

**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 <sup>(1)</sup>, and in particular points (a)(i) and (b) of Article 1(1) thereof,

Having published a draft of this Regulation <sup>(2)</sup>,

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 <sup>(3)</sup> 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 <sup>(4)</sup>. 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 appro-

priate, 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, 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

<sup>(1)</sup> OJ L 142, 14.5.1998, p. 1.

<sup>(2)</sup> OJ C 120, 20.5.2006, p. 2.

<sup>(3)</sup> OJ C 54, 4.3.2006, p. 13.

<sup>(4)</sup> OJ L 10, 13.1.2001, p. 33. Regulation as amended by Regulation (EC) No 1040/2006 (OJ L 187, 8.7.2006, p. 8).

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<sup>(5)</sup>. 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.
- (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<sup>(6)</sup>. 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 agri-

cultural 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)<sup>(7)</sup> 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 consultancy aid, also remains subject to the notification requirements of Article 88(3) of the Treaty.

<sup>(5)</sup> OJ C 71, 11.3.2000, p. 14.

<sup>(6)</sup> OJ L 182, 3.7.1987, p. 36. Regulation as last amended by 1994 Act of Accession.

<sup>(7)</sup> OJ L 277, 21.10.2005, p. 1.

- (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<sup>(8)</sup> in respect 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.

<sup>(8)</sup> OJ L 10, 13.1.2001, p. 30.

(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 <sup>(9)</sup>,

(a) 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 the other current expenditure linked to export activity;

(b) aid contingent upon the use of domestic in preference to imported goods.

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;

(d) the steel industry;

(e) the synthetic fibres sector.

It shall not apply to activities linked to the primary production of agricultural products listed in Annex I to the Treaty. It shall apply to the processing and marketing of agricultural products to the exclusion of the manufacture and marketing of products which imitate or substitute for milk and milk products, as referred to in Article 3(2) of Regulation (EEC) No 1898/87.

3. This Regulation shall not apply to the following types of aid:

#### Article 2

##### Definitions

1. For the purpose of this Regulation the following definitions shall apply:

(a) 'aid' means any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;

(b) 'small and medium-sized enterprises (SMEs)' means small and medium-sized enterprises as defined in Annex I to Regulation (EC) No 70/2001;

(c) 'initial investment' means:

(i) an investment in material and immaterial assets relating to the setting-up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment; or

(ii) the acquisition of the capital assets directly linked to an establishment, where the establishment has closed or would have closed had it not been purchased, and the assets are bought by an independent investor.

The sole acquisition of the shares of an undertaking does not constitute initial investment;

(d) 'ad hoc aid' means individual aid that is not awarded on the basis of an aid scheme;

(e) 'material assets' means assets relating to land, buildings and plant/machinery;

(f) 'immaterial assets' means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge;

<sup>(9)</sup> OJ C 244, 1.10.2004, p. 2.

- (g) 'large investment project' means an initial investment in capital assets with an eligible expenditure above EUR 50 million, calculated at prices and exchange rates on the date when the aid is granted; a large investment project will be considered to be a single investment project when 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;
- (h) 'aid intensity in present gross grant equivalent (GGE)' means the discounted value of the aid expressed as a percentage of the discounted value of the eligible costs;
- (i) 'transparent regional investment aid schemes' means regional investment aid schemes in which it is possible to calculate precisely the Gross grant equivalent as a percentage of eligible expenditure *ex ante* without need to undertake a risk assessment (for example schemes which use grants, interest rate subsidies, capped fiscal measures);
- (j) 'start of work' means either the start of construction work or the first legally binding commitment to order equipment, excluding preliminary feasibility studies, whichever is the earlier;
- (k) 'job creation' means a net increase in the number of annual labour units (ALU) directly employed in a particular establishment compared with the average over the previous 12 months; ALU are the number of persons employed full time in one year, part-time and seasonal work being ALU fractions;
- (l) 'wage cost' means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising the gross wage, before tax, and the compulsory contributions such as social security charges;
- (m) 'jobs directly created by an investment project' means jobs concerning the activity to which the investment relates and created within three years of completion of the investment, including jobs created following an increase in the utilisation rate of the capacity created by the investment;
- (n) 'agricultural product' means:
- (i) the products listed in Annex I of the Treaty, except fishery and aquaculture products covered by Council Regulation (EC) No 104/2000 <sup>(10)</sup>;
  - (ii) products falling under CN codes 4502, 4503 and 4504 (cork products);
  - (iii) products intended to imitate or substitute milk and milk products, as referred to in Article 3(2) of Regulation (EEC) No 1898/87;
- (o) 'products intended to imitate or substitute milk and milk products' mean products which could be confused with milk and/or milk products but whose composition differs from such products in that they contain fat and/or protein of non-milk origin with or without protein derived from milk ('products other than milk products' as referred to in Article 3(2) of Regulation (EEC) No 1898/87);
- (p) 'processing of agricultural products' means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
- (q) 'marketing of an agricultural product' means holding or displaying with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers and processors and any activity preparing a product for such first sale; a sale by a farmer to final consumers shall only be considered as marketing if it takes place in separate premises reserved for that purpose;
- (r) 'tourism activities' means the following business activities in terms of NACE Rev. 1.1 <sup>(11)</sup>:
- (i) NACE 55: Hotels and restaurants;
  - (ii) NACE 63.3: Activities of travel agencies and tour operators, tourist assistance activities;
  - (iii) NACE 92: Recreational, cultural and sporting activities.
2. Schemes which use public loans are considered as transparent regional investment aid schemes within the meaning of paragraph 1(i) if they are backed by normal security and do not involve abnormal risk, and are therefore not considered to contain a state guarantee element; schemes which use state guarantees or public loans with a state guarantee element, are considered as transparent if, before the implementation of the scheme, the methodology to calculate the aid intensity of the state guarantee has been accepted following notification to the Commission after adoption of this Regulation. Public participations and aid comprised in risk capital measures shall not be considered as transparent.

<sup>(10)</sup> OJ L 17, 21.1.2000, p. 22.

<sup>(11)</sup> Classification of Economic Activities in the European Community.

### Article 3

#### Conditions for exemption

1. Transparent regional investment aid schemes fulfilling all the conditions of this Regulation shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

- (a) any aid awarded under such a scheme fulfils all the conditions of this Regulation;
- (b) the scheme contains an express reference to this Regulation, citing its title and publication reference in the *Official Journal of the European Union*.

2. Aid up to the amount determined in accordance with Article 7(e) awarded on the basis of schemes referred to in paragraph 1 of this Article shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the aid awarded directly fulfils all the conditions of this Regulation.

3. Ad hoc aid which is only used to supplement aid granted on the basis of transparent regional investment 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 directly fulfils all the conditions of this Regulation.

### Article 4

#### Aid for initial investment

1. Aid for initial 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:

- (a) the aid is granted in regions eligible for regional aid, as determined in the approved regional aid map for the Member State concerned for the period 2007 to 2013; and
- (b) the aid intensity in present gross grant equivalent does not exceed the regional aid ceiling which is in force at the time the aid is granted for the region in which the investment takes place, as determined in the approved regional aid map for the Member State concerned for the period 2007 to 2013.

With the exception of aid granted in favour of large investment projects and aid for the transport sector, the ceilings in point (b) may be increased by 20 percentage points for aid for initial investment awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

2. In addition to the general conditions for exemption laid down in this Regulation, aid for initial investment shall satisfy the following specific conditions:

- (a) 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;
- (b) to be eligible, immaterial assets must:
  - (i) be used exclusively in the establishment receiving the regional aid;
  - (ii) be regarded as amortizable assets;
  - (iii) be purchased from third parties under market conditions;
  - (iv) be included in the assets of the firm and remain in the establishment receiving the regional aid for at least five years or three years in the case of SMEs;

(c) where the aid is calculated on the basis of material or immaterial 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 the second subparagraph of paragraph 1, if appropriate, exceeds 75 %, the financial contribution of the beneficiary is reduced accordingly.

The condition in point (a) of the first subparagraph shall not prevent the replacement of plant or equipment which has become out-dated within the period referred to in that point due to rapid technological change, provided the economic activity is retained in the region concerned for the minimum period.

3. The ceilings fixed in paragraph 1 shall apply to the intensity of the aid calculated either as a percentage of the investment's eligible material and immaterial costs or as a percentage of the estimated wage costs of the person hired, calculated over a period of two years, for jobs directly created by the investment project, or a combination thereof, provided the aid does not exceed the most favourable amount resulting from the application of either calculation.

4. The eligible investment costs shall be discounted to their value at the moment of granting of the aid. Aid payable in several instalments shall be discounted to its value at the moment of granting of the aid. The interest rate to be used for discounting purposes shall be the reference rate applicable at the time of grant. In cases where aid is awarded by means of tax exemptions or reductions on future taxes due, subject to the respect of a certain aid intensity defined in GGE, discounting of aid tranches takes place on the basis of the reference rates applicable at the various times the tax advantages become effective.

5. In case of acquisition of an establishment, only the costs of buying assets from third parties shall be taken into consideration, provided the transaction has taken place under market conditions. Where the acquisition is accompanied by other initial investment, the expenditure relating to the latter shall be added to the cost of the purchase.

6. Costs related to the acquisition of assets under lease, other than land and buildings, shall only be taken into consideration 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.

7. In the transport sector, expenditure on the purchase of transport equipment (movable assets) shall not be eligible for aid for initial investment.

8. 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 immaterial assets may also be taken into consideration. For large undertakings, such costs are eligible only up to a limit of 50 % of the total eligible investment expenditure for the project.

9. Where the aid is calculated on the basis of wage costs, the following conditions shall be satisfied:

(a) jobs must be directly created by an investment project;

(b) the job creation must occur within three years of the completion of the investment and each job shall be maintained for a minimum period of five years, or three years in the case of SMEs.

10. By way of derogation from paragraph 1, the maximum aid intensities for investments in the processing and marketing of agricultural products may be increased to:

(a) 50 % of eligible investments in regions eligible under 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 to 2013, if the beneficiary is a small or medium-sized enterprise;

(b) 25 % of eligible investments in regions eligible under 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 to 2013, if the beneficiary has less than 750 employees and/or less than EUR 200 million turnover, calculated in line with Commission Recommendation 2003/361/EC<sup>(12)</sup>, and if such beneficiary fulfils all other conditions of that Recommendation.

#### Article 5

##### Necessity for the aid

1. This Regulation shall only exempt aid awarded under regional investment aid schemes if, before the start of work on the project, the beneficiary has submitted an application to the national or regional authorities for aid and, in respect of applications submitted from 1 January 2007, the authority responsible for administering the scheme has confirmed in writing that, subject to the final outcome of a detailed verification, the project meets the conditions of eligibility laid down by the scheme. An express reference to both conditions must also be included in the aid scheme. If work begins before the conditions laid down in this Article are fulfilled, the whole project shall not be eligible for regional aid.

2. Paragraph 1 shall not apply to aid schemes where a tax exemption or reduction is granted automatically to eligible expenditure without any discretion on the part of the authorities.

<sup>(12)</sup> OJ L 124, 20.5.2003, p. 36.

## Article 6

**Cumulation**

1. The aid ceilings fixed in Article 4 shall apply to the total amount of public support for the aided project regardless of whether that support is financed from local, regional, national or Community sources.

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

3. Regional investment aid exempted by this Regulation shall not be cumulated with *de minimis* support within the meaning of Regulation (EC) No 69/2001 in respect of the same eligible expenditure, if such cumulation would result in an aid intensity exceeding that fixed by this Regulation.

## Article 7

**Aid subject to prior notification to the Commission**

The following aid shall not be exempted from notification under this Regulation and shall remain subject to the notification requirement of Article 88(3) of the Treaty:

- (a) non-transparent regional investment aid schemes;
- (b) regional aid schemes targeted at specific sectors of economic activity within manufacturing or services. Regional investment aid schemes aimed at tourism activities are not considered as targeted at specific sectors;
- (c) regional aid schemes which provide for operating aid;
- (d) regional aid schemes which provide for aid other than investment or consultancy aid to newly created small undertakings;
- (e) regional aid awarded in favour of large investment projects on the basis of existing aid schemes if the total amount of aid from all sources exceeds 75 % of the maximum amount of aid an investment with eligible expenditure of EUR 100 million could receive, applying the standard aid ceiling in force for large undertakings in the approved regional aid map on the date the aid is to be granted;
- (f) ad hoc regional aid, other than that exempted pursuant to Article 3(1) of Regulation (EC) No 70/2001 and Article 3(3) of this Regulation;

(g) investment aid 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.

## Article 8

**Transparency and monitoring**

1. On implementation of an aid scheme or grant of ad hoc aid exempted by this Regulation, Member States shall, within 20 working days, forward to the Commission, with a view to its publication in the *Official Journal of the European Union*, a summary of the information regarding such aid in the form laid down in Annex I. This shall be provided electronically in computerised form.

2. Whenever regional aid is granted on the basis of an existing aid scheme for large investment projects which fall below the threshold for individual notification laid down by Article 7(e), the Member States shall, within 20 working days starting from the day on which the aid is granted by the competent authority, provide the Commission with the information requested in the standard form laid down in Annex II, electronically in computerised form. The Commission will make the summary information available to the public through its website (<http://ec.europa.eu/comm/competition/>).

3. Member States shall maintain detailed records regarding the aid schemes exempted by this Regulation and the individual aid awarded under those schemes. Such records shall contain all information necessary to establish that the conditions for exemption, as laid down in this Regulation, are fulfilled, including information on the status of any undertaking whose entitlement to aid depends on its status as an SME. Member States shall keep a record regarding an aid scheme, for 10 years from the date on which the last individual aid was awarded under such scheme. On written request, the Member State concerned shall provide the Commission, within a period of 20 working days or such longer period as may be fixed in the request, with all the information which the Commission considers necessary to assess whether the conditions of this Regulation have been complied with.

4. Member States shall submit a report to the Commission on the application of this Regulation in respect of each whole or part calendar year during which this Regulation applies, in the form laid down in Chapter III of Commission Regulation (EC) No 794/2004 <sup>(13)</sup>.

5. Member State shall publish the full text of the aid schemes which fall within the scope of this Regulation and shall communicate to the Commission the internet address of the publication. That information shall also be contained in the annual report submitted pursuant to paragraph 4. Projects for which expenses were incurred before the date of publication of the aid scheme shall not be eligible for regional aid.

<sup>(13)</sup> OJ L 140, 30.4.2004, p. 1.



*Article 9***Entry into force and period of validity**

1. This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*. It shall apply to aid schemes which enter into force, or are put into effect, after 31 December 2006.

It shall remain in force until 31 December 2013.

2. Notifications pending at the time of entry into force of this Regulation shall be assessed in accordance with its

provisions. Aid schemes put into effect before the date of entry into force of this Regulation and aid granted under those schemes, in the absence of a Commission authorisation and in breach of the obligation to notify laid down in Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempted under this Regulation if they fulfil all the conditions of this Regulation.

At the end of the period of validity of this Regulation, the exemption for aid schemes exempted under this Regulation shall expire at the date of expiry of the approved regional aid maps.

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

Done at Brussels, 24 October 2006.

*For the Commission*

Neelie KROES

*Member of the Commission*

## ANNEX I

**Information communicated by Member States regarding state aid granted under Commission Regulation (EC) No 1628/2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid**

(to be provided in computerised form, by electronic mail, to stateaidgreffe@ec.europa.eu)

<b>Aid No</b>	XR (to be completed by DG COMP)/year		
<b>Member State</b>			
<b>Region in which the scheme applies</b> (NUTS II)			
<b>Title of aid scheme or the name of the undertaking receiving ad hoc aid supplement</b>			
<b>Legal basis</b>  (for the scheme or for the ad hoc aid)			
<b>Annual expenditure planned under the scheme.</b> Amounts are to be given in EUR or, if applicable, in national currency. Indicate the annual overall amount of the budget appropriation(s) or the estimated tax loss per year for all aid instruments contained in the scheme.  <b>In case of ad hoc aid,</b> Indicate the overall aid amount. If appropriate, indicate also for how many years the ad hoc aid will be paid in instalments or how many years tax losses will be incurred.	<b>Annual overall amount under the scheme</b>  EUR ... million  <b>Overall amount of ad hoc aid</b>  EUR ... million  Paid over ... years		
<b>Maximum aid intensity</b>  Please specify the %	In conformity with Article 4 of the Regulation	<b>Yes</b>	<b>No</b>
<b>Date of implementation</b>  (indicate the date from which aid may be granted under the scheme or when the ad hoc aid is granted)	.../.../20...		
<b>Duration</b>  (indicate the date until which aid may be granted under the scheme or in case of an ad hoc aid the expected date of the last instalment to be paid)	Until .../.../20...		

<b>Economic sectors concerned</b>	All sectors eligible for regional investment aid	<b>Yes</b>
	Limited to specific sectors  Please specify which according to NACE Rev.1.1 classification (1):	<b>Yes/No</b>
<b>Name and address of the granting authority</b>  (Include the telephone No and the address for electronic mail)  Indicate the internet address of the publication of the aid scheme.	Name	
	Address	
(1) NACE Rev.1.1 is the Statistical classification of economic activities in the European Community.		

## ANNEX II

**Form for the provision of summary information for aid for large investments projects where the aid does not exceed the thresholds referred to in Article 7(e)**

1. Aid in favour of (name of the undertaking(s) receiving the aid).
  2. Aid scheme reference (Commission reference of the existing scheme or schemes under which the aid is awarded).
  3. Public entity/entities providing the assistance (name and co-ordinates of the granting authority or authorities).
  4. Member State where the investment takes place.
  5. Region (NUTS 3 level) where the investment takes place.
  6. Municipality (previously NUTS 5 level, now LAU 2) where the investment takes place.
  7. Type of project (setting-up of a new establishment, extension of existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment).
  8. Products manufactured or services provided on the basis of the investment project (with PRODCOM/NACE nomenclature or CPA nomenclature for projects in the service sectors).
  9. Short description of investment project.
  10. Discounted eligible cost of investment project (in EUR).
  11. Discounted aid amount (gross) in EUR.
  12. Aid intensity (% in GGE).
  13. Conditions attached to the payment of the proposed assistance (if any).
  14. Planned start and end date of the project.
  15. Date of award of the aid.
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