

**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**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 <sup>(1)</sup>, and in particular Article 2 thereof,

Having published a draft of this Regulation <sup>(2)</sup>,

Having consulted the Advisory Committee on State aid,

Whereas:

- (1) Regulation (EC) No 994/98 empowers the Commission to set out in a regulation a threshold under which aid measures are deemed not to meet all the criteria of Article 87(1) of the Treaty and therefore do not fall under the notification procedure provided for in Article 88(3) of the Treaty.
- (2) The Commission has applied Articles 87 and 88 of the Treaty and in particular clarified, in numerous decisions, the notion of aid within the meaning of Article 87(1) of the Treaty. The Commission has also stated its policy with regard to a *de minimis* ceiling, under which Article 87(1) can be considered not to apply, most recently in the notice on the *de minimis* rule for State aid <sup>(3)</sup>. In the light of this experience and with a view to increasing transparency and legal certainty, it is appropriate that the *de minimis* rule be laid down in a Regulation.
- (3) In view of the special rules which apply in the sectors of agriculture, fisheries and aquaculture, and transport, and of the risk that even small amounts of aid could fulfil the criteria of Article 87(1) of the Treaty in those sectors, it is appropriate that this Regulation should not apply to those sectors.
- (4) In the light of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures <sup>(4)</sup>, this Regulation should not exempt export aid or aid favouring domestic over imported products. 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 does not normally constitute export aid.
- (5) In the light of the Commission's experience, it can be established that aid not exceeding a ceiling of EUR 100 000 over any period of three years does not affect trade between Member States and/or does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty. The relevant period of three years has a mobile character, so that for each new grant of *de minimis* aid, the total amount of *de minimis* aid granted during the previous three years needs to be determined. The *de minimis* aid should be considered to be granted at the moment the legal right to receive the aid is conferred to the beneficiary. The *de minimis* rule is without prejudice to the possibility that enterprises receive, also for the same project, State aid authorised by the Commission or covered by a group exemption Regulation.
- (6) For the purpose of transparency, equal treatment and the correct application of the *de minimis* ceiling, it is appropriate that Member States should apply the same method of calculation. In order to facilitate this calculation and in accordance with the present practice of application of the *de minimis* rule, it is appropriate that aid amounts not taking the form of a cash grant should be converted into their gross 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) The Commission has a duty to ensure that State aid rules are respected and in particular that aid granted under the *de minimis* rules adheres to the conditions thereof. In accordance with the cooperation principle laid down in Article 10 of the Treaty, Member States should facilitate the achievement of this task by establishing the necessary machinery in order to ensure that the total amount of aid, granted to the same beneficiary under the *de minimis* rule, does not exceed the ceiling of EUR 100 000 over a period of three years. To that end, it is appropriate that Member States, when granting a *de minimis* aid, should inform the enterprise concerned of

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

<sup>(2)</sup> OJ C 89, 28.3.2000, p. 6.

<sup>(3)</sup> OJ C 68, 6.3.1996, p. 9.

<sup>(4)</sup> OJ L 336, 23.12.1994, p. 156.

the *de minimis* character of the aid, receive full information about other *de minimis* aid received during the last three years and carefully check that the *de minimis* ceiling will not be exceeded by the new *de minimis* aid. Alternatively respect of the ceiling may also be ensured by means of a central register.

- (8) 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. Should this Regulation expire without being extended, Member States should have an adjustment period of six months with regard to *de minimis* aid schemes which were covered by this Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Scope

This Regulation applies to aid granted to enterprises in all sectors, with the exception of:

- (a) the transport sector and the activities linked to the production, processing or marketing of products listed in Annex I to the Treaty;
- (b) 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;
- (c) aid contingent upon the use of domestic over imported goods.

#### Article 2

##### *De minimis* aid

1. Aid measures shall be deemed not to meet all the criteria of Article 87(1) of the Treaty and shall therefore not fall under the notification requirement of Article 88(3) of the Treaty, if they fulfil the conditions laid down in paragraphs 2 and 3.

2. The total *de minimis* aid granted to any one enterprise shall not exceed EUR 100 000 over any period of three years. This ceiling shall apply irrespective of the form of the aid or the objective pursued.

3. The ceiling in paragraph 2 shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction for direct taxation. Where aid is awarded in a form other

than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments shall be discounted to its value at the moment of its being granted. The interest rate to be used for discounting purposes and to calculate the aid amount in a soft loan shall be the reference rate applicable at the time of grant.

#### Article 3

##### Cumulation and monitoring

1. Where a Member State grants *de minimis* aid to an enterprise, it shall inform the enterprise about the *de minimis* character of the aid and obtain from the enterprise concerned full information about other *de minimis* aid received during the previous three years.

The Member State may only grant the new *de minimis* aid after having checked that this will not raise the total amount of *de minimis* aid received during the relevant period of three years to a level above the ceiling set out in Article 2(2).

2. Where a Member State has set up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within that Member State, the requirement in the first subparagraph of paragraph 1 no longer applies from the moment the register covers a period of three years.

3. Member States shall record and compile all the information regarding the application of this Regulation. Such records shall contain all information necessary to demonstrate that the conditions of this Regulation have been respected. Records regarding an individual *de minimis* aid shall be maintained for 10 years from the date on which it was granted and regarding a *de minimis* 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 that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied with, in particular the total amount of *de minimis* aid received by any enterprise.

#### Article 4

##### Entry into force and period of validity

1. This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

It shall remain in force until 31 December 2006.

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

During the adjustment period, these schemes may continue to be applied under the conditions of this Regulation.

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

Done at Brussels, 12 January 2001.

*For the Commission*  
Mario MONTI  
*Member of the Commission*

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