

COMMUNITY GUIDELINES ON STATE AID FOR SMALL AND MEDIUM-SIZED ENTERPRISES

(96/C 213/04)

(Text with EEA relevance)

1. Introduction

1.1. The Community guidelines on State aid for small and medium-sized enterprises (SMEs)⁽¹⁾, which the Commission adopted on 20 May 1992, stated that the Commission would review their operation no later than three years after the date of their publication. The findings of that review have been submitted to the Member States. On the basis of those findings the Commission has decided to amend or clarify a number of points in the 1992 guidelines. The *de minimis* rule, which applies irrespective of the size of the recipient firm, will now be covered by a separate notice rendering it more flexible⁽²⁾. Aid towards intangible investment in the form of transfers of technology will be accorded the same favourable treatment as tangible investment. The definition of SMEs has been brought into line with the harmonized definition which the Commission has adopted⁽³⁾. The main purpose of these changes is to arrive at rules which are clearer and simpler to apply, and to take account of developments in Community policy, particularly the recommendations set out in the White Paper on Growth, competitiveness and employment.

1.2. At its meeting in Cannes in June 1995, the European Council emphasized in its conclusions that SMEs 'play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive'. But it is generally accepted that SMEs suffer from a number of handicaps that can slow down their development⁽⁴⁾. One of the main such handicaps is the difficulty in obtaining capital and credit, the chief causes of which are imperfect information, the risk-shy nature of financial markets and the limited guarantees that SMEs are in a position to offer; SMEs limited resources also restrict their

access to information, notably regarding new technology and potential markets. The introduction of new regulatory arrangements often entails higher costs for SMEs. The imperfections in the market which limit the socially desirable development of SMEs justify the favourable consideration which the Commission has traditionally been prepared to give to State aid to SMEs, provided that such aid does not affect trade to a disproportionate extent relative to the contribution it makes to the achievement of Community objectives allowed by Article 92 (3) (c). The Community has in fact itself been implementing an action programme for SMEs⁽⁵⁾.

1.3. The approach which Commission competition policy takes towards State aid for SMEs has to be consistent with its other policies, on such matters as enterprise, industrial competitiveness, research and technological development, and economic and social cohesion. The present guidelines are being published in order to inform Member States of the rules the Commission intends to apply when it vets aid to SMEs pursuant to Articles 92 and 93 of the EC Treaty, so that Member States know what to expect from the vetting process and in order to ensure that they are treated equally. For their part, Member States must satisfy themselves that any aid they propose to grant is transparent and that the Commission has been given all the information it needs to assess the impact on competition. The rules set out here apply regardless of the form taken by the aid.

2. When Community monitoring comes into play

2.1. Article 92 (1) of the EC Treaty imposes a general ban, subject to certain exceptions, on 'any aid

⁽¹⁾ OJ No C 213, 19. 8. 1992, p. 2.

⁽²⁾ Commission notice on the *de minimis* rule for State aid (OJ No C 68, 6. 3. 1996, p. 9).

⁽³⁾ Commission recommendation of 3 April 1996 concerning the definition of SMEs (OJ No L 107, 30. 4. 1996, p. 4).

⁽⁴⁾ Report from the Commission to the European Council meeting in Madrid CSE(95) 2087, p. 3.

⁽⁵⁾ See, for example, 'Community actions to assist SMEs and the craft sector': 1. Fourth Commission activity report on enterprise policy — Year 1993; 2. Commission report on coordination of the activities in favour of small and medium-sized enterprises (SMEs) (COM(94) 221 final, 7. 9. 1994).

granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods ... in so far as it affects trade between Member States'. State aid given to SMEs will usually be caught by this provision. Such aid confers an advantage on particular firms, unlike general measures, which may benefit all enterprises throughout the economy. And it may affect trade between Member States because many SMEs export part of their output to other Member States and because in most industries a strengthening in the position of SMEs on the local or national market will make it more difficult for producers from elsewhere in the Community to penetrate that market.

Nevertheless, some SMEs, and certain micro-enterprises in particular, carry on businesses in which there is no trade between Member States (providing local services, for example). Aid given to them for activities of this sort falls outside the scope of Article 92 (1).

2.2. *The de minimis rule*

Any aid given to a firm is capable of distorting competition; but not all aid has a perceptible effect on trade and competition between Member States. This is particularly true where the amount of aid involved is small, although such aid is not, as a general rule, intended exclusively for SMEs. Small amounts of aid are frequently granted under schemes administered by local or regional authorities.

In 1992, in an effort to reduce the administrative burden on the Member States and on the Commission itself — which ought to be left to concentrate its resources on cases of real importance to the Community — and in order to simplify matters for SMEs, the Commission introduced what is known as a *de minimis* rule^(*): this rule sets a threshold figure below which Article 92 (1) can be said not to apply, so that a measure need no longer be notified in advance to the Commission pursuant to Article 93 (3).

^(*) The version currently in force is the one set out in the Commission notice on the *de minimis* rule for State aid, referred to above. (See footnote 2.)

3. *Scope of the guidelines*

3.1. The Commission will follow these guidelines when it considers whether the exemption in Article 92 (3) (c) applies to State aid granted to SMEs.

3.2. *Definition of SMEs*

For the purpose of applying the guidelines, an SME is defined in accordance with the recommendation concerning the definition of SMEs adopted by the Commission on 3 April 1996⁽⁷⁾. On the current definition, whose ceilings for turnover and balance-sheet total can be reviewed every four years in accordance with Article 2 of the Annex to the recommendation, an SME is an enterprise which:

- has fewer than 250 employees⁽⁸⁾, and
- has either an annual turnover⁽⁹⁾ not exceeding ECU 40 million, or an annual balance-sheet total not exceeding ECU 27 million, and
- conforms to the criterion of independence defined below.

Where it is necessary to distinguish between 'small' and 'medium-sized' enterprises, a 'small' enterprise is defined as one which:

- has fewer than 50 employees, and
- has either an annual turnover not exceeding ECU 7 million, or an annual balance-sheet total not exceeding ECU 5 million, and
- conforms to the criterion of independence defined below.

⁽⁷⁾ See footnote 3.

⁽⁸⁾ The number of employees is the number of annual work units (AWUs), that is to say the number of wage- and salary-earners employed full-time for a whole year, with part-time or seasonal work being counted as fractions of a unit. The year to be taken is the last completed financial year.

⁽⁹⁾ The 'turnover' referred to here is the 'net turnover' defined in Article 28 of the Council's Fourth Company Law Directive on the annual accounts of certain types of companies (OJ No L 222, 14. 8. 1978, p. 11), as last amended by Directive 94/8/EC (OJ No L 82, 25. 3. 1994, p. 33), that is to say 'the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover'.

An enterprise is considered independent unless 25 % or more of the capital or of the voting rights is owned by an enterprise falling outside the definition of an SME or of a small enterprise, whichever may apply, or jointly by several such enterprises. This ceiling may be exceeded in two cases:

- if the enterprise is held by public investment corporations, venture capital companies or institutional investors, provided no control is exercised either individually or jointly,
- if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25 % or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.

The three tests — workforce, turnover or balance-sheet total, and independence — are cumulative: all three must be satisfied. The independence test, according to which a large enterprise must not hold 25 % or more of the SME's capital, is based on practice in a number of Member States where this percentage is the threshold at which supervision becomes possible. In order to ensure that only genuinely independent SMEs are included, there has to be a way of eliminating legal arrangements in which SMEs form an economic group much stronger than an individual SME. In calculating the thresholds referred to above, it is therefore necessary to cumulate the relevant figures for the beneficiary enterprise and for all the enterprises which it directly or indirectly controls through possession of 25 % or more of the capital or of the voting rights.

3.3. Industries covered

The present guidelines apply to aid granted to SMEs in all industries, with the exception of those where special Community rules governing State aid have been laid down under the EC or ECSC Treaty. Any aid given to SMEs in those industries is subject to the relevant rules for the particular industry. Such rules currently exist for steel, coal, shipbuilding, synthetic fibres, the motor industry⁽¹⁰⁾, fisheries and transport, and for products of Annex II to the Treaty (for activities at the production level plus those at the processing and/or marketing level).

⁽¹⁰⁾ The rules will apply for as long as 'codes', 'guidelines', 'frameworks' or the like are in force in the two last-named sectors.

4. The tests applied in assessing aid

4.1. General principles

The Commission may consider aid compatible with the common market in accordance with Article 92 (3) (c) if it is intended 'to facilitate the development of certain economic activities ... where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. To qualify for exemption under this provision, a State aid measure must in the first place be in the nature of an incentive: it must under no circumstances have the sole effect of continuously or periodically reducing the costs which the enterprise would normally have to bear, while otherwise leaving the *status quo* untouched, as in the case of operating aid⁽¹¹⁾, and it must be necessary in order to achieve objectives which market forces alone would not secure. The objectives pursued must be in the Community interest. Lastly, the aid must be proportionate to the handicaps which have to be overcome in order to secure the socio-economic benefits deemed to be desirable on grounds of the Community interest: the positive effect must outweigh the damaging effect which State aid has on competition and trade.

4.2. Purpose of the aid and admissible intensities

4.2.1. Tangible investment

The 1992 guidelines did not define 'investment' for the purposes of the thresholds it laid down in point 4.1. In practice, the Commission has taken the view, for reasons of consistency, that the definition applied should be the one laid down in the principles of coordination of regional aid systems⁽¹²⁾: 'investment' must be investment in fixed assets:

- 'in the creation of a new establishment, the extension of an existing establishment or in engaging in an activity involving a fundamental change in the product or production process of an existing establishment (by means of rationalization, restructuring or modernization)',

⁽¹¹⁾ There are certain exceptional circumstances in which operating aid is admissible in regions qualifying for regional aid pursuant to Article 92 (3) (a). See the Commission communication on the method for applying Article 92 (3) (a) and (c) to regional aid, and in particular point I.6 (OJ No C 212, 12. 8. 1988, p. 2).

⁽¹²⁾ OJ No C 31, 3. 2. 1979, p. 9.

or

- 'by way of take-over of an establishment which has closed or which would have closed had such take-over not taken place.'

The intensity is to be calculated by reference to the eligible costs, namely the actual costs of land, buildings and plant. In the case of a takeover of an establishment the selling price of the assets should be looked at.

Outside areas qualifying for domestic regional aid⁽¹³⁾, the Commission may grant exemption pursuant to Article 92 (3) (c) for aid to SMEs where the intensity of the aid, measured in gross grant equivalent⁽¹⁴⁾ as a proportion of the costs referred to in the preceding paragraph, does not exceed:

- 15 % in the case of small enterprises, or
- 7,5 % in the case of medium-sized enterprises.

In assisted areas, the Commission may approve aid to SMEs which exceeds the level of regional investment aid it has authorized for large enterprises in the area:

- by 10 percentage points gross in areas covered by Article 92 (3) (c), provided the total does not exceed 30 % net,

- by 15 percentage points gross in areas covered by Article 92 (3) (a), provided the total does not exceed 75 % net.

The aid ceiling will apply regardless of whether the aid is provided entirely from domestic sources or is part-financed by the Community from the Structural Funds, and more especially the European Regional Development Fund (ERDF).

Where the Member State proposes financing in respect of costs other than the eligible costs defined above, the aid will have to be recalculated by reference to the eligible costs⁽¹⁵⁾. The Member States are also free to grant aid within the limits authorized by the *de minimis* rule towards expenditure which would not be eligible under the definitions given in the present guidelines.

4.2.2. Intangible investment in the form of transfers of technology

The Commission's White Paper on Growth, competitiveness and employment stresses the important role which the promotion of intangible investment has to play in a general policy on competitiveness and recommends that the tests of the acceptability of aid to industry be reviewed in order to eliminate the bias in favour of tangible investment. The Commission's sympathetic approach to aid for R&D, training and consultancy should accordingly be broadened to include aid that is designed to encourage SMEs to use advanced technology which they would not have been able to develop themselves, by authorizing limited assistance towards the transfer of technology to SMEs from research laboratories or from other firms. Again, inequality in the information available to licensors and licensees regarding new technology, and other types of market imperfection associated with technology transfers, along with the irrecoverable character of the costs of acquiring specific technology or know-how, may provide justification for public assistance towards spending of this kind by SMEs, while limiting the impact on competition. For SMEs outside areas qualifying for domestic regional aid, therefore, the Commission may authorize aid which does not exceed the follow-

⁽¹³⁾ See the Commission communication on the method for applying Article 92 (3) (a) and (c) to regional aid, published in OJ No C 212, 12. 8. 1988, p. 2, as amended by the Commission notice published in OJ No C 364, 20. 12. 1994, p. 8).

⁽¹⁴⁾ That is to say, the nominal (before-tax) value of grants and the discounted before-tax value of interest subsidies as a proportion of the investment cost. Net figures are after tax.

⁽¹⁵⁾ This rule does not apply to costs which are eligible for the classes of aid described below.

ing gross intensities, measured as a percentage of the cost of acquiring patent rights, licences, know-how or unpatented technical knowledge⁽¹⁶⁾:

- 15 % in the case of small enterprises, or
- 7,5 % in the case of medium-sized enterprises.

In assisted areas the Commission may approve aid to SMEs which exceeds the level of regional investment aid it has authorized for large enterprises in the area:

- by 10 percentage points gross in areas covered by Article 92 (3) (c), provided the total does not exceed 30 % net,
- by 15 percentage points gross in areas covered by Article 92 (3) (a), provided the total does not exceed 75 % net.

As at 4.2.1, the aid ceiling will apply regardless of whether the aid is provided entirely from domestic sources or is part-financed by the Community from the Structural Funds, and more especially the ERDF.

4.2.3. Consultancy services, training and dissemination of knowledge

Aid of up to 50 % gross will generally be allowed for consultancy services provided by outside consultants to new or established SMEs or for the training given to their staff in such fields as management, financial matters, new technology (especially information technology), pollution control, protection of intellectual property rights or the like, or for the purpose of assessing the feasibility of new ventures. But each scheme will be judged on its merits, with particular reference to the distance of the activity from the market-place, any cost ceilings for individual firms, any possibilities of combination with other forms of aid, and other relevant factors. In certain exceptional circumstances, the Commission may allow

aid of more than 50 %. Assisted areas are one such case. Aid for general information campaigns may also qualify for a higher intensity if the financial benefit to the individual firm is small.

It is important to specify that such measures do not cover:

- aid relating to investment liable to be entered on the assets side of the enterprise's balance sheet as intangible assets (costs of R&D, concessions, patents, licences, etc.) and dealt with at points 4.2.2 and 4.2.5, or
- continuous or periodic aid not acting as an incentive and relating to the enterprise's usual operating expenditure (routine tax consultancy services, regular legal services, advertising, etc.).

4.2.4. Aid for the transfer of SMEs

In its recommendation of 7 December 1994 on the transfer of small and medium-sized enterprises⁽¹⁷⁾, the Commission drew attention to the problem of SMEs, and particularly family businesses, being forced to cease trading owing to insuperable difficulties in transferring them. If the buyer is an SME too, it may be given aid to help with the takeover in accordance with the rules on aid to tangible investment at point 4.2.1.

4.2.5. Aid for environmental protection

Aid for environmental protection will be considered in the light of the Community guidelines on State aid for environmental protection⁽¹⁸⁾. Environmental aid granted to SMEs may be up to 10 percentage points gross above the rate ordinarily allowed in the case of large enterprises.

⁽¹⁶⁾ The rules which follow do not concern the costs of acquiring patent rights, licences, etc. which form part of the eligible costs of an R&D project put forward by the recipient in accordance with the fourth indent of Annex II to the Community framework on State aids to research and development (OJ No C 45, 17. 2. 1996, p. 5) and which qualify for the rates admissible for the type of R&D project of which they form part.

⁽¹⁷⁾ OJ No L 385, 31. 12. 1994, p. 14. See also the Commission communication on that recommendation (OJ No C 400, 31. 12. 1994, p. 1).

⁽¹⁸⁾ The version which currently applies is the one published in OJ No C 72, 10. 3. 1994, p. 3.

4.2.6. Aid for R&D

Aid for R&D will be considered in the light of the Community framework for State aid for research and development⁽¹⁹⁾. R&D aid granted to SMEs may be up to 10 percentage points gross above the rate ordinarily allowed in the case of large enterprises.

4.2.7. Aid for employment

Aid for employment will be considered in the light of the guidelines on aid to employment⁽²⁰⁾. In particular, the Commission will be favourably disposed towards aid to create new jobs in SMEs.

4.2.8. Aid for other purposes

The majority of the aid schemes for SMEs which are notified to the Commission fall into the categories listed above. But the Commission may be prepared to authorize aid towards other justified measures designed to help SMEs, e.g. by encouraging cooperation between them, or towards measures to promote culture and heritage conservation, provided that they do not affect trading conditions and competition within the Community to an extent that is contrary to the common interest.

5. Procedural aspects

- 5.1. The present guidelines replace the Community guidelines on State aid for small and medium-sized enterprises (SMEs) adopted by the Commission on 20 May 1992⁽²¹⁾. They shall apply as from the date of their publication in the *Official Journal of the European Communities*.
- 5.2. The guidelines do not affect the obligation imposed on Member States by Article 93 (3) of the EC Treaty to inform the Commission of all schemes of assistance to SMEs and of any alteration to such schemes, unless the scheme is *de minimis*. To facilitate matters for both the Member States and its departments, the Commission sent Member States a standard form for such notifications by letter dated 22 February 1994⁽²²⁾. For cases where the amount or intensity of the aid is low, the Commission has also introduced a simplified form and an accelerated clearance procedure⁽²³⁾.
- 5.3. These guidelines are without prejudice to schemes already authorized when the guidelines are published, but such schemes may be reviewed pursuant to Article 93 (1).
- 5.4. The operation of these guidelines will be reviewed after they have been in force for three years; they may be revised in consequence if necessary.

⁽²¹⁾ See footnote 1.

⁽²²⁾ Ref. SG(94) D/2472.

⁽²³⁾ The version currently in force is the one set out in the Commission communication to the Member States on the accelerated clearance of aid schemes for SMEs and of amendments of existing schemes, published in OJ No C 213, 19. 8. 1992, p. 10.

⁽¹⁹⁾ The version which currently applies is the one published in OJ No C 45, 17. 2. 1996, p. 5.

⁽²⁰⁾ The version which currently applies is the one published in OJ No C 334, 12. 12. 1995, p. 4.