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Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (Text with EEA relevance)

COMMISSION REGULATION (EC) No 1628/2006

of 24 October 2006

on the application of Articles 87 and 88 of the Treaty to national regional investment aid

(Text with EEA relevance)

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)],

After consulting the Advisory Committee on State Aid,

Whereas:

(1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty, that under certain conditions aid 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.

(2) The Commission has applied Articles 87 and 88 of the Treaty to regional investment aid schemes in assisted areas in numerous decisions and has also stated its policy, in particular in the guidelines on national regional aid for 2007 to 2013[(3)] as well as in 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[(4)]. In the light of the Commission's considerable experience in applying Articles 87 and 88 of the Treaty to regional investment aid and in the light of the guidelines on national 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.

(3) By addressing the handicaps of the disadvantaged regions, national regional aid promotes the economic, social and territorial cohesion of Member States and the Community as a whole. National regional investment aid is designed to assist the development of the most disadvantaged regions by supporting investment and job creation in a sustainable context. It promotes the expansion, rationalisation,

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modernisation and diversification of the economic activities of undertakings located in the less-favoured regions, in particular by encouraging firms to set up new establishments there.

(4) 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 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 which are periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Union* and on the Internet.

(5) In order to ensure transparency and effective monitoring, this Regulation should apply only to regional investment aid schemes which are transparent. These are aid schemes in which it is possible to calculate precisely the gross grant equivalent as a percentage of eligible expenditure *ex ante* without a need to undertake a risk assessment (for example grants, interest rate subsidies and capped fiscal measures). Public loans should be considered to be transparent provided that they are backed by normal security and do not involve abnormal risk and are therefore not considered to contain a state guarantee element. In principle, aid schemes involving state guarantees or public loans with a state guarantee element should not be considered as transparent. However, such aid schemes should be considered as transparent if, before the implementation of the scheme, the methodology used to calculate the aid intensity of the state guarantee has been accepted by the Commission following notification to the Commission after adoption of this Regulation. The methodology will be assessed by the Commission in accordance with the Notice on the application of Article 87 and 88 of the EC treaty to State aid in the Forms of Guarantees[(5)]. Public participation and aid comprised in risk capital measures should not be considered as transparent aid. Regional aid schemes which are not transparent should always be notified to the Commission. Notifications of non-transparent regional aid schemes will be assessed by the Commission in particular in the light of the criteria set out in the Guidelines on national regional aid for 2007 to 2013.

(6) This Regulation should also apply to ad hoc aid, that is to say, individual aid that is not awarded on the basis of an aid scheme, if the ad hoc aid is used to supplement aid granted on the basis of a transparent regional investment aid scheme and the ad hoc component does not exceed 50 % of the total aid to be granted for the investment. It should be recalled that individual aid to small and medium-sized enterprises granted outside of any aid scheme in accordance with Article 3(1) of Regulation (EC) No 70/2001 is compatible with the common market within the meaning of Article 87(3) of the Treaty and is exempted from the notification requirement of Article 88(3) of the Treaty.

(7) Any aid that meets all the requirements of this Regulation should be exempted from the notification requirement. Regional aid schemes exempted under this Regulation should contain an express reference to this Regulation.

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(8) This Regulation should not apply to certain sectors in which special rules apply. Aid awarded in these sectors remains subject to prior notification to the Commission in accordance with Article 88(3) of the Treaty. This is the case for the coal and steel industry, the synthetic fibres and shipbuilding sectors, fisheries and aquaculture. In the agricultural sector, this Regulation should not apply to activities linked to the primary production of agricultural products listed in Annex I to the Treaty. It should apply to the processing and marketing of agricultural products with the exception of the manufacture and marketing of products which imitate or substitute for milk and milk products, as referred to in Article 3(2) of Council Regulation (EEC) No 1898/87 of 2 July 1987 on the protection of designations used in marketing of milk and milk products[(6)]. On-farm activities necessary for preparing a product for the first sale, as well as the first sale to resellers and processors should not be regarded as processing or marketing in this respect. This Regulation should ensure that the aid intensities in favour of undertakings processing and marketing agricultural products set out in Article 28(3) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)[(7)] can always be attained.

(9) The Commission has a consistently less favourable view of aid targeted at particular sectors. Investment aid schemes which are targeted at specific sectors of economic activity within manufacturing or services should not therefore be covered by the exemption from notification provided by this Regulation. However, regional investment aid schemes aimed at tourism activities should not be considered as targeted at specific sectors and should be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the aid awarded fulfils all the conditions of this Regulation.

(10) Aid to small and medium-sized enterprises for consultancy and other services awarded in accordance with Article 5(a) of Regulation (EC) No 70/2001 is compatible with the common market within the meaning of Article 87(3) of the Treaty and is exempted from the notification requirement of Article 88(3) of the Treaty. Such aid should therefore not fall within the scope of this Regulation.

(11) 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.

(12) It is appropriate to establish further conditions that should be fulfilled by any aid scheme or individual aid exempted by this Regulation. Having regard to Article 87(3)(c) of the Treaty, such aid should not normally have the sole effect of continuously or periodically reducing the operating costs which the beneficiary would normally have to bear, and should be proportionate to the handicaps that have to be overcome in order to secure the socioeconomic benefits deemed to be in the Community interest. It is therefore appropriate to limit the scope of this Regulation to regional aid granted in relation to initial investments within the meaning of this Regulation. Regional aid schemes which provide for operating aid remain subject to the notification requirements of Article 88(3) of the Treaty. Aid to newly created small undertakings, other than investment or

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consultancy aid, also remains subject to the notification requirements of Article 88(3) of the Treaty.

(13) Since the Commission has to ensure that authorised aid does not alter trading conditions in a way contrary to the general interest, investment aid awarded in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring the aid illegal and incompatible with the common market, should be excluded from the scope of this Regulation. Such aid therefore remains subject to the notification requirements of Article 88(3) of the Treaty.

(14) In order not to favour the capital factor of an investment over the labour factor, provision should be made for the possibility of measuring aid to investment on the basis of either the investment costs or the costs of new employment directly linked to the carrying-out of the investment project.

(15) Large amounts of aid should remain subject to an individual assessment by the Commission before they are put into effect. Accordingly, aid amounts exceeding a certain threshold granted to a single undertaking or establishment on the basis of an existing aid scheme should be excluded from the exemption provided for in this Regulation and remain subject to the notification requirements of Article 88(3) of the Treaty. In order to prevent large investment projects being artificially divided into sub-projects, a large investment project should be considered to be a single investment project if the initial investment is undertaken within a period of three years by the same undertaking or undertakings and consists of fixed assets combined in an economically indivisible way. To assess whether an initial investment is economically indivisible, the Commission will take into account the technical, functional and strategic links and the immediate geographical proximity. The economic indivisibility will be assessed independently from ownership. This implies that to establish whether a large investment project constitutes a single investment project, the assessment should be the same irrespective of whether the project is carried out by one undertaking, by more than one undertaking sharing the investment costs or by more undertakings bearing the costs of separate investments within the same investment project (for example in the case of a joint venture).

(16) It is important to ensure that regional aid produces a real incentive effect and encourages investments which would not otherwise be made in the assisted areas and acts as an incentive to develop new activities. Before the start of work on the aided project, the responsible authorities should therefore confirm in writing that the project *prima facie* meets the conditions of eligibility. Confirmation in writing should be taken to include communication by fax or e-mail.

(17) In view of the specificities of regional aid, 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. Regional investment aid exempted under this Regulation should not be cumulated with *de minimis* support within the meaning of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid[8] in respect

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of the same eligible expenditure, if such cumulation would result in an aid intensity exceeding that fixed by this Regulation.

(18) This Regulation should not apply to aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to export activities and aid contingent upon the use of domestic over imported goods.

(19) In order to ensure transparency and effective monitoring in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard format to be used by Member States to provide the Commission with summary information whenever, in accordance with this Regulation, an aid scheme is implemented, or an ad hoc aid is granted, with a view to publication in the *Official Journal of the European Union*. For the same reasons, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid schemes exempted by this Regulation. In order to facilitate administrative treatment and in view of the wide availability of the necessary technology, the summary information should be provided in computerised form. In order to improve the transparency of regional aid in an enlarged Community, Member States should publish the full text of the aid scheme and communicate to the Commission the internet address of the publication.

(20) In the light of the Commission's experience in this area, and in particular the frequency with which it is generally necessary to revise State aid policy, it is appropriate to limit the period of application of this Regulation.

(21) This Regulation is without prejudice to any obligation on a Member State to notify individual grants of aid under obligations entered into in the context of other State aid instruments, and in particular the obligation to notify, or to inform the Commission of, aid to an undertaking receiving rescue and restructuring aid within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty[9],

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1 This Regulation shall apply to transparent regional investment aid schemes which constitute State aid within the meaning of Article 87(1) of the Treaty.

It shall also apply to ad hoc aid which constitutes State aid within the meaning of Article 87(1) of the Treaty if the ad hoc aid is used to supplement aid granted on the basis of a transparent regional investment aid scheme, and the ad hoc component does not exceed 50 % of the total aid to be granted for the investment.

2 This Regulation shall not apply to aid in the following sectors:

a the fisheries and aquaculture sector;

b the shipbuilding sector;

c the coal industry;