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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

(OJ L 10, 13.1.2001, p. 33)

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► <u>M1</u>	Commission Regulation (EC) No 364/2004 of 25 February 2004	L 63	22	28.2.2004
► <u>M2</u>	Commission Regulation (EC) No 1857/2006 of 15 December 2006	L 358	3	16.12.2006
► <u>M3</u>	Commission Regulation (EC) No 1976/2006 of 20 December 2006	L 368	85	23.12.2006

**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**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ⁽¹⁾, and in particular points (a)(i) and (b) of Article 1(1) thereof,

Having published a draft of this Regulation ⁽²⁾,

Having consulted the Advisory Committee on State Aid,

Whereas:

- (1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty, that under certain conditions aid to small and medium-sized enterprises is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.
- (2) Regulation (EC) No 994/98 also empowers the Commission to declare, in accordance with Article 87 of the Treaty, that aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is compatible with the common market and is not subject to the notification requirement of Article 88(3) of the Treaty.
- (3) The Commission has applied Articles 87 and 88 of the Treaty to small and medium-sized enterprises in and outside assisted areas in numerous decisions and has also stated its policy, most recently in the Community guidelines on State aid for small and medium-sized enterprises ⁽³⁾ and in the guidelines on national regional aid ⁽⁴⁾. In the light of the Commission's considerable experience in applying those Articles to small and medium-sized enterprises and in the light of the general texts relating to small and medium-sized enterprises and to regional aid issued by the Commission on the basis of those provisions, it is appropriate, with a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, that the Commission should make use of the powers conferred by Regulation (EC) No 994/98.
- (4) This Regulation is without prejudice to the possibility for Member States of notifying aid to small and medium-sized enterprises. Such notifications will be assessed by the Commission in particular in the light of the criteria set out in this Regulation. The guidelines on State aid for small and medium-sized enterprises should be abolished from the date of entry into force of this Regulation, since their contents are replaced by this Regulation.
- (5) Small and medium-sized enterprises play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive. However, their development may be limited by market imperfections. They often have difficulties in obtaining capital or credit, given the risk-shy nature of certain financial markets and the limited guarantees that they may be able to offer. Their limited resources may also restrict their access to

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 89, 28.3.2000, p. 15.

⁽³⁾ OJ C 213, 23.7.1996, p. 4.

⁽⁴⁾ OJ C 74, 10.3.1998, p. 9.

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information, notably regarding new technology and potential markets. Having regard to those considerations, the purpose of the aid exempted by this Regulation should be to facilitate the development of the economic activities of small and medium-sized enterprises, provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest.

- (6) This Regulation should exempt any aid that meets all the relevant requirements of this Regulation, and any aid scheme, provided that any aid that could be granted under such scheme meets all the relevant requirements of this Regulation. With a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, aid schemes and individual grants outside any aid scheme should contain an express reference to this Regulation.
- (7) This Regulation should apply without prejudice to special rules in regulations and directives concerning State aid in certain sectors, such as currently exist for shipbuilding, and should not apply to agriculture and fisheries and aquaculture.
- (8) In order to eliminate differences that might give rise to distortions of competition, in order to facilitate coordination between different Community and national initiatives concerning small and medium-sized enterprises, and for reasons of administrative clarity and legal certainty, the definition of 'small and medium-sized enterprises' used in this Regulation should be that laid down in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises⁽¹⁾. That definition was also used in the Community guidelines on State aid for small and medium-sized enterprises⁽²⁾.
- (9) In accordance with the established practice of the Commission, and with a view to better ensuring that aid is proportionate and limited to the amount necessary, thresholds should be expressed in terms of aid intensities in relation to a set of eligible costs, rather than in terms of maximum aid amounts.
- (10) In order to determine whether or not aid is compatible with the common market pursuant to this Regulation, it is necessary to take into consideration the aid intensity and thus the aid amount expressed as a grant equivalent. The calculation of the grant equivalent of aid payable in several instalments and aid in the form of a soft loan requires the use of market interest rates prevailing at the time of grant. With a view to a uniform, transparent, and simple application of the State aid rules, the market rates for the purposes of this Regulation should be deemed to be the reference rates, provided that, in the case of a soft loan, the loan is backed by normal security and does not involve abnormal risk. The reference rates should be those which are periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Communities* and on the Internet.
- (11) Having regard to the differences between small enterprises and medium-sized enterprises, different ceilings of aid intensity should be set for small enterprises and for medium-sized enterprises.
- (12) The ceilings of aid intensity should be fixed, in the light of the Commission's experience, at a level that strikes the appropriate balance between minimising distortions of competition in the aided sector and the objective of facilitating the development of the economic activities of small and medium-sized enterprises.

⁽¹⁾ OJ L 107, 30.4.1996, p. 4.

⁽²⁾ See footnote 3.

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- (13) It is appropriate to establish further conditions that should be fulfilled by any aid scheme or individual aid exempted by this Regulation. Having regard to Article 87(3)(c) of the Treaty, such aid should not normally have the sole effect of continuously or periodically reducing the operating costs which the beneficiary would normally have to bear, and should be proportionate to the handicaps that have to be overcome in order to secure the socio-economic benefits deemed to be in the Community interest. It is therefore appropriate to limit the scope of this Regulation to aid granted in relation to certain tangible and intangible investments, certain services supplied to beneficiaries and certain other activities. In the light of Community overcapacity in the transport sector, with the exception of railway rolling stock, eligible investment costs for enterprises having their main economic activity in the transport sector should not include transport means and equipment.
- (14) This Regulation should exempt aid to small and medium-sized enterprises regardless of location. Investment and job creation can contribute to the economic development of less favoured regions in the Community. Small and medium-sized enterprises in those regions suffer from both the structural disadvantage of the location and the difficulties deriving from their size. It is therefore appropriate that small and medium-sized enterprises in assisted regions should benefit from higher ceilings.
- (15) In order not to favour the capital factor of an investment over the labour factor, provision should be made for the possibility of measuring aid to investment on the basis of either the costs of the investment or the costs of new employment linked to the carrying-out of the investment project.
- (16) In the light of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures⁽¹⁾, this Regulation should not exempt export aid or aid favouring domestic over imported products. Aid towards the costs of participation 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.
- (17) Having regard to the need to strike the appropriate balance between minimising distortions of competition in the aided sector and the objectives of this Regulation, it should not exempt individual aid grants which exceed a fixed maximum amount, whether or not made under an aid scheme exempted by this Regulation.
- (18) In order to ensure that the aid is necessary and acts as an incentive to develop certain activities, this Regulation should not exempt aid for activities in which the beneficiary would already engage under market conditions alone.
- (19) This Regulation should not exempt aid cumulated with other State aid, including aid granted by national, regional or local authorities, or with Community assistance, in relation to the same eligible costs, when such cumulation exceeds the thresholds fixed in this Regulation.
- (20) In order to ensure transparency and effective monitoring, in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard format in which Member States should provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme is implemented or an individual aid outside such schemes is granted, with a view to publication in the *Official Journal of the European Communities*. For the same reasons, it is appropriate to establish rules concerning the records that Member

⁽¹⁾ OJ L 336, 23.12.1994, p. 156.

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States should keep regarding the aid exempted by this Regulation. For the purposes of the annual report to be submitted to the Commission by Member States, it is appropriate for the Commission to establish its specific requirements, including, in view of the wide availability of the necessary technology, information in computerised form.

- (21) Having regard to 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 six months,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. Without prejudice to special Community Regulations or Directives under the EC Treaty governing the granting of State aid in specific sectors, whether more or less restrictive than this Regulation, this Regulation applies to aid granted to small and medium-sized enterprises in all sectors.

2. This Regulation shall not apply:

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- (a) to fishery and aquaculture products covered by Council Regulation (EC) No 104/2000⁽¹⁾ and to activities linked to the primary production (farming) of agricultural products; to the manufacture and marketing of products intended to imitate or substitute for milk and milk products;

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- (b) to aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- (c) to aid contingent upon the use of domestic over imported goods;

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- (d) to aid falling within the scope of Council Regulation (EC) No 1407/2002⁽²⁾.

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Article 2

Definitions

For the purpose of this Regulation:

- (a) 'aid' shall mean any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
- (b) 'small and medium-sized enterprises' shall mean enterprises as defined in Annex I;
- (c) 'investment in tangible assets' shall mean an investment in fixed physical assets relating to the creation of a new establishment, the extension of an existing establishment, or the engagement in an activity involving a fundamental change in the product or production process of an existing establishment (in particular through rationalisation, diversification or modernisation). An

⁽¹⁾ OJ L 17, 21.1.2000, p. 22.

⁽²⁾ OJ L 205, 2.8.2002, p. 1.

▼ B

- investment in fixed assets undertaken in the form of the takeover of an establishment which has closed or which would have closed had it not been purchased shall also be regarded as tangible investment;
- (d) ‘investment in intangible assets’ shall mean investment in transfer of technology by the acquisition of patent rights, licences, know-how or unpatented technical knowledge;
- (e) ‘gross aid intensity’ shall mean the aid amount expressed as a percentage of the project's eligible costs. All figures used shall be taken before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid. Aid payable in several instalments shall be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in a soft loan shall be the reference rate applicable at the time of grant.

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For aid for research and development (R&D), the gross aid intensity for an R&D project being carried out in collaboration between public research establishments and enterprises shall be calculated on the basis of the combined aid deriving from direct government support for a specific research project and, where they constitute aid, contributions from public non-profit-making higher education or research establishments to the project;

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- (f) ‘net aid intensity’ shall mean the aid amount net of tax expressed as a percentage of the project's eligible costs;
- (g) ‘number of employees’ shall mean the number of annual labour units (ALU), namely the number of persons employed full time in one year, part-time and seasonal work being ALU fractions;

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- (h) ‘fundamental research’ shall mean an activity designed to broaden scientific and technical knowledge not linked to industrial or commercial objectives;
- (i) ‘industrial research’ shall mean planned research or critical investigation aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services;
- (j) ‘pre-competitive development’ shall mean the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation. It does not include the 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;

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- (k) ‘agricultural product’ means:
- (i) the products listed in Annex I of the Treaty, except fishery and aquaculture products covered by Regulation (EC) No 104/2000;
- (ii) products falling under CN codes 4502, 4503 and 4505 (cork products);

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- (iii) products intended to imitate or substitute milk and milk products, as referred to in Article 3(2) of Council Regulation (EEC) No 1898/87 ⁽¹⁾;
- (l) ‘products intended to imitate or substitute milk and milk products’ means products which could be confused with milk and/or milk products but whose composition differs from such products in that they contain fat and/or protein of non-milk origin with or without protein derived from milk (‘products other than milk products’ as referred to in Article 3(2) of Regulation (EEC) No 1898/87);
- (m) ‘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;
- (n) ‘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.

▼B*Article 3***Conditions for exemption**

1. Individual aid outside any scheme, fulfilling all the conditions of this Regulation, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that it contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Communities*.
2. Aid schemes fulfilling all the conditions of this Regulation shall be compatible with the common market within the meaning of Article 87 (3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:
 - (a) any aid that could be awarded under such scheme fulfils all the conditions of this Regulation;
 - (b) the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Communities*.
3. Aid granted under the schemes referred to in paragraph 2 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 granted directly fulfils all the conditions of this Regulation.

*Article 4***Investment**

1. Aid for investment in tangible and intangible assets inside or outside the Community shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it fulfils the conditions of paragraphs 2 to 6.

⁽¹⁾ OJ L 182, 3.7.1987, p. 36.

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2. Where the investment takes place in areas or in sectors which do not qualify for regional aid pursuant to Article 87(3)(a) and (c) of the Treaty at the moment the aid is granted, the gross aid intensity shall not exceed:

- (a) 15 % in the case of small enterprises;
- (b) 7,5 % in the case of medium-sized enterprises.

3. Where the investment takes place in areas and in sectors which qualify for regional aid at the moment the aid is granted, the aid intensity shall not exceed the ceiling of regional investment aid determined in the map approved by the Commission for each Member State by more than:

- (a) 10 percentage points gross in areas covered by Article 87(3)(c), provided that the total net aid intensity does not exceed 30 %; or
- (b) 15 percentage points gross in areas covered by Article 87(3)(a), provided that the total net aid intensity does not exceed 75 %.

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

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

5. In cases where the aid is calculated on the basis of the investment's costs, the eligible costs of tangible investment shall be the costs relating to investment in land, buildings, machinery and equipment. In the transport sector, except for railway rolling stock, transport means and transport equipment shall not be included in the eligible costs. The eligible costs of intangible investment shall be the costs of acquisition of the technology.

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

- (a) job creation shall be linked to the carrying-out of a project of investment in tangible or intangible assets. Jobs shall be created within three years of the investment's completion;
- (b) 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.

▼ M2

7. Where the investment concerns the processing and marketing of agricultural products listed in Annex I to the Treaty, the gross aid intensity may 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 ⁽¹⁾;
- (c) 50 % of eligible investments in regions eligible under Article 87(3)
 - (a) EC;
- (d) 40 % of eligible investments in all other regions.

⁽¹⁾ OJ L 184, 27.7.1993, p. 1.

▼B*Article 5***Consultancy and other services and activities**

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

- (a) for services provided by outside consultants, the gross aid shall not exceed 50 % of the costs of such services. The services concerned shall not be a continuous or periodic activity nor relate to the enterprise's usual operating expenditure, such as routine tax consultancy services, regular legal services, or advertising;
- (b) for participation in fairs and exhibitions, the gross aid shall not exceed 50 % of the additional costs incurred for renting, setting up and running the stand. This exemption shall only apply to the first participation of an enterprise in a particular fair or exhibition.

▼M1*Article 5a***Aid for research and development**

1. Aid for research and development 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 if it fulfils the conditions set out in paragraphs 2 to 5.
2. The aided project must completely fall within the stages of research and development defined in Article 2(h), (i) and (j).
3. The gross aid intensity, as calculated on the basis of the eligible costs of the project, shall not exceed:
 - (a) 100 % for fundamental research;
 - (b) 60 % for industrial research;
 - (c) 35 % for pre-competitive development.

If a project includes different stages of research and development, the permissible aid intensity shall be established on the basis of the weighted average of the respective permissible aid intensities, calculated on the basis of the eligible costs involved.

In the case of collaborative projects, the maximum amount of aid for each beneficiary shall not exceed the permitted aid intensity calculated by reference to the eligible costs incurred by the beneficiary concerned.

4. The ceilings in paragraph 3 may be increased as follows up to a maximum gross aid intensity of 75 % for industrial research and 50 % for pre-competitive development:
 - (a) where the project takes place in an area which, at the time when the aid is granted, qualifies for regional aid, the maximum aid intensity may be increased by 10 percentage points gross in areas covered by Article 87(3)(a) of the Treaty and by five percentage points gross in areas covered by Article 87(3)(c) of the Treaty;
 - (b) where the project aims at carrying out research with potential multi-sectoral application and focuses on a multidisciplinary approach in accordance with the objective, tasks and technical targets of a specific project or programme undertaken under the Sixth Framework Programme for research and development, established by Decision No 1513/2002/EC of the European Parliament and of the Council ⁽¹⁾ or any subsequent Framework Programme for research and development or Eureka, the maximum aid intensity may be increased by 15 percentage points gross;

⁽¹⁾ OJ L 232, 29.8.2002, p. 1.

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- (c) the maximum aid intensity may be increased by 10 percentage points if one of the following conditions is satisfied:
- (i) the project involves effective cross-border cooperation between at least two independent partners in two Member States, particularly in the context of coordinating national R&D policies; no single company in the Member State granting the aid may bear more than 70 % of the eligible costs; or
 - (ii) the project involves effective cooperation between a company and a public research body, particularly in the context of coordination of national R&D policies, where the public research body bears at least 10 % of the eligible project costs and has the right to publish the results insofar as they stem from research implemented by that body; or
 - (iii) the results of the project are widely disseminated through technical and scientific conferences or published in peer-reviewed scientific and technical journals.

For the purposes of points (i) and (ii) subcontracting is not considered to be effective cooperation.

5. Eligible costs for the purposes of this Article 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 duration 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 buildings 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 consultancy and equivalent services used exclusively for the research activity, including 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. These costs are only considered eligible up to 70 % of total eligible project costs;
- (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.

Article 5b

Aid for technical feasibility studies

Aid for technical feasibility studies preparatory to industrial research activities or pre-competitive 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 gross aid intensity, as calculated on the basis of study costs, does not exceed 75 %.

▼ M1*Article 5c***Aid for patenting costs**

1. Aid 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 up to the same level of aid as would have qualified as R&D aid in respect of the research activities which first led to the industrial property rights concerned.
2. Eligible costs for the purposes of paragraph 1 shall be the following:
 - (a) all costs preceding the grant of the right in the first legal 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 6***Large individual aid grants**

1. In the case of aid covered by Articles 4 and 5, this Regulation shall not exempt an individual aid grant where one of the following thresholds is met:
 - (a) the total eligible costs of the whole project are at least EUR 25 000 000; and
 - (i) in areas or in sectors which do not qualify for regional aid, the gross aid intensity is at least 50 % of the ceilings laid down in Article 4(2);
 - (ii) in areas and in sectors which qualify for regional aid, the net aid intensity is at least 50 % of the net aid ceiling as determined in the regional aid map for the area concerned; or
 - (b) the total gross aid amount is at least EUR 15 000 000.
2. In the case of aid covered by Articles 5a, 5b and 5c, this Regulation shall not exempt an individual aid grant where the following thresholds are met:
 - (a) the total eligible costs of the whole project incurred by all companies participating in the project are at least EUR 25 000 000; and
 - (b) it is proposed to provide aid with a gross grant equivalent of at least EUR 5 000 000 to one or more of the individual companies.

In the case of aid granted to a Eureka project, the thresholds in the first subparagraph shall be replaced by the following:

- (a) the total eligible costs of the Eureka project incurred by all companies participating in the project are at least EUR 40 000 000; and
- (b) it is proposed to provide aid with a gross grant equivalent of at least EUR 10 000 000 to one or more of the individual companies.

▼M1*Article 6a***Aid remaining subject to prior notification to the Commission**

1. This Regulation shall not exempt any aid, whether individual aid or aid granted under an aid scheme, in the form of one or more advances that are repayable only in the event of a successful outcome of research activities, where the total amount of the advances expressed as a percentage of the eligible costs exceeds the intensities provided for in Articles 5a, 5b or 5c or the limit fixed in Article 6(2).
2. This Regulation is without prejudice to any obligation on a Member State to notify individual grants of aid under other State aid instruments, and in particular the obligation to notify, or to inform the Commission of, aid to an enterprise receiving restructuring aid within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽¹⁾ and the obligation to notify regional aid for large investment projects under the applicable multisectoral Framework.

▼B*Article 7***Necessity for the aid**

This Regulation shall only exempt aid if, before work on the aided project is started:

- either an application for aid has been submitted to the Member State by the beneficiary, or
- the Member State has adopted legal provisions establishing a legal right to aid according to objective criteria and without further exercise of discretion by the Member State.

*Article 8***Cumulation****▼M1**

1. The aid ceilings fixed in Articles 4 to 6 shall apply regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community.

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2. Aid exempted by this Regulation shall not be cumulated with any other State aid within the meaning of Article 87(1) of the Treaty, or with other Community funding, in relation to the same eligible costs, if such cumulation would result in an aid intensity exceeding that fixed by this Regulation.

*Article 9***Transparency and monitoring**

1. On implementation of an aid scheme, or grant of individual aid outside any scheme, exempted by this Regulation, Member States shall, within 20 working days, forward to the Commission, with a view to its publication in the *Official Journal of the European Communities*, a summary of the information regarding such aid scheme or individual aid in the form laid down in Annex II.
2. Member States shall maintain detailed records regarding the aid schemes exempted by this Regulation, the individual aid granted under those schemes, and the individual aid exempted by this Regulation that is granted outside any existing aid scheme. Such records shall contain all information necessary to establish that the conditions for exemption,

⁽¹⁾ OJ C 288, 9.10.1999, p. 2.

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as laid down in this Regulation, are fulfilled, including information on the status of the company as an SME. Member States shall keep a record regarding an individual aid for 10 years from the date on which it was granted, and regarding an aid scheme, for 10 years from the date on which the last individual aid was granted under such scheme. On written request, the Member State concerned shall provide the Commission, within a period of 20 working days or such longer period as may be fixed in the request, with all the information which the Commission considers necessary to assess whether the conditions of this Regulation have been complied with.

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3. Member States shall compile an annual report on the application of this Regulation in accordance with the implementing provisions concerning the form and content of annual reports provisions which are laid down pursuant to Article 27 of Council Regulation (EC) No 659/1999 ⁽¹⁾.

Until such provisions enter into force, Member States shall compile an annual report on the application of this Regulation in respect of the whole or part of each calendar year during which this Regulation applies, in the form laid down in Annex III, also in computerised form. Member States shall provide the Commission with such report no later than three months after the expiry of the period to which the report relates.

*Article 9a***Transitional provisions**

1. Notifications concerning aid for Research and Development pending on 19 March 2004 shall continue to be assessed under the Framework for State aid for Research and Development, while all other pending notifications shall be assessed in accordance with the provisions of this regulation.

2. Aid schemes implemented before the date of entry into force of this Regulation, and aid granted under such schemes in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if they fulfil the conditions laid down in Article 3(2)(a) and Article 3(3) of this Regulation.

Individual aid outside any scheme granted before the date of entry into force of this Regulation in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if it fulfils all the conditions of this Regulation, except the requirement in Article 3(1) that express reference be made to this Regulation.

Any aid which does not fulfil these conditions shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

▼B*Article 10***Entry into force and period of validity**

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

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It shall apply until 30 June 2008.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

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2. At the end of the period of validity of this Regulation, aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months.

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

▼ M1

ANNEX I

Definition of small and medium-sized enterprises

(Extract from Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of small and medium sized enterprises, OJ L 124, 20.5.2003, p. 36)

DEFINITION OF MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES ADOPTED BY THE COMMISSION*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 ceilings 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 50 million euro, 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.

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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 ceilings 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 ceilings 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 ceilings 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

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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 of summary information to be provided whenever an aid scheme exempted by this Regulation is implemented and whenever an individual aid exempted by this Regulation is granted outside any aid scheme

Summary information on State aid granted in conformity with Commission Regulation (EC) No 70/2001	
Summary information to be filled in	Explanatory remarks
Member state	
Region	Indicate the name of the region if the aid is granted by a subcentral authority
Title of aid scheme or name of company receiving an individual aid	Indicate the name of the aid scheme or in case of individual aid, the name of the beneficiary. In the latter case, no subsequent annual report is necessary!
Legal basis	Indicate the precise national legal reference for the aid scheme or for the individual aid
Annual expenditure planned under the scheme or overall amount of individual aid granted to the company	Amounts are to be given in euro or, if applicable, national currency. In case of an aid scheme: indicate the annual overall amount of the budget appropriation(s) or the estimated tax loss per year for all aid instruments contained in the scheme. In case of an individual aid award: indicate the overall aid amount/tax loss. If appropriate, indicate also for how many years the aid will be paid in instalments or over how many years tax losses will be incurred. For guarantees in both cases, indicate the (maximum) amount of loans guaranteed
Maximum aid intensity	Indicate the maximum aid intensity or the maximum aid amount per eligible item
Date of implementation	Indicate the date from which aid may be granted under the scheme or when the individual aid is granted
Duration of scheme or individual aid award	Indicate the date (year and month) until which aid may be granted under the scheme or in case of an individual aid and if appropriate the expected date (year and month) of the last instalment to be paid
Objective of aid	It is understood that the primary objective is aid to SME. This field gives the opportunity to indicate further (secondary) objectives pursued (e.g. small enterprises only or SME; investment aid/consultancy)

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Summary information to be filled in	Explanatory remarks
Economic Sector(s) concerned <input type="checkbox"/> All sectors or <input type="checkbox"/> Coalmining <input type="checkbox"/> All manufacturing or <input type="checkbox"/> Steel <input type="checkbox"/> Shipbuilding <input type="checkbox"/> Synthetic fibres <input type="checkbox"/> Motor vehicles <input type="checkbox"/> Other manufacturing <input checked="" type="checkbox"/> ⁽¹⁾ <input type="checkbox"/> Processing and marketing of agricultural products (*) ◀ <input type="checkbox"/> All services or <input type="checkbox"/> Transport services <input type="checkbox"/> Financial services <input type="checkbox"/> Other services Remarks:	Choose from the list, where relevant
Name and address of the granting authority	
Other information	

▶⁽²⁾ (*) As defined in Article 2(k) of this Regulation. ◀



ANNEX III

Form of the periodic report to be provided to the Commission

Annual reporting format on aid schemes exempted under a group exemption regulation adopted pursuant to Article 1 of Council Regulation (EC) No 994/98

Member States are required to use the format below for their reporting obligations to the Commission under group exemption regulations adopted on the basis of Council Regulation (EC) No 994/98.

The reports should also be provided in computerised form.

Information required for all aid schemes exempted under group exemption regulations adopted pursuant to Article 1 of Council Regulation (EC) No 994/98

1. Title of aid scheme
2. Commission exemption regulation applicable
3. Expenditure

Separate figures have to be provided for each aid instrument within a scheme or individual aid (e.g. grant, soft loans, etc.) The figures have to be expressed in euro or, if applicable, national currency. In the case of tax expenditure, annual tax losses have to be reported. If precise figures are not available, such losses may be estimated.

These expenditure figures should be provided on the following basis.

For the year under review indicate separately for each aid instrument within the scheme (e.g. grant, soft loan, guarantee, etc.):

- 3.1. amounts committed, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new assisted projects. In the case of guarantee schemes, the total amount of new guarantees handed out should be provided;
- 3.2. actual payments, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new and current projects. In the case of guarantee schemes, the following should be provided: total amount of outstanding guarantees, premium income, recoveries, indemnities paid out, operating result of the scheme under the year under review;
- 3.3. number of new assisted projects;
- 3.4. estimated overall number of jobs created or maintained by new projects (if appropriate);
- 3.5. estimated overall amount of investment aided by new projects;
- 3.6. Regional breakdown of amounts under point 3.1 either by regions defined at NUTS ⁽¹⁾ level 2 or below or by Article 87(3)(a) regions, Article 87(3)(c) regions and non-assisted regions;
- 3.7. Sectorial breakdown of amounts under point 3.1. by beneficiaries' sectors of activity (if more than one sector is covered, indicate the share of each):

coalmining

manufacturing

of which:

steel

shipbuilding

synthetic fibres

motor vehicles

other manufacturing (please specify)

⁽¹⁾ NUTS is the nomenclature of territorial units for statistical purposes in the Community.

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services

of which:

transport services

financial services

other services (please specify)

other sectors (please specify)

4. Other information and remarks.