COMMISSION REGULATION (EC) No 364/2004

of 25 February 2004

amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development

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) The definition of small and medium-sized enterprises (SMEs) used 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 [3] is that used in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises [4]. That Recommendation has been replaced by Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises [5] with effect from 1 January 2005.

(2) The rules should be clarified in cases where an investment takes place in an area eligible for regional aid, but in a sector where regional aid is forbidden. The regional aid ceilings should only apply if both the region where the investment is carried out and the sector to which the beneficiary belongs are eligible for regional aid. The rules requiring notification of large individual grants beyond certain thresholds should be clarified accordingly.

(3) Experience has shown that it is desirable to have a unified and simplified reporting system of annual reports adopted pursuant to Article 27 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [6]. The specific reporting provisions laid down in Annex III to Regulation (EC) No 70/2001 should therefore only apply until such time as a general reporting system has been adopted.

(4) It is necessary to lay down provisions for the assessment of the compatibility with the common market of any aid to small and medium-sized enterprises granted without prior authorisation of the Commission before the entry into force of Regulation (EC) No 70/2001.

(5) Aid for research and development can contribute to economic growth, strengthening competitiveness and boosting employment. Aid for research and development for SMEs is of utmost importance, because one of the structural disadvantages of SMEs lies in the difficulty they may experience in gaining access to new technological developments and to technology transfer. At the same time, the Commission has taken the view in the Community framework for State aid for research and development [7] that it may be assumed that State aid for research and development will represent an incentive for SMEs to engage in more research and development since SMEs in general only spend a low percentage of their turnover on research and development activities. On the basis of its experience with the application of the Community framework for State aid for research and development to SMEs, the Commission has therefore decided that it is justified to exempt such aid from prior notification, taking also into account that such aid only has very limited potential to have a negative effect on competition. This also applies to aid for feasibility studies and aid to cover patenting costs as well as to individual aid which does not exceed certain ceilings.

(6) The scope of Regulation (EC) No 70/2001 should therefore be extended to cover aid for research and development granted to SMEs in the widest possible range of sectors.

(7) Certain definitions in Regulation (EC) No 70/2001 should be amended, in order to take account of the particularities of State aid for research and development, and others should be added. In particular, the definitions of the stages of research and development contained in Annex I to the Community framework for State aid for Research and Development should be inserted. The list of eligible costs should correspond to the list in Annex II to the framework, with certain clarifications necessary in order to reflect the fact that a Regulation is directly applicable in the Member States. Beneficiaries should not be able to benefit from double subsidisation of identical research results.

[1] OJ L 142, 14.5.1998, p. 1.
[2] OJ C 190, 12.8.2003, p. 3.
[3] OJ L 10, 13.1.2001, p. 33.
[4] OJ L 107, 30.4.1996, p. 4.
[5] OJ L 124, 20.5.2003, p. 36.
[6] OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.
[7] OJ C 45, 17.2.1996, p. 5.

(8) The guidance in the Community framework for State aid for research and development as to whether certain measures constitute State aid within the meaning of Article 87(1) of the Treaty remains relevant for the purposes of this Regulation.

(9) With a view to encouraging the dissemination of research results, SMEs may receive aid for the costs of obtaining and validating patents and other industrial property rights resulting from research and development activities. It should not be a precondition for exempting such aid that the activity which led to the right in question also received aid. It is sufficient that the activity would have qualified for research and development aid.

(10) Not all research and development aid for SMEs can be exempted under Regulation (EC) No 70/2001. The ceiling in the Community framework for State aid for Research and Development which applies to individual notifications should also apply in respect of individual aid which may be exempted under that Regulation. Special rules should also continue to apply for Eureka projects falling within the scope of the Declaration of the Ministerial Conference in Hanover on 6 November 1985 which are considered to be of common European interest.

(11) Regulation (EC) No 70/2001 should not exempt aid granted in the form of an advance that, expressed as a percentage of eligible costs, exceeds the aid intensity set in that Regulation and is repayable only in the event of a successful outcome of the research activities as provided for in the Framework for State aid for Research and Development, since the Commission assesses reimbursable aid on a case by case basis, taking into account the proposed conditions of reimbursement.

(12) Regulation (EC) No 70/2001, as amended by this regulation, applies only to State aid for Research and Development granted to small and medium-sized enterprises. The Community framework for State aid for research and development will continue to be used for the assessment of all aid for research and development which is notified to the Commission.

(13) Regulation (EC) No 70/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 70/2001 is amended as follows:

1. Article 1(2) is amended as follows:

   (a) point (a) is replaced by the following:

   '(a) with regard to Articles 4 and 5, to activities linked to the production, processing or marketing of products listed in Annex I to the Treaty;'

   (b) the following point (d) is added:

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

   (*) OJ L 205, 2.8.2002, p. 1.';

2. Article 2 is amended as follows:

   (a) in point (e) the following subparagraph is added:

   '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.';

   (b) the following points (h), (i) and (j) are added:

   '(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.';

3. in Article 4, paragraphs 2 and 3 are replaced by the following:

   '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 %.';

4. the following Articles 5a, 5b and 5c are inserted:

'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 (*) or any subsequent Framework Programme for research and development or Eureka, the maximum aid intensity may be increased by 15 percentage points gross;

(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 %.

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.

(*) OJ L 232, 29.8.2002, p. 1.';

5. Article 6 is replaced by the following:

'*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.';

6. the following Article 6a is inserted:

'*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).