

Commission Regulation (EC) No 800/2008 of 6 August 2008
declaring certain categories of aid compatible with the common
market in application of Articles 87 and 88 of the Treaty (General
block exemption Regulation) (Text with EEA relevance) (repealed)

CHAPTER II

SPECIFIC PROVISIONS FOR THE DIFFERENT CATEGORIES OF AID

SECTION 1

Regional aid

Article 13

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 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 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 that 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 in the assisted region concerned.

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 be taken into consideration only 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.

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 an SME;
- 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 to this Regulation.

10 In order to prevent a large investment being artificially divided into sub-projects, a large investment project shall be considered to be a single investment project when 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.

Article 14

Aid for newly created small enterprises

1 Aid schemes in favour of newly created small 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 of this Article are fulfilled.

2 The beneficiary shall be a small enterprise.

3 The aid amount shall not exceed:

- a EUR 2 million for small enterprises with their economic activity in regions eligible for the derogation provided for in Article 87(3)(a) of the Treaty;
- b EUR 1 million for small enterprises with their economic activity in regions eligible for the derogation provided for in Article 87(3)(c) of the Treaty.

Annual amounts of aid per undertaking shall not exceed 33 % of the amounts of aid laid down in points (a) and (b).

4 The aid intensity shall not exceed:

- a in regions covered by Article 87(3)(a) of the Treaty, 35 % of eligible costs incurred in the first three years after the creation of the undertaking, and 25 % in the two years thereafter;
- b in regions covered by Article 87(3)(c) of the Treaty, 25 % of eligible costs incurred in the first three years after the creation of the undertaking, and 15 % in the two years thereafter.

These intensities may be increased by 5 % in regions covered by Article 87(3)(a) of the Treaty with a gross domestic product (GDP) per capita of less than 60 % of the EU-25 average, in regions with a population density of less than 12.5 inhabitants/km² and in small islands with a population of less than 5 000 inhabitants, and other communities of the same size suffering from similar isolation.

5 The eligible costs shall be legal, advisory, consultancy and administrative costs directly related to the creation of the small enterprise, as well as the following costs, insofar as they are actually incurred within the first five years after the creation of the undertaking:

- a interest on external finance and a dividend on own capital employed not exceeding the reference rate;
- b fees for renting production facilities/equipment;
- c energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;
- d depreciation, fees for leasing production facilities/equipment as well as wage costs, provided that the underlying investments or job creation and recruitment measures have not benefited from other aid.

6 Small enterprises controlled by shareholders of undertakings that have closed down in the previous 12 months cannot benefit from aid under this Article if the enterprises concerned are active in the same relevant market or in adjacent markets.

SECTION 2

SME investment and employment aid

Article 15

SME investment and employment aid

1 SME investment and employment 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 of this Article are fulfilled.

2 The aid intensity shall not exceed:

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

3 The eligible costs shall be the following:

- a the costs of investment in tangible and intangible assets; 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, 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 (EC) No 1405/2006⁽¹⁾;
- 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 female entrepreneurship

Article 16

Aid for small enterprises newly created by female entrepreneurs

1 Aid schemes in favour of small enterprises newly created by female entrepreneurs 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 of this Article are fulfilled.

2 The beneficiaries shall be small enterprises newly created by female entrepreneurs.

3 The aid amount shall not exceed EUR 1 million per undertaking.

Annual amounts of aid per undertaking shall not exceed 33 % of the amounts of aid laid down in the first subparagraph.

4 The aid intensity shall not exceed 15 % of eligible costs incurred in the first five years after the creation of the undertaking.

5 The eligible costs shall be legal, advisory, consultancy and administrative costs directly related to the creation of the small enterprise, as well as the following costs, insofar as they are actually incurred within the first five years of the creation of the undertaking:

- a interest on external finance and a dividend on own capital employed not exceeding the reference rate;
- b fees for renting production facilities/equipment;
- c energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;
- d depreciation, fees for leasing production facilities/equipment as well as wage costs, provided that the underlying investments or job creation and recruitment measures have not benefited from other aid;
- e child care and parent care costs including, where applicable, costs relating to parental leave.

6 Small enterprises controlled by shareholders of undertakings that have closed down in the previous 12 months cannot benefit from aid under this Article if the enterprises concerned are active in the same relevant market or in adjacent markets.

SECTION 4

Aid for environmental protection

Article 17

Definitions

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

1. '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;
2. 'energy-saving measures' mean action which enables undertakings to reduce the amount of energy used notably in their production cycle;
3. 'Community standard' means:
 - (a) a mandatory Community standard setting the levels to be attained in environmental terms by individual undertakings; or
 - (b) the obligation under Directive 2008/1/EC of the European Parliament and of the Council⁽²⁾ to use the best available techniques as set out in the most recent relevant information published by the Commission pursuant to Article 17(2) of that Directive;
4. 'renewable energy sources' means the following renewable non-fossil energy sources: wind, solar, geothermal, wave, tidal, hydropower installations, biomass, landfill gas, sewage treatment plant gas and biogases;
5. 'biofuels' means liquid or gaseous fuel for transport produced from biomass;

6. 'sustainable biofuels' means biofuels fulfilling the sustainability criteria set out in Article 15 of the proposal for a Directive of the European Parliament and the Council on the promotion of the use of energy from renewable sources⁽³⁾; once the Directive has been adopted by the European Parliament and the Council and published in the *Official Journal of the European Union*, the sustainability criteria laid down in the Directive shall apply;
7. 'energy from renewable energy sources' means energy produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants — which also use conventional energy sources; it includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems;
8. 'cogeneration' means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
9. 'high efficiency cogeneration' means cogeneration meeting the criteria of Annex III to Directive 2004/8/EC of the European Parliament and of the Council⁽⁴⁾ and satisfying the harmonised efficiency reference values established by Commission Decision 2007/74/EC⁽⁵⁾;
10. 'environmental tax' means a tax whose specific tax base has a clear negative effect on the environment or which seeks to tax certain activities, 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;
11. 'Community minimum tax level' means the minimum level of taxation provided for in Community legislation; for energy products and electricity, the Community minimum tax level means the minimum level of taxation laid down in Annex I to Directive 2003/96/EC;
12. 'tangible assets' means investments in land which are strictly necessary in order to meet environmental objectives, investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances, and investments to adapt production methods with a view to protecting the environment.

Article 18

Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards

1 Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards 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 8 of this Article are fulfilled.

- 2 The aided investment shall fulfil one of the following conditions:
 - a the investment shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Community standards, irrespective of the presence of mandatory national standards that are more stringent than the Community standards;

- b the investment shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Community standards.

3 Aid may not be granted where improvements are to ensure that companies comply with Community standards already adopted and not yet in force.

4 The aid intensity shall not exceed 35 % of the eligible costs.

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.

5 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 concerned, without taking account of operating benefits and operating costs.

6 For the purposes of paragraph 5, the cost of the investment directly related to environmental protection shall be established by reference to the counterfactual situation:

- a where the cost of investing in environmental protection can be easily identified in the total investment cost, this precise environmental protection-related cost shall constitute the eligible costs;
- b in all other cases, the extra investment costs shall be established by comparing the investment with the counterfactual situation in the absence of State aid; the correct counterfactual shall be the cost of a technically comparable investment that provides a lower degree of environmental protection (corresponding to mandatory Community standards, if they exist) and that would credibly be realised without aid ('reference investment'); technically comparable investment means an investment with the same production capacity and all other technical characteristics (except those directly related to the extra investment for environmental protection); in addition, such a reference investment must, from a business point of view, be a credible alternative to the investment under assessment.

7 The eligible investment shall take the form of investment in tangible assets and/or in intangible assets.

8 In the case of investments aiming at obtaining a level of environmental protection higher than Community standards, the counterfactual shall be chosen as follows:

- a where the undertaking is adapting to national standards adopted in the absence of Community standards, the eligible costs shall consist of the additional investment costs necessary to achieve the level of environmental protection required by the national standards;
- b where the undertaking adapts to or goes beyond national standards which are more stringent than the relevant Community standards or goes beyond Community standards, the eligible costs shall consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards. The cost of investments needed to reach the level of protection required by the Community standards shall not be eligible;
- c where no standards exist, the eligible costs shall consist of the investment costs necessary to achieve a higher level of environmental protection than that which the undertaking or undertakings in question would achieve in the absence of any environmental aid.

9 Aid for investments relating to the management of waste of other undertakings shall not be exempted under this Article.

Article 19

Aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards

1 Investment aid for the acquisition of new transport vehicles enabling undertakings active in the transport sector to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards 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 of this Article are fulfilled.

2 The aided investment shall fulfil the condition laid down in Article 18(2).

3 Aid for the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Community standards shall be exempted, when such acquisition occurs before these Community standards enter into force and where, once mandatory, they do not apply retroactively to vehicles already purchased.

4 Aid for retrofitting operations of existing transport vehicles with an environmental protection objective shall be exempted if the existing means of transport are upgraded to environmental standards that were not yet in force at the date of entry into operation of those means of transport or if the means of transport are not subject to any environmental standards.

5 The aid intensity shall not exceed 35 % of the eligible costs.

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.

6 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.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

Article 20

Aid for early adaptation to future Community standards for SMEs

1 Aid allowing SMEs to comply with new Community standards which increase the level of environmental protection and are not yet in force 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 of this Article are fulfilled.

2 The Community standards shall have been adopted and the investment shall be implemented and finalised at least one year before the date of entry into force of the standard concerned.

3 The aid intensity shall not exceed 15 % of the eligible costs for small enterprises and 10 % of the eligible costs for medium-sized enterprises if the implementation and finalisation take place more than three years before the date of entry into force of the standard and 10 % for

small enterprises if the implementation and finalisation take place between one and three years before the date of entry into force of the standard.

4 The eligible costs shall be the extra investment costs necessary to achieve the level of environmental protection required by the Community standard compared to the existing level of environmental protection required prior to the entry into force of this standard.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

Article 21

Environmental investment aid for energy saving measures

1 Environmental investment aid enabling undertakings to achieve energy savings 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 meets:

- a the conditions laid down in paragraphs 2 and 3 of this Article; or
- b the conditions laid down in paragraphs 4 and 5 thereof.

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

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 energy savings beyond the level required by the Community standards.

The eligible costs shall be calculated as set out in Article 18(6) and (7).

The eligible costs shall be calculated net of any operating benefits and costs related to the extra investment for energy saving and arising during the first three years of the life of this investment in the case of SMEs, the first four years in the case of large undertakings that are not part of the EU CO₂ Emission Trading System and the first five years in the case of large undertakings that are part of the EU CO₂ Emission Trading System. For large undertakings this period may be reduced to the first three years of the life of this investment where the depreciation time of the investment can be demonstrated not to exceed three years.

The eligible cost calculations shall be certified by an external auditor.

4 The aid intensity shall not exceed 20 % of the eligible costs.

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.

5 The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

Article 22

Environmental investment aid for high-efficiency cogeneration

1 Environmental investment aid for high-efficiency cogeneration 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 of this Article are fulfilled.

2 The aid intensity shall not exceed 45 % of the eligible costs.

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 as compared to the reference investment. The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

4 A new cogeneration unit shall overall make primary energy savings compared to separate production as provided for by Directive 2004/8/EC and Decision 2007/74/EC. The improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.

Article 23

Environmental investment aid for the promotion of energy from renewable energy sources

1 Environmental investment aid for the promotion of energy from renewable energy sources 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 of this Article are fulfilled.

2 The aid intensity shall not exceed 45 % of the eligible costs.

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.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

4 Environmental investment aid for the production of biofuels shall be exempted only to the extent the aided investments are used exclusively for the production of sustainable biofuels.

Article 24

Aid for environmental studies

1 Aid for studies directly linked to investments referred to in Article 18, investments in energy saving measures under the conditions set out in Article 21 and investments for the promotion of energy from renewable energy sources under the conditions set out in Article 23 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 of this Article are fulfilled.

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

However, the aid intensity may be increased by 20 percentage points for studies undertaken on behalf of small enterprises and by 10 percentage points for studies undertaken on behalf of medium-sized enterprises.

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

Article 25

Aid in the form of reductions in environmental taxes

1 Environmental aid schemes in the form of reductions in environmental taxes fulfilling the conditions of Directive 2003/96/EC 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 of this Article are fulfilled.

2 The beneficiaries of the tax reduction shall pay at least the Community minimum tax level set by Directive 2003/96/EC.

3 Tax reductions shall be granted for maximum periods of ten years. After such 10 year period, Member States shall re-evaluate the appropriateness of the aid measures concerned.

SECTION 5

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

Article 26

Aid for consultancy in favour of SMEs

1 Aid for consultancy 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 that the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

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

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 27

Aid for SME participation in fairs

1 Aid to SMEs 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 of this Article are fulfilled.

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

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 any particular fair or exhibition.

SECTION 6

Aid in the form of risk capital

Article 28

Definitions

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

1. 'equity' means ownership interest in an undertaking, represented by the shares issued to investors;
2. 'quasi-equity' means financial instruments whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default;
3. 'private equity' means private — as opposed to public — equity or quasi-equity investment in undertakings not listed on a stock-market, including venture capital;
4. 'seed capital' means financing provided to study, assess and develop an initial concept, preceding the start-up phase;
5. '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;
6. '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;
7. '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;

8. 'target undertaking' means an undertaking in which an investor or investment fund is considering investing.

Article 29

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 of this Article are fulfilled.

2 The risk capital measure shall take the form of participation into a profit driven private equity investment fund, managed on a commercial basis.

3 The tranches of investment to be made by the investment fund shall not exceed EUR 1,5 million per target undertaking over any period of twelve months.

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

5 The investment fund shall provide at least 70 % of its total budget invested into target SMEs in the form of equity or quasi-equity.

6 At least 50 % of the funding of the investment funds shall be provided by private investors. In the case of investment funds targeting exclusively SMEs located in assisted areas, at least 30 % of the funding shall be provided by private investors.

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 investment fund is managed on a commercial basis, the following conditions shall be fulfilled:

- a there shall be an agreement between a professional fund manager 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 investors shall be represented in decision-making, such as through an investors' or advisory committee; and
- c best practices and regulatory supervision shall apply to the management of funds.

SECTION 7

Aid for research and development and innovation*Article 30***Definitions**

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

1. '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 its 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 as 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;
2. '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;
3. '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;
4. '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. Those 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 necessarily 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 shall also be eligible, provided that these cannot be used or transformed to be used in industrial applications or commercially.

Experimental development shall 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;

5. 'highly qualified personnel' means researchers, engineers, designers and marketing managers with tertiary education degree and at least 5 years of relevant professional experience; doctoral training may count as relevant professional experience;
6. 'secondment' means temporary employment of personnel by a beneficiary during a period of time, after which the personnel has the right to return to its previous employer.

Article 31

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 of this Article are fulfilled.

2 The aided part of the research and development 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 aid intensity shall not exceed:

- a 100 % of the eligible costs for fundamental research;
- b 50 % of the eligible costs for industrial research;
- c 25 % of the eligible costs 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 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 project and, where they constitute aid, contributions from research organisations to that project may not exceed the applicable aid intensities for each beneficiary undertaking.

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

- a where the aid is granted 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 % of the eligible costs, 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 carried out 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 point (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, shall be considered 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 shall be considered eligible; for land, costs of commercial transfer or actually incurred capital costs shall be 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 costs, 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 32

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) 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 of this Article are fulfilled.

2 The aid intensity shall not exceed:

- a for SMEs, 75 % of the eligible costs for studies preparatory to industrial research activities and 50 % of the eligible costs for studies preparatory to experimental development activities;
 - b for large enterprises, 65 % of the eligible costs for studies preparatory to industrial research activities and 40 % of the eligible costs for studies preparatory to experimental development activities.
- 3 The eligible costs shall be the costs of the study.

Article 33

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) 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 of this Article are fulfilled.
- 2 The aid intensity shall not exceed the intensity for research and development project aid laid down in Article 31(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 34

Aid for research and development in the agricultural and fisheries sectors

- 1 Aid for research and development concerning products listed in Annex I to the Treaty 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 7 of this Article are fulfilled.
- 2 The aid shall be of interest to all operators in the particular sector or sub-sector concerned.
- 3 Information that research will be carried out, and with which goal, shall be 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.

The results of the research shall be made available on internet, for a period of at least 5 years. They shall be published no later than any information which may be given to members of any particular organisation.

4 Aid shall be granted directly to the research organisation 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.

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

6 The eligible costs shall be those provided in Article 31(5).

7 Aid for research and development concerning products listed in Annex I to the Treaty and not fulfilling the conditions laid down in this Article 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 Articles 30, 31 and 32 of this Regulation are fulfilled.

Article 35

Aid to young innovative enterprises

1 Aid to young innovative 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 to 5 of this Article are fulfilled.

2 The beneficiary shall be a small enterprise that has been in existence for less than 6 years at the time when the aid is granted.

3 The research and development costs of the beneficiary shall represent at least 15 % of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor.

4 The aid amount shall not exceed EUR 1 million.

However, the aid amount shall not exceed EUR 1,5 million in regions eligible for the derogation provided for in Article 87(3)(a) of the Treaty, and EUR 1,25 million in regions eligible for the derogation provided for in Article 87(3)(c) of the Treaty.

5 The beneficiary may receive the aid only once during the period in which it qualifies as a young innovative enterprise.

Article 36

Aid for innovation advisory services and for innovation support services

1 Aid for innovation advisory services and for innovation support services 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 6 of this Article are fulfilled.

2 The beneficiary shall be an SME.

3 The aid amount shall not exceed a maximum of EUR 200 000 per beneficiary within any three year period.

Status: This is the original version (as it was originally adopted).

4 The service provider shall benefit from a national or European certification. If the service provider does not benefit from a national or European certification, the aid intensity shall not exceed 75 % of the eligible costs.

5 The beneficiary must use the aid to buy the services at market price, or if the service provider is a non-for-profit entity, at a price which reflects its full costs plus a reasonable margin.

6 The eligible costs shall be the following:

- a as regards innovation advisory services, the costs relating to: management consulting, technological assistance, technology transfer services, training, consultancy for acquisition, protection and trade in Intellectual Property Rights and for licensing agreements, consultancy on the use of standards;
- b as regards innovation support services, the costs relating to: office space, data banks, technical libraries, market research, use of laboratory, quality labelling, testing and certification.

Article 37

Aid for the loan of highly qualified personnel

1 Aid for the loan of highly qualified personnel seconded from a research organisation or a large enterprise to an SME 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 of this Article are fulfilled.

2 The seconded personnel must not be replacing other personnel, but must be employed in a newly created function within the beneficiary undertaking and must have been employed for at least two years in the research organisation or the large enterprise, which is sending the personnel on secondment.

The seconded personnel must work on research and development and innovation activities within the SME receiving the aid.

3 The aid intensity shall not exceed 50 % of the eligible costs, for a maximum of 3 years per undertaking and per person borrowed.

4 The eligible costs shall be all personnel costs for borrowing and employing highly qualified personnel, including the costs of using a recruitment agency and of paying a mobility allowance for the seconded personnel.

5 This Article shall not apply to consultancy costs as referred to in Article 26.

SECTION 8

Training aid

Article 38

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 only or 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 where employees of different undertakings may avail themselves of the training;
 - (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 39

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 of this Article are fulfilled.

- 2 The aid intensity shall not exceed:
- a 25 % of the eligible costs for specific training; and
 - b 60 % of the eligible costs for general training.

However, the aid intensity may be increased, up to a maximum aid intensity of 80 % of the eligible costs, 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.

Where the aid is granted in the maritime transport sector, it may reach an intensity of 100 % of the eligible costs, whether the training project concerns specific or general training, provided that the following conditions are met:

- a the trainee shall not be an active member of the crew but shall be supernumerary on board; and
- b the training shall be carried out on board ships entered on Community registers.

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 aid 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 points (a) to (e). As regards the trainees' personnel 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 9

Aid for disadvantaged and disabled workers

Article 40

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

1 Aid schemes for the recruitment of disadvantaged 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 of this Article 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.

However, where the worker concerned is a severely disadvantaged worker, eligible costs shall be the wage costs over a maximum period of 24 months following recruitment.

4 Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, 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 consistent with the national legislation concerned or any collective agreements governing employment contracts.

If the period of employment is shorter than 12 months or, as the case may be 24 months, the aid shall be reduced pro rata accordingly.

Article 41

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

1 Aid 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 of this Article are fulfilled.

2 The aid intensity shall not exceed 75 % of the eligible costs.

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

4 Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, 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 workers shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts.

If the period of employment is shorter than 12 months, the aid shall be reduced pro rata accordingly.

Article 42

Aid for compensating the additional costs of employing disabled workers

1 Aid 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 of this Article are fulfilled.

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

3 Eligible costs shall be costs other than wage costs covered by Article 41, which are additional to those which the undertaking would have incurred if employing workers who are not disabled, over the period during which the worker concerned is being employed.

The eligible costs shall be the following:

- 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 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 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.

- (1) OJ L 265, 26.9.2006, p. 1.
- (2) OJ L 24, 29.1.2008, p. 8.
- (3) COM(2008) 19 final.
- (4) OJ L 52, 21.2.2004, p. 50.
- (5) OJ L 32, 6.2.2007, p. 183.