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Information and Notices

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I

(Information)

COMMISSION

Euro exchange rates ⁽¹⁾**27 March 2000**

(2000/C 89/01)

1 euro	=	7,4466	Danish krone
	=	334,25	Greek drachma
	=	8,34	Swedish krona
	=	0,6087	Pound sterling
	=	0,9712	United States dollar
	=	1,4207	Canadian dollar
	=	103,77	Japanese yen
	=	1,5908	Swiss franc
	=	8,127	Norwegian krone
	=	71,1539	Icelandic króna ⁽²⁾
	=	1,5818	Australian dollar
	=	1,9547	New Zealand dollar
	=	6,28221	South African rand ⁽²⁾

⁽¹⁾ Source: reference exchange rate published by the ECB.

⁽²⁾ Source: Commission.

LIST OF DOCUMENTS FORWARDED BY THE COMMISSION TO THE COUNCIL DURING THE PERIOD 13.3. TO 17.3.2000

(2000/C 89/02)

Opinion of the Commission on the amendments proposed by the European Parliament to the Council on the back cover

Code	Catalogue No	Title	Date adopted by the Commission	Date forwarded to the Council	Number of pages
COM(2000) 135	CB-CO-00-134-EN-C	Report from the Commission to the Council and the European Parliament — European Community Investment Partners (ECIP) — Progress Report 1998	13.3.2000	13.3.2000	43
COM(2000) 132	CB-CO-00-132-EN-C	Report from the Commission — 23rd Annual Activity Report of the Advisory Committee on Safety, Hygiene and Health Protection at Work — 1998 ⁽³⁾	14.3.2000	14.3.2000	31
COM(2000) 145	CB-CO-00-141-EN-C	Proposal for a Council Regulation suspending, for a period of six months, Council Regulation (EC) No 2151/1999 imposing a ban on flights between the territories of the Community and the Federal Republic of Yugoslavia other than the Republic of Montenegro or the Province of Kosovo, and amending Council Regulations (EC) No 1294/1999 and 2111/1999 as regards payments and supplies in relation to flights during the period of suspension		14.3.2000	
COM(2000) 150	CB-CO-00-146-EN-C	Proposal for a Council Regulation amending Council Regulation (EC) No 1294/1999 concerning a freeze of funds and a ban on investment in relation to the Federal Republic of Yugoslavia (FRY) (and repealing Regulations (EC) No 1295/1998 and (EC) No 1607/98)	14.3.2000	14.3.2000	7
COM(2000) 100	CB-CO-00-089-EN-C	Amended proposal for a Council Regulation concerning the establishment of 'Eurodac' for the comparison of the fingerprints of applicants for asylum and certain other third-country nationals to facilitate the implementation of the Dublin Convention ⁽²⁾	15.3.2000	15.3.2000	40
COM(2000) 134	CB-CO-00-133-EN-C	Proposal for a Council Decision setting up a Social Protection Committee ⁽²⁾ ⁽³⁾	13.3.2000	15.3.2000	13
COM(2000) 141	CB-CO-00-135-EN-C	Amended proposal for a Council Regulation regarding the implementation of measures to intensify the EC-Turkey customs union ⁽²⁾	16.3.2000	16.3.2000	21
COM(2000) 148	CB-CO-00-143-EN-C	Proposal for a Council Decision on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part, and Bulgaria, of the other part, which entered into force on 1 February 1995, extending the double-checking system for the period from 1 January to 31 December 2000, concerning the export of certain steel products from Bulgaria to the Community	16.3.2000	16.3.2000	7

Code	Catalogue No	Title	Date adopted by the Commission	Date forwarded to the Council	Number of pages
COM(2000) 149	CB-CO-00-144-EN-C	Proposal for a Council Regulation concerning the export of certain ECSC steel products from Bulgaria to the Community for the period 1 January to 31 December 2000 (extension of the double-checking system)	16.3.2000	16.3.2000	5
COM(2000) 146	CB-CO-00-142-EN-C	Proposal for a Council Decision on the Community position to be adopted on certain proposals submitted to the 11th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Gigiri, Kenya, 10 to 20 April 2000	17.3.2000	17.3.2000	36
COM(2000) 151	CB-CO-00-145-EN-C	Amended proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children	17.3.2000	17.3.2000	36
COM(2000) 166	CB-CO-00-149-EN-C	Opinion of the Commission pursuant to Article 251(2)(c) of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the proposal for a Directive of the European Parliament and of the Council on end of life vehicles	17.3.2000	17.3.2000	23

(¹) This document contains an impact assessment on business, and in particular on SMEs.

(²) This document will be published in the *Official Journal of the European Communities*.

(³) Text with EEA relevance.

NB: COM documents are available by subscription, either for all editions or for specific subject areas, and by single copy, in which case the price is based pro rata on the number of pages.

Non-opposition to a notified concentration

(Case COMP/M.1801 — Neusiedler/American Israeli Paper Mills/JV)

(2000/C 89/03)

(Text with EEA relevance)

On 11 February 2000, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in German and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CDE' version of the CELEX database, under document number 300M1801. CELEX is the computerised documentation system of European Community law; for more information concerning subscriptions please contact:

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Prior notification of a concentration**(Case COMP/M.1814 — Bayer/Rhöhm/Makroform)**

(2000/C 89/04)

(Text with EEA relevance)

1. On 14 March 2000, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ⁽¹⁾, as last amended by Regulation (EC) No 1310/97 ⁽²⁾, by which the German undertakings Bayer AG and Rhöm GmbH will transform the pre-existing joint venture Makroform GmbH into a full function joint venture within the meaning of Article 3(1)(b) of the Regulation, contribute their respective production of PC intermediates and extruded PET-plates to the joint venture and will hold control of Makroform GmbH.

2. The business activities of the undertakings concerned are:

- Bayer: health care products, household insecticides, crop protection and animal health care products, chemicals (basic and intermediate) and polymers,
- Rhöm: chemicals,
- Makroform: PC intermediates and extruded PET-plates.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.1814 — Bayer/Rhöhm/Makroform, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

Prior notification of a concentration
(Case COMP/M.1892 — Sara Lee/Courtaulds)

(2000/C 89/05)

(Text with EEA relevance)

1. On 20 March 2000, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ⁽¹⁾, as last amended by Regulation (EC) No 1310/97 ⁽²⁾, by which the undertaking Sara Lee Corporation (United States of America) acquires, within the meaning of Article 3(1)(b) of the Regulation, control of the whole of Courtaulds Textiles plc (United Kingdom) by way of public bid.

2. The business activities of the undertakings concerned are:

— Sara Lee: foods and beverages, personal apparel and household/body care products,

— Courtaulds: personal apparel, household furnishings and fabrics.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.1892 — Sara Lee/Courtaulds, to:

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Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

**DRAFT COMMISSION REGULATION ON THE APPLICATION OF ARTICLES 87 AND 88 OF THE EC TREATY
TO DE MINIMIS AID**

(2000/C 89/06)

Invitation to submit comments on the draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to *de minimis* 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 *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 ⁽¹⁾, and in particular Article 2 thereof,

Having published a draft of this Regulation ⁽²⁾,

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 ⁽³⁾. 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 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 Commission's experience, it can be established that aid not exceeding a ceiling of EUR 100 000 over a 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: this is without prejudice to the possibility that enterprises will receive other aid authorised by the Commission.

(5) Export aid has always been prohibited within the Community and is also subject to rules established in international agreements to which the European Community is a party, and in particular the WTO Agreement on Subsidies and Countervailing Measures. Consequently, in accordance with the Commission's practice on *de minimis* aid, export aid should be excluded from the scope of this 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

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 89, 28.3.2000, p. 2.

⁽³⁾ OJ C 68, 6.3.1996, p. 9.

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* rule 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 inform the enterprise concerned of the *de minimis* character of an aid and obtain a written statement from the enterprise concerned, confirming that the *de minimis* ceiling has not been exceeded.

(8) In accordance with Article 2(2) of Regulation (EC) No 994/98, the Commission should require Member States to provide at any time such information as is necessary to verify compliance with this Regulation.

(9) 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, the aid schemes already covered by this Regulation may remain in force for six months, in accordance with Article 4 of Regulation (EC) No 994/98,

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.

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 before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount is the 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 purpose 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 a written statement from the enterprise that the new aid does not raise the total amount of *de minimis* aid received to a level above the ceiling set out in Article 2(2). In order to facilitate the task of enterprises in making such statements, Member States shall, during the first three years of the application of this Regulation, give them all necessary information about aid which they have granted to them under the *de minimis* rule before the entry into force of this Regulation and which could be taken into account for the calculation of the ceiling.

2. 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 aid shall be maintained 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 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

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.
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- ⁽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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**DRAFT COMMISSION REGULATION ON THE APPLICATION OF ARTICLES 87 AND 88 OF THE EC TREATY
TO STATE AID TO SMALL AND MEDIUM-SIZED ENTERPRISES**

(2000/C 89/08)

Invitation to submit comments on the draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises.

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 State
aid to small and medium-sized enterprises**

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 ⁽¹⁾, and in particular point (a)(i) and (b) of Article 1(1) thereof,

Having published a draft of this Regulation ⁽²⁾,

Having consulted the Advisory Committee on State Aid,

Whereas:

- (1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty, that under certain conditions aid to small and medium-sized enterprises is compatible with the common market and not subject to the notification requirements of Article 88(3) of the Treaty.
- (2) Regulation (EC) No 994/98 also empowers the Commission to declare, in accordance with Article 87 of the Treaty, that aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is compatible with the common market and is not subject to the notification requirements of Article 88(3) of the Treaty.

- (3) The Commission has applied Articles 87 and 88 of the Treaty to small and medium-sized enterprises in and outside assisted areas in numerous decisions and has also stated its policy, most recently in the Community guidelines on State aid for small and medium-sized enterprises ⁽³⁾ and in the guidelines on national regional aid ⁽⁴⁾. In the light of the Commission's considerable experience in applying those Articles to small and medium-sized enterprises and in the light of the general texts relating to small and medium-sized enterprises and to regional aid issued by the Commission on the basis of those provisions, 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.

- (4) Small and medium-sized enterprises play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive. However, their development may be limited by market imperfections. They often have difficulties in obtaining capital or credit, given the risk-shy nature of certain financial markets and the limited guarantees that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. Having regard to those considerations, the purpose of the aid exempted by this Regulation should be to facilitate the development of the economic activities of small and medium-sized enterprises, provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest.

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 89, 28.3.2000, p. 15.

⁽³⁾ OJ C 213, 23.7.1996, p. 4.

⁽⁴⁾ OJ C 74, 10.3.1998, p. 9.

- (5) 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 would meet 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.
- (6) This Regulation should apply without prejudice to special rules in Regulations and Directives concerning State aid in certain sectors, such as shipbuilding and steel, and should not apply to agriculture and fisheries.
- (7) 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⁽¹⁾. That definition was also used in the Community guidelines on State aid for small and medium-sized enterprises⁽²⁾.
- (8) In accordance with the established practice of the Commission, and with a view to better ensuring that aid is proportionate and limited to the amount necessary, thresholds should be expressed in terms of aid intensities in relation to a set of eligible costs, rather than in terms of maximum aid amounts.
- (9) 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. The calculation of the grant equivalent of aid payable in several instalments and aid in the form of a soft loan requires 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.
- (10) Having regard to the differences between small enterprises and medium-sized enterprises, different ceilings of aid intensity should be set for small enterprises and for medium-sized enterprises.
- (11) The ceilings of aid intensity should be fixed, in the light of the Commission's experience, at a level that strikes the appropriate balance between minimising distortions of competition in the aided sector and the objective of facilitating the development of the economic activities of small and medium-sized enterprises.
- (12) It is appropriate to establish further conditions that should be fulfilled by any aid scheme or individual aid exempted by this Regulation. Having regard to Article 87(3)(c) of the Treaty, such aid should not normally have the sole effect of continuously or periodically reducing the operating costs which the beneficiary would normally have to bear, and should be proportionate to the handicaps that have to be overcome in order to secure the socio-economic benefits deemed to be in the Community interest. It is therefore appropriate to limit the scope of this Regulation to aid granted in relation to certain tangible and intangible investments, certain services supplied to beneficiaries and certain other activities.
- (13) This Regulation should exempt aid to small and medium-sized enterprises regardless of location. Investment and job creation can contribute to the economic development of less favoured regions in the Community. Small and medium sized enterprises in those regions suffer from both the structural disadvantage of the location and the difficulties deriving from their size. It is therefore appropriate that small and medium-sized enterprises in assisted regions should benefit from higher ceilings.
- (14) In order not to favour the capital factor of an investment over the labour factor, provision should be made for the possibility of measuring aid to investment on the basis of either the costs of the investment or the costs of new employment linked to the carrying-out of the investment project.
- (15) In the light of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures⁽³⁾, this Regulation should not exempt export aid or aid favouring domestic over imported products.

⁽¹⁾ OJ L 107, 30.4.1996, p. 4.

⁽²⁾ See footnote 3.

⁽³⁾ OJ L 336, 23.12.1994, p. 156.

- (16) Having regard to the need to strike the appropriate balance between minimising distortions of competition in the aided sector and the objectives of this Regulation, it should not exempt individual aid grants which exceed a fixed maximum amount, whether or not made under an aid scheme exempted by this Regulation. That amount should be fixed also having regard to the Commission's experience in this area, notably when applying the multi-sectoral framework on regional aid for large investment projects ⁽¹⁾.
- (17) In order to ensure that the aid is necessary and acts as an incentive to develop certain activities, this Regulation should not exempt aid for activities in which the beneficiary would already engage under market conditions alone.
- (18) This Regulation should not exempt the aid cumulated with other State aid, including aid granted by national, regional or local authorities, or Community assistance, when such cumulation exceeds the thresholds fixed in this Regulation.
- (19) 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 report 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.
- (20) Having regard to the Commission's experience in this area, aid 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

1. Without prejudice to special Community regulations or directives under the EC Treaty governing the granting of State aid in specific sectors, this Regulation applies to aid granted to small and medium-sized enterprises in all sectors.
2. This Regulation shall not apply:
 - (a) to activities linked to the production, processing or marketing of products listed in Annex I to the Treaty;
 - (b) to 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.

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) 'investment in tangible assets' shall mean an investment in fixed assets relating to the creation of a new establishment, the extension of an existing establishment, or the engagement in an activity involving a fundamental change in the product or production process of an existing establishment (in particular through rationalisation, diversification or modernisation). An investment in fixed assets undertaken in the form of the takeover of an establishment which has closed or which would have closed had it not been purchased shall also be regarded as tangible investment;
- (d) 'investment in intangible assets' shall mean investment in transfer of technology by the acquisition of patent rights, licences, know-how or unpatented technical knowledge;
- (e) 'gross 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 moment 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;
- (f) 'net aid intensity' shall mean the aid amount net of tax expressed as a percentage of the project's eligible costs;

⁽¹⁾ OJ C 107, 7.4.1998, p. 7.

- (g) 'number of employees' shall mean the number of annual labour units (ALU), namely the number of persons employed full time in one year, part-time and seasonal work being ALU fractions.

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 provided 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

Investment

1. Aid for investment in tangible and intangible assets inside or outside the Community shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirements of Article 88(3) of the Treaty if it fulfils the conditions of paragraphs 2 to 6.
2. The gross aid intensity shall not exceed:
 - (a) 15 % in the case of small enterprises;
 - (b) 7,5 % in the case of medium-sized enterprises.
3. Where the investment takes place in areas which qualify for regional aid, the aid intensity shall not exceed the level of regional investment aid determined in the map approved by the Commission for each Member State by more than:
 - (a) 10 percentage points gross in areas covered by Article 87(3)(c), provided that the total net aid intensity does not exceed 30 %; or
 - (b) 15 percentage points gross in areas covered by Article 87(3)(a), provided that the total net aid intensity does not exceed 65 %.

The higher regional aid ceilings apply only if the aid is granted under the condition that the investment is granted under the condition that the investment is maintained in the recipient region for at least five years and that the recipient's contribution to its financing is at least 25 %.

4. The thresholds fixed in paragraphs 2 and 3 apply to intensity of the aid calculated either as a percentage of the investment's eligible costs or as a percentage of the wage costs of employment created by the carrying-out of an investment (aid to job creation) or a combination thereof, provided the aid does not exceed the most favourable amount resulting from the application of either calculation.

5. In case the aid is calculated on the basis of the investment's costs, the eligible costs of tangible investment shall be the costs relating to investment in land, buildings, machinery and equipment. In the transport sector, semi-mobile and mobile transport equipment shall not be included in the eligible costs. The eligible costs of intangible investment shall be the costs of acquisition of the technology.

6. In case the aid is calculated on the basis of jobs created, the amount of the aid shall be expressed as a percentage of the wage costs over a period of two years relating to the employment created under the following conditions:

- (a) job creation shall be linked to the carrying-out of a project of investment in tangible or intangible assets. Jobs shall be created within three years of the investment's completion;
- (b) it shall lead to a net increase in the number of employees in the particular establishment, compared with the average over the past twelve months; and
- (c) the employment created shall be maintained during a minimum period of two years. Where the aid ceilings for regional aid are applied, this period shall be five years.

Article 5

Consultancy and other services and activities

Aid to small and medium-sized enterprises that fulfils the following conditions shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirements of Article 88(3) of the Treaty:

- (a) for services provided by outside consultants, the gross aid shall not exceed 50 % of the costs of such services. The services concerned shall not be a continuous or periodic activity nor relate to the enterprise's usual operating expenditure, such as routine tax consultancy services, regular legal services, or advertising;

- (b) for participation in fairs and exhibitions, the gross aid shall not exceed 50 % of the costs of renting, setting up and running the stand. This exemption shall only apply to the first participation of an enterprise in a certain fair or exhibition.

Article 6

Large individual aid grants

This Regulation shall not exempt an individual aid grant where either of the following two criteria are met:

- (a) the total project cost is at least EUR 50 000 000 and the aid intensity is at least 50 % of the aid ceiling in the area concerned and aid per job created amounts to at least EUR 40 000; or
- (b) the total aid is at least EUR 50 000 000.

Article 7

Necessity for the aid

This Regulation shall only exempt aid if, before work on the aided project is started, the recipient's aid application is received by the Member State or the tax or similar legislation establishing in principle the legal right to the aid without further exercise of discretion by the Member State is adopted.

Article 8

Cumulation

1. The aid ceilings fixed in Articles 4, 5 and 6 shall apply regardless of whether the support for the aided 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.

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

Done at Brussels, ...

Article 9

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 in the form 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.

Article 10

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 a period of 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.

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
 - has 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 enterprise, 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 or 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:

Sectors concerned:

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, aid exempted under a regulation adopted pursuant to Council Regulation (EC) No 994/98 and subsidies under the WTO Agreement on subsidies and countervailing measures (SCM Agreement)**

EXPLANATORY NOTE

Member States are advised to use those 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) 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 ECU 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.

III

(Notices)

COMMISSION

Texts published in the *Official Journal of the European Communities* C 89 E

(2000/C 89/09)

These texts are available on:

EUR-Lex: <http://europa.eu.int/eur-lex>

EUDOR: <http://eudor.eur-op.eu.int>

CELEX: <http://europa.eu.int/celex>

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2000/C 89 E/02	Proposal for a Council Regulation (EC) amending Regulation (EEC) No 1696/71 on the common organisation of the market in hops (COM(1999) 302 <i>final</i> — 1999/0128(CNS))	3
2000/C 89 E/03	Proposal for a Council Regulation (EC) amending Regulation (EC) No 1488/96 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (COM(1999) 494 <i>final</i> — 1999/0214(CNS))	4
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2000/C 89 E/05	Proposal for a directive of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system (COM(1999) 617 <i>final</i> — 1999/0252(COD)) ⁽¹⁾	11
2000/C 89 E/06	Proposal for a Council Regulation (EC) amending Regulation (EC) No 1255/1999 on the common organisation of the market in milk and milk products (COM(1999) 631 <i>final</i> — 1999/0254(CNS))	31
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2000/C 89 E/09	Proposal for a Council Decision concerning the signature of the Agreement between the European Community and the Republic of Hungary establishing certain conditions for the carriage of goods by road and the promotion of Combined Transport (COM(1999) 665 <i>final</i> — 1999/0268(CNS)) ⁽¹⁾	35
2000/C 89 E/10	Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Republic of Hungary establishing certain conditions for the carriage of goods by road and the promotion of Combined Transport (COM(1999) 665 <i>final</i> — 1999/0268(CNS)) ⁽¹⁾	36
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2000/C 89 E/15	Proposal for a Council Regulation (EC) correcting Regulation (EEC) No 2075/92 on the common organisation of the market in raw tobacco (COM(1999) 704 <i>final</i> — 1999/0283(CNS))	80
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⁽¹⁾ Text with EEA relevance