid under schemes approved by the Commission,
- the ceiling will apply to aid of all kinds, irrespective of the form it takes or the objective pursued, with the exception of export aid, which is excluded from the benefit of the *de minimis* rule [3].

The public assistance which is allowed up to the ECU 100 000 ceiling comprises all aid granted by the national, regional or local authorities, regardless of whether the resources are provided from domestic sources or whether the measures are part-financed by the Community from the Structural Funds, and more especially the European Regional Development Fund (ERDF).

The rule will be of interest primarily to SMEs, though it applies irrespective of the size of the recipient. It does not apply to the industries covered by the ECSC Treaty, to shipbuilding, to transport or to aid towards expenditure in connection with agriculture or fisheries.

The limit in the *de minimis* facility is expressed as a cash grant of ECU 100 000. In cases where assistance is provided otherwise than as a grant, it has to be converted into its cash grant equivalent value for the purposes of applying the *de minimis* limit. Of the other forms in which aid with a low cash value is given, the commonest are soft loans, tax allowances and loan guarantees. The conversion of aid in these forms into its cash grant equivalent is to be carried out as follows:

The cash grant equivalent should be calculated gross, i.e. before tax, if the aid is taxable. If the aid is not taxable, as in the case of some tax allowances, the amount to be taken is the nominal amount of the aid, which is both gross and net.

All aid receivable in the future should be discounted to its present value. The discount rate used should be the reference interest rate which applies at the time the aid is granted. However, a cash grant is to be counted as a single lump sum even if it is to be paid in instalments.

The cash grant equivalent of a soft loan in a given year is the difference between the interest due at the reference

(1) Community guidelines on State aid for small and medium-sized enterprises (SMEs), point 3.2: OJ No C 213, 19. 8. 1992, p. 2.

(2) The method for calculating the grant equivalent of aid paid otherwise than as a grant was explained in the letter the Commission sent to Member States on 23 March 1993 (ref. D/06878); that method continues to apply.

(3) 'Export aid' means any aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to current expenditure linked to the export activity. It does not include aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market.

interest rate and that actually paid. All the interest that will be saved until the loan has been fully repaid should be discounted to its value at the time the loan is granted and added together.

The cash grant equivalent of a tax allowance is the saving in tax payments in the year concerned. Again, tax savings which are to be obtained in the future should be discounted to their present value using the reference interest rate.

For loan guarantees, the cash grant equivalent in a given year can be either:

— calculated in the same way as the cash grant equivalent of a soft loan, once the premiums paid have been deducted, the interest subsidy representing the difference between the reference interest rate and the rate obtained thanks to the state guarantee, or

— taken to be the difference between (a) the outstanding sum guaranteed, multiplied by the risk factor (the probability of default) and (b) any premium paid, i.e.

$$(\text{guaranteed sum} \times \text{risk}) - \text{premium}$$

The risk factor should reflect the experience of default on loans extended in similar circumstances (sector, size of firm, level of general economic activity). Discounting to present value should be carried out in the same way as before.

The Commission has a duty to satisfy itself that Member States are not giving their enterprises aid which is incompatible with the common market (1). The Member States are under an obligation to facilitate the achievement of this task by establishing machinery to ensure that, where aid is given to the same recipient under separate measures all of which are covered by the *de minimis* rule, the total amount of the aid does not exceed ECU 100 000 over a period of three years. In particular, any decision granting *de minimis* aid or the rules of any scheme providing for aid of this kind must include an explicit stipulation that any additional aid granted to the same recipient under the *de minimis* rule must not raise the total *de minimis* aid received by the enterprise to a level above the ceiling of ECU 100 000 over a period of three years. The machinery established must also enable the Member State to answer any questions the Commission might wish to ask.

(1) The Commission also reserves the right to take appropriate action against any aid which complies with the *de minimis* rule but infringes other provisions of the Treaty.

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Invitation to tender No	Number and date of 'S' Journal	Country	Subject	Final date for submission of bids
4126	S 44, 2. 3. 1996	Zimbabwe	ZW-Harare: vehicles	29. 5. 1996