

Official Journal

of the European Union

C 210

Volume 50

English edition

Information and Notices

8 September 2007

<u>Notice No</u>	Contents	Page
	II <i>Information</i>	
	INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES	
	Commission	
2007/C 210/01	Non-opposition to a notified concentration (Case COMP/M.4757 — Nordic Capital/Thule) ⁽¹⁾	1
<hr/>		
	IV <i>Notices</i>	
	NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES	
	Commission	
2007/C 210/02	Euro exchange rates	2
<hr/>		
	V <i>Announcements</i>	
	ADMINISTRATIVE PROCEDURES	
	Commission	
2007/C 210/03	Call for proposals — EACEA/20/07 — Youth in Action — Action 4.1 — Support for bodies active at European level in the field of youth	3
	PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY	
	Commission	
2007/C 210/04	Notice of initiation of a partial interim review of the countervailing measures applicable to imports of polyester textured filament yarn (PTY) originating in India	5



PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

Commission

2007/C 210/05	Prior notification of a concentration (Case COMP/M.4903 — Hochtief/Vinci/JV) — Candidate case for simplified procedure ⁽¹⁾	9
2007/C 210/06	Prior notification of a concentration (Case COMP/M.4904 — Lite-On/Perlos) — Candidate case for simplified procedure ⁽¹⁾	10
2007/C 210/07	Prior notification of a concentration (Case COMP/M.4581 — Imperial Tobacco/Altadis) ⁽¹⁾	11
2007/C 210/08	Prior notification of a concentration (Case COMP/M.4868 — Avnet/Magirus EID) ⁽¹⁾	12
2007/C 210/09	Prior notification of a concentration (Case COMP/M.4726 — Thomson/Reuters) ⁽¹⁾	13
2007/C 210/10	Invitation to submit comments on the draft general block exemption of the Commission in the State aid area	14



⁽¹⁾ Text with EEA relevance

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Non-opposition to a notified concentration**(Case COMP/M.4757 — Nordic Capital/Thule)****(Text with EEA relevance)**

(2007/C 210/01)

On 20 July 2007, 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 (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- from the Europa competition website (<http://ec.europa.eu/comm/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes.
 - in electronic form on the EUR-Lex website under document number 32007M4757. EUR-Lex is the on-line access to European law. (<http://eur-lex.europa.eu>)
-

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Euro exchange rates ⁽¹⁾

7 September 2007

(2007/C 210/02)

1 euro =

Currency	Exchange rate	Currency	Exchange rate
USD US dollar	1,3696	RON Romanian leu	3,3032
JPY Japanese yen	157,79	SKK Slovak koruna	33,726
DKK Danish krone	7,4467	TRY Turkish lira	1,7697
GBP Pound sterling	0,6773	AUD Australian dollar	1,6564
SEK Swedish krona	9,326	CAD Canadian dollar	1,4398
CHF Swiss franc	1,6437	HKD Hong Kong dollar	10,6646
ISK Iceland króna	88,02	NZD New Zealand dollar	1,9834
NOK Norwegian krone	7,9085	SGD Singapore dollar	2,0867
BGN Bulgarian lev	1,9558	KRW South Korean won	1 284,96
CYP Cyprus pound	0,5842	ZAR South African rand	9,8556
CZK Czech koruna	27,631	CNY Chinese yuan renminbi	10,3261
EEK Estonian kroon	15,6466	HRK Croatian kuna	7,3209
HUF Hungarian forint	254,47	IDR Indonesian rupiah	12 870,82
LTL Lithuanian litas	3,4528	MYR Malaysian ringgit	4,7998
LVL Latvian lats	0,6984	PHP Philippine peso	63,734
MTL Maltese lira	0,4293	RUB Russian rouble	35,112
PLN Polish zloty	3,8081	THB Thai baht	44,546

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

V

(Announcements)

ADMINISTRATIVE PROCEDURES

COMMISSION

CALL FOR PROPOSALS — EACEA/20/07

Youth in Action

Action 4.1 — Support for bodies active at European level in the field of youth

(2007/C 210/03)

1. Objectives and description

This call for proposals concerns Action 4.1. of the 'Youth in Action' Programme and its purpose is to provide support for the permanent activities of bodies active at European level in the field of youth and pursuing an aim which is of general European interest.

These activities must help encourage young people to participate as citizens in public life, in society and in the development and implementation of European cooperation actions in the broadly defined field of youth.

This call for proposals corresponds to the grants to be awarded for **2008**.

It provides for two types of agreement:

- **partnership framework agreement:** bodies that wish to enter into long-term cooperation with the Agency are asked to file an application for a **three-year** partnership framework agreement ⁽¹⁾,
- **annual operating agreement:** those bodies that prefer not to commit themselves in the long term under a partnership agreement may apply for an annual operating grant.

The Education, Audiovisual and Culture Executive Agency is responsible for implementing this call for proposals.

2. Eligible candidates

2.1. Eligible bodies

To be eligible for an operating grant, a body must:

- be non-governmental,
- have been legally established for at least one year in the case of annual operating agreements at the time of applying and for at least four years in the case of partnership framework agreements at the time of applying,
- be non-profit-making,
- be a youth organisation or one having a broader scope but including a section dedicated to youth,
- involve young people in managing activities developed with them in mind,
- have at least one (salaried or non-salaried) permanent member of staff. An exception is granted to bodies that have never received grants under this action and that intend to employ a permanent member of staff if this grant is awarded.

2.2. Eligible countries

Bodies established in any one of the following countries are eligible to apply:

- the Member States of the European Union,
- the European Free Trade Association (EFTA) countries in the European Economic Area (EEA): Iceland, Liechtenstein and Norway,
- the countries applying for membership of the European Union and benefiting from a pre-accession strategy: Turkey,

⁽¹⁾ The signing of the framework agreement does not entail any obligation on the Agency to award a grant for 2009 or 2010.

- the countries of the Western Balkans: Albania, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Montenegro and Serbia,
- some East European countries: Belarus, Moldova, Russian Federation, Ukraine,
- the Swiss Confederation, subject to a bilateral agreement being concluded with this country.

Those bodies applying for an annual agreement must have active organisations in at least **eight** of the aforementioned countries.

Those bodies applying for a partnership framework agreement must have active organisations in at least **twelve** of the aforementioned countries

3. Budget

The total budget earmarked for cofinancing the operation of bodies active at European level in the field of youth is estimated at **EUR 2 400 000** for 2008. Community financial assistance cannot exceed **80 % of the total eligible operating costs**. The maximum Community grant for each body will be **EUR 40 000 in the case of a partnership framework agreement and**

EUR 35 000 in the case of an annual operating agreement. Applicants' attention is drawn to the fact that if both kinds of grant are applied for, two applications must be submitted and the maximum grant requested **in both cases** may not exceed EUR 35 000.

The Agency reserves the right not to distribute all the funds available.

4. Final date for applications

Applications for a three-year partnership framework agreement and applications for an annual operating grant for 2008 must be sent to the Agency **by 31 October 2007 at the latest**.

5. Additional information

Applications must comply with the provisions contained in the full text and be submitted on the form provided for this purpose. Said documents can be found on the Internet at the following addresses:

- EAC DG: http://ec.europa.eu/youth/program/ingyo_en.html
- Agency: <http://eacea.ec.europa.eu/index.htm>

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

COMMISSION

Notice of initiation of a partial interim review of the countervailing measures applicable to imports of polyester textured filament yarn (PTY) originating in India

(2007/C 210/04)

The Commission has decided on its own initiative to initiate a partial interim review limited to the level of subsidization for certain Indian exporting producers pursuant to Article 19 of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ('the basic Regulation')⁽¹⁾.

1. Product

The product under review is polyester textured filament yarn (PTY) originating in India ('the product concerned'), currently classifiable within CN code 5402 33 00. This CN code is given only for information.

2. Existing measures

The measures currently in force are a definitive countervailing duty imposed by Council Regulation (EC) No 2094/2002⁽²⁾ on imports of polyester textured filament yarn (PTY) originating in India.

3. Grounds for the review

There is sufficient *prima facie* evidence available to the Commission that the circumstances with regard to subsidisation on the basis of which measures were established have changed and that these changes are of a lasting nature.

Indeed, the benefits from two subsidy schemes (the Duty Entitlement Passbook Scheme ('DEPBS') and the Income Tax Exemption under Section 80 HHC of the Income Tax Act ('ITES')) appear to have significantly decreased. This is due to the modification of the relevant basic Indian laws on which these schemes are based.

As a consequence, the level of subsidisation is likely to have decreased for those companies whose measures are based either fully or partly on benefits obtained from one or both of the aforesaid two schemes in the investigation period used in the investigation that led to the determination of the level of the existing measures.

This indicates that the measures mentioned in the preceding point on imports of the product under review at their present level may no longer be necessary to counteract the current subsidisation. Therefore, the measures should be reviewed for the companies in question.

These companies include those listed in the Annex and any other producer of the product under review that makes itself known to the Commission within the deadline set in point 5(b)(i) below and demonstrates within the same time limit that (1) it enjoyed benefits from one or both of the two schemes mentioned above during the investigation period used in the investigation that led to the determination of the level of the measure to which they are subject (1 October 2000-30 September 2001), and that (2) given the structural changes in these schemes as mentioned above, the benefit accruing from these schemes has decreased.

In addition, if the review investigation shows or any interested party provides sufficient *prima facie* evidence within the deadline set in point 5(a)(i) below that exporters of the product concerned that are concerned by the current review are benefiting from subsidy schemes other than those mentioned above, an investigation of these schemes may also be made within the framework of the current review.

Insofar as the modified subsidy margins resulting from the current investigation could have an impact on the measures applicable for cooperating companies in the investigation that set the level of the measures and/or on the residual measure applicable for all other companies, these rates may be revised accordingly.

It should be noted that, for those companies which are subject to both anti-dumping and countervailing measures, the anti-dumping measure may be adjusted accordingly should there be a change in the countervailing measure.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 323, 28.11.2002, p. 21.

4. Procedure

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an *ex officio* partial interim review, the Commission hereby initiates a review in accordance with Article 19 of the basic Regulation.

The investigation will assess the need for the continuation, removal or amendment of the existing measures in respect of those companies having benefited from one or both subsidy schemes mentioned above and, for those companies, in respect of other schemes where sufficient evidence is provided as mentioned in point 3, paragraph 6 above. The investigation will also assess the need, depending on the findings of the current investigation, to revise the measures applicable to other companies that cooperated in the investigation that set the level of the existing measures and/or the residual measure applicable for all other companies.

(a) Sampling

In view of the apparent number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 27 of the basic Regulation.

(i) Sampling for exporters/producers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies within the time limit set in point 5(b)(i) and in the formats indicated in point 6:

- name, address, e-mail address, telephone, and fax numbers and contact person,
- the turnover in local currency and the volume in tonnes of the product concerned sold for export to the Community during the period 1 April 2006 to 31 March 2007,
- the turnover in local currency and the sales volume in tonnes of the product concerned sold on the domestic market during the period 1 April 2006 to 31 March 2007,
- whether the company intends to claim an individual subsidy rate (individual subsidy rates can only be claimed by producers) ⁽¹⁾,

⁽¹⁾ Individual margins may be claimed pursuant to Article 27(3) of the basic Regulation for companies not included in the sample.

- the precise activities of the company with regard to the production of the product concerned and the production volume in tonnes of the product concerned, the production capacity and the investments in production capacity during the period 1 April 2006 to 31 March 2007,
- the names and the precise activities of all related companies ⁽²⁾ involved in the production and/or selling (export and/or domestic) of the product concerned,
- whether the company received benefits under the DEPBS and/or the ITES in (i) the investigation period used in the investigation that led to the determination of the level of the measure to which it is currently subject (1 October 2000-30 September 2001) and/or (ii) in the period 1 April 2006 to 31 March 2007.
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to not have co-operated in the investigation. The consequences of non-cooperation are set out in point 7 below.

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the exporting country, and any known associations of exporters/producers.

(ii) Final selection of the sample

All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within the time limit set in point 5(b)(ii).

The Commission intends to make the final selection of the sample after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the sample must reply to a questionnaire within the time limit set in point 5 (b)(iii) and must co-operate within the framework of the investigation.

If sufficient co-operation is not forthcoming, the Commission may base its findings, in accordance with Articles 27(4) and 28 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 7.

⁽²⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

(b) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled companies and to the authorities of the exporting country concerned.

(c) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 5(a)(i).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 5(a)(ii).

5. Time limits

(a) General time limits

- (i) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies, in particular the authorities of the exporting country concerned, or any other information, including that mentioned in point 3 sixth paragraph, within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period.

(ii) Hearings

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

(b) Specific time limit in respect of sampling

- (i) The information specified in point 4(a)(i) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

- (ii) All other information relevant for the selection of the sample as referred to in point 4(a)(ii) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

- (iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

6. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ and, in accordance with Article 29(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'FOR INSPECTION BY INTERESTED PARTIES'.

Commission address for correspondence:

European Commission
Directorate General for Trade
Directorate H
Office: J-79 4/23
B-1049 Brussels
Fax (32-2) 295 65 05

7. Non-cooperation

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 28 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 28 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

⁽¹⁾ This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 29 of the basic Regulation and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.

8. Schedule of the investigation

The investigation shall be concluded, according to Article 22(1) of the basic Regulation, within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

9. Other interim reviews under Article 19 of the basic Regulation

The scope of the current review is as set out in point 4 above. Any party wishing to claim a review on the basis of other

grounds may do so in accordance with the provisions of Article 19 of the basic Regulation.

10. Processing of personal data

Please note that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.

ANNEX

- Indo Rama Synthetics Limited, 51-A, Industrial Area, Sector III, Pithampur, 453 001, Dist. Dhar, Madhya Pradesh
 - Welspun Syntex Limited, Kamani Wadi, 1st floor, 542, Jaganath Shankar Sheth Road, Chira Bazar, Mumbai 400 002
-

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION
POLICY

COMMISSION

Prior notification of a concentration

(Case COMP/M.4903 — Hochtief/Vinci/JV)

Candidate case for simplified procedure

(Text with EEA relevance)

(2007/C 210/05)

1. On 24 August 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertakings HOCHTIEF PPP Solutions GmbH ('Hochtief', Germany), belonging to HOCHTIEF Aktiengesellschaft, VINCI S.A. und die VINCI Concessions S.A. (together 'Vinci', France) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the newly created joint venture.

2. The business activities of the undertakings concerned are:

- Hochtief: construction and construction related services,
- Vinci: concessions, construction and construction related services,
- JV: rebuilding and maintenance of a motorway section.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ⁽²⁾ it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4903 — Hochtief/Vinci/JV, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

⁽²⁾ OJ C 56, 5.3.2005, p. 32.

Prior notification of a concentration
(Case COMP/M.4904 — Lite-On/Perlos)
Candidate case for simplified procedure

(Text with EEA relevance)

(2007/C 210/06)

1. On 3 September 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertaking Lite-On Technologies Corporation ('Lite-On', Taiwan) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Perlos Corporation ('Perlos', Finland) by way of public bid announced on 13 August 2007.

2. The business activities of the undertakings concerned are:

- for undertaking Lite-On: supply of computer, communications and consumer electronics devices,
- for undertaking Perlos: design and manufacture of mechanical parts for mobile phones.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ⁽²⁾ it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4904 — Lite-On/Perlos, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

⁽²⁾ OJ C 56, 5.3.2005, p. 32.

Prior notification of a concentration
(Case COMP/M.4581 — Imperial Tobacco/Altadis)

(Text with EEA relevance)

(2007/C 210/07)

1. On 30 August 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertaking Imperial Tobacco Group PLC ('Imperial', United Kingdom) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Altadis S.A. ('Altadis', Spain) by way of public bid announced on 18 July 2007.

2. The business activities of the undertakings concerned are:

— for Imperial: manufacture and distribution of tobacco products,

— for Altadis: manufacture of tobacco products, distribution of tobacco products and non-tobacco products.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. 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 to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4581 — Imperial Tobacco/Altadis, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ OJL 24, 29.1.2004, p. 1.

Prior notification of a concentration
(Case COMP/M.4868 — Avnet/Magirus EID)

(Text with EEA relevance)

(2007/C 210/08)

1. On 31 August 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertaking Avnet Inc. ('Avnet', USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of the undertaking Magirus Group (Germany), namely its infrastructure division ('Magirus EID') by way of purchase of assets.

2. The business activities of the undertakings concerned are:

— for Avnet: distributor of electronic components, computer products and technology services,

— for Magirus EID: distribution of IT products.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. 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 to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4868 — Avnet/Magirus EID, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ OJL 24, 29.1.2004, p. 1.

Prior notification of a concentration
(Case COMP/M.4726 — Thomson/Reuters)

(Text with EEA relevance)

(2007/C 210/09)

1. On 3 September 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertaking The Thomson Corporation ('Thomson', Canada) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Reuters Group PLC ('Reuters', United Kingdom) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for undertaking Thomson: provider of value-added information, integrated with software tools and applications, to professionals in legal, tax, accounting, financial services, scientific research and healthcare markets,
- for undertaking Reuters: provider of information, trading capabilities, related software and news to professionals in financial services, media and corporate markets.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. 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 to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4726 — Thomson/Reuters, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

⁽¹⁾ OJL 24, 29.1.2004, p. 1.

Invitation to submit comments on the draft general block exemption of the Commission in the State aid area

(2007/C 210/10)

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
 Consultation on general block exemption (HT 364)
 State aid Registry
 B-1049 Brussels
 Fax (32-2) 296 12 42
 E-mail: stateaidgreffe@ec.europa.eu

The text will also be available on the following website:

http://ec.europa.eu/comm/competition/state_aid/reform/reform.cfm

**DRAFT COMMISSION REGULATION (EC) No .../...
 of ... 2007**

on the application of Articles 87 and 88 of the EC Treaty declaring certain categories of aid compatible with the common market

THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) 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 1(a) and (b) thereof,

Having published a draft of this Regulation ⁽²⁾,

After consulting 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 ('SMEs'), aid in favour of research and development, aid in favour of environmental protection, employment and training aid, and 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 not subject to the notification requirement of Article 88(3) of the Treaty.

(2) The Commission has applied Articles 87 and 88 of the Treaty in numerous decisions and gained sufficient experience to define general compatibility criteria as regards aid in favour of SMEs, in the form of investment aid in and outside assisted areas, in the form of risk capital schemes and in the area of research and development, in particular in the context of the implementation of Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ⁽³⁾, the implementation of Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development ⁽⁴⁾ and the implementation of the Commission communication on State aid and risk capital ⁽⁵⁾ and Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises ⁽⁶⁾.

(3) The Commission has also gained sufficient experience in the application of Articles 87 and 88 of the Treaty in the fields of training aid, employment aid, environmental aid, research and development aid and regional aid with respect to both SMEs and large enterprises, in particular in the context of the implementation of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽⁷⁾, Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ⁽⁸⁾, the Community framework for State aid

⁽³⁾ OJ L 10, 13.1.2001, p. 33.

⁽⁴⁾ OJ L 63, 28.2.2004, p. 22.

⁽⁵⁾ OJ C 235, 21.8.2001, p. 3.

⁽⁶⁾ OJ C 194, 18.8.2006, p. 2.

⁽⁷⁾ OJ L 10, 13.1.2001, p. 20.

⁽⁸⁾ OJ L 337, 13.12.2002, p. 3

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 210, 8.9.2007, p. 14.

for research and development ⁽⁹⁾, the Community Framework for State aid for research and development and innovation ⁽¹⁰⁾, the Community guidelines on State aid for environmental protection ⁽¹¹⁾ and the Guidelines on national regional aid ⁽¹²⁾.

- (4) In the light of this experience, it is necessary to adapt some of the conditions laid down in the regulations mentioned above. For reasons of simplification and to ensure more efficient monitoring of aid by the Commission, they should be replaced by a single Regulation.
- (5) This Regulation should exempt any aid that fulfils all the relevant conditions of this Regulation, and any aid scheme, provided that any aid that could be granted under such scheme fulfils all the relevant conditions of this Regulation. In order to ensure more efficient monitoring of the aid individual aid granted under an aid scheme and *ad hoc* individual aid granted outside any aid scheme, but to the exclusion of aid schemes, should contain an express reference to this Regulation and to the identification number attributed to any such measure by the Commission. In order to monitor the implementation of this Regulation, the Commission should also be in a position to obtain all necessary information from Member States concerning the measures implemented under the benefit of this Regulation. A failure of the Member State to provide information within a reasonable deadline on these aid measures may therefore be considered as an indication that the conditions of this Regulation are not being respected. A failure by a Member State to provide information allowing for monitoring of an aid measure may therefore lead the Commission to decide that the Regulation, or the relevant part of the Regulation, should be withdrawn as regards the Member State concerned. As soon as the Member State has provided correct and complete information, the Commission should allow the Regulation to be fully applicable again.
- (6) State aid within the meaning of Article 87(1) of the Treaty not covered by this Regulation should remain subject to the notification requirement of Article 88(3) of the Treaty. This Regulation is without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation. Such aid will be assessed by the Commission in particular on the basis of the conditions set out in this Regulation and in accordance with the criteria laid down in specific guidelines or frameworks adopted by the Commission wherever the aid measure at stake falls

within the scope of application of such specific instrument.

- (7) This Regulation should not apply to export aid or aid favouring domestic over imported products. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. 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.
- (8) This Regulation should apply across virtually all sectors. In the sector of fisheries and aquaculture, this Regulation should only exempt aid in the fields of research and development, aid in the form of risk capital, training aid and aid for disadvantaged and disabled workers.
- (9) In the agricultural sector, in view of the special rules which apply in the primary production of agricultural products, this Regulation should only exempt aid in the fields of research and development, aid in the form of risk capital, training aid, environmental aid and aid for disadvantaged and disabled workers.
- (10) In view of the similarities between the processing and marketing of agricultural products and of non-agricultural products this Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met.
- (11) Neither on-farm activities necessary for preparing a product for the first sale, nor the first sale to resellers or processors should be considered as processing or marketing for the purposes of this Regulation. The Court of Justice of the European Communities has established that, once the Community has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. This Regulation should therefore not apply to aid, the amount of which is fixed on the basis of price or quantity of products purchased or put on the market, nor should it apply to aid which is linked to an obligation to share it with primary producers.
- (12) In view of Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry ⁽¹³⁾, this Regulation should not apply to aid granted to undertakings active in the coal sector with the exception of training aid, research and development aid and environmental aid.

⁽⁹⁾ OJ C 45, 17.2.1996, p. 5.

⁽¹⁰⁾ OJ C 323, 30.12.2006, p. 1.

⁽¹¹⁾ OJ C 37, 3.2.2001, p. 3.

⁽¹²⁾ OJ C 54, 4.3.2006, p. 13.

⁽¹³⁾ OJ L 205, 2.8.2002, p. 1.

- (13) Where a regional aid scheme purports to realise regional objectives, but is targeted at particular sectors of the economy, the objective and likely effects of the scheme may be sectorial rather than horizontal. Therefore, regional aid schemes targeted at specific sectors of economic activity should not be covered by the exemption from notification. However, the tourism sector plays an important role in national economies and in general has a particularly positive effect on regional development. Regional aid schemes aimed at tourism activities should therefore be exempt from the notification requirement
- (14) Aid granted to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁴⁾ should be assessed under those Guidelines in order to avoid their circumvention. SMEs which are incorporated since less than three years and whose business plan foresees losses in those first three years shall not be considered as being in difficulty for this period for the purposes of this Regulation.
- (15) The Commission has to ensure that authorised aid does not alter trading conditions in a way contrary to the general interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the common market, should be excluded from the scope of this Regulation. As a consequence, any individual *ad hoc* aid paid out to such a beneficiary and any aid scheme not containing a provision explicitly excluding such beneficiaries remains subject to the notification requirements of Article 88(3) of the Treaty. This provision shall not affect the legitimate expectations of beneficiaries of aid schemes which are not subject to outstanding recovery orders.
- (16) In order to ensure the consistent application of Community State aid rules, as well as for reasons of administrative simplification, the definitions of terms which are relevant in context of different categories of aid covered by this Regulation should be harmonised.
- (17) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid which is transparent. Transparent aid is aid for which it is possible to calculate precisely the gross grant equivalent *ex ante* without a need to undertake a risk assessment. Such precise calculation can, for instance, be realised as regards grants, interest rate subsidies and capped tax exemptions.
- (18) Aid comprised in guarantee schemes should be considered as transparent when the methodology to calculate the gross grant equivalent has been approved following notification of this methodology to the Commission, and, in the case of regional aid, also when the Commission has approved such methodology after adoption of Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional aid⁽¹⁵⁾. The Commission will examine such notifications on the basis of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees⁽¹⁶⁾. In view of the difficulty in calculating the grant equivalent of aid in the form of repayable advances such aid should be covered by this Regulation only if the total amount of the repayable advance is inferior to the applicable individual notification threshold and the maximum aid intensities provided under this Regulation.
- (19) Due to the higher risk of distortion of competition, large amounts of aid should continue to be assessed by the Commission on an individual basis. Thresholds should therefore be set for each type of aid within the scope of this Regulation, at a level which takes into account the type of aid concerned and its likely effects on competition. Any aid granted above those thresholds remains subject to the notification requirement of Article 88(3) of the Treaty.
- (20) With a view to ensuring that aid is proportionate and limited to the amount necessary, thresholds should, whenever possible, be expressed in terms of aid intensities in relation to a set of eligible costs. For the purpose of calculating aid intensities, aid payable in several instalments should 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 aid not taking the form of a grant, should be the reference rate applicable at the time of grant. Because it is based on a form of aid for which eligible costs are difficult to identify, the threshold with regard to aid in the form of risk capital should be formulated in terms of maximum aid amounts.
- (21) The thresholds in terms of aid intensity or aid amount 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 tackling the market failure or cohesion issue concerned. With respect to regional aid, this threshold should be set at a level taking into account the allowable aid intensities under the regional aid maps.
- (22) In order to determine whether the individual notification thresholds and the maximal aid intensities laid down in this Regulation are respected, the total amount of public support for the aided activity or project should be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.

⁽¹⁴⁾ OJ C 244, 1.10.2004, p. 2.

⁽¹⁵⁾ OJ L 302, 1.11.2006, p. 29.

⁽¹⁶⁾ OJ C 71, 11.3.2000, p. 14.

- (23) Moreover, this Regulation should specify the circumstances under which different categories of aid covered by this Regulation may be cumulated. As regards cumulation of aid covered by this Regulation with State aid not covered by this Regulation, regard should be had to the decision of the Commission approving the aid not covered by this Regulation, as well as the State aid rules on which this decision is based. Special provisions should apply in respect to cumulation of aid for disadvantaged and disabled workers with other types of aid. This Regulation should also make provision for cumulation of aid measures with identifiable eligible costs and aid measures without identifiable eligible costs.
- (24) In order to ensure that the aid is necessary and acts as an incentive to develop further activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would already engage under market conditions alone. As regards any aid covered by this Regulation granted to SMEs, such incentive should be considered present when, before the activities relating to the implementation of the aided project or activities are initiated, the SME has submitted an application to the Member State. [As regards any aid covered by this regulation granted to beneficiaries which are large enterprises, the Member State should, in addition to the conditions applying to SMEs, also verify that that the beneficiary has analysed, in an internal document, the feasibility of the aided project or activity with aid and without aid. This analysis should be realised by the beneficiary *ex ante* on the basis of quantitative and qualitative indicators. The Member State should verify that analysis and keep such documents in its records. Moreover, as the incentive effect of *ad hoc* aid granted to large enterprises is considered to be difficult to establish, this form of aid should be excluded from the scope of application of this Regulation. The Commission will examine the existence of such incentive effect in the context of the notification of the aid concerned on the basis of the criteria established in the applicable guidelines, frameworks or other Community instruments.]
- (25) 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 form to be used by Member States to provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme or *ad hoc* individual aid are implemented. The summary information form shall be used for the publication of the measure in the *Official Journal of the European Union* and on the internet. The summary information should be sent to the Commission in electronic format making use of the established IT application before the measure is implemented. The Commission will attribute an identification number to each aid measure which is communicated to it. The fact that such number is attributed to an aid measure does not imply that the Commission has examined whether the aid fulfils the conditions of this Regulation. It creates therefore no legitimate expectations for the Member State or beneficiary as regards the compatibility of the aid measure with this Regulation.
- (26) For the same reasons, the Commission should establish specific requirements as regards the form and the content of the annual reports to be submitted to the Commission by Member States. Moreover, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid schemes and individual aid exempted by this Regulation.
- (27) It is necessary to establish further conditions that should be fulfilled by any aid scheme or individual aid exempted by this Regulation. Indeed, having regard to Articles 87(3)(a) and 87(3)(c) of the Treaty, such aid should be proportionate to the market failures or handicaps that have to be overcome in order to be in the Community interest. It is therefore appropriate to limit the scope of this Regulation, as far as it concerns investment aid to SMEs, environmental investment aid and regional aid, to aid granted in relation to certain tangible and intangible investments. In the light of Community overcapacity and the specific problems of distortion of competition in the road freight and air transport sectors eligible investment costs for undertakings having their main economic activity in these transport sectors should not include transport means and equipment. Special provisions apply as regards the definition of tangible assets for the purpose of environmental aid.
- (28) Consistent with the principles governing the aid falling within Article 87(1) of the Treaty, aid should be considered to be granted at the moment the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.
- (29) 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 in favour of SMEs and regional aid on the basis of either the costs of the investment or the costs of employment directly created by an investment project.
- (30) Environmental aid in the form of tax reductions, aid for disadvantaged or disabled workers, regional aid or aid in the form of risk capital granted to a beneficiary on an *ad hoc* basis may have a major impact on competition in the relevant market because it favours the beneficiary over other undertakings which have not received such aid. Because it is granted only to a single undertaking, *ad hoc* aid is likely to have only a limited positive structural effect on the environment, the employment of disabled and disadvantaged workers regional cohesion or the risk capital market failure. For this reason, aid schemes providing environmental aid in the form of tax reductions regional aid or aid in the form of risk capital

- should be exempted under this Regulation, whilst individual *ad hoc* awards should be notified to the Commission. This Regulation should however exempt *ad hoc* regional aid when this *ad hoc* aid is used to supplement aid granted on the basis of a regional aid scheme, with a maximum limit for the *ad hoc* component of 50 % of the total aid to be granted for the investment.
- (31) The provisions relating to SME investment and employment aid do not provide, as was the case in Regulation (EC) No 70/2001, any possibility for increasing the maximum aid intensities by means of a regional bonus. However, the maximum aid intensities provided in the section concerning regional aid can be granted also to SMEs as long as the conditions for granting regional aid are fulfilled. Similarly, the provisions relating to environmental investment aid do not provide any possibility for increasing the maximum aid intensities by means of a regional bonus. The maximum aid intensities provided for under the section concerning regional aid can however also be applied to projects which have a positive impact on the environment, as long as the conditions for granting regional aid are fulfilled.
- (32) By addressing the handicaps of the disadvantaged regions, national regional aid promotes the economic, social and territorial cohesion of Member States and the Community as a whole. National regional aid is designed to assist the development of the most disadvantaged regions by supporting investment and job creation in a sustainable context. It promotes the expansion, rationalization, modernization and diversification of the economic activities of undertakings located in the less favoured regions, in particular by encouraging firms to set up new establishments there.
- (33) In order to prevent large regional investment projects from being artificially divided into sub-projects, thereby escaping the notification thresholds provided under this Regulation, a large investment project should be considered to be a single investment project if the investment is undertaken within a period of three years by the same undertaking or undertakings and consists of fixed assets combined in an economically indivisible way. To assess whether an investment is economically indivisible, Member States should take into account the technical, functional and strategic links and the immediate geographical proximity. The economic indivisibility should be assessed independently from ownership. This means that to establish whether a large investment project constitutes a single investment project, the assessment should be the same irrespective of whether the project is carried out by one undertaking, by more than one undertaking sharing the investment costs or by more undertakings bearing the costs of separate investments within the same investment project (for example in the case of a joint venture).
- (34) In contrast to regional aid, which may be granted in assisted areas only, SME investment and employment aid may be granted both in assisted and in non-assisted areas. The Member States may thus provide, in assisted areas, investment aid as long as they respect either all conditions applying to the section concerning regional aid or all conditions applying to the section concerning SME investment aid.
- (35) Sustainable development is one of the main pillars in the Lisbon Strategy for Growth and Jobs, together with competitiveness and security of energy supplies. Sustainable development is based, amongst others, on a high level of protection and improvement of the quality of the environment. Promoting environmental sustainability and combating climate change leads as well to increasing security of supply and ensuring the competitiveness of European economies and the availability of affordable energy. The area of environmental protection is often confronted with market failures in the form of negative externalities. Under normal market conditions, undertakings may not necessarily have an incentive to reduce their pollution since such reduction may increase their costs. When undertakings are not obliged to internalise the costs of pollution, society as a whole bears these costs. This internalisation of environmental costs can be ensured by imposing environmental regulation or taxes. The lack of full harmonization of environmental standards at Community level creates an uneven playing field. Furthermore, an even higher level of environmental protection can be achieved by the initiatives to go beyond the mandatory Community standards, which may harm the competitive position of the undertakings concerned.
- (36) In view of the sufficient experience gathered in the application of the Community guidelines on State aid for environmental protection, investment aid for environmental protection improving on Community standards or in the absence of Community standards (for example in the case of retrofitting existing vehicles), aid for early adaptation to future Community standards by SMEs, environmental aid for investment in energy saving, environmental aid for investment in high efficiency cogeneration, environmental aid for investments to promote renewable energy sources and environmental aid in the form of tax reductions should be exempt from the notification requirement. In particular, aid for the acquisition of new transport vehicles complying with adopted Community standards is permissible before their entry into force when the new standards, once mandatory, do not apply retroactively to already purchased vehicles.

- (37) A correct calculation of the extra investment or production costs to achieve environmental protection is essential to determine whether or not aid is compatible with Article 87(3) of the Treaty. Such calculation should take place on the basis of a comparable reference investment not providing the environmental benefits concerned, with the same capacity in terms of effective production. In view of the difficulties which may arise, in particular, with respect to the deduction of benefits deriving from extra investment, provision should be made for a simplified method of calculation of the extra investment costs. Therefore, and with the exception of environmental aid for investment in energy saving measures, these costs should, for the purpose of applying this Regulation, be calculated without taking into account operating benefits, cost savings or additional ancillary production and without taking into account operating costs engendered during the life of the investment. The maximum aid intensities provided for the different types of environmental investment aid concerned have been determined accordingly.
- (38) As regards environmental aid for investment in cogeneration and environmental aid for investments to promote renewable energy sources, the extra costs should, for the purpose of the application of this Regulation, be calculated without taking into account other support measures granted for the same eligible costs, with the exception of other environmental investment aid.
- (39) In order to eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Community and national initiatives concerning SMEs, as well as for reasons of administrative clarity and legal certainty, the definition of SME used for the purpose of this Regulation should be based on the definition in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of small and medium sized enterprises ⁽¹⁷⁾.
- (40) SMEs 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 failures, leading to these SMEs suffering from typical handicaps. SMEs often have difficulties in obtaining capital, risk capital or loans, given the risk-averse nature of certain financial markets and the limited collateral that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. In order to facilitate the development of the economic activities of SMEs, this Regulation should therefore exempt certain categories of aid when they are granted in favour of SMEs. Consequently, it is justified to exempt such aid from prior notification and to consider that, for the purposes of application of this Regulation, when a beneficiary fulfils the conditions of the SME definition provided in annex to this Regulation, that SME can be presumed, when the aid amount does not exceed the applicable notification threshold, to be limited in its development by the typical SME handicaps prompted by market failures.
- (41) Having regard to the differences between small enterprises and medium-sized enterprises, different basic aid intensities and different bonuses should be set for small enterprises and for medium-sized enterprises. Market failures affecting SMEs in general, amongst others as regards access to finance, result in even greater obstacles to the development of small enterprises as compared to medium-sized enterprises.
- (42) On the basis of the experience gained in applying the Communication on State aid and risk capital ⁽¹⁸⁾, there appear to be a number of specific risk capital market failures in the Community in respect of certain types of investments at certain stages of undertakings' development. These market failures result from an imperfect matching of supply and demand of risk capital. As a result, the level of risk capital provided in the market may be too restricted, and undertakings do not obtain funding despite having a valuable business model and growth prospects. The main source of market failure relevant to risk capital markets, which particularly affects access to capital by SMEs and which may justify public intervention, relates to imperfect or asymmetric information. Consequently, risk capital schemes taking the form of investment funds in which a sufficient proportion of the funds are considered as private equity should be exempt from the notification requirement under certain conditions. This regulation will not affect the EIF and EIB status as defined in the Community guidelines on risk capital.
- (43) Aid for research and development can contribute to economic growth, strengthening competitiveness and boosting employment. On the basis of its experience with the application of Regulation (EC) No 364/2004, the Community framework for State aid for research and development ⁽¹⁹⁾, the Community Framework for State aid for research and development and innovation ⁽²⁰⁾, it appears that given the available research and development capabilities of both SMEs and large enterprises, market failures may prevent the market from reaching the optimal output and lead to an inefficient outcome. Such inefficient outcomes generally relate to positive externalities/knowledge spill-overs, public goods/knowledge spill-overs, imperfect and asymmetric information and coordination and network failures.

⁽¹⁷⁾ OJ L 124, 20.5.2003, p. 36.

⁽¹⁸⁾ OJ C 194, 18.8.2006, p. 2.

⁽¹⁹⁾ OJ C 45, 17.2.1996, p. 5.

⁽²⁰⁾ OJ C 323, 30.12.2006, p. 1.

- (44) Aid for research and development for SMEs is of particular importance, because one of the structural disadvantages of SMEs lies in the difficulty they may experience in gaining access to new technological developments, technology transfers or highly qualified personnel. Therefore, aid for research and development projects, aid for technical feasibility studies and aid to cover industrial property rights costs for SMEs should be exempt from the requirement of prior notification, under certain conditions.
- (45) As regards project aid for research and development, the aided part of the research project must completely fall within the categories of fundamental research, industrial research or experimental development. When a project encompasses different tasks, each task must be qualified as falling under the categories of fundamental research, industrial research or experimental development or as not falling under any of those categories at all. This qualification need not necessarily follow a chronological approach, moving sequentially over time from fundamental research to activities closer to the market. Accordingly, a task which is carried out at a late stage of a project may be qualified as industrial research. Similarly, it is not excluded that an activity carried out at an earlier stage of the project may constitute experimental development.
- (46) In the agricultural sector, on the basis of the experience gained in particular when applying the Commission communication amending the Community framework for State aid for research and development ⁽²¹⁾, certain aid for research and development should be exempted if conditions similar to those provided in the specific provisions laid down for the agricultural sector in the Community framework for State aid for research and development and innovation are fulfilled. If those specific conditions are not fulfilled, aid may be exempted if it fulfils the conditions set out in the general provisions related to research and development in this regulation.
- (47) The promotion of training and the recruitment of disadvantaged and disabled workers and compensation of additional costs for the employment of disabled workers constitute a central objective of the economic and social policies of the Community and of its Member States.
- (48) Training usually has positive externalities for society as a whole since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of Community industry and plays an important role in the Community employment strategy. Training, including e-learning, is also essential for the constitution, the acquisition and the diffusion of knowledge, a public good of primary importance. In view of the fact that undertakings in the Community generally under-invest in the training of their workers, especially when this training is general in nature and does not lead to an immediate and concrete advantage for the undertaking concerned, State aid can help to correct this market failure. Therefore such aid should be exempt, under certain conditions, from prior notification. In view of the particular handicaps with which SMEs are confronted and the higher relative costs that they have to bear when they invest in training, the intensities of aid exempted by this Regulation should be increased for SMEs.
- (49) A distinction can be drawn between general and specific training. The permissible aid intensities should differ according to the type of training provided and the size of the undertaking. General training provides transferable qualifications and substantially improves the employability of the trained worker. Aid for this purpose has less distortive effects on competition, meaning that higher intensities of aid can be exempted from prior notification. Specific training, which mainly benefits the undertaking, involves a greater risk of distortion of competition and the intensity of aid which can be exempted from prior notification should therefore be much lower. Training shall be considered to be general in nature also when it relates to environmental management, eco-innovation or corporate social responsibility and thereby increases the capacity of the beneficiary to contribute to general objectives in the environment field.
- (50) Certain categories of disabled or disadvantaged workers still experience particular difficulty in entering the labour market. For this reason there is a justification for public authorities to apply measures providing incentives to undertakings to increase their levels of employment, in particular of workers from these disadvantaged categories. Employment costs form part of the normal operating costs of any undertaking. It is therefore particularly important that aid for the employment of disabled and disadvantaged workers should have a positive effect on employment levels of these categories of workers and should not merely enable undertakings to reduce costs which they would otherwise have to bear. Consequently, such aid should be exempt from prior notification when it is likely to assist these categories of workers in re-entering the job market or, as regards disabled workers, re-entering and staying in the job market.
- (51) It is appropriate to lay down transitional provisions for aid which was granted before the entry into force of this Regulation and was not notified in breach of the obligation in Article 88(3) of the Treaty. With the repeal of

⁽²¹⁾ OJ C 48, 13.2.1998, p. 2.

Regulation (EC) No 1628/2006 on the application of Articles 87 and 88 of the EC Treaty to national regional aid, the existing regional investment schemes, as exempted, will be allowed to continue being implemented under the conditions foreseen by that Regulation, in line with Article 9, paragraph 2, last indent, of that Regulation.

- (52) In the light of the Commission's experience in this area, 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, aid schemes already exempted by this Regulation should continue to be exempted for a further period of six months, in order to give Member States time to adapt.
- (53) The following regulations should be repealed: Regulation (EC) No 70/2001, Regulation (EC) No 68/2001, Regulation (EC) No 2204/2002 and Regulation (EC) No 1628/2006,

HAS ADOPTED THIS REGULATION:

CHAPTER I

COMMON PROVISIONS

Article 1

Scope

1. This Regulation shall apply to the following types of aid:

- (a) regional investment and employment aid;
- (b) SME investment and employment aid;
- (c) aid for environmental protection;
- (d) aid for consultancy and SME participation in fairs;
- (e) aid in the form of risk capital;
- (f) aid for research and development;
- (g) training aid;
- (h) aid for disadvantaged or disabled workers.

2. It shall not apply to:

- (a) 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 costs linked to the export activity;
- (b) aid contingent upon the use of domestic over imported goods.

3. This Regulation shall apply to aid in all sectors of the economy with the exception of the following:

- (a) aid granted to undertakings active in the fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000⁽²²⁾, except for training aid, aid in the form of risk capital, aid for research and development and aid for disadvantaged and disabled workers;
- (b) aid granted to undertakings active in the primary production of agricultural products as listed in Annex I to the Treaty, except for training aid, aid in the form of risk capital, aid for research and development, environmental aid, and aid for disadvantaged and disabled workers;
- (c) aid granted to undertakings active in the processing and marketing of agricultural products as listed in Annex I to the Treaty, in the following cases:
 - (i) when the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
 - (ii) when the aid is conditional on being partly or entirely passed on to primary producers;
- (d) aid granted to undertakings active in the coal sector with the exception of training aid, research and development aid and environmental aid;
- (e) aid granted to undertakings active in the steel sector, with the exception of environmental aid, training aid and aid for disadvantaged and disabled workers;
- (f) regional aid granted to undertakings active in the ship-building sector;
- (g) regional aid granted to undertakings active in the synthetic fibres⁽²³⁾ sector.

4. This Regulation shall not apply to regional aid schemes which are targeted at specific sectors of economic activity within manufacturing or services. Schemes aimed at tourism activities are not considered as targeted at specific sectors.

5. This Regulation shall not apply to *ad hoc* individual aid granted to large enterprises, except as provided for in Article 11(1).

6. This Regulation shall not apply to the following aid:

- (a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the common market;

⁽²²⁾ OJL 17, 21.1.2000, p. 22.

⁽²³⁾ NACE code XXX.

- (b) *ad hoc* individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the common market;
- (c) aid to undertakings in difficulty.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'aid' means any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
2. 'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
3. '*ad hoc* individual aid' means individual aid not awarded on the basis of an aid scheme;
4. 'aid intensity' means the aid amount expressed as a percentage of the eligible costs;
5. 'transparent aid' means aid in respect of which it is possible to calculate precisely the gross grant equivalent *ex ante* without need to undertake a risk assessment;
6. 'small and medium-sized enterprises' or 'SME' shall mean undertakings fulfilling the criteria laid down in Annex I;
7. 'large enterprises' shall mean undertakings not fulfilling the criteria laid down in Annex I;
8. 'assisted areas' means regions eligible for regional aid, as determined in the approved regional aid map for the Member State concerned for the period 2007-2013;
9. 'tangible assets' means assets relating to land, buildings and plant, machinery and equipment. In the transport sector, except for the road freight and air transport, transport means and transport equipment shall be considered as eligible assets except as regards regional aid;
10. 'intangible assets' means assets entailed in by transfer of technology by the acquisition of patent rights, licences, know-how or unpatented technical knowledge;
11. 'large investment project' means an investment in capital assets with eligible costs above EUR 50 million, calculated at prices and exchange rates on the date when the aid is granted;
12. 'number of employees' means 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;
13. 'employment directly created by an investment project' means employment concerning the activity to which the investment relates, including employment created following an increase in the utilisation rate of the capacity created by the investment;
14. 'wage cost' means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising:
 - (a) the gross wage, before tax; and
 - (b) the compulsory contributions, such as social security charges;
15. 'SME investment and employment aid' means aid fulfilling the conditions provided in Article 12;
16. 'investment aid' includes the types of aid foreseen in the following articles: Article 11 concerning regional investment and employment aid; Article 12 concerning SME investment and employment aid and Articles 14 to 18 concerning investment aid for environmental protection;
17. 'disadvantaged worker' means any person who belongs to any of the following categories:
 - (a) any person who has not been in regular paid employment for the previous 6 months;
 - (b) any person who has not attained an upper secondary educational or vocational qualification (ISCED 3);
 - (c) any person over the age of 50 years;
 - (d) any person living as a single adult with one or more dependents;

- (e) any woman working in a sector or profession characterised by a gender imbalance which is 25 % more significant than the average national gender imbalance;
- (f) any person who is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;
18. 'disabled worker' means any person:
- (a) recognised as disabled under national law; or
- (b) having a recognised limitation which results from physical, mental or psychological impairment;
19. 'sheltered employment' means employment in an establishment where at least 50 % of workers are disabled;
20. 'supported employment' means employment of disabled workers in an establishment which offers personal assistance or support, but is not a 'sheltered employment' environment;
21. 'agricultural product' means:
- (a) the products listed in Annex I of the Treaty, except fishery and aquaculture products covered by Regulation (EC) No 104/2000;
- (b) products falling under CN codes 4502, 4503 and 4504 (cork products);
- (c) products intended to imitate or substitute milk and milk products, as referred to in Article 3(2) of Council Regulation (EEC) No 1898/87 ⁽²⁴⁾;
22. 'processing of agricultural products' means any operation on an agricultural product resulting in a product which is also an agricultural product, except on farm activities necessary for preparing an animal or plant product for the first sale;
23. 'marketing of agricultural products' means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose;
24. 'tourism activities' means the following business activities in terms of NACE Rev. 1.1:
- (a) NACE 55: Hotels and restaurants;
- (b) NACE 63.3: Activities of travel agencies & tour operators, tourist assistance activities;
- (c) NACE 92: Recreational, cultural and sporting activities;
25. 'repayable advance' means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the research and development project;
26. 'risk capital' means finance provided through equity and quasi-equity financing to undertakings during their early-growth stages (seed, start-up and expansion phases);
27. 'steel sector' means the sectors covered by Annex I of the guidelines on national regional aid for 2007-2013 ⁽²⁵⁾;

Article 3

Conditions for exemption

- Aid schemes fulfilling all the conditions of chapter I of this Regulation, as well as the relevant provisions of chapter II 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 any individual aid awarded under such scheme fulfils all the conditions of this Regulation, and the scheme contains an express reference to this Regulation by citing its title and publication reference in the *Official Journal of the European Union*.
- Individual aid granted under a scheme referred to in paragraph 1 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 the aid fulfils all the conditions of chapter I of this Regulation, as well as the relevant provisions of chapter II of this Regulation, and that the individual aid measure contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union* and an express reference to the Commission identification number provided for in Article 9(1).
- Ad hoc* individual aid fulfilling all the conditions of chapter I of this Regulation, as well as the relevant provisions of chapter II 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 the aid contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union* and an express reference to the Commission identification number provided for in Article 9(1).

⁽²⁴⁾ OJL 182, 3.7.1987, p. 36.

⁽²⁵⁾ OJ C 54, 4.3.2006, p. 13.

Article 4

Aid intensity and eligible costs

1. For the purposes of calculating aid intensity, all figures used shall be taken before any deduction of tax or other charge. 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 shall be the reference rate applicable at the time of grant. In cases where aid is awarded by means of tax exemptions or reductions on future taxes due, subject to the respect of a certain aid intensity defined in gross grant equivalent, discounting of aid tranches takes place on the basis of the reference rates applicable at the various times the tax advantages become effective.

2. The eligible costs shall be supported by documentary evidence which shall be clear and itemised.

Article 5

Transparency of aid

1. This Regulation shall apply only to transparent aid.

In particular, the following types of aid shall be considered to be transparent:

- (a) aid comprised in loans, where the gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant and taking into account the existence of normal security and/or abnormal risk associated with the loan;
- (b) aid comprised in guarantee schemes, where the methodology to calculate the gross grant equivalent has been accepted following notification of this methodology to the Commission in the context of the application of this Regulation or Regulation (EC) No 1628/2006 and the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake;
- (c) aid comprised in fiscal measures, where the measure provides for a cap ensuring that the applicable threshold is not exceeded.

2. The following types of aid shall not be considered to be transparent:

- (a) aid comprised in capital injections;
- (b) aid comprised in risk capital measures, with the exception of aid fulfilling the conditions of Article 23.

3. Aid in the form of repayable advances shall only be considered to be transparent aid if the total amount of the repayable advance does not exceed the applicable thresholds

under this Regulation. If the threshold is expressed in terms of aid intensity, the total amount of the repayable advance, expressed as a percentage of the eligible costs, shall not exceed the applicable aid intensity.

Article 6

Individual notification thresholds

1. This Regulation shall not apply to any individual aid, whether granted *ad hoc* or on the basis of a scheme, the grant equivalent of which exceeds the following thresholds:

- (a) SME investment and employment aid: EUR 7,5 million per undertaking per investment project;
- (b) investment aid for environmental protection: EUR 5 million per undertaking per investment project;
- (c) aid for consultancy in favour of SMEs and aid for SME participation in fairs: EUR 2 million per undertaking per project;
- (d) research and development project aid and feasibility studies:
 - (i) if the project is predominantly fundamental research, EUR 20 million per undertaking, per project/feasibility study;
 - (ii) if the project is predominantly industrial research, EUR 10 million per undertaking, per project/feasibility study;
 - (iii) for all other projects, EUR 7,5 million per undertaking, per project/feasibility study;
 - (iv) if the project is a EUREKA project, twice the amounts laid down in points (i), (ii) and (iii) respectively.

A project shall be considered to consist 'predominantly' of fundamental research or 'predominantly' of industrial research, if more than 50 % of the eligible project costs are incurred through activities which fall within the category of fundamental research, respectively industrial research. In cases where the predominant character of the project cannot be established, the lower threshold shall apply;

- (e) aid for industrial property rights costs for SMEs: EUR 5 million per undertaking per project;
- (f) training aid: EUR 2 million per training project;
- (g) aid for the recruitment of disadvantaged workers: EUR 5 million per undertaking per year;
- (h) aid for the employment of disabled workers in the form of wage costs: EUR 10 million per undertaking per year;
- (i) aid for the employment of disabled workers compensating for additional expenses: EUR 10 million per undertaking per year.

2. Regional aid awarded in favour of large investment projects shall be notified to the Commission if the total amount of aid from all sources exceeds 75 % of the maximum amount of aid an investment with eligible costs of EUR 100 million could receive, applying the standard aid threshold in force for large enterprises in the approved regional aid map on the date the aid is to be granted.

Article 7

Cumulation

1. In determining whether the individual notification thresholds laid down in Article 6 and the maximum aid intensities laid down in Chapter II are respected, the total amount of public support measures for the aided activity or project shall be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.

2. Aid exempted by this Regulation may be cumulated with any other aid exempted under this Regulation as long as those aid measures concern different identifiable eligible costs.

3. Aid exempted by this Regulation shall not be cumulated with any other aid exempted under this Regulation or de minimis aid fulfilling the conditions laid down in Commission Regulation (EC) No 1998/2006⁽²⁶⁾ or with other Community funding in relation to the same — partly or fully overlapping — eligible costs if such cumulation would result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.

4. By way of derogation from paragraph 3, aid in favour of disabled workers, as foreseen in Articles 32 and 33, may be cumulated with aid exempted under this Regulation in relation to the same eligible costs above the highest applicable threshold under this Regulation, provided that such cumulation does not result in an aid intensity exceeding 100 % of the wage costs over any period for which the workers concerned are employed.

5. As regards the cumulation of aid measures exempted under this Regulation with identifiable eligible costs and aid measures exempted under this Regulation without identifiable eligible costs, the conditions laid down in the second subparagraph shall apply.

Where a target undertaking has received capital under a risk capital measure within the scope of Article 23 and subsequently applies, during the first three years after the first risk capital investment, for aid within the scope of this Regulation, the rele-

vant aid thresholds or maximum eligible amounts under this Regulation will be reduced by 50 % in general and by 20 % for target undertakings located in assisted areas. The reduction shall not exceed the total amount of risk capital received. This reduction does not apply to aid for research and development exempted under Articles 25 to 27.

Article 8

Incentive effect

1. This Regulation shall only exempt aid which has an incentive effect.

Aid shall be considered to have an incentive effect if it enables the beneficiary to carry out activities or projects which it would not have carried out as such in the absence of the aid.

Regional aid shall be considered to have an incentive effect also if, in the absence of the aid, the investment project would not have been carried out in the assisted area concerned.

2. As regards aid to SMEs, covered by this Regulation, the condition laid down in paragraph 1 shall be considered to be fulfilled if, before work on the project or activity has started, the beneficiary has submitted an application for the aid to the Member State concerned.

[3. As regards aid to large enterprises, covered by this Regulation, the condition laid down in paragraph 1 shall be considered to be fulfilled if, in addition to fulfilling the condition laid down in paragraph 2, the Member State has verified, before granting the individual aid concerned, that documentation prepared by the beneficiary establishes the incentive effect of the aid on the basis of one or more of the following criteria:

- (a) the increased size of the project/activity due to the aid;
- (b) the increased scope of the project/activity due to the aid;
- (c) the increased total amount spent by the beneficiary on the project/activity due to the aid.]

4. The conditions laid down in paragraphs 2 [and 3] shall not apply as regards fiscal measures establishing a legal right to aid in accordance with objective criteria and without further exercise of discretion by the Member State if these fiscal measures have been adopted before work on the aided project or activity has started.

5. If the conditions of paragraphs 1 to 4 are not fulfilled, the entire aid measure will not be exempted under this Regulation.

⁽²⁶⁾ OJ L 379, 28.12.2006, p. 5.

Article 9

Transparency and monitoring

1. At the latest 10 working days before granting individual aid Member States shall forward to the Commission a summary of the information regarding such aid in electronic form, via the established Commission IT application and in the form laid down in [Annex III], with a view to its publication in the *Official Journal of the European Union* and on the Commission's website. Within five working days of receipt of that summary, the Commission shall send an acknowledgment of receipt to the Member State with the identification number of the aid measure concerned.

2. As soon as an aid scheme enters into force, or an *ad hoc* individual aid is granted on the basis of this Regulation, Member States shall publish on the internet the full text of such aid measure, indicating the criteria and conditions under which such aid is granted and the identity of the granting authority. The address of the website shall be communicated to the Commission together with the summary of the information regarding the aid required pursuant to paragraph 1. It shall also be contained in the annual report submitted pursuant to paragraph 5.

3. Member States shall refer to the identification number provided by the Commission pursuant to paragraph 1 in each aid granting measure addressed to a final beneficiary, with the exception of aid taking the form of fiscal measures.

4. Whenever individual aid is granted under an existing aid scheme for research and development projects covered by Article 25 and the individual aid exceeds EUR 3 million or whenever individual regional aid is granted, on the basis of an existing aid scheme for large investment projects, which is not individually notifiable pursuant to Article 6, the Member States shall, within 20 working days from the day on which the aid is granted by the competent authority, provide the Commission with the information requested in the standard form laid down in Annex II, via the established IT application.

5. In accordance with Chapter III of Council Regulation (EC) No 794/2004 ⁽²⁷⁾, Member States shall compile a report in electronic form on the application of this Regulation in respect of each whole year or each part of the year during which this Regulation applies.

6. Member States shall maintain detailed records regarding any individual aid or aid scheme exempted under this Regulation. Such records shall contain all information necessary to establish that the conditions laid down in this Regulation, are fulfilled, including information on the status of any undertaking whose entitlement to aid or a bonus depends on its status as an SME, information on the incentive effect of the aid and informa-

tion making it possible to establish the precise amount of eligible costs for the purpose of applying this Regulation.

Records regarding individual aid shall be maintained for 10 years from the date on which the aid was granted. Records regarding an aid scheme shall be maintained for 10 years from the date on which the last aid was granted under such scheme.

7. The Commission shall regularly monitor aid measures of which it has been informed pursuant to paragraph 1.

8. On written request, the Member State concerned shall provide the Commission within the period fixed in the request, with all the information which the Commission considers necessary to monitor the application of this Regulation.

If such information is not provided within that period or a commonly agreed period, the Commission shall send a reminder setting a new deadline for the submission of the information. If, despite such reminder, the Member State concerned does not provide the information requested, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all future aid measures to which this Regulation applies are to be notified to the Commission.

Article 10

Specific conditions applicable to investment aid

1. In order to be considered an eligible cost for the purposes of this Regulation, investments shall consist of the following:

- (a) an investment in tangible and/or intangible assets relating to the setting-up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment; or
- (b) the acquisition of the capital assets directly linked to an establishment, where the establishment has closed or would have closed had it not been purchased, and the assets are bought by an independent investor.

The sole acquisition of the shares of an undertaking shall not constitute investment.

2. In order to be considered eligible costs for the purposes of this Regulation, intangible assets shall fulfil the following conditions:

- (a) they must be used exclusively in the establishment receiving the aid;
- (b) they must be regarded as amortizable assets;

⁽²⁷⁾ OJ L 140, 30.4.2004, p. 1.

- (c) they must be purchased from third parties under market conditions, without the acquirer being in a position to exercise control, within the meaning of Article 3 of Council Regulation (EC) No 139/2004⁽²⁸⁾, on the seller, or vice versa;
- (d) they must be included in the assets of the undertaking and remain in the establishment receiving the aid for at least five years or three years in the case of SMEs.
3. In order to be considered an eligible cost for the purposes of this Regulation, employment directly created by an investment project shall fulfil the following conditions:
- (a) employment shall be created within three years of completion of the investment; and
- (b) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous twelve months; and
- (c) the employment created shall be maintained during a minimum period of five years in case of large enterprise and a minimum period of three years in case of SMEs.

CHAPTER II

SPECIFIC PROVISIONS FOR THE DIFFERENT CATEGORIES OF AID

SECTION 1

Regional Aid

Article 11

Regional investment and employment aid

1. Regional investment and employment aid schemes shall be compatible with the common market within the meaning of Article 87(3) of the EC Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in this Article are fulfilled.

Ad hoc aid which is only used to supplement aid granted on the basis of regional investment and employment aid schemes and which does not exceed 50 % of the total aid to be granted for the investment, 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 the *ad hoc* aid awarded directly fulfils all the conditions of this Regulation.

2. The aid shall be granted in regions eligible for regional aid, as determined in the approved regional aid map for the Member State concerned for the period 2007-2013. The investment must be maintained in the recipient region for at least five years, or three years in the case of SMEs, after the whole investment

has been completed. This shall not prevent the replacement of plant or equipment which has become out-dated due to rapid technological change, provided the economic activity is retained in the region concerned for the minimum period.

3. The aid intensity in present gross grant equivalent shall not exceed the regional aid threshold which is in force at the time the aid is granted for the region in which the investment takes place, as determined in the approved regional aid map for the Member State concerned for the period 2007-2013.

4. With the exception of aid granted in favour of large investment projects and regional aid for the transport sector, the thresholds fixed in paragraph 3 may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

5. The thresholds fixed in paragraph 3 shall apply to the intensity of the aid calculated either as a percentage of the investment's eligible tangible and intangible costs or as a percentage of the estimated wage costs of the person hired, calculated over a period of two years, for employment directly created by the investment project or a combination thereof, provided that the aid does not exceed the most favourable amount resulting from the application of either calculation.

6. Where the aid is calculated on the basis of tangible or intangible investment costs, or of acquisition costs in case of takeovers, the beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support. However, where the maximum aid intensity approved under the national regional aid map for the Member State concerned, increased in accordance with paragraph 4, exceeds 75 %, the financial contribution of the beneficiary is reduced accordingly. If the aid is calculated on the basis of tangible or intangible investment costs, the conditions set out in paragraph 7 shall also apply.

7. In the case of acquisition of an establishment, only the costs of buying assets from third parties shall be taken into consideration, provided that the transaction has taken place under market conditions. Where the acquisition is accompanied by other investment, the costs relating to the latter shall be added to the cost of the purchase.

Costs related to the acquisition of assets under lease, other than land and buildings, shall only be taken into consideration if the lease takes the form of financial leasing and contains an obligation to purchase the asset at the expiry of the term of the lease; for the lease of land and buildings, the lease must continue for at least five years after the anticipated date of the completion of the investment project or three years in the case of SMEs.

⁽²⁸⁾ OJ L 24, 29.1.2004, p. 1.

Except in the case of SMEs and takeovers, the assets acquired shall be new. In the case of takeovers, assets for the acquisition of which aid has already been granted prior to the purchase shall be deducted. For SMEs, the full costs of investments in intangible assets may also be taken into consideration. For large enterprises, such costs are eligible only up to a limit of 50 % of the total eligible investment costs for the project.

8. Where the aid is calculated on the basis of wage costs, the employment shall be directly created by the investment project.

9. By way of derogation from paragraphs 3 and 4, the maximum aid intensities for investments in the processing and marketing of agricultural products may be set at:

- (a) 50 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty and 40 % of eligible investments in other regions eligible for regional aid, as determined in the regional aid map approved for the Member States concerned for the period 2007-2013, if the beneficiary is a small or medium-sized enterprise;
- (b) 25 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty and 20 % of eligible investments in other regions eligible for regional aid, as determined in the regional aid map approved for the Member States concerned for the period 2007-2013, if the beneficiary has less than 750 employees and/or less than EUR 200 million turnover, calculated in accordance with Annex I.

10. In order to prevent a large investment being artificially divided into sub-projects, a large investment project will be considered to be a single investment project when investments are undertaken during a period of three years by the same undertaking or undertakings and consists of fixed assets combined in an economically indivisible way.

SECTION 2

SME Investment and Employment Aid

Article 12

SME Investment and employment Aid

1. Investment aid in favour of small and medium-sized enterprises 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 the conditions laid down in paragraphs 2, 3 and 4 are fulfilled.

2. The aid intensity shall not exceed:

- (a) 20 % in the case of small enterprises;
- (b) 10 % in the case of medium-sized enterprises.

3. The eligible costs shall be the following:

- (a) the investment's eligible tangible and intangible costs; or
- (b) the estimated wage costs of employment directly created by the investment project, calculated over a period of two years.

4. Where the investment concerns the processing and marketing of agricultural products listed in Annex I to the Treaty, the aid intensity shall not exceed:

- (a) 75 % of eligible investments in the outermost regions;
- (b) 65 % of eligible investments in the smaller Aegean Islands within the meaning of Council Regulation (EEC) No 2019/93 ⁽²⁹⁾;
- (c) 50 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty;
- (d) 40 % of eligible investments in all other regions.

SECTION 3

Aid for Environmental Protection

Article 13

Definitions

For the purposes of this section, the following definitions shall apply:

- (a) 'environmental protection' means any action designed to remedy or prevent damage to physical surroundings or natural resources by the beneficiary's own activities, to reduce risk of such damage or to lead to a more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy;
- (b) 'energy-saving measures' means action which enables undertakings to reduce the amount of energy used in their production cycle, to the exclusion of the design and manufacture of machines or means of transport which can be operated with fewer natural resources and to the exclusion of action taken with a view to improving safety or hygiene;
- (c) 'Community standard' means a mandatory Community standard setting the level to be attained in environmental terms. Obligations provided under Council Directive No 96/61/EC ⁽³⁰⁾ shall not be regarded as a Community standard for the purpose of this regulation;
- (d) 'renewable energy sources' means renewable, non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydro-power installations with a capacity below 10 MW, direct biomass burning, landfill gas, sewage treatment plant gas and biogases);

⁽²⁹⁾ OJ L 184, 27.7.1993, p. 1.

⁽³⁰⁾ OJ L 257, 10.10.1996, p. 26.

- (e) 'energy generation from renewable energy sources' means energy generated by processes using only renewable energy sources, as well as the proportion in terms of calorific value of energy produced from renewable energy sources in hybrid installations — like co-firing — also using conventional energy sources, including renewable electricity used for filling storage systems and excluding electricity produced as a result of storage systems;
- (f) 'cogeneration' means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
- (g) 'high efficiency cogeneration' means cogeneration meeting the criteria of Annex II and Annex III to Directive 2004/8/EC of the European Parliament and of the Council ⁽³¹⁾ and satisfying the harmonised efficiency reference values as defined in the Article 4 of that Directive;
- (h) 'environmental tax' means a tax whose specific taxable base has a clear negative effect on the environment and which seeks to tax certain goods or services so that the environmental costs may be included in their price and/or so that producers and consumers are oriented towards activities which better respect the environment;
- (i) 'tangible assets': for the purpose of section 3 of this regulation and by derogation to Article 2(9), road freight transport means and equipment shall also be considered as eligible tangible assets.

Article 14

Investment aid for environmental protection improving on Community standards

1. Investment aid for environmental protection shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 to 5 are fulfilled.
2. The aided investment shall fulfil one of the following conditions:
 - (a) the investment enables the beneficiary to reduce the pollution resulting from its activities by means of improving on the Community standards applicable, irrespective of the presence of mandatory national standards that are more stringent than the Community standard;
 - (b) the investment enables the beneficiary to reduce the pollution resulting from its existing activities in the absence of Community standards.

⁽³¹⁾ OJL 52, 21.2.2004, p. 50.

3. The aid intensity shall not exceed 25 % ⁽³²⁾.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

4. The eligible costs shall be the extra investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards.
5. Aid for investments relating to waste management shall not be exempted under this Article.

Article 15

Aid for early adaptation to future Community standards for SMEs

1. Aid allowing SMEs to comply with new Community standards improving on environmental protection shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2, 3 and 4 are fulfilled.
2. The Community standards shall have been adopted, but the date of mandatory transposition must not have expired.

The investment shall be implemented and finalised at least one year before the mandatory date of transposition.

3. The aid intensity shall not exceed 15 percentage points ⁽³³⁾ for small enterprises and 10 percentage points ⁽³⁴⁾ for medium-sized enterprises.
4. The eligible costs shall be the extra investment costs necessary to achieve the level of environmental protection required by the Community standard.

Article 16

Environmental aid for investment in energy saving measures

1. Environmental investment aid enabling undertakings to realise energy savings shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in the paragraphs 2 and 3 are fulfilled.

⁽³²⁾ This proposal does not prejudice the Commission positions in the context of the ongoing revision of the environmental guidelines, in particular with regard to intensities. In any event, given the simplified calculation methods retained for the purposes of this Regulation, the maximum aid intensities provided under this Regulation will necessarily have to stay below the maximum aid intensities provided under the guidelines which are based on more detailed calculation methods.

⁽³³⁾ See footnote 32.

⁽³⁴⁾ See footnote 32.

2. The aid intensity shall not exceed 35 % ⁽³⁵⁾.

Article 19

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

3. The eligible costs shall be the extra investment costs necessary to achieve a level of energy savings higher than the level required by the Community standards. The eligible costs shall be calculated on the basis of the extra investment costs minus the operating benefits accruing from the reduced energy consumption during the first five years of the life of the investment.

Article 17

Environmental aid for investment in high efficiency cogeneration

1. Environmental aid enabling undertakings to invest in high efficiency cogeneration shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 and 3 are fulfilled.

2. The aid intensity shall not exceed 35 % ⁽³⁶⁾.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

3. The eligible costs shall be the extra investment costs necessary to realise a high efficiency cogeneration plant.

Article 18

Environmental aid for investments to exploit renewable energy sources

1. Environmental aid enabling undertakings to realise investments for the production of energy from renewable energy sources shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 and 3 are fulfilled.

2. The aid intensity shall not exceed 35 % ⁽³⁷⁾.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

3. The eligible costs shall be the extra costs borne by the beneficiary compared with a conventional power plant or with a conventional heating system with the same capacity in terms of the effective production of energy.

⁽³⁵⁾ See footnote 32.

⁽³⁶⁾ See footnote 32.

⁽³⁷⁾ See footnote 32.

Environmental aid in the form of tax reductions

1. Environmental aid in the form of tax reduction on environmental tax schemes fulfilling the conditions of Council Directive 2003/96/EC ⁽³⁸⁾ shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in paragraphs 2 and 3 are fulfilled.

2. The aid shall not exceed the difference between the Community minimum tax level and the national tax without reduction.

The Community minimum tax level shall be considered to be the minimum level of taxation foreseen in Directive 2003/96/EC.

3. Tax reductions shall be granted for periods no longer than ten years.

SECTION 4

Aid for consultancy in favour of SMEs and SME participation in fairs

Article 20

Aid for consultancy in favour of SMEs

1. Aid to small and medium-sized enterprises for consultancy 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 the conditions laid down in paragraphs 2 and 3 are fulfilled.

2. The aid intensity shall not exceed 50 %.

3. The eligible costs shall be the consultancy costs of services provided by outside consultants.

The services concerned shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services, or advertising.

Article 21

Aid for SME participation in fairs

1. Aid to small and medium-sized enterprises for participation in fairs 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 the conditions laid down in paragraphs 2 and 3 are fulfilled.

⁽³⁸⁾ OJL 283, 31.10.2003, p. 51.

2. The aid intensity shall not exceed 50 %.
3. The eligible costs shall be the costs incurred for renting, setting up and running the stand for the first participation of an undertaking in a particular fair or exhibition.

SECTION 5

Aid in the form of risk capital

Article 22

Definitions

For the purposes of this section, the following definitions shall apply:

- (a) 'equity' means ownership interest in an undertaking, represented by the shares issued to investors;
- (b) 'quasi-equity' means financial instruments whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and are unsecured in the event of default;
- (c) 'private equity' means private — as opposed to public — equity or quasi-equity investment in undertakings not listed on a stock-market, including venture capital;
- (d) 'seed capital' means financing provided to study, assess and develop an initial concept, preceding the start-up phase;
- (e) 'start-up capital' means financing provided to undertakings, which have not sold their product or service commercially and are not yet generating a profit for product development and initial marketing;
- (f) 'expansion capital' means financing provided for the growth and expansion of an undertaking, which may or may not break even or trade profitably, for the purposes of increasing production capacity, market or product development or the provision of additional working capital;
- (g) 'exit strategy' means a strategy for the liquidation of holdings by a venture capital or private equity fund in accordance with a plan to achieve maximum return, including trade sale, write-offs, repayment of preference shares/loans, sale to another venture capitalist, sale to a financial institution and sale by public offering, including Initial Public Offerings;
- (h) 'target undertaking' means an undertaking in which an investor or investment fund is considering investing.

Article 23

Aid in the form of risk capital

1. Risk capital aid schemes in favour of SMEs 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 the conditions laid down in paragraphs 2 to 8 are fulfilled.

2. The aid shall take the form of participation into a profit driven investment fund, managed on a commercial basis.

3. The tranches of finance realised by the investment fund shall not exceed EUR 1 000 000 per target undertaking over any period of twelve months.

4. For SMEs located in assisted areas, as well as for small undertakings located in non-assisted areas, the risk capital measure shall be restricted to providing financing for seed capital, start-up capital and/or expansion capital. For medium-sized undertakings located in non-assisted areas, the risk capital measure shall be restricted to providing financing for seed capital and/or start-up capital, to the exclusion of expansion capital.

5. The risk capital measure shall provide at least 70 % of its total budget in the form of equity or quasi-equity into the target undertakings. [The maximum duration of the period during which aid may be granted on the basis of the risk capital aid scheme to target undertakings shall be limited to six years.]

6. At least 50 % of the funding of the investment funds shall be provided through funding by private equity, or at least 30 % in the case of investment funds targeting exclusively SMEs located in assisted areas. The providers of private equity shall be selected by the Member State either on the basis of a public tender, or on the basis of an open invitation to participate in investment funds if the Member State has no discretionary powers of limiting the number of private equity investors participating.

7. To ensure that the risk capital measure is profit-driven, the following conditions shall be fulfilled:

- (a) a business plan shall exist for each investment, containing details of product, sales and profitability development and establishing the *ex ante* viability of the project; and
- (b) a clear and realistic exit strategy shall exist for each investment.

8. To ensure that the management of the investment fund is effected on a commercial basis, the following conditions shall be fulfilled:

- (a) there shall be an agreement between a professional fund manager or a management company and participants in the fund, providing that the manager's remuneration is linked to performance and setting out the objectives of the fund and proposed timing of investments; and

- (b) private equity investors shall be represented in the fund investment structure, such as through an investors' or advisory committee; and
- (c) best practices and regulatory supervision shall apply to the management of funds.

SECTION 6

Aid for research and development

Article 24

Definitions

For the purposes of this section, the following definitions shall apply:

- (a) 'research organisation' means an entity, such as a university or research institute, irrespective of its legal status (organised under public or private law) or way of financing whose primary goal is to conduct fundamental research, industrial research or experimental development and to disseminate their results by way of teaching, publication or technology transfer. All profits must be reinvested in these activities, the dissemination of their results or teaching. Undertakings that can exert influence upon such an organisation, for instance in their capacity of shareholders or members of the organisation, shall enjoy no preferential access to the research capacities of such an organisation or to the research results generated by it;
- (b) 'fundamental research' means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view;
- (c) 'industrial research' means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts to complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of prototypes;
- (d) 'experimental development' means the acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services. These may also include, for instance, other activities aiming at the conceptual definition, planning and documentation of new products, processes or services. The activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use.

The development of commercially usable prototypes and pilot projects is also included where the prototype is neces-

sarily the final commercial product and where it is too expensive to produce for it to be used only for demonstration and validation purposes. In case of a subsequent commercial use of demonstration or pilot projects, any revenue generated from such use must be deducted from the eligible costs.

The experimental production and testing of products, processes and services are also eligible, provided that these cannot be used or transformed to be used in industrial applications or commercially.

Experimental development does not include routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements.

Article 25

Aid for research and development projects

1. Aid for research and development projects 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 the conditions laid down in paragraphs 2 to 5 are fulfilled.
2. The aided part of the research project shall completely fall within one or more of the following research categories:
 - (a) fundamental research;
 - (b) industrial research;
 - (c) experimental development.

When a project encompasses different tasks, each task shall be qualified as falling under one of the categories listed in the first subparagraph, or as not falling under any of those categories.

3. The basic aid intensity shall not exceed:
 - (a) 100 % for fundamental research;
 - (b) 50 % for industrial research;
 - (c) 25 % for experimental development.

The aid intensity shall be established for each beneficiary of aid, including in a collaboration project, as provided in paragraph 4(b)(i).

In the case of State aid for a research and development project being carried out in collaboration between research organisations and undertakings, the combined aid deriving from direct government support for a specific research project and, where they constitute aid, contributions from research organisations to that project may not exceed the applicable aid intensities for each benefiting undertaking.

4. The basic aid intensities set for industrial research and experimental development in paragraph 3 may be increased as follows:

- (a) where the aid is given to SMEs, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises; and
- (b) a bonus of 15 percentage points may be added, up to a maximum aid intensity of 80 %, if:

- (i) the project involves effective collaboration between at least two undertakings which are independent of each other and the following conditions are fulfilled:

- no single undertaking bears more than 70 % of the eligible costs of the collaboration project,
- the project involves collaboration with at least one SME or is carried out in at least two different Member States; or

- (ii) the project involves effective collaboration between an undertaking and a research organisation and the following conditions are fulfilled:

- the research organisation bears at least 10 % of the eligible project costs, and
- the research organisation has the right to publish the results of the research projects insofar as they stem from research implemented by that organisation; or

- (iii) in the case of industrial research, the results of the project are widely disseminated through technical and scientific conferences or through publication in scientific or technical journals or in open access repositories (databases where raw research data can be accessed by anyone, or through free or open source software.

For the purposes of points (b)(i) and (ii) of the first subparagraph subcontracting shall not be considered to be effective collaboration.

5. The eligible costs shall be the following:

- (a) personnel costs (researchers, technicians and other supporting staff to the extent employed on the research project);
- (b) costs of instruments and equipment to the extent and for the period used for the research project. If such instruments and equipment are not used for their full life for the research project, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice, are considered as eligible;
- (c) costs for building and land, to the extent and for the duration used for the research project. With regard to buildings,

only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;

- (d) cost of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices, where the transaction has been carried out at arm's length and there is no element of collusion involved, as well as costs of consultancy and equivalent services used exclusively for the research activity;

- (e) additional overheads incurred directly as a result of the research project;

- (f) other operating expenses, including costs of materials, supplies and similar products incurred directly as a result of the research activity.

6. All eligible costs shall be allocated to a specific category of research and development.

Article 26

Aid for technical feasibility studies

1. Aid for technical feasibility studies preparatory to industrial research or experimental development activities shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 and 3 are fulfilled.

2. The aid intensity shall not exceed:

- (a) for SMEs, 75 % for studies preparatory to industrial research activities and 50 % for studies preparatory to experimental development activities;

- (b) for large enterprises, 65 % for studies preparatory to industrial research activities and 40 % for studies preparatory to experimental development activities.

3. The eligible costs shall be the costs of the study.

Article 27

Aid for industrial property rights costs for SMEs

1. Aid to SMEs for the costs associated with obtaining and validating patents and other industrial property rights shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in paragraphs 2 and 3 are fulfilled.

2. The aid intensity shall not exceed the intensity which would have qualified as project aid covered by Article 25(3) and (4), in respect of the research activities which first led to the industrial property rights concerned.

3. The eligible costs shall be the following:

- (a) all costs preceding the grant of the right in the first jurisdiction, including costs relating to the preparation, filing and prosecution of the application as well as costs incurred in renewing the application before the right has been granted;
- (b) translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdictions;
- (c) costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right is granted.

Article 28

Aid for research and development in the agricultural sector

1. Aid for research and development concerning products listed in Annex I to the EC Treaty shall be compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and shall be exempt from the notification requirement of Article 88 (3) of the EC Treaty, provided all the following conditions are fulfilled:

- (a) it is of general interest to the particular sector or sub-sector concerned;
- (b) information that research will be carried out, and with which goal, is published on the internet, prior to the commencement of the research. An approximate date of expected results and their place of publication on the internet, as well as a mention that the result will be available at no cost, must be included;
- (c) the results of the research are made available on internet, for a period of at least 5 years. This information on the internet shall be published no later than any information which may be given to members of any particular organisation;
- (d) aid shall be granted directly to the researching institution or body and must not involve the direct granting of non-research related aid to a company producing, processing or marketing agricultural products, nor provide price support to producers of such products.

2. The aid intensity shall not exceed 100 %.

3. Aid for research and development concerning products listed in Annex I to the EC and not fulfilling the conditions laid down in paragraph 1 shall be compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and shall be exempt from the notification requirement of

Article 88(3) of the Treaty, provided the conditions laid down in Articles 24 to 27 are fulfilled.

SECTION 7

Training aid

Article 29

Definitions

For the purposes of this section, the following definitions shall apply:

1. 'specific training' means training involving tuition directly and principally applicable to the employee's present or future position in the undertaking and providing qualifications which are not or only to a limited extent transferable to other undertakings or fields of work;
2. 'general training' means training involving tuition which is not applicable directly and principally to the employee's present or future position in the undertaking, but which provides qualifications that are largely transferable to other undertakings or fields of work.

Training shall be considered 'general' if, for example:

- (a) it is jointly organised by different independent undertakings, or if employees of different undertakings may avail themselves of the training; or
- (b) 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.

Article 30

Training aid

1. Training aid 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 the conditions laid down in paragraphs 2, 3 and 4 are fulfilled.

2. The aid intensity shall not exceed:

- (a) 25 % for specific training; and
- (b) 60 % for general training.

However, the aid intensity may be increased, up to a maximum aid intensity of 80 %, as follows:

- (a) by 10 percentage points if the training is given to disabled or disadvantaged workers;
- (b) by 10 percentage points if the aid is awarded to medium-sized enterprises and by 20 percentage points if the aid is awarded to small enterprises.

3. 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 shall apply.

4. The eligible costs of a training aid project shall be:

- (a) trainers' personnel costs;
- (b) trainers' and trainees' travel expenses, including accommodation;
- (c) other current expenses such as materials and supplies directly related to the project;
- (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 and general indirect costs (administrative costs, rent, overheads) up to the amount of the total of the other eligible costs referred to in (a) to (e). As regards the former type of costs, only the hours during which the trainees actually participate in the training, after deduction of any productive hours, may be taken into account.

SECTION 8

Aid for disadvantaged and disabled workers

Article 31

Aid for the recruitment of disadvantaged workers in the form of wage subsidies

1. Aid schemes for the recruitment of disadvantaged workers 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 the conditions laid down in paragraphs 2 to 5 are fulfilled.

2. The aid intensity shall not exceed 50 % of the eligible costs.

3. Eligible costs shall be the wage costs over a maximum period of 12 months following recruitment.

4. Where the recruitment does not represent a net increase in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

5. Except in the case of lawful dismissal for misconduct, the disadvantaged worker shall be entitled to continuous employment for a minimum period of 12 months. By way of derogation, Member States may limit the minimum period of employment consistent with their national legislation governing employment contracts, in which case the aid shall be reduced *pro rata* accordingly.

Article 32

Aid for the employment of disabled workers in the form of wage subsidies

1. Aid schemes for the employment of disabled workers in the form of wage subsidies 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 the conditions laid down in paragraphs 2 to 5 are fulfilled.

2. The aid intensity shall not exceed 60 % of the eligible costs.

3. Eligible costs shall be the wage costs over any given duration during which the disabled worker is being employed.

4. Where the recruitment does not represent a net increase in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

5. Except in the case of lawful dismissal for misconduct the disabled workers shall be entitled to continuous employment for a minimum period of 12 months. By way of derogation, Member States may limit the minimum period of employment consistent with their national legislation governing employment contracts, in which case the aid shall be reduced *pro rata* accordingly.

Article 33

Aid for the employment of disabled workers compensating for additional expenses

1. Aid schemes for compensating the additional costs of employing disabled workers 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 the conditions laid down in paragraphs 2 and 3 are fulfilled.

2. The aid intensity shall not exceed 100 % of the eligible costs.

3. Eligible costs shall be costs other than wage costs, which the employer has to bear and which are additional to those which the undertaking would have incurred if employing workers who are not disabled, over any given duration during which the disabled worker is being employed.

The following costs shall be eligible:

- (a) costs of adapting premises;
- (b) costs of employing staff for time spent solely on the assistance of the disabled workers;
- (c) costs of adapting or acquiring equipment, or acquiring and validating software for their use by disabled workers, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred if employing workers who are not disabled;
- (d) where the beneficiary undertaking provides sheltered employment, the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport which result directly from the employment of disabled workers;
- (e) where the beneficiary provides supported employment, any costs of administration and transport which result directly from the employment of disabled workers.

CHAPTER III

FINAL PROVISIONS

Article 34

Repeal

Regulation (EC) No 70/2001, Regulation (EC) No 68/2001, Regulation (EC) No 2204/2002 and Regulation (EC) No 1628/2006 are repealed.

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

Done at Brussels, ...

Any references to the repealed Regulations shall be construed as references to this Regulation.

Article 35

Transitional provisions

1. This Regulation shall apply to aid granted before its entry into force, if the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 9, paragraphs 1 to 3.

2. Any aid granted before [31 December 2008], which does not fulfil the conditions laid down in this Regulation but fulfils the conditions laid down in Regulation (EC) No 70/2001, Regulation (EC) No 68/2001, Regulation (EC) No 2204/2002 or Regulation (EC) No 1628/2006 shall be exempt from the notification requirement of Article 88(3) of the Treaty.

Any other aid granted before the entry into force of this Regulation aid which fulfils neither the conditions laid down in this Regulation nor the conditions laid down in one of the Regulations mentioned in the previous paragraph, will be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

3. At the end of the period of validity of this Regulation, any aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months, with the exception of regional aid schemes. The exemption of regional aid schemes under Regulation (EC) No 1628/2006 shall expire at the date of expiry of the approved regional aid maps.

Article 36

Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2013.

For the Commission

...

Member of the Commission

ANNEX I

DEFINITION OF SME

Article 1

Enterprise

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

Article 2

Staff headcount and financial thresholds determining enterprise categories

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employ fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

Article 3

Types of enterprise taken into consideration in calculating staff numbers and financial amounts

1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

- (a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;
 - (b) universities or non-profit research centres;
 - (c) institutional investors, including regional development funds;
 - (d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.
3. 'Linked enterprises' are enterprises which have any of the following relationships with each other:
 - (a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
 - (b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
 - (c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
 - (d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as stakeholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the thresholds set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Community rules.

Article 4

Data used for the staff headcount and the financial amounts and reference period

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.

2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive accounting periods.

3. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

Article 5

Staff headcount

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

- (a) employees;
- (b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
- (c) owner-managers;
- (d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

*Article 6***Establishing the data of an enterprise**

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph are added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

ANNEX II

FORM FOR THE PROVISION OF SUMMARY INFORMATION FOR RESEARCH AND DEVELOPMENT UNDER THE EXTENDED REPORTING OBLIGATION LAID DOWN IN ARTICLE 9(4)

1. Aid in favour of (name of the undertaking(s) receiving the aid, SME or not):
2. Aid scheme reference (Commission reference of the existing scheme or schemes under which the aid is awarded):
3. Public entity/entities providing the assistance (name and co-ordinates of the granting authority or authorities):
4. Member State where the aided project or measure is carried out:
5. Type of project or measure:
6. Short description of project or measure:
7. Where applicable, eligible costs (in EUR):
8. Discounted aid amount (gross) in EUR:
9. Aid intensity (% in gross grant equivalent):
10. Conditions attached to the payment of the proposed aid (if any):
11. Planned start and end date of the project or measure:
12. Date of award of the aid:

FORM FOR THE PROVISION OF SUMMARY INFORMATION FOR AID FOR LARGE INVESTMENT PROJECTS WHERE THE AID DOES NOT EXCEED THE THRESHOLDS REFERRED TO IN ARTICLE 9(4)

1. Aid in favour of (name of the undertaking(s) receiving the aid):
 2. Aid scheme reference (Commission reference of the existing scheme or schemes under which the aid is awarded):
 3. Public entity/entities providing the assistance (name and co-ordinates of the granting authority or authorities):
 4. Member State where the investment takes place:
 5. Region (NUTS 3 level) where the investment takes place:
 6. Municipality (previously NUTS 5 level, now LAU 2) where the investment takes place:
 7. Type of project (setting-up of a new establishment, extension of existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment):
 8. Products manufactured or services provided on the basis of the investment project (with PRODCOM/NACE nomenclature or CPA nomenclature for projects in the service sectors):
 9. Short description of investment project:
 10. Discounted eligible cost of investment project (in EUR):
 11. Discounted aid amount (gross) in EUR:
 12. Aid intensity (% in GGE):
 13. Conditions attached to the payment of the proposed assistance (if any):
 14. Planned start and end date of the project:
 15. Date of award of the aid:
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