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1 Modern Tendencies in Public Management

1.1 Towards an action-oriented administration

For many years, Max Weber’s model for bureaucracy was thought to be ideal for local government. However, in today’s environment of rapid and frequent change, where problems are far more complex, a model based on hierarchical structures, standardized procedures and direct control no longer seems to be the best method to use. Public institutions and bodies have to be far more flexible, adaptable, goal-oriented and able to communicate effectively. Local authorities need to provide high quality services that respond directly to the needs of the public. Consequently, comprehensive and systematic restructuring of the public sector has been taking place over the last decade, with a strong tendency towards an action-oriented administration.

Table 1: Bureaucratic model <=> model of action-oriented administration

bureaucratic model	model of action-oriented administration
supply orientation with forced demand	demand orientation and development of a produce – market – concept
hierarchical structures	contract management in independent organizational units
organization according to functions	organization according to business processes
normalized standardized production	customer-orientated specialization
cameralistic principles	mercantilistic principles
equality	effectivity
steering by conditions	steering by results
files and papers	information and communication technologies
communication in defined channels	networked structures

In addition to the issues affecting management attitudes, the whole public sector faces different challenges because of accelerating European integration and general globalization.

1.2 New requirements for structures and staff

Changes of legal and organizational regulations and increasing competition between the regions as a result of the development of the European Union on the one hand, and the modernization of public administration and budgetary constraints on the other one, require the creation of new management tools and result in new structures and strategies. Consequently, this all means considerable changes for local government employees. These include:

- induction of employees,
- inclusion of staff in the decision-making process,
- human resource development through career planning and qualification training,
- team-building,
- quality management systems and reward concepts,
- systems controlling,
- interregional cooperation.

In this new situation managers and employees in the public sector administration require new and different skills. Some of the new aspects of management and the new requirements for staff that are necessary to successfully address the new situation are presented in the following figure.

Figure 1: Human Resources Management

Aspects of Management	Requirements for Staff
➤ political planning, strategy-making	➤ goal-definitions, planning, cooperation with politicians, experts, institutes
➤ organizational structures / institution building	➤ decentralization, controlling, outsourcing, cost centres, self-assessment
➤ shaping the external spheres	➤ citizen orientation, marketing strategies and instruments
➤ output-orientation	➤ defining and measuring products, results, qualities, benchmarking

As a result of the new requirements for staff, new skills and abilities are needed both by managers and employees in the public sector.

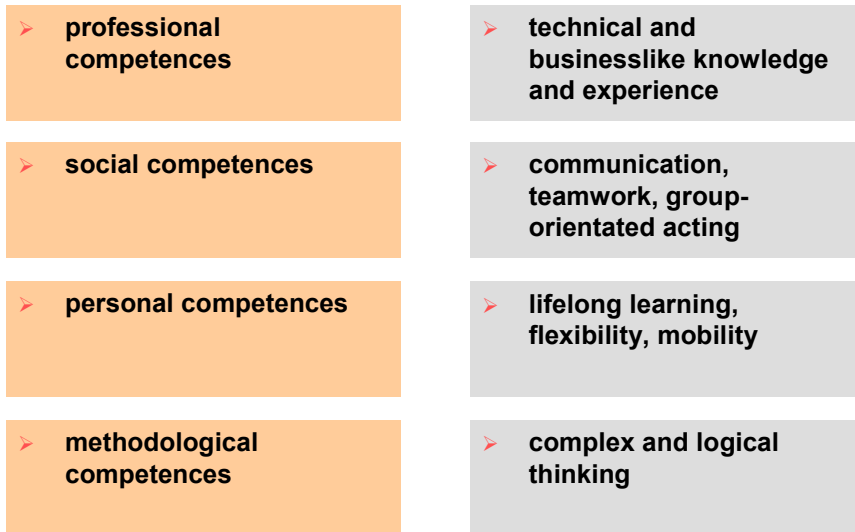
Managers in the public sector are team leaders, initiators and the main designers of organizational processes, just like managers in the private one. They play the key role in the modernization process. In today's complex world, knowledge of the law is not enough to accomplish a successful restructuring of public administration. That is why managers have to be skilled in economics and management practices as well as possess a number of other competences to allow them to recognize the abilities of employees. Key competences of a modern public sector manager are presented in the following figure.

Figure 2: Managers - competences required

<ul style="list-style-type: none"> ➤ knowledge 	<ul style="list-style-type: none"> ➤ management, political science, finances, HRM, law, economy, social science
<ul style="list-style-type: none"> ➤ technical abilities 	<ul style="list-style-type: none"> ➤ application of management methods and instruments e.g. project planning and calculation
<ul style="list-style-type: none"> ➤ social abilities 	<ul style="list-style-type: none"> ➤ communication, leadership, motivation, conflict management, coaching, negotiations
<ul style="list-style-type: none"> ➤ analytical abilities 	<ul style="list-style-type: none"> ➤ risk evaluation, systematic thinking, problem awareness
<ul style="list-style-type: none"> ➤ personal skills 	<ul style="list-style-type: none"> ➤ motivation, independence, flexibility, learning aptitude, creativity, critical faculty

The changes in public administration affect local government staff on every organizational level. **Employees** have to be ready to take on more responsibility and to work more independently. Staff needs to focus on efficiency and quality of service provision, and to become more customer oriented, actively participating in the management process such as setting aims and objectives. Generally, employees have to be adaptable and able to respond appropriately to the environmental changes. Key competences of local governments' staff are presented in the following figure.

Figure 3: Staff - competences required



In summary, the political changes, social and demographic processes and the substantial modernization of the whole public sector require a new understanding of leadership and strategic human resource management.

1.3 Modern Human Resource Management

Human Resource Management (HRM) is one of the key elements of the administration's strategy in the public sector. All measures and decisions that have a quantitative, qualitative or motivational influence on staff should be systematically coordinated as an integral part of the organization's strategy. In other words, Human Resource Management illustrates all aims, strategies and instruments that create and shape the behaviour of managers and employees.

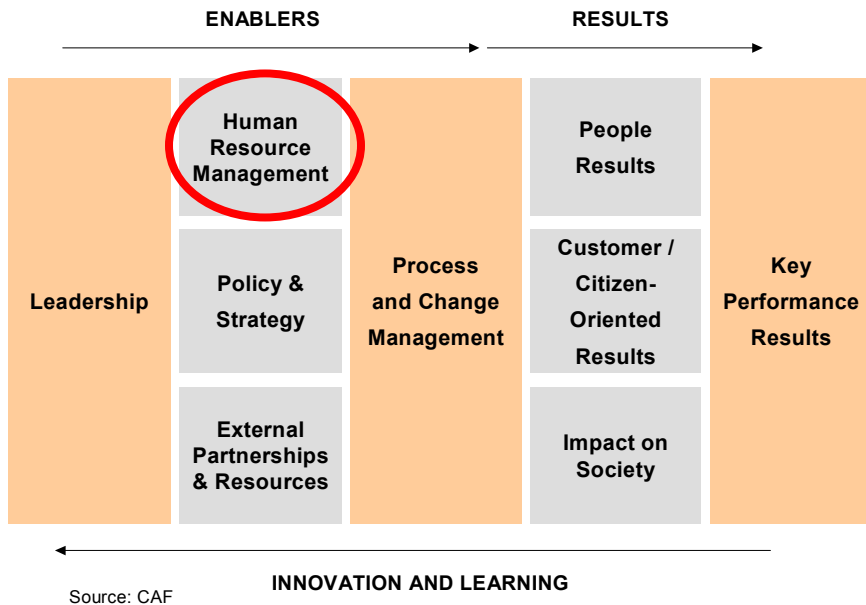
Following tasks belong to modern **Human Resource Management**:

- introduction of new organizational structures, in particular decentralization, involvement of employees in decision making processes, teamwork and management by objectives;
- providing the organization with employees:
 - personnel planning,
 - selection of personnel and personnel requirement (in-house and external),
 - personnel placement and introduction,
 - personnel development,

- assessment of performance and potential,
- career planning,
- redundancies;
- creation of organizational incentives for better staff motivation:
 - structuring of work and arrangement of working hours,
 - reward and social policy,
 - personnel management and achievement motivation,
 - education policy.

HRM is one of the nine main aspects requiring consideration in any organizational analysis according to **CAF - Common Assessment Framework** for strengthening and supporting quality development in public administration. CAF is an instrument for self-assessment in public administrations which has been developed by the European Institute for Public Administration (EIPA) under the umbrella of the European Union.

Figure 4: The CAF Model (CAF, 2003)



According to the CAF there are three criteria for the assessment of Human Resource Management in an organization.

- *Plan, manage and improve human resources with regard to strategy and planning* e.g. developing and communicating a HRM policy based on strategy and planning of the organization, analysing current and future needs for human resources, taking into account needs and expectations of stakeholders, developing and agreeing a clear policy containing objective criteria with regard to needs, promotion, rewards and the assignment of managerial functions, defining the managerial and leadership skills required of managers, etc.
- *Identify, develop and use competencies of the employees aligning individual, team and organizational targets and goals* e.g. identifying the current competencies at the individual and the organizational level in terms of knowledge, skills and attitudes, establishing and communicating a training plan based on current and future organizational and personal needs, developing and agreeing on personal training and development plans for all employees, developing and promoting modern training methods (on-the-job training, e-learning), developing and promoting inter-personal skills and abilities to deal with the public etc.
- *Involve employees by developing dialogue and empowerment* e.g. promoting a culture of open, non hierarchical communication and dialogue, involving employees in the development of plans and strategies, seeking agreement between managers and employees on goals and on ways of measuring goals and achievement.

Human Resource Development being a part of HRM is one of the most important managerial tasks.

2 Human Resource Development

2.1 Principles of Human Resource Development

The main task of Human Resource Development is the recognition, maintenance and extension of the potential and learning ability of each employee. Motivation and incentive systems, assessment of performance, carrier planning and training are the core elements.

The main **aims of Human Resource Development** are:

- improvement of qualifications and increase in organizational know-how,
- adaptability to changes in the organizational environment,
- stimulation of a customer care orientation,
- development of the sense of responsibility and quality,
- development of readiness and ability to take on the responsibility,
- motivation,
- increased job satisfaction,
- improvement of learning opportunities,
- recognition and enhancement of the ability to solve a problem individually, as a group and as a whole organization as well as
- development of a shared organizational culture.

2.2 Training

The existence of appropriate human resources in public administration is necessary for the achievement of strategic organizational aims. The modernization of the public sector can only be successfully accomplished with the involvement of qualified managers and employees. Therefore, the development of each individual is so important.

Training in public administration should, on the one hand, actualize and extend expert knowledge, and on the other, result in additional abilities such as learning aptitude, capacity for teambuilding or decision-making. Each educational measure should be integrated to a strategic training programme and assure further development of an employee. The qualifications required for a particular position and from a particular member of staff, result from the analysis of education needs in the organization that addresses present and future qualification requirements. The identified deficits are addressed by drawing up a schedule of appropriate education measures, agreed with the respective member of staff through consultation. Staff qualifications should be adapted to meet new requirements and expanded to take on new tasks and positions.

2.2.1 Types of Training

Generally, there are several methods of training such as:

- induction training (into the job training),
- on the job training,
- external training (off the job training),
- learning by doing.

Induction training means education that aims to prepare new employees for the work. This includes the selection and recruitment of personal and everything associated with the induction of new employees.

On the job training includes all forms of staff development directly associated with the workplace. The training takes place in the direct execution of the task, and in the actual workplace. The aim is to get the competences needed for the implementation of the particular task directly on site. This includes:

- job rotation,
- job development,
- job enrichment,
- assistance job,
- project work,
- teamwork,
- assignment of specific tasks and
- substitution.

External training corresponds to the traditional form of education that takes place outside the workplace. This includes:

- lectures,
- seminars,
- workshops,
- congresses,
- case studies,
- teamwork and
- role-playing.

Learning by doing takes place in the day to day work. People learn through performing the task, through the cooperation with colleagues and supervisors, through the involvement in different projects of reorganization, etc.. This process of learning by doing is often not directly intended or planned, but is invaluable in helping staff to cope with the necessary tasks.

2.2.2 Training available

The shift from a law-oriented and formally structured organization to one of efficient management and allocation of public resources leads to different responses in the education system. Education institutions offer specialized training in public management, postgraduate courses, specific curricula for public management and a broad range of different seminars and courses.

Generally, the training offer for the specific education for managers and employees in the public sector can be categorized in the following four groups:

- **Training Courses for Public Management** provided by public universities of applied sciences and giving a master degree; they last 4 years (included 5 months of work experience) and combine regular studies and in-service training;
- **Post-graduate Trainings** provided mostly by universities and big corporations and giving a master degree and MAS-degree, they last 100 – 120 days, have a character of in-service training and are usually quite expensive;
- **In-service training** for local government managers provided by special training academies at the provincial level or in big cities and lasting 4 – 6 weeks;
- Various **specific 2/3 days seminars** provided by consulting companies / public institutions / non profit organizations; these seminars are client oriented to different levels of civil servants – junior civil servants at the beginning of their carrier, top-level public managers, decision-makers and secretary generals;
- **Web based courses**; a number of e-learning courses related to knowledge that is needed to develop the professional carrier of civil servants.

3 Special training for local governments

Concerning the requirement of European democratic concepts to guarantee the balance of power between national, regional and local levels, effective and powerful local governments have to be supported by special training. The experiences have shown that managing transition has to be implemented in local authorities and good governance can only be reached through an effective, living local and regional level.

3.1 In-service training

Traditional university studies for public management often mean 2 to 4 years long education processes with inflexible curriculum. In addition to this **in-service training** offers:

- an indispensable complement to basic education,
- flexible structures responding to changes of the socio-economic context of public sector tasks and strategies,
- that are able to adapt to the new tasks of municipal reform and
- facilitate permanent renovation of the normative-legislative basis of the local self-government.

Programmes organized as in-service training have proven their usability for the needs of local governments. Flexibility, low costs and an approach to the paradigm of “lifelong learning” are best covered by in-service trainings that guarantee professional re-skilling of each individual public servant.

3.1.1 Principles

Practice-oriented training requires a factual coherence in the research with regard to the forthcoming innovation as well as a feedback from the practice according to problems and deficits. Institutions that execute multifunctional research, consulting and training are economic at an advantage because of the synergy effects. Associations of local government should therefore perform on the training market together with their specialized research units.

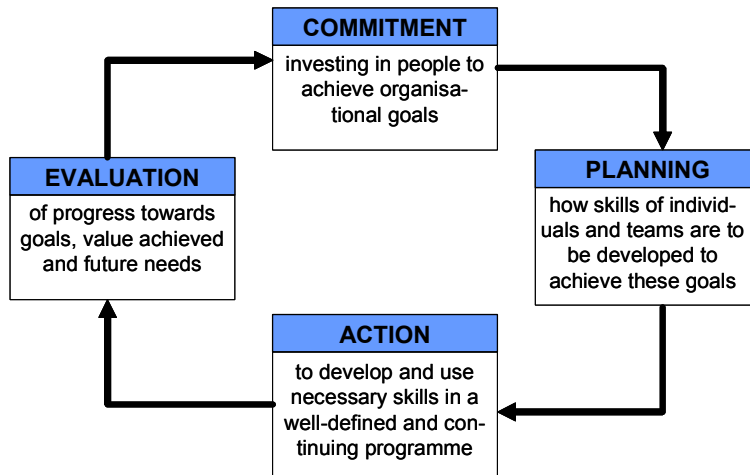
Integration of local governments associations in the preparation and implementation of in-service trainings for employees and managers of local governments is essential and has proven to improve the outputs of the trainings. Associations are directly involved in evolution and innovating of public sector as a whole. They guarantee a coherent and common environment and philosophy of training.

By the preparation of trainings for local authorities all potential providers should be considered and integrated. Generally, the competition between different providers should be supported in order to find the best offer with the best price. Cooperation between professional associations, national higher education institutes, training agencies and other providers such as NGOs has to be requested. The definition of strategy, results, curriculum and organizational surroundings are nevertheless best placed in the associations of local government. This guarantees a tailor-made curriculum as well as a programme organization, which fits the needs of local governments in costs and duration of the trainings.

3.1.2 The organization of in-service training

In-service trainings need to be developed to a comprehensive and coherent training programme, which is implemented in the administrations strategy. The quality-training programme is essential in keeping the staff motivated about learning new concepts and keeping the organization competitive. Thus, an effective in-service training has to integrate the following main components:

Figure 5: Components of in-service training



Source: Development and training for civil servants (London 1996)

Special training programmes for local government civil servants have to be established for the following target groups:

Figure 6: Target groups

<p>➤ newly recruited staff</p>	<p>➤ information on the organization (mission, vision, goals, values, ...)</p>
<p>➤ lower ranking civil servants</p>	<p>➤ new public management (NPM): customer-orientation; accounting, budgeting, etc. ...</p>
<p>➤ higher ranking civil servants / junior managers</p>	<p>➤ NPM / governance; re-engineering administrative processes; managing teams & projects, ...</p>
<p>➤ elected officials of local self-government</p>	<p>➤ basics of management, finance & budgeting, public relations</p>

Furthermore, the following areas should be taken into account by the organization of in-service training regarding sustainability:

- evaluation of training (mainly with questionnaires reflecting content, methods, trainers, personal benefits and benefits for colleagues etc),
- incentives for civil servants to attend an in-service training,
- follow up trainings or events for civil servants who completed an in-service training programme and
- internet website accompanying the training process.

3.2 Concept of the “project-oriented in-service training” (PIST)

A new, modern and flexible concept is the **project-oriented in-service training**, which is a combination of a “traditional” in-service training of two weeks and a project work accompanied by the lecturers. This special training provides participants with “off-the-job” skills and supports the development of public sector managers “on the job”. This means to provide the participants with an opportunity:

- to develop a basic understanding of the objectives and the substance of modern public management,
- to get acquainted with the context of output-oriented public management,
- to get acquainted with modern instruments and procedures of public management,
- to identify requirements and consequences for their own leadership duties,
- to link the theoretical background of two weeks training with practical work on the basis of a project (work) within 9 months after the start of the training.

A particular strength of attending such a course is the opportunity to meet colleagues from other public sector departments, who are all in a similar position and situation. The exchange of experience on a personal and professional level plays a prominent role.

The course is organized on a module-basis (listed as below) and contains a separate coaching part for each participant. This means that apart from attending all three modules (10 days), each participant has the possibility - and to gain the certificate it is a necessity - to carry through a project of his or her own, which he or she has to present at the end of the course to a committee. Each participant is supported by a coach which is part of the course and who should act as facilitator, clear methodological problems etc..

Apart from the participants’ coaching, the participants themselves are responsible for finding a so-called mentor (if possible also depending on the topic), who could either share his professional experiences with them or support them by promoting the project in the organization. The mentors as well as the superiors of each participant take part in the final workshop where the projects are presented.

The content of the PIST is presented in the following two tables.

Table 2: PIST - content of the course – part 1

Modules	Details
Kick-off meeting	<ul style="list-style-type: none"> Establishing an appropriate framework to get to know each other and facilitate cooperation, to scan the expectations of the participants, to clarify objectives, topics and programme execution.
Module 1 – Key aspects of Public Management	
Main features of Good Governance and Public Management	<ul style="list-style-type: none"> Public Management – future emphasis in the Public Sector Modernization strategies for public administrations (New Public Management, Good Governance)
Central elements of Public Management	<ul style="list-style-type: none"> Contract management Budgeting Performance contracts Decentralized structures
Process Management	<ul style="list-style-type: none"> Basics of process management, developing and optimising processes Client-orientation as key aspect for successful process optimisation
Module 2 - Strategic Planning, Project Management	
Strategic Steering	<ul style="list-style-type: none"> Steering at arm's length, steering instruments: replace control through rules by performance contracts Measuring output and outcome Controlling
Project Management in Public Administration	<ul style="list-style-type: none"> Requirements for a project-oriented organization Developing and managing projects
Strategic Planning	

Table 3: PIST - content of the course – part 2

Module 3 – Public Leadership	
Standards and re-quirements for Public Leaders	<ul style="list-style-type: none"> ● Leadership ● Motivation - demotivation ● Specific requirements for public leaders ● Instruments of human resource management ● Integrated human resource management
Quality Management	<ul style="list-style-type: none"> ● Models and instruments ● Practical approaches for the implementation ● Benefit of quality management
Change Management	<ul style="list-style-type: none"> ● Central aspects for successfully managing change ● Obstacles ● Stages ● Project management in change management processes
Module 4 – Coaching	
Development projects – formulation of a project	<ul style="list-style-type: none"> ● Formulation of a concrete development project ● Definition of aims, contents, success factors, time schedule and persons involved ● Establishment of next steps and reflection
Project results – interim result and accordingly individual coaching	<ul style="list-style-type: none"> ● What has been achieved? SWOT analysis ● First measures – and how do they should be achieved
Reflection about the implementation	<ul style="list-style-type: none"> ● What has been already achieved? What has to be still applied? Concrete steps for the implementation, future evaluation ● How the project results can be rounded off?

4 Summary of the questionnaire “Human resource development and training in local government associations”

The following chapter presents the main results of an extensive research exercise involving 18 of the LOGON partners undertaken between summer 2003 and spring 2004. The detailed evaluation of the whole questionnaire is presented in the appendix.

The survey included 18 associations of local authorities:

- 11 associations representing new member states: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland (2 associations), Slovak Republic and Slovenia,
- 2 associations from candidate countries Bulgaria and Romania as well as
- 5 selected associations from “old” EU member countries: Austria, Finland, Germany, Italy and Sweden.

4.1 Local government associations in different countries

Usually larger countries like Poland, Romania, Germany and Italy are divided into 4 or at least 3 different levels of government – national, regional, (district) and local. Only a few small countries like Malta, Cyprus and Slovenia and Bulgaria have a structure of only national and local government. In any case, no connection can be found between the number or type of existing associations and the sub-national government structure.

In most of the countries there are three or more national local government associations. In some cases, for example Romania or Latvia, an umbrella organization exists of which all the national associations are members. 4 of the 18 countries surveyed (Czech Republic, Lithuania, Malta and Finland) have only one local government association.

With the exception of the Italian association, AICCRE (founded in 1952), all the “old” EU-associations interviewed were founded in the early 20th century (1905-1920). Most of the associations in the accession countries and new member states were founded in the early 90s. In all the associations questioned, each employee has a defined field of work, which, with the exception of the Slovenian and Italian associations, is also specified in an existing job description.

The following table presents the administrative structures and the associations of local government in the countries surveyed:

Table 4: Administration structure and associations of local governments – part 1

Country (... mill. inhabitants*)	Existing government levels				Number of associations	Titles of associations (bold: organization interviewed; * : year of establishment)
	national	regional	district	local		
Bulgaria (7.8 mill.)	x			x	10	National Association of Local Authorities , *1996 9 Regional Associations of Local Authorities
Czech Republic (10.2 mill.)	x	x		x	1	Union of Towns and Communities of the Czech Republic , *1990
Cyprus (0.8)	x			x	2	Union of Municipalities , *1981 Union of Communities
Estonia (1.4 mill.)	x	x			3	Association of Estonian Cities (ELL/AEC), *1920 Association of Estonian Rural Municipalities (EMOL/AERM), Union of Estonian Associations of Local Authorities (EOÜ/UEALA)
Hungary (10.1 mill.)	x	x	x	x	7	Hungarian National Association of Local Authorities , *1989 National Association of Self-Governments of Small Towns, Association of Local Governments of Small Municipalities, Association of Hungarian Villages, Hungarian Local Government Association, Association of Cities of County Rank, National Association of County Local Governments
Latvia (2.3 mill.)	x		x	x	6	Union of Local and Regional Governments of Latvia (ULRGL), *1991 Association of Cities, Union of Latvian Towns, Association of Latvian Rural Municipalities, Association of Latvian Amalgamated Municipalities, Association of Towns of Latgale Region
Lithuania (3.5 mill.)	x	x		x	1	Association of Local Authorities in Lithuania (ALAL), *1995
Malta (0.4)	x			x	1	Local Councils Association , *1994
Poland ZGWRP (38.6 mill.)	x	x	x	x	5	Union of Rural Communes of the Republic of Poland , *1993 Association of Polish Cities, Union of Polish Metropolitan Cities, Union of Polish Small Towns, Association of Polish Counties
Poland ZMP (38.6 mill.)	x	x	x	x	6	Association of Polish Cities , *1991 Association of Polish Counties, Association of Small Towns, Union of Rural Communes, Union of Polish Metropolises, Association of Polish Regions
Romania (21.7 mill.)	x	x		x	5	Romanian Federation of Local Authorities , *2001 National Union of the County Councils of Romania, Romanian Association of Municipalities, Romanian Association of Towns, Romanian Association of Communes
Slovakia (5.4 mill.)	x	x	x	x	2	Association of Towns and Communities of Slovakia , *1990 Union of Towns of Slovakia
Slovenia (1.9 mill.)	x			x	2	Association of Municipalities and Towns of Slovenia , *1992 Association of Municipalities of Slovenia

Table 5: Administration structure and associations of local governments – part 2

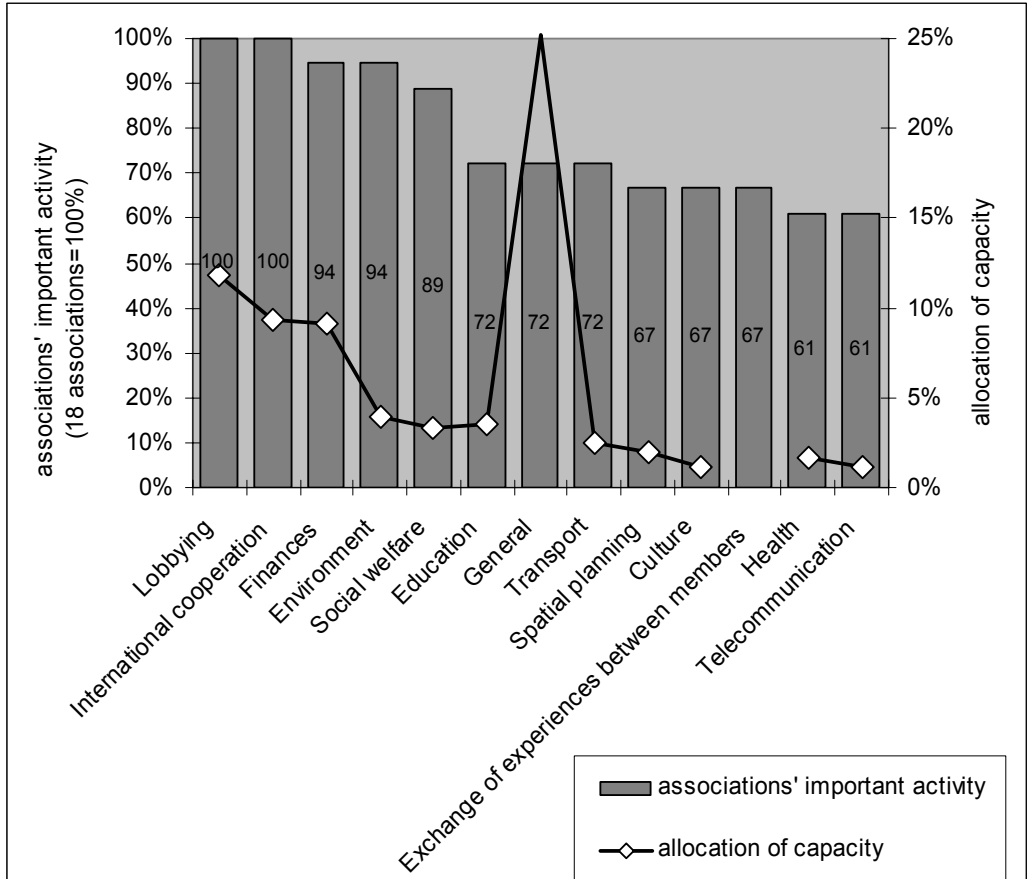
Country (... mill. inhabitants*)	Existing government levels				Number of associations	Titles of associations (bold: organization interviewed; * : year of establishment)
	national	regional	district	local		
Austria (8.1 mill.)	X	X		X	2	Austrian Association of Cities and Towns (AACT) , * 1915 Austrian Association of Municipalities
Finland (5.2 mill.)	X	X		X	1	The Association of Finnish Local and Regional Authorities (AFLRA) , *1914 (1993 by merging 7 associations)
Germany (82.5 mill.)	X	X		X	3	German Association of Cities , *1905 German Association of Towns and Municipalities, German County Association
Italy (57.1 mill.)	X	X	X	X	4	L'Associazione italiana per il Consiglio dei Comuni e delle Regioni d'Europa (AICCRE) . *1952 Associazione Nazionale Comuni Italiani (ANCI), Unione delle Province d'Italia (UPI), Unione nazionale comuni comunità enti montani (UNCEM)
Sweden (8.9 mill.)	X	X		X	21	Swedish Association of Local Authorities and Swedish Federation of County Councils (SALA) , *around 1900 One national (SALA) and 20 regional associations of local authorities.

* Source: Panorama of the European Union: Enlarging the EU Statistical Network (PHARE candidate countries); Eurostat, European Commission, Luxembourg, 2003; <http://europa.eu.int/comm/eurostat>.

4.2 Associations' fields of activity and services provided for members

The graph below shows the close connection between the associations' main fields of activity and the average allocation of employees. All 18 associations defined "lobbying" and "international cooperation" as an important area of work, followed by "finances", "environment" and "social welfare" (94 percent). "Education", "transport" and "general" represent an important part of their work for at least two third of respondents. Of lesser importance are tasks such as "spatial planning", "culture" and "exchange of experiences between members". "Health" and "telecommunication" are not considered core tasks by nearly half of the associations, especially in non EU countries and new member states.

Figure 7: Fields of activity of the associations

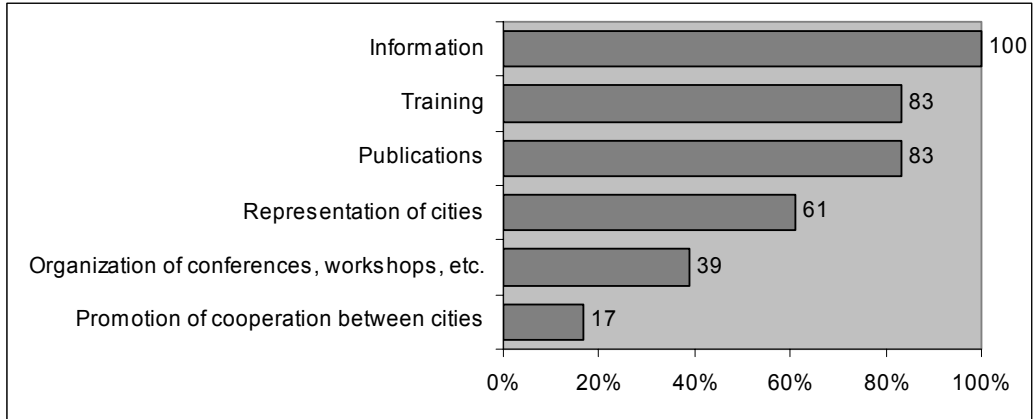


Note: About one quarter of the employees deals as well with administration or other tasks which are not shown in the graph.

On the whole, the allocation of capacity reflects the relative importance of the areas of activities. Lobbying, international cooperation and financial issues cover about 10 percent of the associations' capacities, whereas culture, spatial planning, health and telecommunication are around 1-3 percent. The exceptional result concerning the average allocation of capacity to "general" work should be read as being the result of different interpretations of this term and the missing allocation of the employees to other fields.

The following graph presents services provided by associations directly for their members.

Figure 8: Services provided directly to cities and municipalities



Note: As a percentage of the interviewed associations

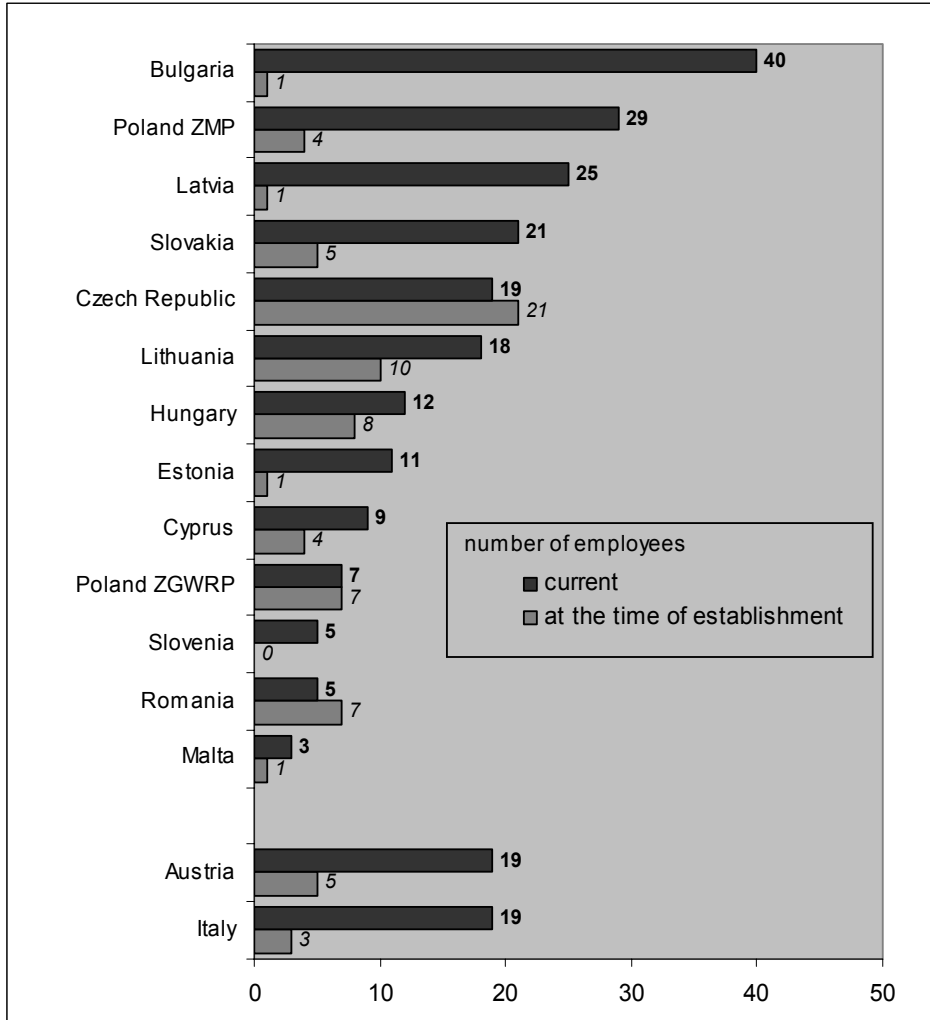
As direct service providers for cities and municipalities, all 18 associations provide different information products – e.g. information about new legislation, newsletters, circular letters, bulletins and press releases. Nearly all of the interviewed organizations (15) organize or hold training sessions and provide publications for cities and municipalities.

In addition to this, more than half of the associations represent cities and municipalities. Seven associations organize conferences, workshops, etc. and three promote cooperation between cities and municipalities. Furthermore, a few of the associations also provide services like research, statistics (mainly financial) and periodic surveys.

4.3 Employees and organization

There are significant differences of size and numbers of employees between the associations. As the workforce requirements are mainly determined by their specific tasks, there is neither a correlation to the size of the country (population) nor to the existing number of associations in a country. But in comparison to other associations, the Finnish and Swedish organizations are comparatively large. In relation to the number of inhabitants, the associations of Cyprus and Latvia can also be considered “large”. Generally female employees dominate staff numbers, in particular in the Slovenian and Polish organizations where they represent more than 80 percent of staff. Only the Romanian and Maltese associations have noticeably fewer female employees. The following figure presents the evolution in number of staff.

Figure 9: Number of employees



Note: Finland (332/[340]), Sweden (300), Germany (150/ [8]).

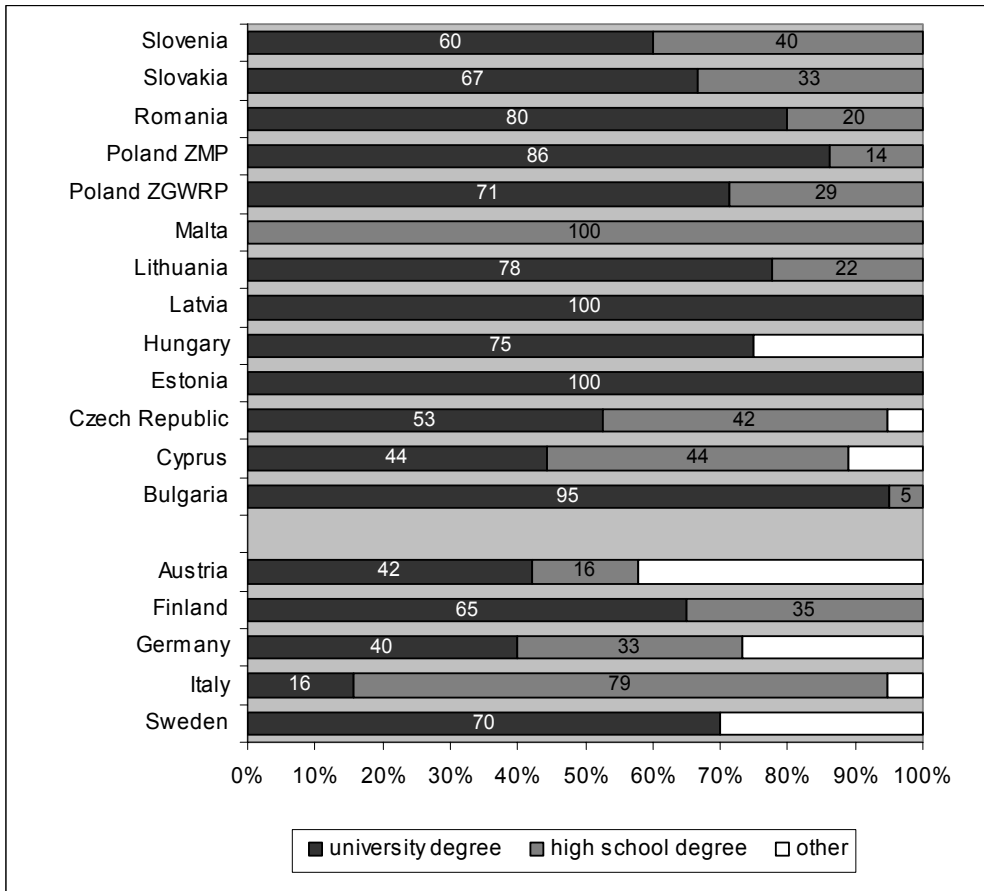
4.4 Education and languages

About 65 percent of the staff members of all the associations surveyed have a university degree. Particularly noticeable is the higher education level amongst LOGON partner associations in the new member states. On average, about 70 percent of the employees of organizations in the non EU countries and new member states have a university degree, whereas the average for the “old” EU partner associations is around 50 percent. The exceptions are the Local Councils Association from Malta, the Union of Cyprus Municipalities and the Union of Towns

and Communities of the Czech Republic. Among the “old” EU countries the Italian association has a relatively low percentage of staff educated to degree level.

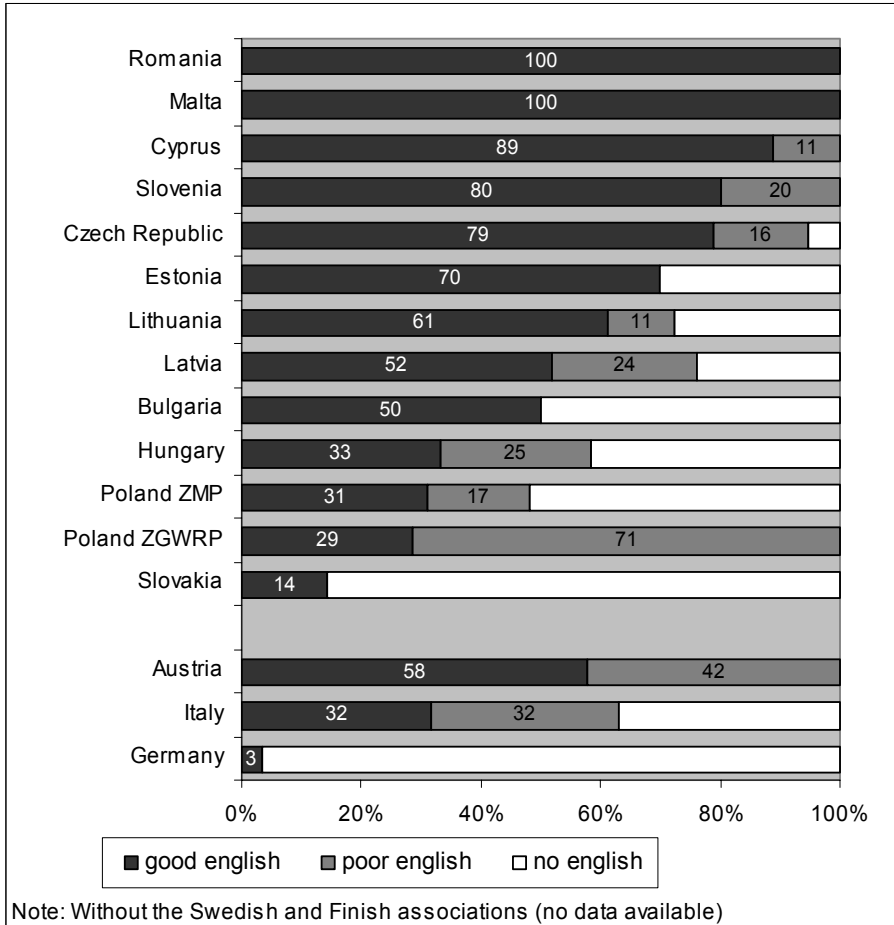
The following chart presents the educational qualification levels of the employees in the associations.

Figure 10: Educational qualification level



Concerning foreign language skills English is by far the most popular foreign language, although in some of the new member states like Poland, Slovakia, Lithuania or Latvia there are still more employees with greater proficiency in Russian than English. On average, about 55 percent of employees possess good or very good knowledge of English.

Figure 11: Foreign language skills

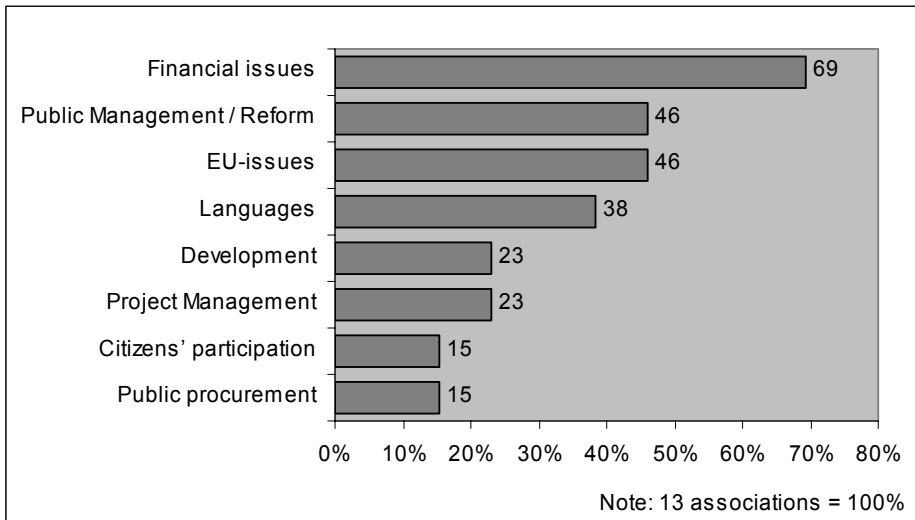


The willingness of the associations to employ trainees seems to be rather limited. Only seven associations employ trainees on a regularly basis. In this respect, the Hungarian National Association of Local Authorities provides a model example with four trainees per year. About half of the organizations questioned have either no trainees or did not answer this question.

4.5 Training

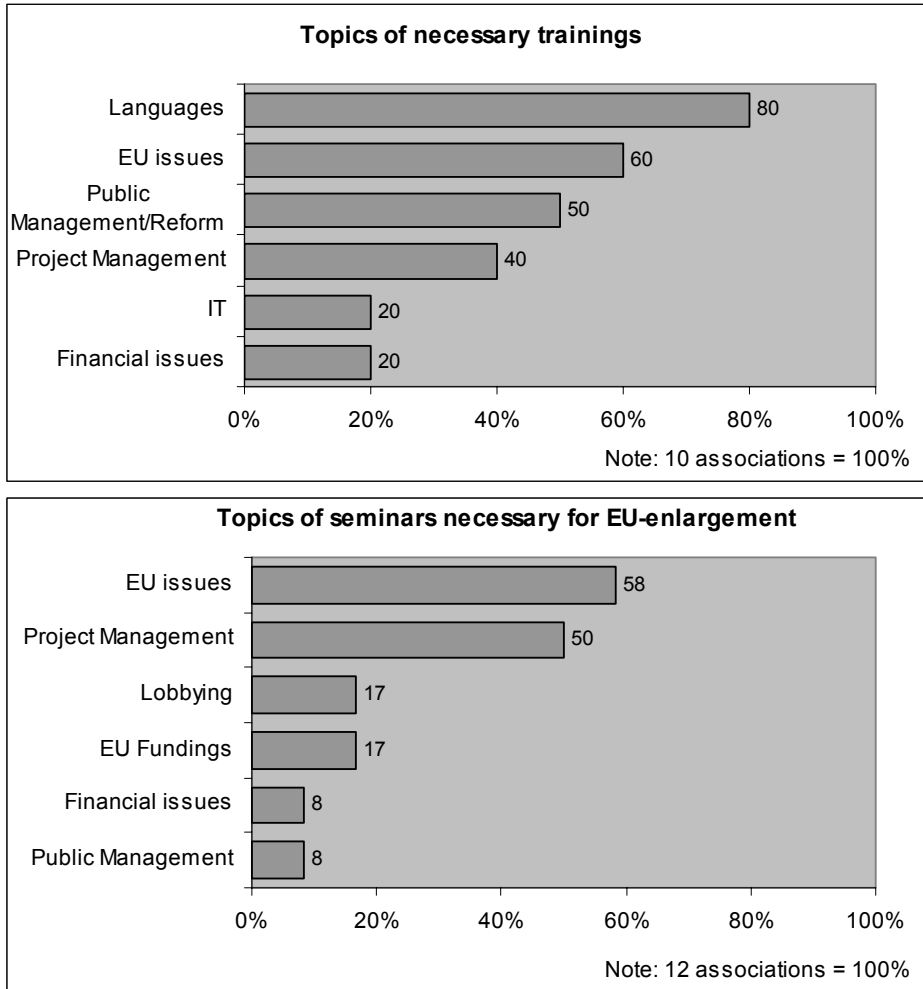
According to the figure below 69 – 46 percent of the associations define “financial issues”, “EU-issues”, “public management” and “governmental reform” as current training topics at the local level.

Figure 12: Topics of current trainings



In relation to future training needs, about 80 percent of the associations require training in “foreign languages”, 50 - 60 percent in “EU issues” and “public management” as well as 40 percent in “project management”. Other key topics for training can be identified as: IT, public relations, exchange programmes, development indicators, quality management, team building, local development strategies, urban policy, human resources, public services, communication and conflict management. Especially seminars about “EU-issues” and “project management” are considered to be essential in order to work effectively after EU-enlargement.

Figure 13: Topics of training and seminars needed

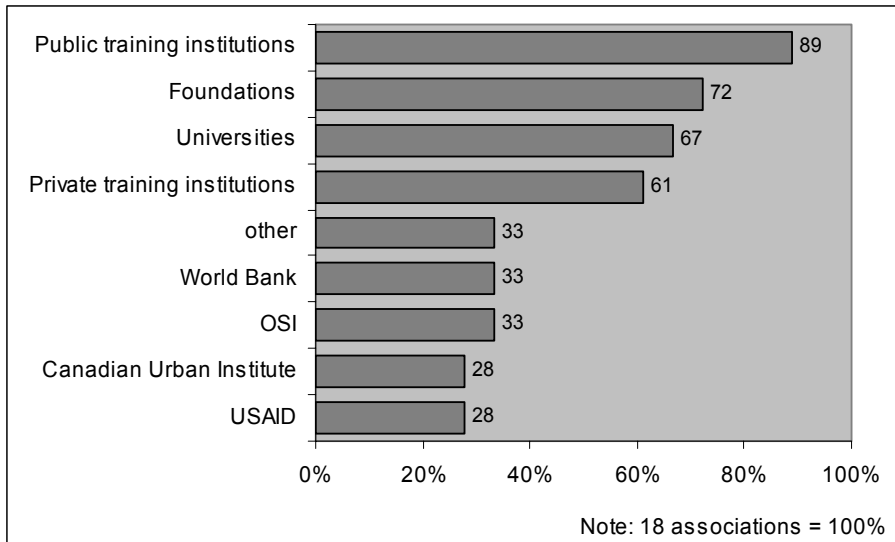


In preparation for EU accession, most associations in the candidate countries and new member states offered special training (mostly “in-house-training”) to their employees. The Bulgarian, Hungarian and Romanian associations provided regular in-house-training 2 to 3 times per year. In addition, most association organize some training for public administration staff. Only the Local Councils Association from Malta and the Union of Towns and Communities of the Czech Republic did not organize training for EU accession.

4.6 Cooperation

In the field of training most associations cooperate with more than one provider and nearly all of them work with public training institutions. Other important partners in training are foundations, universities and private training institutions. Nearly one third of all organizations cooperate with one of the big international institutions like the World Bank, OSI, the Canadian Urban Institute or the USAID. Details concerning the cooperation are presented in the following chart.

Figure 14: Cooperation with training institutions



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5.1 List of Literature

Bauer, Helfried/Kravchenko, Victor/Meyer, Paul: Development of a training system for local self-government staff in Ukraine, Council of Europe, European Commission, 2004

Common Assessment Framework

Kasper, Helmut/Mayrhofer, Wolfgang: Personalmanagement, Führung, Organisation, Linde Verlag, Wien 2002

Müller, Eduard: Personalentwicklung in der öffentlichen Verwaltung, Linde Verlag, Wien 1996

Naschold Frieder/Bogumil, Jörg: Modernisierung des Staates – New Public Management und Verwaltungsreform, Leske+Budrich, Opladen 1998

Osborne, David/Gaebler, Ted: Reinventing Government – How the Entrepreneurial Spirits is transforming the Public Sector. Addison-Wasley Publishing, Reading (Mass.) 1993

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1 Introduction

The following tables and figures are the results of the survey by KDZ – Centre for Public Administration Research on “human resource development and training” that was carried out in August 2003 and adapted in spring 2004.

The survey includes LOGON partners from all new member states and candidate countries:

- Bulgaria – National Association of Local Authorities
- Czech Republic – Union of Towns and Communities
- Cyprus – Union of Municipalities
- Estonia – Association of Estonian Cities
- Hungary – Hungarian National Association of Local Authorities
- Latvia – Union of Local and Regional Governments
- Lithuania – Association of Local Authorities
- Malta – Local Councils Association
- Poland ZGWRP – Union of Rural Communes
- Poland ZMP – Association of Polish Cities
- Romania – Romanian Federation of Local Authorities
- Slovakia – Association of Towns and Communities
- Slovenia – Association of Municipalities and Towns

(together 13 organizations)

as well as

five associations from EU countries:

- Austria - Austrian Association of Cities and Towns,
- Italy – L'Associazione italiana per il Consiglio dei Comuni e delle Regioni d'Europa (AICCRE)
- Finland – Association of Finnish Local and Regional Authorities
- Germany – German Association of Cities and
- Sweden – Swedish Association of Local Authorities and Swedish Federation of County Councils

2 Local government associations in different countries

2.1 Administrative levels

How many levels of government exist in your country?

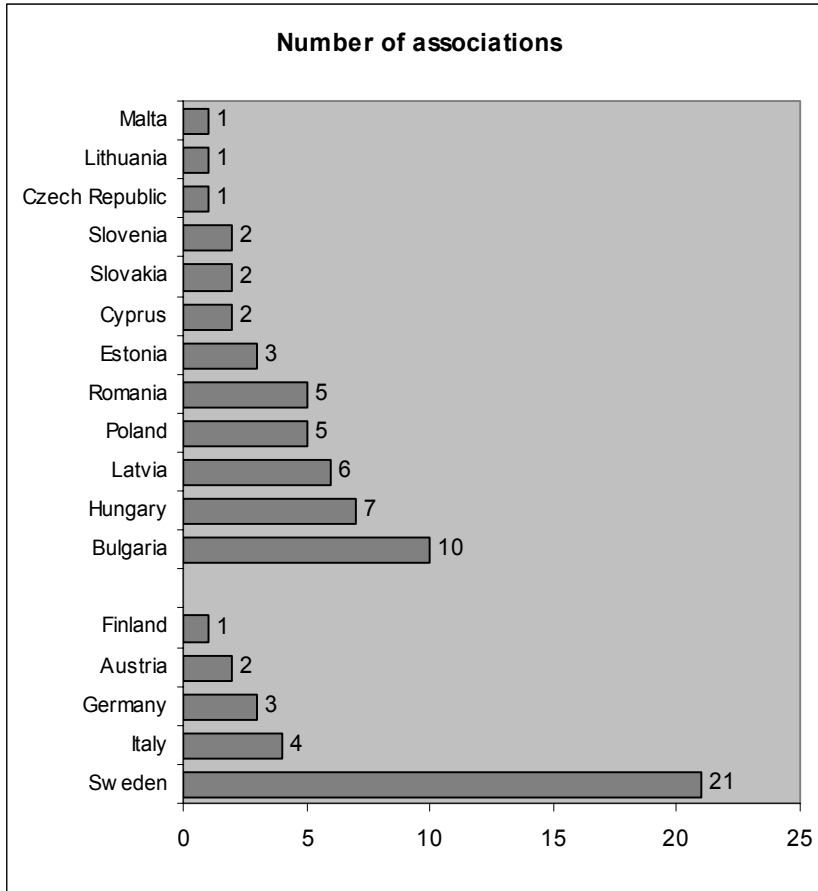
	national level	regional level	district level	local level	other level	Number of levels
Bulgaria	√			√		2
Czech Republic	√	√		√		3
Cyprus	√			√		2
Estonia	√	√		√		3
Hungary	√	√	√	√		4
Latvia	√		√	√		3
Lithuania	√	√		√		3
Malta	√			√		2
Poland ZGWRP	√	√	√	√		4
Poland ZMP	√	√	√	√		4
Romania	√	√		√		3
Slovakia	√	√	√	√		4
Slovenia	√			√		2
Austria	√	√		√		3
Finland	√	√		√		3
Germany	√	√		√		3
Italy	√	√	√	√		4
Sweden	√	√		√		3

2.2 Number of associations of local authorities in the country

How many associations of local authorities exist in your country?

	Number of associations	Titles of associations
Bulgaria	10	National Association of Local Authorities, 9 Regional Associations of Local Authorities
Czech Republic	1	Union of Towns and Communities of the Czech Republic
Cyprus	2	Union of Municipalities, Union of Communities
Estonia	3	Association of Estonian Cities (ELL/AEC), Association of Estonian Rural Municipalities (EMOL/AERM), Union of Estonian Associations of Local Authorities (EOÜ/UEALA)
Hungary	7	Hungarian National Association of Local Authorities, National Association of Self-Governments of Small Towns, Association of Local Governments of Small Municipalities, Association of Hungarian Villages, Hungarian Local Government Association, Association of Cities of County Rank, National Association of County Local Governments

	Number of associations	Titles of associations
Latvia	6	Union of Local and Regional Governments of Latvia (ULRGL) , Association of Cities (member of ULRGL), Union of Latvian Towns (member of ULRGL), Association of Latvian Rural Municipalities (member of ULRGL), Association of Latvian Amalgamated Municipalities, Association of Towns of Latgale Region
Lithuania	1	Association of Local Authorities in Lithuania (ALAL)
Malta	1	Local Councils Association
Poland ZGWRP	5	Union of Rural Communes of the Republic of Poland , Association of Polish Cities, Union of Polish Metropolitan Cities, Union of Polish Small Towns, Association of Polish Counties
Poland ZMP	6	Association of Polish Cities , Association of Polish Counties, Association of Small Towns, Union of Rural Communes, Union of Polish Metropolies, Association of Polish Regions
Romania	5	Romanian Federation of Local Authorities , National Union of the County Councils of Romania, Romanian Association of Municipalities, Romanian Association of Towns, Romanian Association of Communes
Slovakia	2	Association of Towns and Communities of Slovakia , Union of Towns of Slovakia
Slovenia	2	Association of Municipalities and Towns of Slovenia , Association of Municipalities of Slovenia
Austria	2	Austrian Association of Cities and Towns (AACT) , Austrian Association of Municipalities
Finland	1	Association of Finnish Local and Regional Authorities
Germany	3	German Association of Cities , German Association of Towns and Municipalities, German County Association
Italy	4	L'Associazione italiana per il Consiglio dei Comuni e delle Regioni d'Europa (AICCRE) Associazione Nazionale Comuni Italiani (ANCI), Unione delle Province d'Italia (UPI), Unione nazionale comuni comunità enti montani (UNCHEM)
Sweden	21	Swedish Association of Local Authorities and Swedish Federation of County Councils (SALA) One national (SALA) and 20 regional associations of local authorities.
bold: organization interviewed		



2.3 Cooperation between associations in the country

Do the different associations in your country work together?

	General cooperation		Implementation of common projects	
	close	not close	close	not close
Bulgaria	√			√
Czech Republic*	-	-	-	-
Cyprus				
Estonia	√			√
Hungary		√		√
Latvia	√		√	
Lithuania*	-	-	-	-
Malta*	-	-	-	-
Poland ZGWRP		√		√
Poland ZMP	√		√	

	General cooperation		Implementation of common projects	
	close	not close	close	not close
Romania	√		√	
Slovakia		√		√
Slovenia		√		√
Austria	√			√
Finland*	-	-	-	-
Germany	√		√	
Italy	√			√
Sweden	√			√

* only one association in the country

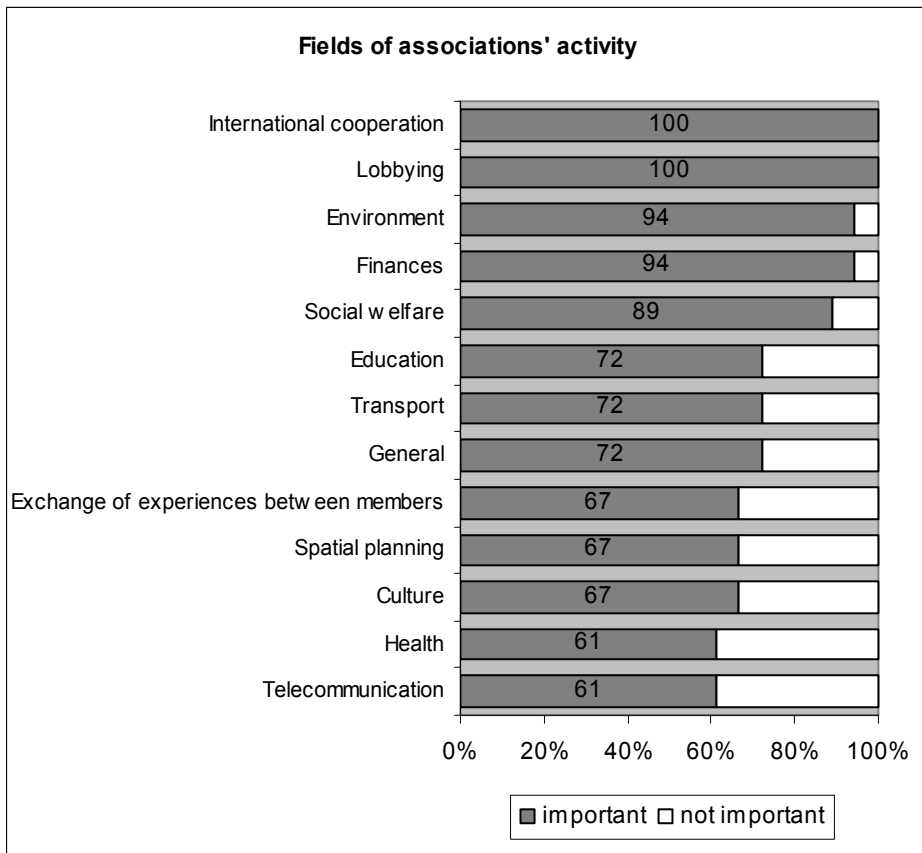
2.4 Establishment of associations

When was the association established and who initiated its establishment?

	Year	Establisher
Bulgaria	1996	94 Bulgarian municipalities
Czech Republic	1990	Czech municipalities
Cyprus	1981	local elected government
Estonia	1920	mayors of some cities
Hungary	1989	152 Hungarian local authorities
Latvia	1991	Municipalities
Lithuania	1995	Congress of ALAL
Malta	1994	Central Government
Poland ZGWRP	1993	25 rural municipalities
Poland ZMP	1991	Councils of over 60 cities
Romania	2001	4 other associations
Slovakia	1990	Representatives of 176 municipalities
Slovenia	1992	communities and municipalities
Austria	1915	Richard Weiskirchner – Mayor of Vienna
Finland	1993	By merging 7 associations, the oldest was established in 1914
Germany	1905	Freiherr von Stein
Italy	1952	Prof. Umberto Serafini
Sweden	around 1900	no data

2.5 Main fields of activity of the associations

What are the association's main fields of activity?



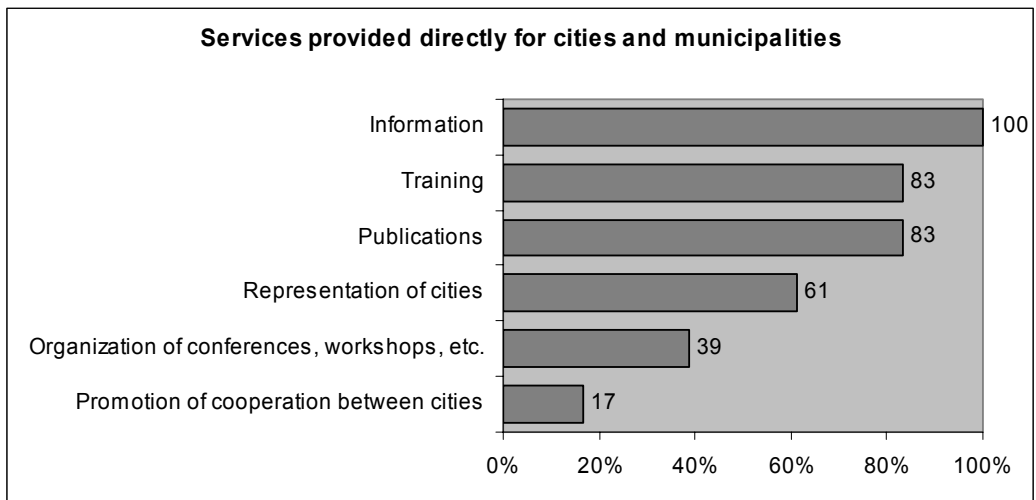
The figure above shows the importance of the individual fields of activity in the associations' estimation, whereas the figure below reflects the current staff resources dedicated to the individual activities by percentage. (How many employees are allocated to the associations' fields of activity?)

main field of activity	allocation of employees (in percent)															average allocation of capacity of work in percent				
	Bulgaria	Czech Republic	Cyprus	Estonia	Hungary	Latvia	Lithuania	Malta	Poland ZGWRRP	Romania	Slovakia	Slovenia	Poland ZIMP	Austria	Finland		Germany	Italy	Sweden	
very im- portant	Lobbying	15	0	0	no data	9,1	44	26	0	13	14	0	0	no data	5,3	no data	35,9	0	12,9	11,8
	International cooperation	13	27,8	0	no data	18	8,3	16	0	5,9	14	15	0	no data	7,9	no data	6,28	0	6,47	9,3
important	Finances	18	11,1	0	no data	9,1	8,3	11	0	18	14	23	0	no data	5,3	no data	7,17	0	12,9	9,1
	Environment	5	0	0	no data	4,5	2,8	11	0	0	14	7,7	0	no data	5,3	no data	2,69	0	6,47	3,9
	Social welfare	7,5	0	0	no data	4,5	2,8	11	0	0	0	7,7	0	no data	2,6	no data	2,69	0	10,8	3,3
rather important	Education	5	0	0	no data	4,5	2,8	11	0	0	14	7,7	0	no data	0	no data	2,69	0	5,17	3,5
	General	10	27,8	50	no data	9,1	8,3	0	100	0	14	0	100	no data	16	no data	6,28	37	0	25,2
	Transport	5	0	0	no data	2,3	2,8	5,3	0	0	0	7,7	0	no data	3	no data	2,69	0	8,62	2,5
less im- portant	Spatial planning	5	0	0	no data	4,5	2,8	0	0	0	0	7,7	0	no data	3	no data	0,45	0	6,47	2,0
	Exch. of experiences betw. members	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data	no data
	Culture	5	0	0	no data	2,3	2,8	0	0	0	0	0	0	no data	0	no data	2,69	0	4,31	1,1
	Health	5	0	0	no data	4,5	2,8	11	0	0	0	0	0	no data	0	no data	2,69	0	0	1,7
	Telecommunication	0	0	0	no data	9,1	2,8	0	0	0	0	0	0	no data	0	no data	0,9	0	4,31	1,1
	<i>Administration and other</i>	7,5	33,3	50	no data	18	8,3	0	0	63	14	23	0	no data	53	no data	26,9	63	21,6	25,4
		100	100	100		100	100	100	100	100	100	100	100		100	100	100	100	100	100

Other: EU issues, projects, citizens' safety, developing local self-government.

2.6 Services provided by the association directly for cities and municipalities

Does the association provide services directly to cities or municipalities and if so, what kind?



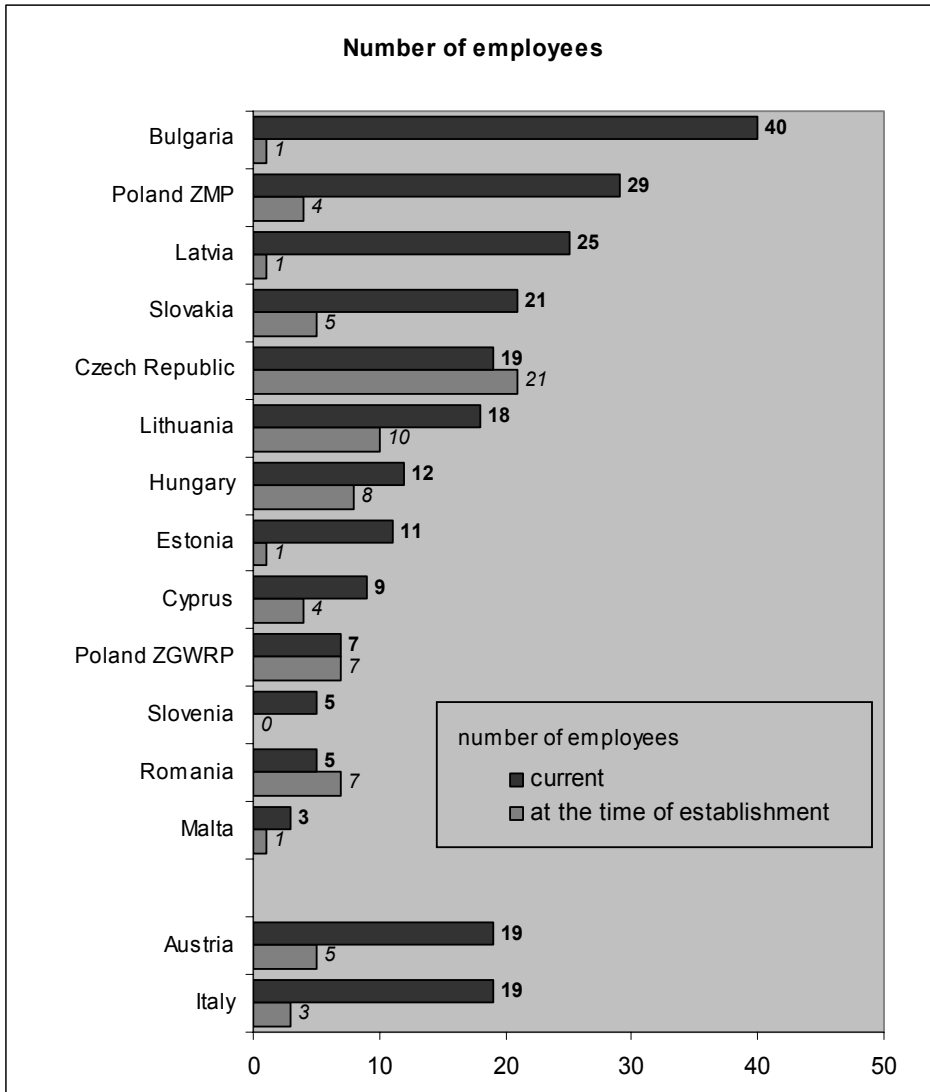
	Information	Training	Representation of cities	Promotion of cooperation between cities	Organization of conferences, workshops, etc.	Publications
Bulgaria	√	√			√	
Czech Republic	√		√			√
Cyprus	√	√				√
Estonia	√	√	√			√
Hungary	√	√			√	√
Latvia	√	√	√	√	√	√
Lithuania	√	√				
Malta	√	√				√
Poland ZGWRP	√	√	√		√	√
Poland ZMP	√	√	√	√	√	√
Romania	√	√				√
Slovakia	√	√	√		√	√
Slovenia	√	√	√		√	
Austria	√		√			√
Finland	√	√	√			√
Germany	√		√			√
Italy	√	√		√		√
Sweden	√	√	√			√
Total	18	15	11	3	7	15

Other: statistics, financial indicators database, research, surveys, press releases, media service.

3 Employees of the associations

3.1 Number of employees in the association

How many people were originally employed by the association at the time of establishment, and how many are there now?

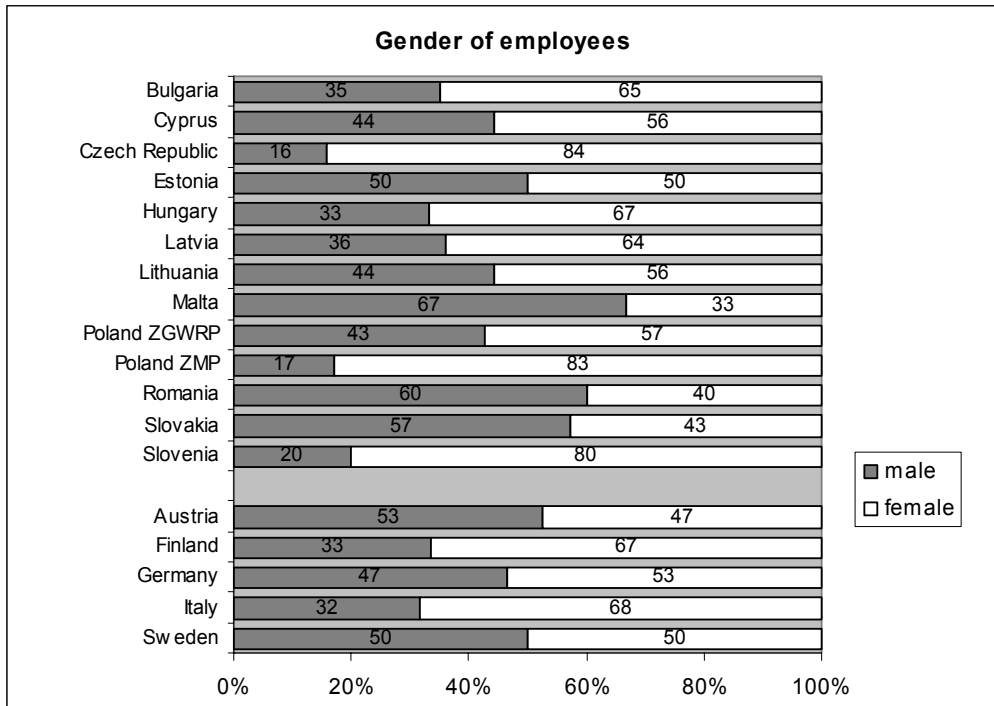


	Inhabitants	Employees at the time of establishment	Number of employees 2003	Number of associations
Bulgaria	7,8	1	40	10
Czech Republic	10,2	21	19	1
Cyprus	0,8	4	9	2
Estonia	1,4	1	11	3
Hungary	10,1	8	12	7
Latvia	2,3	1	25	6
Lithuania	3,5	10	18	1
Malta	0,4	1	3	1
Poland ZGWRP	38,6	7	7	5
Poland ZMP	(38,6)	4	29	6
Romania	21,7	7	5	5
Slovakia	5,4	5	21	2
Slovenia	1,9	0	5	2
Austria	8,1	5	19	2
Finland	5,2	~340	332	1
German	82,5	8	150	3
Italy	57,1	3	19	4
Sweden	8,9	very few	~300	21

3.2 Gender of employees and kind of employment

Number of employees at the moment; Number of male/female employees; Number of full-time/part-time employees; Number of trainees per annum.

	Number of employees							trainees
	total	male		female		full-time	part-time	
		total	in %	total	in %			
Bulgaria	40	14	35	26	65	27	13	5
Czech Republic	19	3	16	16	84	17	2	0
Cyprus	9	4	44	5	56	8	1	0
Estonia	10+1vacant	5	50	5	50	11	-	1-2
Hungary	12	4	33	8	67	12	-	4
Latvia	25	9	36	16	64	21	4	4
Lithuania	18	8	44	10	56	18	-	1
Malta	3	2	66	1	34	3	-	-
Poland ZGWRP	7	3	43	4	57	5	2	-
Poland ZMP	29	5	17	24	83	26	3	-
Romania	5	3	60	2	40	3	2	-
Slovakia	21	12	57	9	43	21	0	0
Slovenia	5	1	20	4	80	2	2	1
Austria	19	10	53	9	47	19	-	-
Finland	332	111	33,5	221	66,5	no data	no data	no data
Germany	150	70	47	80	53	144	6	3
Italy	19	6	32	13	68	15	4	-
Sweden	~300	~150	~50	~150	~50	no data	no data	no data



3.3 Number of employees working in different fields of activity

How many employees are allocated to the following fields of activity?

	Bulgaria	Czech Rep.	Cyprus	Estonia	Hungary	Latvia	Lithuania	Malta	Poland ZGWRP	Romania	Slovakia	Slovenia	Poland ZMP	Austria	Finland	Germany	Italy	Sweden	total	average distribution of capacity in percent
General	4	5**	5	no data	1	3	3	3	1	1	3	no data	3	no data	7	7			41	25
Finances	7	2*		no data	1	3	2		1	1	3	no data	1	no data	8		30		58	9
International cooperation	5	5		no data	2	3	3		0,3	1	2	no data	1,5	no data	7		15		43	9
Lobbying	6			no data	1	16	5		0,8	1		no data	1	no data	40		30		100	12
Education	2			no data	0,5	1	2			1	1	no data		no data	3		12		23	4
Environment	2			no data	0,5	1	2			1	1	no data	1	no data	3		15		26	4
Transport	2			no data	0,3	1	1				1	no data	0,5	no data	3		20		28	2
Culture	2			no data	0,3	1						no data		no data	3		10		16	1
Spatial planning	2			no data	0,5	1					1	no data	0,5	no data	0,5		15		20	2
Telecommunication				no data	1	1						no data	no data	no data	1		10		13	1
Social welfare	3			no data	0,5	1	2				1	no data	0,5	no data	3		25		36	3
Health	2			no data	0,5	1	2					no data		no data	3				9	2
Administration and other	3	6	5	no data	2	3			3,5	1	3	no data	10	no data	30	12	50		119	25

*Economic unit, ** Legislative Department; other: IT issues, projects, charwoman, press

3.4 Work stations in associations

How many work stations exist? How many are equipped with a computer? How many are equipped with an access to the internet? Do all employees have an e-mail address?

	Number of work places	Technical equipment		E-mail addresses for all employees	
		Computer			Internet
		Total	In %		
Bulgaria	36	36	100	36	Yes
Czech Republic	18	18	100	18	Yes
Cyprus	9	6	66	1	No
Estonia	11	11	100	11	Yes
Hungary	5	5	100	5	No
Latvia	24	24	100	24	Yes
Lithuania	18	18	100	18	Yes
Malta	1				
Poland ZGWRP	8	13	162,5*	13	Yes
Poland ZMP	29	28	97	28	Yes
Romania	5	5	100	5	Yes
Slovakia	22	22	100	22	Yes
Slovenia	5	4	80	4	Yes
Austria	18	17	94	17	No
Finland	332	332	100	332	Yes
Germany	150	150	100	150	Yes
Italy	20	20	100	20	Yes
Sweden	~300	~300	~100	~300	Yes

* 9 Desktops, 4 Laptops

3.5 Strategic management in associations

Does the organization have a clearly defined mission statement? Do the employees work to agreed targets? Does the organization manage by objectives?

	Mission statement	Participation of employees in goal agreements	Management by objectives
Bulgaria	√	√	√
Czech Republic	√		√
Cyprus	√	√	√
Estonia		√	√
Hungary	√	√	√
Latvia	√	√	√
Lithuania	√	√	√
Malta	√	√	√
Poland ZGWRP	√		
Poland ZMP	√	√	√

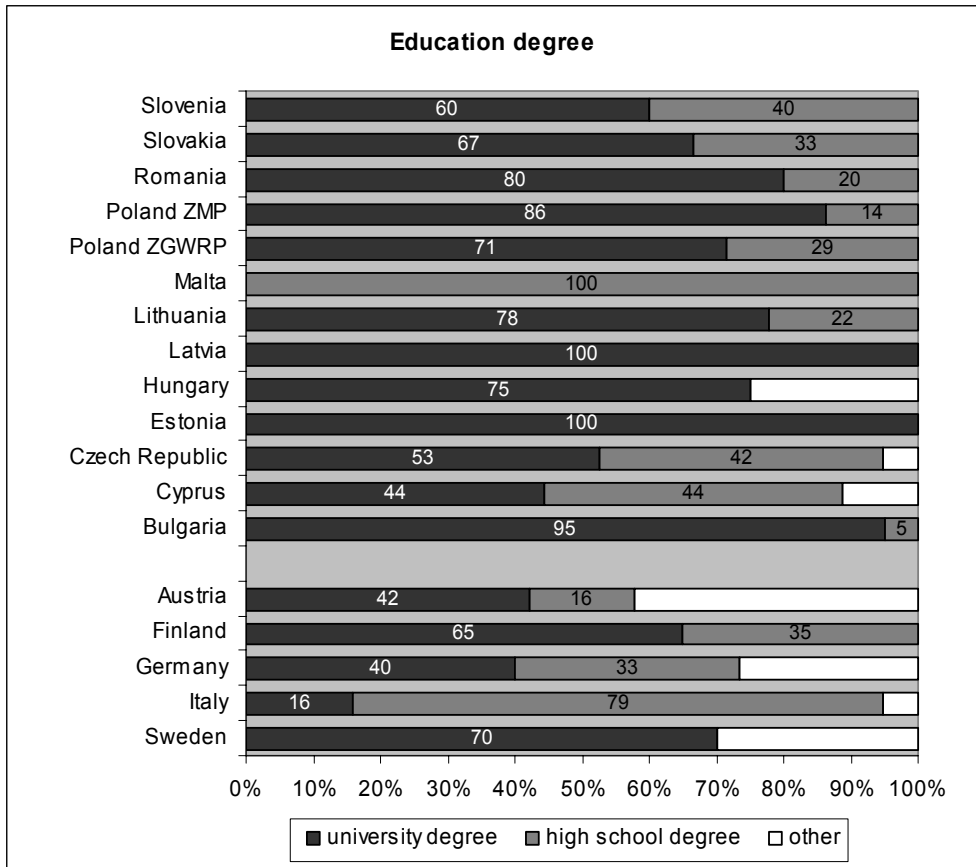
	Mission statement	Participation of employees in goal agreements	Management by objectives
Romania	√	√	√
Slovakia	√		
Slovenia	√	√	
Austria	√	√	√
Finland	√	√	√
Germany	√	√	√
Italy	√		√
Sweden	√	√	√

4 Education and training

4.1 Education

Number of employees with an university/high school degree.

	Number of employees with	
	university degree	high school degree
Bulgaria	38	2
Czech Republic	10	8
Cyprus	4	4
Estonia	10	0
Hungary	9	3
Latvia	25	0
Lithuania	14	4
Malta	0	3
Poland ZGWRP	5	2
Poland ZMP	25	4
Romania	4	1
Slovakia	14	7
Slovenia	3	2
Austria	8	3
Finland	216	116
Germany	60	50
Italy	3	15
Sweden	210	no data



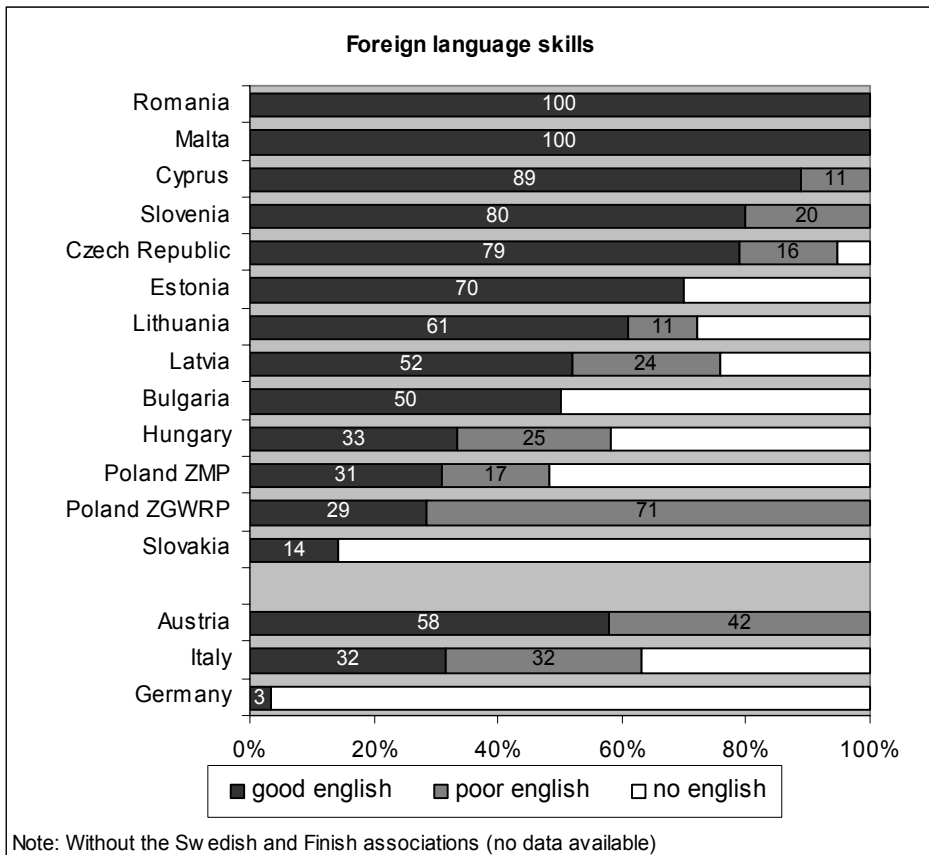
4.2 Number of employees speaking foreign languages

How many employees speak English/German/French/Russian/other languages?

	English		German		French		Russian	
	good	poor	good	poor	good	poor	good	poor
Bulgaria	20		3		3		7	
Czech Republic	15	3	2	6	4	1	3	5
Cyprus	8	1	1		1			
Estonia	7		1		1		6	
Hungary	4	3	5	2	2	0	1	2
Latvia	13	6	4	2		2	25	
Lithuania	11	2		5	1		18	
Malta	3							

	English		German		French		Russian	
	good	poor	good	poor	good	poor	good	poor
Poland ZGWRP	2	5	2	1			5	2
Poland ZMP	9	5	4		2		10	10
Romania	5				5			
Slovakia	3		2		1		6	
Slovenia	4	1	3					
Austria	11	8	19		2	5		
Finland	no data	no data	no data	no data	no data	no data	no data	no data
Germany	5		[150]		3		0	0
Italy	6	6		1	5	4	0	0
Sweden	many		a few		even fewer		5	

Other: Croatian, Danish, Dutch, Finnish, Greek, Hungarian, Italian, Polish, Serbian, Slovene, Spanish, Swedish.



4.3 Human resource management

Who recruits the staff of the association? Does each employee have a defined field of work? Do job specifications and/or job descriptions exist?

	Staff recruiter	Defined fields of work	Job description/job specification
Bulgaria	The Executive Director	√	√
Czech Republic	The SMO ČR management	√	√
Cyprus	Executive Committee of the Union	√	√
Estonia	Executive Director	√	√
Hungary		√	√
Latvia	Selection committee (comprised from: Secretary General, Chairman and concerned adviser/-s)	√	√
Lithuania	ALAL Director	√	√
Malta	Government Department	√	√
Poland ZGWRP	Managing Director	√	√
Poland ZMP	Executive Director	√	√
Romania	Steering Committee	√	√
Slovakia	Director of ZMOS Office	√	√
Slovenia	Secretary General	√	
Austria	Secretary General and personal manager	√	√
Finland	Heads of unit of the AFLRA	√	√
Germany	Managing Director	√	√
Italy	Management	√	
Sweden	no data	√	partly

4.4 Possibilities for further education in associations

Do employees have a chance to participate in training seminars/evening schools/language courses?

	Training seminars	Evening schools	Language courses
Bulgaria	√	√	√
Czech Republic	√	√	√
Cyprus	√	√	√
Estonia	√		√
Hungary	√	√	√
Latvia		√	√
Lithuania	√	√	√
Malta	√		
Poland ZGWRP	√	√	√
Poland ZMP	√	√	√

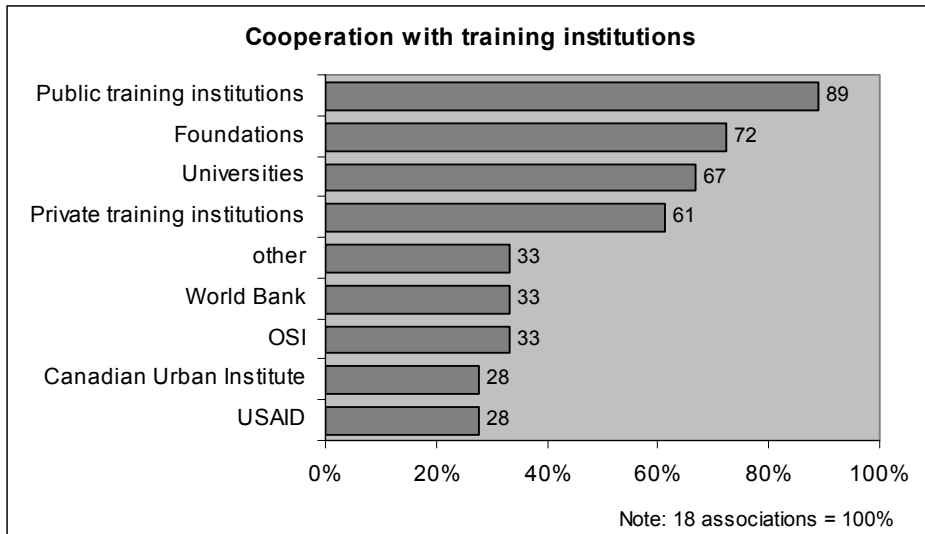
	Training seminars	Evening schools	Language courses
Romania	√	√	√
Slovakia			
Slovenia	√		
Austria	√		√
Finland	√	√	√
Germany	√	√	√
Italy	√		√
Sweden	√	√	√

4.5 Cooperation with training institutions

Does the organization cooperate in training issues with:

	Public training institutions	Private training institutions	Universities	Foundations	USAID	OSI	Canadian Urban Institute	World Bank	Other
Bulgaria	√		√	√	√		√		
Czech Republic	√	√							
Cyprus	√	√	√	√			√	√	
Estonia	√	√	√	√		√		√	√
Hungary	√	√	√	√	√	√	√	√	
Latvia	√		√	√	√	√		√	√
Lithuania	√	√	√	√		√		√	√
Malta	√								
Poland ZGWRP			√	√					
Poland ZMP	√			√	√	√	√		
Romania	√	√	√	√	√	√		√	√
Slovakia							√		√
Slovenia	√	√	√	√					
Austria	√								√
Finland	√	√	√						
Germany	√	√		√					
Italy	√	√	√	√					
Sweden	√	√	√	√					
Total	16	11	12	13	5	6	5	6	6

Other: training organized in the project frameworks (especially – bilateral projects), UNDP, Ministry of Public Administration, KDZ.

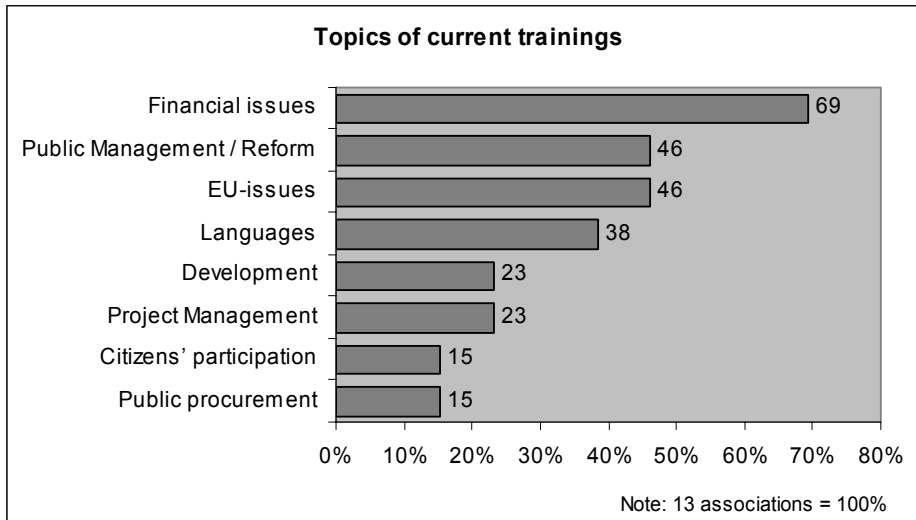


4.6 Topics of training

What are the main topics of training?

	EU-issues	Public Management / Reform	Languages	Financial issues	Project Management	Public procurement	Citizens' participation	Development
Bulgaria		√	√	√	√			
Czech Republic	√		√	√				
Cyprus	no data							
Estonia	√	√		√				√
Hungary	√							
Latvia	√	√		√	√	√	√	√
Lithuania	√				√			
Malta		√		√				
Poland ZGWRP			√	√				
Poland ZMP	no data							
Romania				√			√	√
Slovakia		√		√				
Slovenia						√		
Austria		√	√	√				
Finland	no data							
Germany	no data							
Italy	√		√					
Sweden	no data							
Total	6	6	5	9	3	2	2	3

Other: municipal issues, employment, environment, law, education methodology, Public Relations, social issues, capacity building, strategic planning, IT (3), policies, public services, local self government.

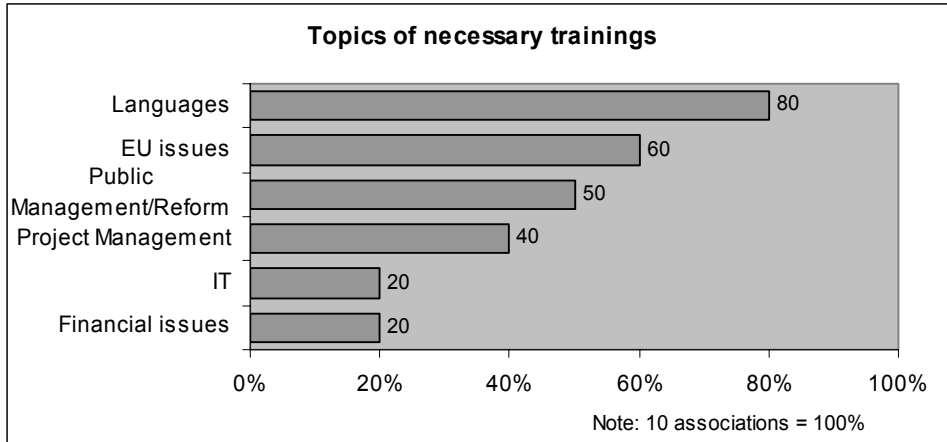


4.7 Topics of training needed

Please indicate further needs for training in your association.

	EU-issues	Public Management / Reform	Languages	Financial issues	Project Management	IT
Bulgaria	No data					
Czech Republic	√	√	√		√	√
Cyprus	√	√	√		√	
Estonia	√	√	√		√	
Hungary	√	√	√			
Latvia		√	√			
Lithuania			√			
Malta			√			
Poland ZGWRP	√			√		
Poland ZMP	no data					
Romania				√		√
Slovakia	√		√		√	
Slovenia	no data					
Austria	no data					
Finland	no data					
Germany	no data					
Italy	no data					
Sweden	no data					
Total	6	5	8	2	4	2

Other: Public Relations, exchange programmes, development indicators, quality management, team building, local development strategies, urban policy, human resources, public services, communication, conflict management.



4.8 Preparation for EU accession

Is in-house training organized? How often? Are other training sessions organized relating to EU accession? Who organizes them? Does the association organize training for local authority officers?

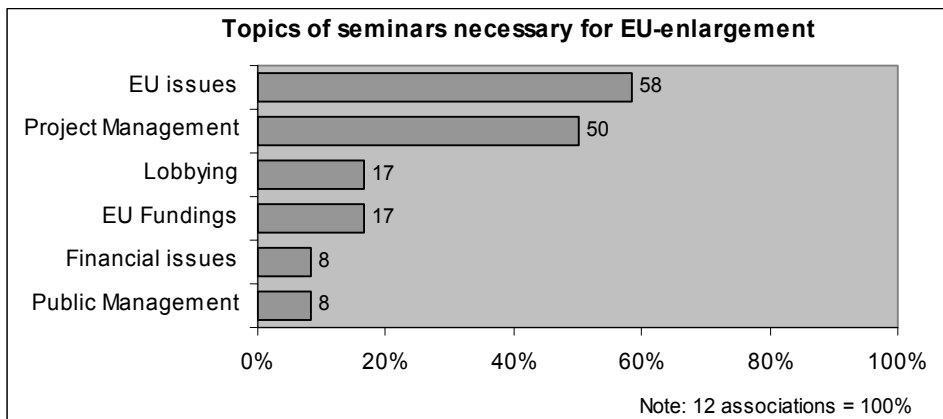
	In-house trainings	Other	Organization of trainings for public administration
Bulgaria	√; at least 3 times per year	√	√
Czech Republic			
Cyprus	√	√; national, local, international	√
Estonia	√	√	√
Hungary	4 per year	√	√
Latvia	√	√	√
Lithuania	√	√	√
Malta			
Poland ZGWRP			√
Poland ZMP		√ There were several training seminars organized during the implementation of the Polish-Danish bilateral project	√
Romania	√; 2 per year		√
Slovakia			
Slovenia	√	√; Governmental institutions	
Austria	no data	no data	no data
Finland		√	
Germany		√ DST together with the foreign Ministry and the other local government associations	
Italy			√
Sweden			√

4.9 Seminars needed to work effectively after EU enlargement

What kind of seminars are needed to work effectively after EU enlargement?

	EU-issues	Public Management	Financial issues	Project Management	EU fundings	Lobbying
Bulgaria	√					√
Czech Rep.	√			√		
Cyprus	√					
Estonia				√		
Hungary						
Latvia	√			√		√
Lithuania		√		√		
Malta	no data					
Poland ZGWRP	no data					
Poland ZMP	no data					
Romania	√		√	√		
Slovakia	√			√	√	
Slovenia	√				√	
Austria	no data					
Finland	no data					
Germany						√
Italy		√				
Sweden	no data					
total	7	2	1	6	2	3

Other: Social welfare, environment, employment, public procurement, Citizens rights and obligations, decentralisation, IT, cooperation and exchange between local government association on expert subjects of local government policy, establishment of common structure between local authorities, social and cultural deepening.



5 EU and International work

5.1 Exchange programmes

Are programmes implemented with ... ?

	Programmes are implemented with:		
	cities	associations from CEEC	associations from the EU countries
Bulgaria	√	√	
Czech Republic			√
Cyprus			√
Estonia	√	√	√
Hungary	√	√	√
Latvia			
Lithuania			√
Malta			
Poland ZGWRP			
Poland ZMP			
Romania		√	√
Slovakia			
Slovenia	√	√	√
Austria	√	√	
Finland			√
Germany	√	√	√
Italy			
Sweden			in an ad hoc way
Total	6	7	9

5.2 Financing of exchange programmes

Who finances the exchange programmes?

- Bulgaria: International donor programs and NAMRB budget,
- Czech Republic: Wallonian Regional Government,
- Estonia: EU programmes and bilateral agreements,
- Latvia: TAIEX RTP, Danish Ministry of Interior, Nordic Council of Ministers,
- Lithuania: Danish Ministry of Foreign Affairs and ALAL,
- Romania: CLRAE,
- Slovenia: European Commission,
- Hungary: Hungarian Ministry, host land and the Association,
- Austria: Know-How-Transfer-Center (KTC, till 2003), Austrian Association of Cities and Towns (AACT),
- Germany: Government funding, political foundations, European Commission.

5.3 Best practice in training cooperation

Please indicate best practices in training cooperation and staff exchange (title and short description).

- **Czech Republic:** Cooperation between SMO CR and the Union of Towns and Municipalities of Wallonia (Belgium) – the project started in January 2002 and finished in May 2003. Four representatives and officers of SMO CR visited the Wallonian association and were given training on the following issues: mission and functioning of Wallonian association, system and functioning of local government in Belgium, EU programmes and structural funds, EU institutions.
- **Latvia:** TAIEX a Regional Training Program (in the framework of TAIEX RTP) - 21 Latvian experts (including two advisers of ULRLG) had two four-day technical sessions in Brussels and a two week training session in Austria on the following issues: public procurement and environmental issues. During training experts exchanged experiences with their colleagues from EU and other CEE countries. Strengthening the role and functions of local government executive directors in Latvia: The aim of the project was to develop and run a program of training courses for a number of Executive Directors from Latvia who are expected to be able to continue as trainers in Latvia afterwards. The project was implemented in cooperation with the Norwegian (the first part of the project, until 2002) and with the Danish (2nd part of the project) associations of local government. In the framework of this project Latvian executive directors were trained and also had a chance to work for two weeks in Norwegian municipalities and in Local Government Denmark.
- **Lithuania:** Since Autumn 2002, a Danish consultant works in ALAL Training and consultancy centre.
- **Romania:** Within the NALAs network project, representatives of associations from South-East Europe meet to exchange experiences.
- **Slovenia:** TAIEX OFFICE (Technical Assistance Information Exchange Office) DG Enlargement, European Commission: to provide technical knowledge on EU Legislation for participants in the Regional Training Programme for Slovenia.
- **Hungary:** Participation in short study visits abroad organized by the Hungarian Ministry of Interior in Germany, Netherlands.
- **Austria:** Study visits in different cities of Austria and Brussels.
- **Germany:** Trainees from the Argentinian and Columbian Local Government Associations worked in the international dept for 1-3 months. Experts from the government agency for international cooperation get a briefing/training on local government structures and working methods before going on a project abroad.

5.4 Changes in the organizational structure due to the EU accession

Has the structure/number of employees changed because of EU accession? How?

- **Bulgaria:** The structure of NAMRB comprises three units: Team 1- presentation and policy, Team 2 - services to members and Team 3 - administration and finance. The international cooperation unit working also in the sphere of EU integration is situated in Team 2 and is supervised directly by the Deputy Executive Director.
- **Cyprus:** Creation of an EU-Affairs Officer post and appointment of an EU-Affairs Officer.
- **Estonia:** A new institution has been created for managing structural funds of the EU.
- **Lithuania:** Instead of two vice-presidents there are now four vice-presidents.
- **Slovenia:** In early 2003, the assembly of the Association of Municipalities and Towns of Slovenia set up a statutory commission for EU affairs. It is intended to employ one person who will be responsible for EU affairs and for providing legal support for the Slovenian delegation to the Committee of the Regions.
- **Austria:** more personnel (+1).
- **Finland:** Posts of EU Affairs Manager, Senior Adviser and EU Secretary were created, EU Network for experts of AFLRA was established.
- **Sweden:** Stronger International Secretariat after EU-membership, including a Brussels office.
- **Germany, Italy:** no changes.

5.5 EU/International officer

Does the association have an EU/international officer? When was the post created?

	Name	Post created in:
Bulgaria	No; The EU International cooperation is carried out by two experts and two coordinators and is supervised directly by the Deputy executive Director of NAMRB	2000
Czech Republic	Milena Jaburkova (since 2003)	1999
Cyprus	Kalia Martides	2003
Estonia	Toivo Riimaa, deputy director, Irja Alakivi, leading official	1991
Hungary	Mr. Dr. György Csalotzky, Ms. Veronika Krausz	1997
Latvia	Ms. Evita Gržibovska; Ms Dace Damkevica, Ms Ilze Ciganska	1993
Lithuania	Justas Sakenas, Ausra Sauliene, Auste Tamulynaite	1997
Malta	No	
Poland ZGWRP	Waldemar Grzegorzcyk	2001
Poland ZMP	Katarzyna Halas – International Relations Officer, Twinning Officer and Hanna Leki – International Relations Officer	1991
Romania	ILEANA ȚIGĂNUȘ	2001
Slovakia	Boris Tonhauser, Rudolf Damašek	1993
Slovenia	Izidor Rojs	2002
Austria	DI Rolf Gehringer	1992
Finland	12 employees working mainly in the field of EU and international affairs	1995 (Post of the EU Affairs Manager)
Germany	no data	
Italy	Ms. Marijke Vanbiervliet	2003
Sweden	Jointly with SFCC an international Secretariat of 15 people	1988

5.6 Main fields of activity of the officer

What are the main tasks of the officer?

	COR, CLRAE	CEMR	Town twinning	Int. Project management	Int. cooperation	Lobbying	EU Information (for members)	Consultation
Bulgaria			√		√		√	
Czech Republic	√	√		√	√	√	√	
Cyprus	√			√			√	
Estonia	√	√	√	√	√			
Hungary		√					√	
Latvia	√		√	√	√	√	√	√
Lithuania					√		√	√
Malta	no data							
Poland ZGWRP	√	√		√	√			
Poland ZMP	√	√	√	√	√			
Romania					√			
Slovakia	√	√	√	√	√			
Slovenia	√							
Austria			√		√		√	
Finland				√	√		√	
Germany		√						
Italy		√	√		√		√	
Sweden						√		
Total	8	8	7	8	12	3	9	2

Other: Head of Know-How-Transfer-Center (KTC).

5.7 International work in associations

What are the main fields of activity in the EU/international work?

	COR CLRAE	EU- Programmes	Exchange of experiences	Providing EU information	Conferences - events	Int. Projects	Int. cooperation
Bulgaria	no data						
Czech Republic	√			√	√	√	√
Cyprus	√	√					
Estonia							
Hungary				√			√
Latvia					√		√

	COR CLRAE	EU- Programmes	Exchange of experiences	Providing EU information	Conferences - events	Int. Projects	Int. cooperation
Lithuania						√	√
Malta	no data						
Poland ZGWRP			√			√	
Poland ZMP	no data						
Romania	√					√	
Slovakia			√	√			
Slovenia	no data						
Austria			√	√		√	
Finland	no data						
Germany		√		√		√	
Italy					√		
Sweden							
Total	3	2	3	5	3	6	4

Other: publications, consultations, development of local authorities, lobbying, promotion of local democracy, seminars, improving the situation for local self-government, Green Paper on Services of General Interest, Reform of regional policy and structural funding.

5.8 Brussels Office

Does the association have an office in Brussels? Do cities or regions of your country have an office in Brussels? Do the offices in Brussels cooperate?

	of the association	of cities or regions	Cooperation between bureaus
Bulgaria		√	
Czech Republic	√	√	
Cyprus			
Estonia		√	
Hungary		√	√
Latvia			
Lithuania	planned 2004	√	
Malta			
Poland ZGWRP		√	no data available
Poland ZMP		√	√
Romania			
Slovakia		√	
Slovenia			
Austria	√	√	√
Finland	√	√	√
Germany	√	√	some do
Italy	√	√	√
Sweden	√	√	√

5.9 Additional funds for international activities from the government

Does the association receive additional funds for its international activities from the government?

Bulgaria	
Czech Republic	√
Cyprus	√
Estonia	√
Hungary	
Latvia	
Lithuania	
Malta	
Poland ZGWRP	
Poland ZMP	
Romania	
Slovakia	
Slovenia	
Austria	√
Finland	
Germany	
Italy	√
Sweden	Only for project cooperation with Eastern Europe and developing countries

5.10 Main obstacles in the implementation of international cooperation

Please indicate the main obstacles concerning the implementation of international cooperation.

Partners named the following obstacles:

- poor knowledge of foreign languages
- limited budget
- insufficient time for coordination between the partners in preparation of projects
- long and difficult bureaucratic procedures
- not sufficient cooperation from the MOFA
- lack of direct access to EU funding for local authorities in SEE
- human resources
- organizational capacity
- funding as well as the difficulty of our local authorities to engage in that field at this crucial time

PART II

A Guide to the Competition Rules for State Aid in the European Union

A Guide to the Competition Rules for State Aid in the European Union

Renate Schohaj

Author:

Since 1994, Mag. Renate Schohaj has been working for the Austrian Financial Authority, which seconded her in August 2000 to act as National Expert with the European Commission, Directorate-General for Competition, State Aid II, Public Enterprises and Services, where Mag. Schohaj is in charge of questions relating to European aid legislation and the preparation of aid-specific decisions (e.g. banks, services of general economic interest, ski lifts).

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Translation by:

Sigrid Szabó

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Foreword

State aid to the economy has traditionally been and continues to be an instrument to improve the economic situation, with a wide scope of different measures employed for this purpose. In times of economic depression, the responsible actors – i.e. mainly the public decision-makers – have often tried to counteract the consequences of recession by providing funds or modifying tax legislation in order to boost job security. However, support continued to be granted even during economic upswings, e.g. by trying to attract enterprises to specific locations, by identifying and developing industrial sites, etc. It is obvious that national economies disposing of ample financial resources can create more favourable conditions by investing greater sums of money than national economies with an inferior gross domestic product. Yet this results in distortion of competition, which undermines the efforts to eliminate disparities in the economic development of the Member States and regions of the European Community and, now, of the European Union.

Since the scope of the underlying legal instruments and provisions is vast and moreover subject to a process of constant revision and amendment, the Association of Austrian Cities and Towns has set itself the task to provide for the compilation of an easy-to-use guide geared to the needs of cities, towns and local authorities in order to draw their attention to specific “pitfalls” and obligatory rules to be met. Obviously, the present guide can offer only a “snapshot”, as it were, of the legal basis, since the European Commission evidently reacts to the changing requirements of economic development by constantly introducing new or modified provisions to govern competition legislation.

The Association of Austrian Cities and Towns would like to thank Mag. Renate Schohaj, National Expert with the European Commission, for authoring the text of the present guide and hopes that this volume of the Association’s publication series will add another piece to the mosaic of legal information for the benefit of its members.

Dkfm. Dr. Erich Pramböck

Secretary General of the Association of Austrian Cities and Towns

Introduction

The granting of State funds, which results in favouring certain undertakings or industry sectors at the detriment of other undertakings or industry sectors, thus impairing intra-Community trade, can significantly hamstring the functioning of the common market.

Oftentimes, the objective of State aid lies in economic promotion and/or in the cushioning of difficulties encountered by undertakings, industry sectors or regions, a fact viewed at first glance as positive, in particular by the beneficiaries. However, in reality rescue and restructuring aid proves especially damaging, since this stratagem frequently keeps floundering enterprises artificially alive, although these would prove unable, in the long run, to become once more competitive on their own.

From the viewpoint of non-subsidised competitors, State aid is frequently seen as unjustified discrimination, since these players, contrary to aid recipients, are forced to struggle on their own to preserve their competitive edge. The negative consequences of State aid for the competitiveness of efficient enterprises lie in distorting the entrepreneurial competition of prices and performance levels, which ultimately may even endanger the survival of originally efficient enterprises and hence the preservation of further workplaces. As a result, State aid can, in some cases, prove detrimental to the market in the long run, thus weakening the competitiveness of European national economies by tying resources to the wrong beneficiaries.

The European Commission is the sole body in charge of monitoring the aid schemes granted by its Member States and hence regards it as its task to protect efficient enterprises against economically unjustifiable disadvantages. For this reason, its monitoring activities aim above all at limiting State aid to the strictly necessary minimum. By striving to prevent distortions of competition within the Community, which would counteract the development of the common market, the supervision of State aid contributes to the economic growth of the European Union and hence towards promoting employment. Ultimately, State aid supervision also encourages the improvement of the standard of life and welfare of citizens by approving specific, targeted forms of aid designed to stimulate citizen-friendly developments, thus promoting general interest. For this reason, the central task of State aid supervision lies on the one hand in preventing forms of aid detrimental to competition and on the other hand in allowing for exemptions and derogations for those forms of aid that, despite their competition-distorting effect, must be viewed as predominantly positive.

The supervisory process laid down in the EC Treaty obligates the Member States to submit their aid projects to the European Commission for approval before being authorised to implement them. By exercising this supervisory function, the Commission has been able to develop both an extensive body of decision-making know-how in the field of State aid and a range of specific solution approaches.

The following pages do not contain an exhaustive coverage of aid-related provisions but are merely to serve as a guide for readers of the Competition Rules for State Aid, with special attention paid to the relevant interests of cities, towns and local authorities.

1 Legal EC framework

1.1 The notion of state aid

As defined in Article 87(1) of the EC Treaty, State aid is considered incompatible with the common market if it is 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, insofar as such aid affects trade between Member States.

While Article 87(1) of the EC Treaty does not contain either a concrete definition of the notion of State aid nor specifies the type of measures that are prohibited, it does lay down a few specific characteristics to describe measures of relevance under Community legislation. Moreover, the decision-making practice of the Commission and the case-law of the Court of Justice of the European Communities likewise offer indications that permit distinguishing between various forms of State aid.

1.1.1 State resources

In order to classify a measure as aid, it has to be established that it confers an advantage which is State-financed. In its judgment in the case *Ladbroke Racing Ltd. vs. Commission*¹, the Court of Justice confirmed that Article 87(1) of the EC Treaty covers all the financial means by which the public sector may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. The fact that the sums involved constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State aid, since the State is thus able to control the use of these means and, if it deems this necessary, to finance special advantages that benefit other undertakings.

The distinction made in Article 87(1) of the EC Treaty between the concept of “**State aid**” and “**aid granted through State resources**” serves the purpose of including into the aid concept, not only aid granted directly by the State, but also indirect aid granted through public or private institutions designated or established by the State. In the first case, it is a prerequisite that the aid be granted by a State institution. However, it is not necessary that the aid be granted by the central government. Thus both regional and local bodies at all levels must be taken account of, irrespective of their status or description². In the second case, public or private institutions are entrusted with the granting of State aid. Here, the decisive criterion to clarify whether or not the aid is to be imputed to the State is the question of whether the institutions act autonomously or whether their actions are dictated by the State.

¹ ECJ 16 May 2000, C-83/98 P.

² ECJ 14 October 1987, C-248/84

In its judgment in the case *Stardust*³, the Court of Justice ruled that, in order to constitute State aid, the financial support must derive from public funds. However, the mere fact that the company giving out the funds is a public company taking actions does not suffice. Rather, the decisive element is, on the one hand, whether the State is in a position to control the public undertaking and exercise a dominant influence over its operations and, on the other hand, whether it actually does exercise this right of control over the undertaking paying out the funds. As long as there are no indications of this, the financial support of a public undertaking cannot be imputed to the State.

Moreover, it should be remarked that the Court of Justice, in its case-law concerning the concept of State aid, has repeatedly ruled that State funds must have been disbursed to the recipient of the aid. The criterion “**injection of funds**” thus excludes such advantages from the scope of application of the aid rules as are brought about by the State without entailing financial expenditure for the State. Therefore the respective measure must not present itself as a burden on the public budget in the form of direct expenditure or reduced income.

In its judgment in the case *PreussenElektra*⁴, the Court of Justice has ruled that a transfer of State resources to the aid recipient must have taken place in order to qualify as aid. The case concerned an obligation imposed on private electricity distributors in Germany to pay a higher feed-in price for electricity produced in their area of supply from renewable sources. Following litigation in Germany, the Court of Justice was requested to give a preliminary ruling on whether such a system would constitute State aid within the scope of Article 87(1) of the EC Treaty.

In its judgement the Court of Justice ruled that the measure uncontestedly constituted an advantage for the producers of electricity from renewable sources as they received guaranteed higher prices than would otherwise be the case. However, for a measure to rank as State aid, it was not enough that the advantage was conferred by the State. The advantage had to be provided directly or indirectly through State resources. Having regard to the facts of the case, the Court found that the system of electricity pricing in Germany which required one private company to pay another a higher price than would otherwise have been the case did not involve the use of State resources and therefore could not be deemed to be aid.

³ ECJ, 16 May 2002, C-482/99

⁴ ECJ 13 March 2001, C-379/98

1.1.2 Advantages conferred on an undertaking

The Court has consistently taken the view that “aid” means any **advantage** conferred on an undertaking by

the public authorities, without payment, or against a payment which corresponds only to a minimal extent to the figure at which the advantage can be valued.

A definition of this kind covers both the allocation of resources and the grant of relief on charges which the undertaking would otherwise have to bear, enabling it to make a saving. The form in which the aid is granted is immaterial (cf. 1.2).

In its judgment of 19 September 2000 in the case *Federal Republic of Germany vs. Commission*⁵, the Court of Justice has emphasised that the origin of the advantage indirectly conferred on undertakings by the German Income Tax Act has to be seen in the renunciation by the Member State of tax revenue which it would normally have received inasmuch as it is this renunciation which has enabled investors to take up holdings in undertakings on conditions which are in tax terms more advantageous. The fact that investors take independent decisions does not mean that the connection between the tax concession and the advantage given to the undertakings concerned has been eliminated since, in economic terms, the alteration of the market conditions which gives rise to the advantage is the consequence of the public authorities' loss of tax revenue.

The question whether public means are involved in a measure arises a fortiori where a Member State or a publicly-owned holding corporation intends to take a holding in the capital of a company an undertaking. As the public investor, the State assumes a role that is perfectly legitimate under Article 295 of the EC Treaty⁶. As State aid has to be assessed on the basis of its effects, and not its reasons or aims⁷, the Commission has developed the **criterion of “the private investor in a market economy”**: in each case it has to be established whether the public holding in the capital of the company is intended to earn a return, and has consequently been acquired by the State or public holding corporation in the same way as it might have been acquired by a private buyer, or whether it has been acquired in the public interest, so that the acquisition has to be considered a form of assistance by the State in its capacity as public authority. When public capital is to be injected into an business, the question arises whether a private investor of a size comparable to that of the administrative institution of the public sector would, in a comparable situation,

⁵ ECJ 19 September 2000, C-156/98

⁶ Article 295 of the EC Treaty States that the “Treaty shall in no way prejudice the rules in Member States governing the system of property ownership”. This permits the conclusion that the Member States, exactly as any other party, may acquire goods, services or participations.

⁷ Cf. ECJ 26 September 1996, C-241/94, or ECJ 12 October 2000, C-480/98

act in the same manner. The test is satisfied where the capital invested can be expected to produce a normal return on investment, in the form of dividends or capital gains.

Principally, the circle of **recipients of favourable treatment** includes undertakings and the producers of certain goods. The qualification of an undertaking as such hinges on its executing an economic activity; according to the ECJ case-law, any activity that consists in offering goods and services on a given market is an economic activity⁸. Since the concept of what constitutes an undertaking should be construed in a broad sense (function-based concept of an undertaking), any actor contributing to the economy may assume the role of a favoured recipient of aid, which may thus extend to both **public** and **private** undertakings. A public undertaking means any undertaking over which the public authorities may exercise, directly or indirectly, a **dominant influence** by virtue of their ownership of it, their financial participation therein, or the rules which govern it. According to Article 2(2) of the Transparency Directive⁹, a dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking, hold the major part of the undertaking's subscribed capital, or control the majority of the votes attaching to shares issued by the undertaking or can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

Moreover, it should be borne in mind that the beneficiary and the recipient of the State aid need not necessarily be identical. Thus aid is also granted if the assistance by the State is not directly¹⁰ conferred on the beneficiary, whilst the measure taken by the State is in fact liable to favour certain undertakings over other, comparable undertakings.

1.1.3 Selectivity

In order to be covered by the scope of application of Article(1) of the EC Treaty, a measure must not only be a State measure, rather, it must also be selective and hence affect the balance between the recipient undertaking or industry sector and its competitors.

It is this selective character which distinguishes State aid measures from **general economic support measures** (general short-term economic policy measures and measures relating to general tax and social policies), which are aimed at promoting

⁸ ECJ 12 September 2000, C-180-184/98, Pavel Pavlov and Others vs. Stichting Pensioenfonds Medische Specialisten

⁹ Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings, last amended in 2000, OJ L 193 of 29 July 2000

¹⁰ ECJ 19 September 2000, C-156/98

the economy as a whole and apply across the board to all firms in all sectors of economic activity in a Member State. As long as they do not favour a particular area of activity, such general measures derive from Member State's power to determine their economic policy. As a result, measures that have a cross-sectoral impact, being equally applicable throughout the territory of a Member State (e.g. infrastructure measures) and favouring the whole economy, do not constitute State aid within the scope of Article 87(1) of the EC Treaty.

Fiscal measures that favour all economic actors of a Member State are principally general measures if they actually are open to all entrepreneurs in the same manner. The selective character of a measure may only be justified "**on the basis of the nature or general scheme of the tax system**" if the measure is in keeping with the inner logic of the general tax system. For example, progressiveness of the tax which is justified by the tax system's aim of redistribution is thus excluded from the application of Article 87(1) of the EC Treaty¹¹.

The Commission evaluated a Danish scheme granting a lower flatrate for income tax below the normal tax rate with respect to this constituting a case of State aid, since it had the potential to confer benefits only on certain sectors or industry. However, the documentation submitted showed that the scheme was actually being applied to both the private and the public sector, to manufacturing, trade and services as well as to large enterprises and SMEs. Since the measure in fact did not favour certain undertakings or the production of certain goods, the Commission therefore approved the Danish scheme¹².

According to the judgment of the Court of Justice of 26 September 1996¹³, even measures not limited sectorally or territorially or by reference to a restricted category of undertakings may in the individual case constitute State aid within the scope of Article 87(1) of the EC Treaty, if the **discretion** conferred on the public authority enables it to adjust its financial assistance. If thus a public body in granting financial advantages disposes of scope for discretion, this measure – which, although theoretically open to all, may in practice favour only certain undertakings – can no longer be construed as a general measure. Moreover, the Court of Justice has ruled in the same judgment that the system of State participation (FNE) in the implementation of a social plan, on grounds of its purpose and general context, is liable to place certain undertakings in a more favourable position than others, and hence to fulfil the preconditions for constituting a form of aid.

¹¹ CFI, T-127/99, T-129/99 and T-148/99, Diputación de Álava, Comunidad Autónoma del País Vasco, Daewoo Electronics Manufacturing España SA vs. Commission

¹² Commission Decision of 3 May 2000, OJ C-284 of 7 October 2000

¹³ ECJ 26 September 1996, C-241/94, French Republic vs. Commission

1.1.4 Distortion of competition

It is a precondition for the application of Article 87(1) of the EC Treaty that the aid distorts or threatens to distort competition. The reference to distortion of competition as a constituent element of the relevant Article results from the fact that the State aid provisions serve attainment of the Community objective of creating a system ensuring that competition in the internal market is not distorted¹⁴. Distortion of competition applies whenever the measure interferes with an actually existing or possibly developing competitive relationship between undertakings or branches of the economy. With respect to the existence of a potential competitive relationship, it is sufficient to determine that such may develop with a sufficient degree of probability in the foreseeable future.

Distortion of competition is defined as any intervention attributable to the transfer of State resources, which changes the market conditions for the competitors. As a rule, the aid tends to strengthen the competitive market position of the favoured undertaking. This fact alone justifies the statement that competition is distorted. The Court of Justice confirmed this interpretation once more in its latest judgments in this matter¹⁵. In itself, the instance of distortion of competition need not be either essential or significant. Even a small aid does not per se exclude that competition will be distorted by it¹⁶.

Due to the additional element of selectivity, aid of relevance within the Community context is not deemed to have been granted if potentially all competing undertakings within the Community may take part in the favourable measure. In this case, the measure must also be open to new market players.

1.1.5 Effect on trade between Member States

According to Article(1) of the EC Treaty, aid is incompatible with the common market only inasmuch as it affects trade between Member States. The constituent element of trade affectation restricts the **validity range** of Community legislation on State aid control vis-à-vis the national legislations of the Member States. The ban on State aid under Community law hence extends only to such forms of favourable treatment as have effects on trade between the Member States; the Member States' decision-making competence relating to their local, regional or national issues is not affected.

¹⁴ Cf. Article 3 g) of the EC Treaty

¹⁵ Cf. ECJ 12 December 2002, C-5/01, Kingdom of Belgium vs. Commission; ECJ 23 October 2002, T-269-99, T-271/99 and T-272/99 as well as T-346/99, T-347/99 and T-348/99, Diputación Foral de Guipúzcoa

¹⁶ With the exception of aid meeting the criteria of the De-minimis Regulation, OJ L 10/30 of 13 January 2001; cf. 1.1.6

In order to determine the effects of distortion of competition on the trade between Member States, it is sufficient to state that the favoured party, even if only partially, pursues an activity that involves trade between the Member States. This statement shall not be affected, neither by the slightness of the participation of the favoured undertaking in the common market, nor by its lack of export activities, nor by the fact that the undertaking exports almost its entire production from the Community.

Decisive element will be whether the movement of goods or services within the Community has or might have developed differently due to the aid than it would have without it. For this reason, affectation of trade may also be assumed to exist if the aid has not entailed any change in the trade flows, i.e. if such a change would in fact also have occurred without the aid. Moreover, it is not necessary for actual trade affectation to have occurred; the fact that an aid, after evaluation of all objective circumstances, is liable with a sufficient degree of probability to impair trade shall be considered sufficient.

However, the effects on competition must be **appreciable**. In this connection, the Court of Justice, in its judgment in the case *Federal Republic of Germany vs. Commission*¹⁷, has consistently held that neither the relatively small amount of aid¹⁸ nor the relatively small size of the undertaking which receives it as such excludes the possibility that intra-Community trade might be affected. When aid granted by the State or through State resources strengthens the position of an undertaking vis-à-vis other competitors in intra-Community trade, the latter undertakings must be regarded as affected by that aid. That was the case here, since any undertaking other than those to which the measure in issue applied could increase its own resources only on less advantageous terms, whether it was established in Germany or in another Member State.

1.1.6 De-minimis aid

Although neither the relatively small amount of aid nor the relatively small size of the undertaking which receives it as such excludes the possibility that intra-Community trade might be affected, State aid must, however, have some effect on trade and competition between the Member States in order to come under Article 87(1) of the EC Treaty.

For aid involving very small amounts, the Commission has introduced the so-called **de-minimis threshold**¹⁹ in the form of a Block Exemption Regulation, which stipulates an absolute aid ceiling of EUR 100,000.- over any period of three years.

¹⁷ ECJ 19 September 2000, C-156/98

¹⁸ With the exception of aid meeting the criteria of the De-minimis Regulation, OJ L 10/30 of 13 January 2001; cf. 1.1.6

¹⁹ OJ L 10/30 of 13 January 2001

According to Article 2(1) of the De-minimis Regulation, de-minimis aid measures shall be deemed not to meet all criteria of the Article and hence not to constitute aid under that provision at all. For this reason, such aid is not subject to the notification requirement of Article 88(3) of the EC Treaty. However, the Member States are obligated to make sure that the total de-minimis aid granted to any one enterprise does not exceed the amount the total amount of € 100.000 within 3 years. Although State aid, granted directly by the European Union, does not qualify to be caught under Article 87(1) of the EC Treaty; this volume must, however, be taken into account when calculating this maximum ceiling²⁰.

1.2 Different forms of state aid

Since the notion of State aid must be construed in a broad sense, it does not merely cover financial grants that do not have to be repaid, but principally extends to all forms of assistance or easing of cost burdens the undertaking would otherwise have to bear on its own.

For example, the **sale of State-owned land and buildings** may be examined with respect to related State aid to the purchasing undertakings if the real estate was sold by the State at a price below market value. According to the Communication of the Commission regarding elements of State aid in the sale of land or buildings by public authorities²¹, the sale of land or buildings following a sufficiently well-publicised, open and unconditional trade sale (comparable to an auction), accepting the best or only bid, is by definition at market value and consequently does not involve State aid. If public authorities intend not to use this procedure, an independent valuation should be carried out by one or more independent asset valuers prior to the sale negotiations in order to establish the market value on the basis of generally accepted market indicators and valuation standards. The market price thus established is the minimum purchase price that can be agreed without granting State aid.

A similar case applies with respect to the **sale of public shareholdings**. The sales price for a public shareholding does not contain any elements of State aid if the object to be sold is sold at market value. This may be assumed to apply if the holding is offered in an open, unconditional and non-discriminatory tender procedure and sold to the highest bidder. Although there was no call for public tenders in the case *Kali und Salz GmbH*²², the final price was obtained following a procedure in which context no potential investor was arbitrarily excluded from the sale, and corresponded to the market value.

²⁰ Cf. Article 8(1) of SME Regulation

²¹ OJ C 209 of 10 July 1997

²² Commission Decision of 13 June 2000, C-21/99

Conversely, however, the purchase of company shareholdings by the State or other forms of capital transfers by the State, such as capital injections from a State-owned holding company to its subsidiaries, capital increases or participations, may come under Article 87(1) of the EC Treaty if the State does not behave like a market economy investor (cf. 1.1.2).

According to the Communication on the application of the State-aid rules to **measures relating to direct business taxation**²³, all rules of national business taxation that selectively favour either undertakings in a certain region or belonging to a certain industry sector as compared to general taxation rules come under the scope of application of Article(1) of the EC Treaty. Such favourable treatment may result both from fiscal and administrative rules and from discretionary decisions of the tax authority and generally eases the tax burden of the favoured undertaking by reducing the tax base (such as special deductions, special or accelerated depreciation arrangements or the entering of reserves on the balance sheet, etc.), by means of total or partial reduction in the amount of tax (such as exemption or a tax credit, etc.), by deferment, cancellation or special rescheduling of tax debt.

In addition, **State aid in the form of guarantees**, which are usually associated with a loan or other financial obligation to be contracted by a borrower with a lender, may contain aid because State guarantees offer the advantage that the risk the guarantee relates to is borne by the State. Normally, such State aid is granted to the borrower either directly by the State or indirectly through a financial institution, by permitting the borrower, due to the advantage created by the guarantee, to obtain a lower interest rate or offer less security²⁴. This permits raising funds at lower cost that would have been possible without the guarantee. The Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees²⁵ sets out on the basis of the existing principles of assessment how the aid element of a guarantee should be calculated. Moreover, it specifies the conditions that must be met in order for the Commission to assume a priori that a guarantee does not contain an element of State aid. This includes inter alia that the borrower must not be in financial difficulty and would in principle be able to obtain a loan on market conditions from the financial markets without any intervention by the State, that the guarantee is linked to a specific financial transaction, is for a fixed maximum amount, does not cover more than 80 % of the outstanding loan and that the market price for the guarantee is paid. Since guarantees differ from other State aid measures, in the sense that in the case of a guarantee the State also enters into a legal relationship not only with the beneficiary but also with third parties (e.g. the

²³ OJ C 384 of 10 December 1998

²⁴ "In some cases, the borrower would not, without a State guarantee, find a financial institution prepared to lend on any terms" – see Item 2.1.1 of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees

²⁵ OJ C 071 of 11 March 2000

provider of a loan), the fact that a State aid has been unlawfully granted also has different consequences. It must therefore be examined under national law²⁶ whether the fact that State aid was unlawfully granted has consequences for these third parties also²⁷.

Privatisation of public enterprises

Since under Article 295 of the EC Treaty Community law is neutral with respect to the private or public ownership of undertakings, aid that facilitates privatisations of State-owned companies may not as such benefit from derogation from the basic principle of incompatibility of State aid with the common market. In its XXIIIrd Report on Competition Policy²⁸, the Commission has expressed its opinion regarding the general principles which it applies to privatisation and which have been built up over the years on the basis of scrutiny of individual cases. In the case the privatisation is effected by the sale of shares on the stock exchange it is generally assumed to be on market conditions and not to involve aid. If the undertaking is not privatised by stock-exchange flotation but by a trade sale, i.e. by sale of the company as a whole or in parts to other companies, an open, transparent and not conditional competitive tender procedure must be organised, which offers bidders enough time and information to carry out an adequate valuation of the assets and in the course of which the undertaking is sold to the highest bidder. Privatisations by flotation or competitive tender on the abovementioned conditions need not be notified to the Commission in advance for examination of possible aid implications. In all other cases (e.g. sales following negotiations with a single prospective purchaser or a number of selected bidders, sales on conditions not customary in comparable transactions between private parties, etc.), trade sales must be examined for possible aid implications and hence be notified to the Commission.

Cross-subsidisation

Even in already liberalised sectors, certain undertakings may still occasionally benefit from financial transfers or other forms of **State support for the provision of general economic activities** (services of general economic interest). State support for general economic activities will in particular entail distortions of competition that are dubious under Community law if the favoured undertaking is at the same time active in other economic business areas, hence giving rise to the danger of unlawful cross-subsidisation between the two areas of activity.

In order on the one hand to safeguard an assessment of the proportionality of a support granted for general economic activities and on the other hand to prevent potential cross-subsidisation, a clearcut and appropriate separation between the different business areas and their internal cost structure must be brought about.

²⁶ Article 88(3) of the EC Treaty is directly applicable at the national level

²⁷ See Item 6.5 of the Notice

²⁸ XXIIIrd Report on Competition Policy (1993), Brussels, Luxembourg 1994, page 255

According to **Commission Directive 2000/52/EC** of 26 July 2000 on the transparency of financial relations between Member States and public undertakings²⁹, undertakings which on the one hand are either granted special or exclusive rights according to Article 86(1) of the EC Treaty or are entrusted with the operation of services of general economic interest according to Article 86(2) of the EC Treaty and receiving some kind of financial compensation for this, but which on the other hand provide traditional economic activities in which they compete with other undertakings, are obligated to maintain separate accounts for the different business areas.

The obligation to maintain separate accounts according to the Transparency Directive applies to both public and private undertakings. In order to avoid an excessive burden, however, the Directive does not apply to undertakings whose total annual net turnover is less than EUR 40 million (SMEs); neither does it apply to business areas already governed by special provisions. In addition, the Directive does not apply to undertakings whose services are not liable to either distort competition or affect intra-Community trade or to undertakings where the extent of financial compensation for the fulfilment of services of general economic interest was determined in the context of an open, transparent and non-discriminatory procedure.

1.3 The principle of incompatibility and its exemptions

Aid corresponding to the above-described elements of Article (1) of the EC Treaty is subject to the principle of incompatibility laid down in that provision. The provision reflects a principally negative attitude towards all forms of State aid that distort competition between undertakings and are liable to impair the trade flows between Member States.

However, this entails **no absolute prohibition of aid**, since Article 87(2) and (3) of the EC Treaty provides for a number of exceptions from this prohibition, according to which certain forms of aid may be regarded as compatible with the common market. This system of exemptions from the underlying principle of incompatibility necessitates a **procedure for State aid control**.

²⁹ Commission Directive 2000/52/EC of 26 July 2000 on the transparency of financial relations between Member States and public undertakings (OJ 1980 L 195), amended by Commission Directive 85/413/EEC of 24 July 1995 (OJ 1985 L 229), amended by Commission Directive 93/84/EEC of 30 September 1993 (OJ 1993 L 254), amended by Commission Directive 2000/52/EC of 26 July 2000 (OJ 2000 L 193).

1.3.1 The role of the European Commission

The Commission as a controle body plays a central role in monitoring State aid within the Community, since in the field of day-to-day application and enforcement of aid legislation it has sole competence regarding all decisions concerning the (in)compatibility of aid with the common market and disposes of a large scope of assessment and discretion. The Member States intending to grant aid are thus obligated to notify their plans to the Commission in due time before executing them. The aid in question may only be granted after completion of a procedure in whose course the Commission examines whether one of the exeptions under Article 87(2) or (3) of the EC Treaty actually applies.

While Article 87(2) of the EC Treaty enumerates the exemptions that are per se compatible with the common market, Article 87(3) of the EC Treaty lists the exemptions whose compatibility with the common market may be determined by the Commission within its scope for discretion. Moreover, for specific forms of horizontal aid Block Exemption Regulations of the Commission³⁰ have come into effect, which exempt such forms of aid from the notification obligation.

1.3.2 Legal instruments of State aid control

Since the EC Treaty does not specify the Commission's discretion deriving from Article 87(3) in more detail, the Commission has considered it appropriate to establish, by means of different instruments, a set of general criteria for the interpretation and application of these derogations and exemptions and thus to communicate to the authorities and economic players concerned which aid projects it plans to consider compatible with the common market, notwithstanding the principal prohibition of Article 87(1) of the EC Treaty as well as on the basis of Article 87(3) of the EC Treaty.

The different legal nature of these instruments entails highly different consequences, in particular with a view to the procedures required for their adoption and/or the degree to which they will be binding. **Article 249 of the EC Treaty** specifies that **Regulations** are binding in their entirety, **Directives** are binding as to the result to be achieved and **Decisions** are binding in their entirety upon those to whom they are addressed, whilst **Recommendations** and **Opinions** have no binding force.

However, Communications, Guidelines and Community Frameworks create a separate category of **principally non-binding instruments**, which help to clarify legal questions with respect to State aid and explain the criteria on whose basis the Commission evaluates individual cases. By publishing the decisions made by the Commission and the Commission policy, they are to contribute to the safeguarding of

³⁰ Cf. also 1.4.2.4

transparency, predictability, legal security and equal treatment of all Member States. In this way, the publications create a certain protection of legitimate expectations; which leads to the result that even legal actions not being directly legally binding develop the effect of becoming indirectly binding with respect to the assessment of the protection of legitimate expectations and the principle of equal treatment. Depending on their legal nature, the Commission's instruments can be divided into three groups:

1. For those areas of the EC Treaty in which the Commission has no discretion regarding the application of aid legislation but where it appears appropriate to describe the interpretation of the provisions in more detail for reasons of transparency, the Commission may prepare **Communications**.
2. In the field of discretionary decisions (Article 87(3) of the EC Treaty), the Commission may establish **Guidelines** and bind itself thereby with regard to its future actions in exercising its discretion.
3. If the Guidelines established by the Commission at the same time comprise certain obligations that are imposed on the Member States as useful measures³¹ within the scope of a procedure for existing aid and accepted by them, this will create a **binding Community Framework**.

The new transparency instruments of the Commission – State Aid Register and State Aid Scoreboard –

have three main objectives:

- they are to deepen the Member States' understanding of the necessity of control in the field of State aid,
- they are to provide information on decisions taken by the Commission, and
- they are to encourage the Member States to exchange information on the implementation of Commission decisions.

The **State Aid Register**³² contains a summary of information on the decision-making practice of the Commission. This summary on the one hand is composed of statistical data and on the other hand enables users to search for decisions taken by the Commission in the field of State aid since 1 January 2000.

³¹ Cf. also 2.3

³² The State Aid Register is available on the website of the Directorate-General for Competition at http://europa.eu.int/comm/competition/State_aid/register/

The **State Aid Scoreboard**³³ is developed together with the Member States, which are encouraged to use the Scoreboard as a forum for discussions on the different approaches relating to aid and for the exchange of opinions in order to determine optimum procedures. In this, the Commission wants to act as a moderator. The State Aid Scoreboard is therefore to contribute to the reduction of the overall State aid level and lead to an orientation of State aid that promotes horizontal objectives of common interest, such as research and development or small and medium-sized enterprises. The State Aid Scoreboard is published twice a year; whereby the spring edition features the figures for the previous year, as furnished by the Member States, while the autumn edition contains an in-depth analysis of this information.

1.3.3 Legal exemptions pursuant to Article 87(2) of the EC Treaty

Article 87(2) of the EC Treaty specifies certain forms of aid that are exempted a priori from the prohibition of State aid as laid down in Article 87(1); thus the Commission is not entitled to submit an opinion regarding the appropriateness of applying the exemptions contained therein. These exemptions define the aid included in them as **per se** compatible with the common market if the constituent elements are complied with. Nevertheless, they do not free the Member State, which refers to them, from the obligation to notify its aid project. The Commission's right to investigate, however, is limited to the aid itself and to the facts underlying its application. If these facts indicate that the respective aid comes under the scope of application of one of the exemptions covered in Article 87(2), the Commission has no discretion to decide whether the aid is or is not compatible with Community legislation. According to Article 87(2) of the EC Treaty, the following cases shall be compatible with the common market:

a) Aid having a social character, granted to individual consumers

Aid of a social character is not subject to the prohibition of State aid as defined in Article 87(1) if it is granted without discrimination regarding the origin of the goods or services to individual end consumers (but not to undertakings) and favours a specific group of consumers (e.g. needy consumers – e.g. distribution of school milk).

b) Aid to make good the damage caused by natural disasters or exceptional occurrences

Aid granted to make good the damage caused by natural disasters (e.g. floods or hurricanes) or other exceptional occurrences is compatible with the common market if it merely serves the purpose of compensating the damage caused without overcompensating it.

³³ The State Aid Scoreboard is available on the website of the Directorate-General for Competition at http://europa.eu.int/comm/competition/State_aid/scoreboard/

c) Aid granted to the economy of certain areas of Germany that are affected by the country's division

In the opinion of the Commission, this exemption has become obsolete since the re-establishment of the German Unification. Conversely, the Federal Republic of Germany maintains that this exemption is to remain in force with respect to State aid granted to the territory of the former GDR³⁴.

1.3.4 Discretionary exemptions pursuant to Article 87(3) of the EC Treaty

Article 87(3) of the EC Treaty provides for the possibility to consider certain forms of aid compatible with the common market by decisions of the Commission according to Article 87(3) a) to d) in combination with Article 88 of the EC Treaty or by decisions of the Council according to Article 87(3) e) of the EC Treaty. Due to the wording of paragraph 3, these decisions of the Commission or the Council are **discretionary decisions**.

The exemptions provided for in Article 87(3) of the EC Treaty therefore apply only in those cases in which the Commission, after careful examination and in exercising its discretionary powers, establishes that the aid may be considered admissible for an exemption and hence declared compatible with the common market. Compatibility of State aid with the common market may be possible in the following cases: (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment; (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest; (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest; and (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

The exemptions laid down in Article 87(3) of the EC Treaty permit deriving three categories of aid, within which the Commission has defined focal areas:

(1) Regional aid (lit. a and c), which applies to areas disadvantaged at a national and Community-wide level.

³⁴ The judgment of the ECJ of 19 September 2000, C-156/98, highlights the different positions held by the Commission and the Federal Republic of Germany.

(2) **Horizontal aid (lit. c)** covers research and development, environmental protection, rescue and restructuring of firms in difficulty, SMEs, training and employment.

(3) **Sectoral aid (lit. c)** covers the iron and steel industry, coal mining, the motor vehicle industry, the synthetic fibres industry, transport (rail and road transport, inland navigation, air and maritime transport), agriculture, fisheries and shipbuilding.

1.4 Selected examples of exemptions derived from discretionary power

1.4.1 Regional aid

Undoubtedly, regional aid ranks among the key exemptions laid down in Article 87(3) of the EC Treaty, since this form of aid can contribute to economic and social coherence in the Community. Regional aid measures differ from other categories of State aid in that they are reserved for particular regions and designed to develop less-favoured regions by **supporting initial investment** and **job creation** in a sustainable context. The Commission considers that regional aid can play the role that is assigned to it effectively and hence justify the consequent distortions of competition, if it is used sparingly and if it remains concentrated on the most disadvantaged regions (i.e. the underlying principle is the exceptional nature of regional aid). According to the **Guidelines on national regional aid**³⁵, a derogation from the incompatibility principle established by Article 87(1) of the EC Treaty may be granted in respect of regional aid only if the equilibrium between the resulting distortions of competition and the advantages of the aid in terms of the development of a less-favoured region can be guaranteed³⁶.

a) Regions eligible for aid pursuant to Article 87(3) a) of the EC Treaty

This group of regions coming under Article 87(3) of the EC Treaty is composed of disadvantaged regions inasmuch as the “**standard of living is abnormally low or there is serious underemployment**” in them. For this purpose, the extent of such disadvantages and the relative development level of such regions must be measured by using the Community average as a yardstick. The definition of the regions eligible for aid according to Article 87(3) of the EC Treaty as NUTSII regions³⁷ is based on the gross domestic product (GDP) per capita. As long as the GDP per capita in a region does not exceed 75 % of the Community average, regional aid according to Article 87(3) of the EC Treaty may be regarded as compatible with the common

³⁵ Guidelines on national regional aid, OJ C-74 of 10 March 1998

³⁶ See Item 2 of the Guidelines on national regional aid

³⁷ The systematic classification of statistical regional units for the EU (NUTS – Nomenclature des unités territoriales statistiques) provides for the geographical division of the Community into three levels. With respect to Austria, the NUTSII level corresponds to the country's federal provinces.

market if 50 % of the net grant equivalent (NGE)³⁸ is not exceeded and if the recipient of the aid makes a contribution of at least 25% towards its financing (exemptions only for the outermost regions of the Community).

b) Regions eligible for aid pursuant to Article 87(3) c) of the EC Treaty

According to this provision, aid “to facilitate the development of certain economic activities or of certain economic areas“ may be compatible with the common market. Contrary to the regions eligible for aid according to Article 87(3) a) of the EC Treaty, the criterion applied to define such regions does not exclusively refer to the economic situation of the Community, but also to that of the respective Member State. The Member States may propose a directory of national aid maps to the Commission, on whose basis the Commission uniformly defines the regions eligible for aid. In this, the apportionment breakdown is calculated on the basis of NUTSIII regions, taking into account the population of those areas where, at a national level, the per-capita GDP does not exceed 85 % of the average of the respective Member State and the unemployment rate is at least 115 % of the national average. In these areas, the maximum regional aid rate must, as a rule, not exceed 20 % of the net grant equivalent (NGE); however, there are some exceptions (cf. Guidelines on national regional aid).

c) Multisectoral Framework on regional aid for large investment projects

Since alternative sites in different Member States are often considered for large investment projects, which may lead to increasingly generous promises of aid on the part of these Member States and since such subsidy spirals carry a considerable risk of distorting competition and moreover may clearly favour the richer Member States and/or regions, the Commission has therefore introduced a **multisectoral Framework on regional aid**³⁹, which is to limit aid for large-scale projects to a level which avoids as much as possible adverse effects on competition but which at the same time maintains the attraction of the assisted area.

The Framework on regional aid stipulates a notification requirement for aid granted in the context of regional aid schemes for large-scale projects in such cases where either the total aid is at least EUR 50 million or the total project cost is at least EUR 50 million, the total aid intensity is at least 50 % of the regional aid ceiling for large companies in the area concerned and aid per job created or safeguarded amounts to at least EUR 40,000.-.

³⁸ The method to calculate the NGE is published in the annex to the Guidelines on national regional aid; it is used by the Commission in its assessment of aid schemes notified by the Member States.

³⁹ Multisectoral Framework on regional aid for large investment projects, OJ C-107 of 7 April 1998

On 19 March 2002, a new multisectoral Framework on regional aid for large investment projects⁴⁰, which will take effect in 2004 and remain applicable until 31 December 2009, was introduced. As in the previous Framework on regional aid, the maximum aid amounts are again based on the Guidelines on regional aid and the regional aid ceilings as laid down in the regional aid maps. The following reduced maximum aid amounts apply: up to EUR 50 million of eligible expenditure, 100 % of the regional aid ceiling may be granted; between EUR 50 million and EUR 100 million, 50 % of the regional aid ceiling may be granted; above EUR 100 million, 34% of the regional aid ceiling may be granted. Projects with a total investment amount of less than EUR 100 million are no longer subject to notification if the aid was granted in the context of an approved aid scheme. Another novelty is the inclusion of specific sectors (motor vehicle industry and synthetic fibre industry) in the new Framework on regional aid starting in 2003⁴¹.

1.4.2 Horizontal aid

1.4.2.1 Research and development aid

The actions of the Community and its Member States aim, inter alia, at fostering better exploitation of the industrial potential of policies of innovation, research and technological development⁴². In the context of State aid control, aid contributing to the improvement of the international competitiveness of undertakings and Community industry may be granted. According to the Community Framework for State aid for research and development⁴³, the Commission makes a distinction between “fundamental research“, “industrial research“ and “precompetitive development activity“, depending on the proximity to the market of the aided R&D (the closer the R&D is to the market, the more significant may be the distortive effect of the State aid).

a) Fundamental research: By fundamental research is meant an activity designed to broaden scientific and technical knowledge not linked to industrial or commercial objectives as well as for which non-discriminatory dissemination of the research results is safeguarded. In exceptional cases, aid for fundamental research with a gross aid intensity of up to 100 % may be granted if the category of aid is far from the market and the results are made available for exploitation on a non-discriminatory basis and at market rates.

⁴⁰ Communication from the Commission – Multisectoral Framework on regional aid for large investment projects, OJ C-70 of 19 March 2002

⁴¹ However, stricter regulations apply to these sectors.

⁴² Article 157(1) of the EC Treaty

⁴³ Community Framework for State aid for research and development, OJ C-45 of 17 February 1996, and Commission Communication concerning the prolongation of the Community Framework for State aid for research and development until 31 December 2005, OJ C-111 of 8 May 2002

b) Industrial research: By industrial research is meant 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. The gross aid intensity for industrial research must not exceed 50 % of the eligible costs of the project.

c) Precompetitive development activity: By precompetitive development activity is meant 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. For precompetitive development, the permissible gross aid intensity is fixed at 25 % of the eligible costs of the project.

Going beyond the abovementioned aid intensities, an extra 10 percentage points may be granted for SMEs or for research projects carried out in a region according to Article 87(3) a) of the EC Treaty, while an extra 5 percentage points may be granted for research projects carried out in a region according to Article 87(3) c) of the EC Treaty. If the research projects are carried out in the context of cross-border co-operation, they qualify for an extra 10 to 25 percentage points.

1.4.2.2 Environmental aid

According to Article 6 of the EC Treaty, Community policies must integrate the promotion of sustainable development into the definition of Community policies, which duly extends to the Commission's activities in the context of its aid policy. This means that the Commission must evaluate the effects of environmental aid from the viewpoint of sustainable development and unrestricted application of the "polluter pays" principle. However, the Community Guidelines on State aid for environmental protection⁴⁴ make it quite clear that the avoidance of cost internalisation⁴⁵ cannot be balanced by the granting of aid. As a result, taking account of environmental requirements presupposes that prices be clear and reflect costs, i.e. that prices of goods and services internalise those costs caused by negative external effects.

a) Investment aid:

The granting of aid is not justified in the case of investments designed merely to bring companies into line with new or existing Community technical standards. A transitional period is provided solely for **SMEs**. For a period of three years from the adoption of new compulsory Community standards, investment aid to help SMEs

⁴⁴ Community Guidelines on State aid for environmental protection, OJ C-37 of 3 February 2001

⁴⁵ "Cost internalisation" means the principle that all costs associated with the protection of the environment should be included in the production costs incurred by undertakings.

meet new standards may be authorised for up to a **maximum of 15 % gross of eligible costs**.

Standards stricter than those of the Community: Conversely, investment aid enabling firms to improve on the Community standards, where firms undertake investment in the absence of mandatory Community standards or where they have to undertake investment in order to comply with national standards that are more stringent than the applicable Community standards may be authorised up to a maximum of 30 % gross of the eligible investment costs.

Energy sector: Aid for investments in energy saving is eligible for investment aid at the basic rate of 40 % of the eligible costs. The same is true for investments in the combined production of electric power and heat if it can be shown that these measures are beneficial in terms of environmental protection. The aid rate for investment in support of renewable sources of energy may be increased by 10 percentage points. The Member States may grant investment aid for renewable sources of energy for up to 100 % of the eligible costs where this is shown to be necessary.

In regions according to Article 87(3) a) of the EC Treaty, the maximum rate of investment aid increases by 10 percentage points, and in regions according to Article 87(3) c) of the EC Treaty, by 5 percentage points. In addition, the maximum rate of aid may also be composed of the rate of regional aid plus 10 percentage points. For SMEs, too, a bonus of 10 percentage points may be granted. The bonuses may be combined, but the maximum rate of environmental aid may never exceed 100 % of the eligible costs.

Measures designed to repair environmental damage by rehabilitating polluted industrial sites as well as aid for the relocation of undertakings on grounds of environmental protection may likewise come within the scope of the Community Guidelines on State aid for environmental protection.

b) Operating aid:

Operating aid may be principally granted for the management of waste and for energy-saving measures on a temporary basis and wound down over time as well as for renewable sources of energy and the combined production of electric power and heat; it is also admissible in the form of temporary tax reductions and exemptions.

1.4.2.3 Rescue and restructuring aid

Rescue and restructuring aid may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the Community interest if the conditions set out in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁴⁶ are met. A **firm in difficulty** is an enterprise that is unable, whether through its own resources or with the funds it is able to obtain from its owners/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term. The usual signs of a firm being in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value. Newly created firms are not eligible for rescue or restructuring aid, even if their initial financial position is insecure.

a) Rescue aid

Rescue aid should make it possible to keep an ailing firm afloat for the time needed to work out a restructuring or liquidation plan and/or for the length of time the Commission needs to be able to reach a decision on that plan. Thus rescue aid is by nature temporary assistance and can only be approved by the Commission if it meets the following requirements.

- It must consist of **liquidity support** in the form of loan guarantees or loans. In both cases, the loan must be granted at an interest rate at least comparable to those observed for loans to healthy firms, and in particular to the reference rates adopted by the Commission.
- It must be linked to loans that **are to be reimbursed** over a period of not more than **twelve months** after disbursement of the last instalment to the firm.
- It must be warranted on the grounds of **serious social difficulties** and have no unduly adverse spillover effects on other Member States.
- On notification, it must be accompanied by a pledge on the part of the Member State concerned to communicate to the Commission, not later than six months after the rescue aid measure has been authorised, either a **restructuring plan or a liquidation plan** or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated.

⁴⁶ Community Guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C-288 of 9 October 1999

- It must be **restricted to the amount** needed to keep the firm in business for the period during which the aid is authorised.

The rescue aid will initially be authorised for not more than six months. However, in duly substantiated exceptional circumstances and at the request of the Member State concerned, the Commission may extend the initial six-month period. Conversely, repeated rescues that merely maintain the status quo, postpone the inevitable and in the meantime shift the attendant economic and social problems onto other, more efficient producers or other Member States cannot be allowed.

b) Restructuring aid

The restructuring of a firm is based on a feasible, coherent and far-reaching plan to restore its long-term viability. Restructuring usually involves one or more of the following elements: the reorganisation and rationalisation of the firm's activities on to a more efficient basis, typically involving the withdrawal from loss-making activities, the restructuring of those existing activities that can be made competitive again and, possibly, diversification in the direction of new and viable activities. Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Since restructuring aid raises particular competition concerns as it can shift an unfair share of the burden of structural adjustment and the attendant social and economic problems onto other producers who are managing without aid and to other Member States, the Commission will grant restructuring aid only in circumstances in which it can be demonstrated that it does not run counter to the Community interest. This will only be possible if the following strict criteria are met:

- The granting of the aid is conditional on implementation of a restructuring plan, which permits **restoring the long-term viability** of the undertaking within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions.
- In order to avoid any **undue distortion of competition**, measures must be taken to mitigate the adverse effects of the aid on competitors by means of adequate compensation on behalf of these competitors.
- The amount and intensity of the aid must be limited to the **strict minimum** needed to enable restructuring to be carried out and must be proportionate to the benefit expected by the Community.
- The undertaking must **fully implement** the **restructuring plan** submitted to the Commission and must discharge the obligations laid down in the Commission Decision.

- The Commission must be put in a position to make certain that the restructuring plan is being implemented properly, through detailed regular **reports**.

In order to prevent undertakings from being unfairly assisted, restructuring aid should be granted **once** only.

1.4.2.4 Block Exemption Regulations for specific categories of horizontal aid

Council Regulation No. 994/98 adopted on the basis of Article 89 of the EC Treaty (Enabling Regulation) enables the Commission to adopt detailed Block Exemption Regulations for a specific group of categories of horizontal aid with the effect that such categories of aid are no longer subject to notification according to Article 88(3) of the EC Treaty. These Commission Regulations, which are directly applicable in the Member States, simplify the administrative work of both the Member States and the Commission insofar as they give a precise definition of the exemption criteria, shift the monitoring of whether or not a form of aid corresponds to the exemption criteria from the Commission to the Member States and/or their national courts of law and hence render notification to the Commission superfluous. On this basis, the first three block exemptions in the form of Commission Regulations came into force in 2001, followed by a fourth block exemption in 2002.

a) Small and medium-sized enterprises (SMEs)

In the opinion of the Commission, small and medium-sized enterprises play a decisive role both in job creation and in preserving social stability and economic drive. However, their development may be limited by market imperfections and, given the risk-shy nature of certain financial markets and the limited guarantees that SMEs may be able to offer, they may often find it difficult to obtain capital or credit. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. Due to the aid to small and medium-sized enterprises made available through the SME Regulation⁴⁷, which replaced the previously existing Community Guidelines on State aid for small and medium-sized enterprises⁴⁸, their economic activities are therefore to be facilitated inasmuch as such aid does not adversely affect trading conditions to an extent contrary to the common interest.

⁴⁷ 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, OJ L 10 of 13 January 2001

⁴⁸ Community Guidelines on State aid for small and medium-sized enterprises, OJ C 213 of 23 July 1996

Annex 1 to the SME Regulation defines an SME as an enterprise that has fewer than 250 (50)⁴⁹ employees **and** has either an annual turnover not exceeding EUR 40 (7) million **or** an annual balance-sheet total not exceeding EUR 27 (5) million **and** where not more than 25 % or more of the capital or voting rights is owned by other enterprises not corresponding to the SME definition.

The SME Regulation permits aid for investments in tangible fixed assets⁵⁰ and in intangible fixed assets⁵¹, provided that these do not exceed the gross aid intensity of 15 % for small enterprises and of 7.5 % for medium-sized enterprises. In addition, an extra 15 percentage points (gross) of the investment costs may be granted in areas receiving regional aid according to Article 87(3) a) of the EC Treaty, while an extra 10 percentage points (gross) may be allocated in areas receiving regional aid according to Article 87(3) c) of the EC Treaty, if the investments are maintained in the recipient region for at least five years and the beneficiary's contribution to investment financing is at least 25 %. According to Article 5 of the SME Regulation, aid may, under certain circumstances, likewise be exempted from the notification requirement if granted for consultancy and other services and activities on behalf of undertakings. Because of their sheer volume, individual aid grants whose volume exceeds EUR 15 million or where the total eligible cost of the whole project amounts to at least EUR 25 million cannot be exempted from notification, even if they are granted on the basis of an aid scheme exempted from notification according to the SME Regulation. Therefore such forms of aid must be notified in any case.

With respect to the cumulation of aid, the aid ceilings likewise apply, regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community.

b) Training aid

In the opinion of the Commission, training usually has positive external effects for society as a whole since it increases the pool of skilled workers from which other undertakings may draw and thus improves the competitiveness of Community industry. Since undertakings in the Community generally underinvest in the training of their workers, State aid might help to correct this market imperfection. Aid for general training measures providing transferable qualifications that substantially improve the employability of the trained workers concerned have less distortive

⁴⁹ Figures in brackets refer to small-scale enterprises.

⁵⁰ Investments in fixed assets in connection with 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. Moreover, taking over an establishment which has closed or which would have closed had such take-over not taken place is also understood as a fixed-asset investment.

⁵¹ Investments in the transfer of technology by the acquisition of patent rights, licences, know-how or unpatented technical knowledge

effects on competition, so that higher intensities of aid can be considered compatible with the common market. Conversely, specific training measures which mainly benefit the undertaking, involve a greater risk of distortion of competition, so that the intensity of aid should be lower.

In keeping with the aid exempted from notification on the basis of the Regulation on training aid⁵², which has replaced the Community Framework on training aid⁵³, general training measures of large enterprises may receive aid for up to 50 % of the eligible costs; the corresponding amount for SMEs is 70 %; conversely, the intensity of aid for specific training measures is 25 % of the eligible costs for large enterprises and 35 % for SMEs. Moreover, an extra 5 percentage points of the costs may be granted in regions covered by Article 87(3) c) of the EC Treaty, while an extra 10 percentage points may be allocated in regions covered by Article 87(3) a) of the EC Treaty. Training measures for the benefit of disadvantaged workers are likewise entitled to an extra of 10 percentage points. According to Article 5 of the Regulation, the exemption does not apply if the amount of aid granted to one undertaking for a single training project exceeds EUR 1 million. The cumulation provisions likewise apply here *mutatis mutandis*.

c) Employment aid

The promotion of employment is a central aim for the economic and social policies of the Community and of its Member States. The Community has therefore developed a European employment strategy in order to promote this objective. Unemployment remains a significant problem in some parts of the Community. Certain categories of workers still find particular difficulty in entering the labour market. For this reason, there is a justification for public authorities and the Community to apply measures providing incentives to enterprises to increase their levels of employment, in particular of workers from disadvantaged categories. The Regulation thus exempts all forms of aid granted on the basis of an aid scheme and meeting the relevant exemption requirements, while individually granted forms of aid to employment remain to be notified to the Commission.

In keeping with the aid exempted from notification on the basis of the Regulation on aid to employment⁵⁴, which has replaced the Guidelines on aid to employment⁵⁵, the admissible gross aid intensity for the **creation of new employment** in areas which did not qualify for regional aid according to Article 87(3) a) or c) of the EC Treaty at the moment the aid was awarded is limited to a maximum ceiling of 15 % for small

⁵² Commission Regulation (EC) No. 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid, OJ L 10 of 13 January 2001

⁵³ Community Framework on training aid, OJ C-343 of 11 November 1998

⁵⁴ Commission Regulation (EC) No. 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment, OJ L 337 of 13 December 2002

⁵⁵ Guidelines on aid to employment, OJ C 334 of 12 December 1995

enterprises and of 7.5 % for medium-sized enterprises. If the area does qualify for regional aid at the moment the aid is awarded, the net aid intensity must not exceed the corresponding ceiling of regional investment aid. In the case of SMEs, the ceiling may moreover be increased by 10 percentage points (gross) in areas covered by Article 87(3) c) of the EC Treaty and by 15 percentage points in areas covered by Article 87(3) a) of the EC Treaty if the beneficiary's contribution to financing is at least 25 %.

The gross aid intensity of all aid granted for the **employment of disadvantaged or disabled workers** in existing employment contracts is calculated as a percentage of the wage costs of the respective worker over a period of one year following recruitment and must not exceed 50 % for disadvantaged workers or 60 % for disabled workers. With respect to employing disabled workers, the costs additional to those which the beneficiary would have incurred if employing workers who are not disabled may be compensated if the total aid granted to promote the employment of disabled workers does not exceed the level needed to compensate for any reduced productivity resulting from the disabilities of such workers as well as the additional costs of adapting premises to the needs of disabled workers, the costs of employing staff for time spent solely on the assistance of disabled workers as well as the costs of adapting or acquiring equipment for the use by disabled workers.

The cumulation provisions likewise apply here *mutatis mutandis*.

1.4.3 Sectoral aid

As a rule, sectoral aid is used by the Member States for the benefit of specific sensitive and problematic industry sectors struggling against adjustment difficulties or other critical situations. Sectoral aid principally is a form of interim aid designed to re-establish the long-term viability of a specific industry sector where this would seem to be impossible without State support.

a) Iron and steel industry

According to Article 4 c) of the ECSC Treaty aid to the iron and steel industry was principally prohibited. With the expiry of the ECSC Treaty on 23 July 2002, the 6th Steel Aid Code (on whose basis State aid on behalf of ECSC products could be granted) likewise lost its validity; as a result, the steel industry is now covered by the new, multisectoral Framework on regional aid⁵⁶, which, however, contains a special rule that continues to ban investment aid to the steel industry. In its Communication of 19 March 2002, which will remain in force from 24 July 2002 to 31 December 2009, the Commission maintains that it deems rescue and restructuring aid on behalf

⁵⁶ Cf. 1.4.1 c)

of the steel industry to be fundamentally incompatible and sets up the principles according to which it intends to approve aid for plant closedowns.

b) Coal mining

According to Article 4 c) of the ECSC Treaty aid to the coal industry was likewise prohibited. State aid for the benefit of ECSC coal products was subject to Commission Decision No. 3632/93/ECSC⁵⁷, which likewise lost its validity when the ECSC Treaty expired on 23 July 2002. In its Communication of 26 June 2002⁵⁸, the Commission states its position regarding the treatment of State aid after expiry of the ECSC Treaty.

c) Motor vehicle industry

Until 31 December 2002, aid to the motor vehicle industry was subject to the Community Framework for State aid to the motor vehicle industry⁵⁹; since then, the new multisectoral Framework on regional aid⁶⁰ and the normal horizontal rules, respectively, apply.

d) Synthetic fibres industry

Until 31 December 2002, the Code on aid to the synthetic fibres industry⁶¹ was binding for aid to the synthetic fibres industry; since then, the new multisectoral Framework on regional aid⁶² and the normal horizontal rules, respectively, apply.

e) Transport

According to Article 73 of the EC Treaty, aid is compatible with the EC Treaty if it meets the needs of transport co-ordination or if it represents reimbursement for the discharge of certain obligations inherent in the concept of a public service. A key

⁵⁷ Commission Decision of 28 December 1993 establishing Community rules for State aid to the coal industry, OJ L 329 of 30 December 1993, implemented by Commission Decision No. 341/91/ECSC of 8 February 1994, OJ L 49 of 19 February 1994

⁵⁸ Communication from the Commission concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty, OJ C 152 of 26 June 2002

⁵⁹ Community Framework for State aid to the motor vehicle industry, OJ C 279 of 15 September 1997, Notice on the extension of the period of validity of the Community Framework for State aid to the motor vehicle industry, OJ C 258 of 9 September 2000, Communication from the Commission to the Member States – Community Framework for State aid to the motor vehicle industry, OJ C 368 of 22 December 2001

⁶⁰ Cf. 1.4.1 c)

⁶¹ Code on aid to the synthetic fibres industry, OJ C 94 of 30 March 1996, Commission Notice on the extension of the period of validity of the Code on aid to the synthetic fibres industry, OJ C 24 of 29 January 1999

⁶² Cf. 1.4.1 c)

share of aid in inland transport consists of aid to **rail transport**, which is granted to the national railways in the context of the Regulations (EEC) No. 1191/69⁶³ as well as (EEC) No. 1107/70⁶⁴. These Regulations may be equally used as a legal basis for the granting of aid in the fields of **road transport** and **inland navigation**. The Commission monitors State aid in the field of **air transport** by means of its rules for air transport⁶⁵, which in particular provide for the granting of one-time-only restructuring aid for airlines. In the field of **maritime transport**, the Commission treats State aid according to the Community Guidelines on State aid to maritime transport⁶⁶.

f) Agriculture

In the field of agriculture, all State aid granted in connection with activities for the production, processing and marketing of agricultural products (with the exception of forestry, fisheries and aquaculture), the Community Guidelines for State aid in the agriculture sector⁶⁷ apply. According to the Guidelines, investments which are intended to reduce production costs, to improve and re-deploy production, to increase quality, to preserve and improve the natural environment, hygiene conditions and animal welfare standards or to promote the diversification of farm activities may come under the exemption provided for in Article 87(3) c) of the EC Treaty, since they improve the conditions of agricultural production and facilitate the development of the agriculture sector. In addition to these forms of investment aid, other categories of aid are also admissible, such as for example aid to compensate disadvantages in less-favoured areas, setting-up aid for young farmers, aid for early retirement or for the cessation of farming activities, for closing production, processing and marketing capacity, etc.

⁶³ Regulation (EEC) No. 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, OJ L 156 of 28 June 1969, amended by Regulation (EEC) No. 1893/91 of the Council of 20 June 1991, OJ L 169 of 29 June 1991

⁶⁴ Regulation (EEC) No. 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway, OJ L 130 of 15 June 1970, amended by Regulation (EEC) No. 1473/1975 of the Council of 20 May 1975, OJ L 152 of 12 June 1975, Regulation (EEC) No. 3578/92 of the Council of 7 December 1992, OJ L 364 of 12 December 1992, Regulation (EC) No. 2255/96 of the Council of 19 November 1996, OJ L 304 of 27 November 1996, Regulation (EC) No. 543/97 of the Council of 17 March 1997, OJ L 84 of 26 March 1997

⁶⁵ Application of Articles 92 and 93 of the EC Treaty as well as of Article 61 of the EEA Agreement to State aid in the aircraft sector, OJ C 350 of 10 December 1994

⁶⁶ Community Guidelines for State aid to maritime transport of 29 October 2003, not yet published

⁶⁷ Community Guidelines for State aid in the agriculture sector, OJ C 28 of 1 February 2000, republished in a corrected version in OJ C 232 of 12 August 2000

g) Fisheries

The compatibility of national aid schemes for the benefit of fisheries and aquaculture is examined by the Commission on the basis of the Guidelines for the examination of State aid to fisheries and aquaculture⁶⁸, which apply to the entire fisheries sector – i.e. to the exploitation of living aquatic resources and aquaculture, the means of production as well as the processing and marketing of the resultant products – and establish exemptions from the principle of the incompatibility of State aid with the common market.

h) Shipbuilding

The granting of aid to shipbuilding follows Regulation (EC) No. 1540/98 of the Council, which, however, lost its validity on 31 December 2003. As of 2004, this sector is to be regulated by an aid framework.

1.5 The decision-making practice of the Commission

The European Commission, Directorate-General for Competition, publishes an annual report on the competition policy of the European Union, which reflects the Commission's current decision-making practice. This report is also available on the Internet and may be accessed on the following website (2001 edition):

http://europa.eu.int/comm/competition/annual_reports/2001/competitionpolicy/en.pdf.

A wealth of additional information on the European Union is available on the Internet. It can be accessed through the Europa server: <http://europa.eu.int> .

⁶⁸ Guidelines for the examination of State aid to fisheries and aquaculture, OJ C 19 of 20 January 2001

2 State aid procedures

2.1 General

Article 88 of the EC Treaty determines the procedure for the application of the aid rules contained in Article 87 of the EC Treaty and makes a distinction between the **procedure for the evaluation of aid schemes to be newly introduced or altered**⁶⁹ on the one hand and the procedure for the **constant review of existing aid**⁷⁰ on the other hand. Contrary to the antitrust procedure, the State aid control procedure is a procedure in which only the institutions of the Community (as a rule, the Commission; in exceptional cases, the Council⁷¹) and the Member States are involved. Hence, the Member States as such take the status of the legal party to the proceedings, while other local and regional authorities may only be understood as directly and individually concerned parties within the scope of Article 230(4) of the EC Treaty.

With Council Regulation (EC) No. 659/1999 of 22 March 1999, laying down detailed rules for the application of Article 93 of the EC Treaty (**Procedural Regulation**), a procedural framework for the evaluation of aid schemes was defined which, without prejudice to special procedural rules laid down in Regulations for certain sectors, applies to aid in all sectors.

2.2 Examination of aid to be newly introduced or altered

2.2.1 Notification

According to Article 88(3) of the EC Treaty, the Commission shall be informed of any plans to grant or to alter existing aid in sufficient time to enable it to decide whether or not to approve the aid. Thus this rule is based on a **system of preliminary notification** and obliges the Member States to notify all measures that are sufficiently likely to constitute aid. At the same time, it prohibits the implementation of the aid in question until it has been expressly or tacitly authorised by the Commission (**standstill obligation**). In its turn, the Commission has the duty to communicate within a reasonable period of time whether the notified aid comes under the exemption rules laid down in Article 87(2) of the EC Treaty and hence can be approved as compatible with the common market, or whether the formal investigation procedure provided for in Article 88(2) of the EC Treaty should be launched.

⁶⁹ Cf. Article 88(3): "The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid".

⁷⁰ Cf. Article 88(1): "The Commission shall, in co-operation with Member States, keep under constant review all systems of aid existing in those States".

⁷¹ Cf. Article 88(2), 3rd subparagraph, and Article 89 of the EC Treaty

The notification obligation according to Article 88 of the EC Treaty encompasses all projects for the granting of aid or for the altering of existing aid arrangements. Only aid that is already covered by a positive decision of the Commission or by a Block Exemption Regulation or aid qualifying as de-minimis⁷² and thus falling outside the scope of Article 87 ff. of the EC Treaty is exempted from the notification obligation.

It is in the interest of potential recipients of aid to clarify whether the aid was approved by the Commission after being notified by the national authorities, as aid granted without notification or, in case of notification, before conclusion of the investigation procedure is **illegal** and may be recovered if it is evident after conclusion of the procedure that this aid is incompatible with the common market. Since Article 88(3) of the EC Treaty takes direct effect in the Member States, there exists moreover the risk that the national courts of law may demand the preliminary reimbursement of the unlawful aid.

2.2.1.1 Formalities

Notifications must be handled by the respective Member State's central authority in charge of State aid (in Austria, this is the Federal Ministry for Economic Affairs and Labour, C 1 Economic Policy, Division 8 – EU Aid Legislation) and forwarded to the Commission by the Member State's Permanent Representation to the European Union in Brussels; they should make reference to Article 87(3) of the EC Treaty or any other underlying rule under Community law. For this purpose, the **notification form**⁷³ prepared by the Commission may be used. Reception of the notification by the Secretariat-General of the Commission or the competent Directorate-General (only in case of approved aid) marks the time-limit within which the Commission must make a determination on the case, i.g. decide to approve the aid or to initiate a formal investigation under Article 88(2) of the EC Treaty.

2.2.1.2 Decision of the Commission to approve notified aid without opening Article 88(2) EC Treaty proceedings (preliminary investigation procedure)

After notification of the planned aid, the Commission begins its preliminary investigation, which serves the purpose of enabling the Commission to form a first opinion concerning the compatibility of the aid with the common market. This investigation phase begins with **complete** notification⁷⁴ and, according to the Court

⁷² Official Journal L 10/30 of 13 January 2001

⁷³ Communication SG(94) D/2472-2494 of the Commission to the Member States of 22 February 1994 on notifications and standardised annual reports

⁷⁴ I.e. when the Commission disposes of all information necessary to assess the compatibility of the aid with the common market

of Justice, may not exceed **two months**⁷⁵. Within this period, the Commission is obliged to take one of the following decisions:

- The notified measure does not constitute State aid pursuant to Article 87(1) of the EC Treaty and may therefore be put into effect without modification.
- The notified measure constitutes State aid pursuant to Article 87(1) of the EC Treaty, which, however, comes under an approved aid rule or one of the exemptions of Article 87(2) or (3), of Article 86(2) or of Article 73 of the EC Treaty and hence may be regarded as compatible with the common market. The measure may be put into effect without modification.
- The notified measure constitutes State aid pursuant to Article 87(1) of the EC Treaty; the Commission has serious doubts as to the compatibility of the aid with the common market and thus initiates the investigation procedure according to Article 88(2) of the EC Treaty. In this case, the measure cannot be put into effect until the Commission has expressly authorised its implementation.

If a notification does not contain all the necessary information to enable the Commission to assess the compatibility of the measure with the common market, the **notification is incomplete**. In this case, the Commission may ask the respective Member State in a request for information to submit additional information, which suspends the period for the investigation of the notification; thus the two-month investigation period only starts to run afresh from the date on which the requested information has been received. However, the Commission may not prolong the preliminary investigation of State measures designated as incompatible with Article 87(1) of the EC Treaty indefinitely⁷⁶ but must initiate the formal investigation procedure according to Article 88(2) of the EC Treaty if it meets with fundamental difficulties in establishing whether or not the aid in question is compatible with the common market.

If the requested information is submitted by the Member States either not at all or only incompletely, the Commission sends a reminder or another request for the missing information. If the requested information is not submitted in time even after the reminder, the notification is considered **withdrawn** and the Member State cannot put the aid into effect.

Before taking a decision on a notified aid procedure without initiation of the formal investigation procedure according to Article 88(2) of the EC Treaty, the Commission is not obligated to inform the other Member States and **interested parties** of the

⁷⁵ Cf. Article 4(6) of the Procedural Regulation

⁷⁶ ECJ 3 June 1999, T-17/96, *Télévision française vs. Commission*

course of the preliminary investigation procedure. The decision of the Commission to raise no objections to the notified aid is communicated to the Member State by letter and is the object of a brief communication published in the Official Journal of the European Communities, C Series⁷⁷. However, the complete text of the decision may be requested in writing by any interested party from the Secretariat-General of the Commission.

If the Commission has not taken a decision within the stipulated **two-month period** as of the moment of complete notification, the aid is considered approved and may be legally granted by the Member State after the latter has given notice of its intention to implement the proposal and the Commission has failed to react to this information by submitting a decision within a period of 15 days⁷⁸. In this way, the aid is considered to be an existing aid⁷⁹.

2.2.1.3 Formal investigation procedure under Article 88(2) of the EC Treaty

Where the Commission, after conclusion of a preliminary investigation, finds that doubts are raised as to the compatibility of the aid with the common market or where the aid, in the opinion of the Commission, can only be authorised by imposing certain conditions or where the Commission finds that an authorised aid is being misused, thereby disregarding the terms of the authorisation, it will immediately initiate the formal investigation procedure provided for in Article 88(2) of the EC Treaty.

To initiate such a procedure, the Commission **publishes** a detailed description of the aid in the Official Journal, C series, by summarising the relevant issues of fact and law, and moreover gives the Member State concerned and other interested parties under Article 20(1) of the Procedural Regulation⁸⁰ notice to submit their **observations** in writing within a certain period of time (as a rule, 30 days after delivery or publication). The notice publishing the decision to initiate proceedings, which reproduces the letter to the Member State concerned, is thus intended to open an inquiry usually referred to as “formal investigation”, in which all parties who can show a legitimate interest, be they public or private, can make their views known. The purpose of the procedure lies in safeguarding a comprehensive evaluation of each case by making sure that cases which raise doubt as to their compatibility with the common market will be evaluated with consultation of the Member State concerned, and that interested parties will be heard.

⁷⁷ Communications and Notices

⁷⁸ ECJ 11 December 1973, C-120/73 Lorenz

⁷⁹ Cf. 2.3

⁸⁰ E.g. the undertaking favoured by the aid and/or the undertakings whose interests are impaired by the aid

If the respective Member State fails to take its opportunity to reply to the opening of proceedings, the Commission is entitled to take a decision on the basis of the information available to it. The investigation procedure of the Commission should be concluded within a **period of 18 months** after initiation of the procedure⁸¹; if this is not the case, the respective Member State may request that a decision be taken within two months. If at this moment the Commission does not dispose of sufficient information to enable it to remove its doubts as to the compatibility of the aid with the common market, it has to take a negative decision.

The Member State may withdraw the notification of the aid project at any stage of the investigation procedure. Except in cases of withdrawal of the notification, the Commission concludes the formal investigation procedure with one of the following formal decisions:

- **Positive decision:** In the course of the formal investigation procedure, the Commission decides to raise no objections to the aid on the ground that the measure does not involve aid under Article 87(1) of the EC Treaty or that the aid is compatible with the common market and eligible for exemption under Article 87(2) or (3), Article 86(2) or Article 73 of the EC Treaty.
- **Positive decisions** may also be **subject to conditions or requirements**; in this case, the granting of aid is restricted with respect to its duration or the category, amount or purpose of the aid.
- **Negative decision:** In the course of the formal investigation procedure, the Commission finds that the notified measure constitutes aid not being compatible with the common market. The decision states that the Member State is not entitled to grant the aid and has to suspend or modify it.
- **Mixed decisions** are partly positive and partly negative.

In its decision, the Commission states a time-limit within which the Member State concerned must conform to the decision and put the requested measures into effect. In case of a (partly) negative decision or a positive decision imposing conditions or also an entirely positive decision⁸², the Member State concerned and the undertaking receiving the aid are entitled to refer the matter to the Court for its annulment according to Article 230 of the EC Treaty. In case of a (partly) positive decision, the same right to bring Court action lies with the competitors of the recipient of the aid and individually concerned parties. However, this court action has no suspensory effect with regard to the decision of the Commission.

⁸¹ Cf. Article 7(6) sentence 2 of the Procedural Regulation

⁸² E.g. if the Commission has based its positive decision on a different legal basis than intended by the Member State.

2.2.2 Illegal aid

Should a Member State not comply with its **obligation to notify or await authorisation**, the Commission may initiate proceedings on its own initiative, if it has doubts as to the compatibility of the aid; aid granted before authorisation of the Commission is illegal.

The Commission may obtain knowledge of an aid, not only by way of notification by a Member State, but also as a result of **complaints**⁸³ by competitors of the recipient of the aid or through other sources of information, since interested parties⁸⁴ are entitled to inform the Commission about allegedly illegal aid. After submission of a substantiated complaint, the Commission is principally obligated to assess that complaint by applying the State aid rules, in order to ascertain whether the case merits closer investigation.

After the Commission has established that a Member State has not complied with its obligations of notification and awaiting authorisation regarding an aid procedure, it requests the Member State to submit comments. If the Member State does not comply with this request or complies only in an unsatisfactory manner, the Commission will order by way of a decision that the information be supplied (**information injunction**).

Furthermore, the Commission may also order that illegal aid be recovered (**recovery injunction**) if there is no doubt as to the respective measure constituting aid, if urgent action on the part of the Commission is imperative and if there is imminent danger of serious and irreparable damage to a competitor.

Both the procedure entailing decisions in cases of non-notified aid and the substance of such decisions correspond to those for notified aid; however, in case of non-notified aid, the Commission is not bound by time-limits for its decisions. If the Commission has obtained knowledge of the aid by way of a complaint, it is obligated to investigate the claims put forward by the complainant impartially and exhaustively and supplies the complainant, after conclusion of the procedure, with a copy of the decision delivered to the Member State concerned.

As is the case with notified aid, the Commission may take a **positive decision** already after conclusion of the preliminary investigation and decide to raise no objections to the aid on the ground the latter does not constitute aid under Article 87(1) of the EC Treaty or because the aid measure either is covered by an authorised scheme or it is eligible for exemption under Article 87(2) or (3) of the EC

⁸³ Cf. Form for the submission of complaints concerning allegedly unlawful State aid, OJ C 116 of 16 May 2003, p. 0003-0006

⁸⁴ Cf. Article 20(2) of the Procedural Regulation

Treaty. Such cases constitute ex-post approval of an illegally granted aid. Conversely, the Commission may immediately initiate the **procedure according to Article 88(2) of the EC Treaty**. If this procedure ends with a negative decision, the Member State has to recover the illegal aid from the recipient of the aid.

2.2.3 Misuse of aid

If a beneficiary uses State aid in breach of the positive decision of the Commission⁸⁵, this fact constitutes misuse of an aid. In this case, the Commission as a rule initiates the formal investigation procedure and applies the rules concerning the procedure for illegal aid mutatis mutandis.

2.2.4 Recovery of State aid

According to Article 14 of the Procedural Regulation, the Commission orders the recovery of all aid that has been granted in violation of the notification obligation and is incompatible with the common market (**recovery decision**). Consequently, the Member State concerned is required to carry out recovery from the beneficiary without delay and **in accordance with the procedures under its national laws**, provided that they allow the immediate and effective execution of the Commission's decision.

The purpose of recovery lies in retroactively correcting the distortion of competition in the common market caused by the illegal aid. For this reason, the Commission orders that interest be payable from the date on which the illegal aid was at the disposal of the beneficiary until the date of its recovery, which interest is calculated on the basis of the reference interest rate determined by the Commission. Since Article 242 of the EC Treaty provides that actions brought before the Court of Justice of the European Communities shall have no suspensory effect, a Court action for annulment according to Article 230 of the EC Treaty brought by the recipient of the aid or the Member State concerned has no effect on the obligation to comply with the recovery decision by means of repayment or collection of the aid.

The Commission supervises the implementation of its recovery order by the Member State. If the Member State fails to comply with the recovery decision, the Commission is entitled to turn directly to the Court of Justice of the European Communities to bring **infringement proceedings** on the basis of Article 88(2) of the EC Treaty for non-compliance with a Commission decision.

The powers of the Commission to recover aid is subject to a limitation period of ten years. This period begins on the day on which the illegal aid is awarded to the

⁸⁵ Cf. Article 1 g) of the Procedural Regulation

beneficiary. Any aid with regard to which the limitation period has expired is deemed to be existing aid.

2.2.5 Principle of the protection of legitimate expectations

An argument usually put forward by the Member States or recipients of aid to avoid the collection or repayment of aid is the principle of the protection of legitimate expectations.

However, since the Commission according to Article 88 of the EC Treaty has the sole responsibility and competence for State aid control, an aided undertaking may only legitimately expect that the aid received by it is legal if it was granted in compliance with the procedure provided for in Article 88 of the EC Treaty. The Court of Justice of the European Communities maintains that recipients of aid may invoke protection of legitimate expectations only in exceptional cases, i.e. if they had legitimately, on the basis of due diligence, assumed the aid to be legal⁸⁶. If undertakings therefore do not examine the legality and compatibility of the aid with the common market, they cannot at a later date claim to have been convinced of the conformity of the aid with Community legislation.

2.3 Constant review of existing aid

The Member States' obligation to notify State aid and the related obligation to await authorisation do not apply to existing aid, i.e. existing aid is legal and compatible with the common market unless the Commission finds otherwise. Existing aid within the meaning of Article 88(1) of the EC Treaty includes in particular:

- Aid that was introduced before the entry into force of the EEC Treaty (1 January 1958) or before the relevant date of accession in the case of Member States which joined the Community later or 1 January 1994 in the case of the EFTA States signatories of the EEA Agreement and which has never been formally investigated or authorised by the Commission.
- Aid already authorised by the Commission on the basis of a decision.
- Aid which is to be understood as legally granted because the Commission has failed to make a determination within the two-month period allowed for examination of a notification, and the Member State has given the Commission notice after expiry of this period that it is going ahead and will put the aid project into effect, without any reaction of the latter.

⁸⁶ ECJ 20 September 1990, C-5/59, Commission vs. Federal Republic of Germany

The category of existing aid is of special importance because it comprises cases in which the aid rules already approved by the Commission were applied. According to **Article 88(1) of the EC Treaty**, the Commission constantly reviews the aid schemes existing in the Member States in co-operation with these States. It proposes appropriate measures required by the progressive development or by the functioning of the common market.

This rule is based on a **system of ex-post control** and is to enable the Commission to secure the abolition or adaptation of old or pre-accession aid that is incompatible with the common market and to review aid schemes or provisions which were authorised in the past but which may no longer be compatible with the common market under the conditions currently prevailing. The other Member States have a legal right resulting directly from the terms of the Treaty to demand constant review from the Commission. Whether the Commission actually conducts such a re-evaluation or at what moment it does so is at its own **discretion**. However, this procedure is applied not only to review the aid schemes of individual Member States but also when the Commission wishes to obtain changes to existing aid schemes, e.g. as regards particular sectors or particular purposes⁸⁷, in all Member States.

If the Commission believes that an existing aid scheme may be harming the functioning or development of the common market, it begins a review normally by requesting relevant information from the Member State concerned, which information must be supplied within a set period of time. The fact that an investigation has been initiated does not require that the operation of the aid scheme must be suspended. After investigation of the existing aid scheme, taking account of the information submitted by the Member State, the Commission may decide that no change in the aid scheme is necessary since it can be viewed as compatible with the common market, or the Commission may propose whatever modifications may appear appropriate in order to bring the scheme into line with current requirements. These **appropriate measures**, which constitute non-binding recommendations of the Commission, are communicated to the Member State in a reasoned opinion letter. If the Member State agrees in a formal and binding statement of acceptance to make the changes recommended, the Commission takes notice of this, informs the Member State and closes the case.

If a Member State declines to carry out the appropriate measures proposed, the Commission may only require the Member State concerned to comply through a formal **investigation procedure according to Article 88(2) of the EC Treaty**. The decision concluding the formal investigation procedure of the Commission enters into

⁸⁷ E.g. aid programmes must be adapted in all Member States as soon as an aid framework has been modified by the Commission

force at the moment of its publication⁸⁸ and, in case of a negative decision, states a time-limit within which the Member State shall suspend or modify the aid.

However, the Commission's evaluation of an aid as a **new or existing aid** is not only of importance with regard to the procedure. In cases where new aid was granted illegally and thus considered to be incompatible with the common market, the Commission has to order the recovery of the aid according to Article 14 of the Procedural Regulation, while it is not possible to order the recovery of existing aid.

2.4 Rights of third parties

Since the investigation procedure for aid legislation is principally of a bilateral nature based on the dialogue between the Commission and the Member State granting aid, the undertakings receiving aid as well as their competitors are not directly involved but act as third parties for the purposes of the procedure.

However, according to Article 20(2) in combination with Article 1 h) of the Procedural Regulation, **interested parties** enjoy significant rights. For example, complaints to the Commission regarding alleged illegal aid or alleged misuse of aid may be put forward solely by interested parties. This has been arranged because it is only their activities that will be potentially impaired or disadvantaged by the commercial activities of competitors receiving aid, i.e. the very undertakings that compete with them in the market. According to the case-law of the Court of Justice of the European Communities⁸⁹, interested parties are therefore not only the recipient undertaking or undertakings, but also any person, undertaking or association which might be injured by the granting of aid, and especially the recipient's competitors and the trade associations whose interests might be impaired by the granting of aid.

If the Commission has doubts as to the compatibility of an aid with the common market and therefore decides to initiate the **formal investigation procedure** according to Article 88(2) of the EC Treaty, the rights of interested parties are safeguarded inasmuch as the Commission publishes the letter (after removal of confidential data) by which the Member State concerned was informed of the initiation of the procedure in the Official Journal of the European Communities and grants the interested parties the right to comment in writing within the period of one month after publication. The Court of Justice has ruled⁹⁰ that such a publication is an appropriate means of informing all parties concerned and that individual notice to be given to particular persons is not required. However, interested parties are not entitled to any further participation in the preliminary investigation procedure of the Commission and have no right to a hearing or access to the documents.

⁸⁸ Cf. Article 254(2) of the EC Treaty

⁸⁹ ECJ 14 November 1984, C-323/82, Intermills vs. Commission

⁹⁰ ECJ 14 November 1984, C-323/82, Intermills vs. Commission

2.5 Legal protection

2.5.1 National courts of law

As provided for in Article 88(3) of the EC Treaty, the direct effect of the prohibition to implement planned aid measures provides the legal basis for the intervention of national courts of law. In order to comply with the obligation imposed on the Member States by this provision, the national courts of law are bound, in keeping with their national legislation, to act on behalf of the individual by drawing all relevant consequences from any infringement of Article 88(3) of the EC Treaty with respect to both the validity of the implementing measures and the recovery of the financial assistance granted in breach of this provision or any preliminary measures⁹¹.

2.5.2 Court actions for annulment

All decisions of the Commission concluding State aid procedures are exclusively addressed to the **Member States**, which thus become directly concerned parties. According to Article 230 of the EC Treaty, this entitles them, within a period of two months, to bring a court action for the annulment of a negative decision of the Commission before the Court of Justice of the European Communities. Moreover, the other Member States and the European Council likewise are entitled to bring a Court action for annulment of a positive decision of the Commission before the Court of Justice of the European Communities. With respect to the legal remedies available to them, the position of aid recipients is largely the same as that of the Member States; thus they, too, are entitled to bring a court action for the annulment of decisions of the Commission (however, before the Court of First Instance).

In addition, a Court action for annulment may only be brought by **directly and individually concerned parties** within the scope of Article 230(4) of the EC Treaty. As the Court of Justice has ruled in its judgment of 23 May 2000⁹², an undertaking cannot therefore rely solely on its status as a competitor of the undertaking in receipt of aid but must additionally show that its circumstances distinguish it in a way similar to the undertaking in receipt of the aid. The extent of participation in the formal investigation procedure and the involvement of the market position of the competitor are often used as an indicator of whether the undertaking may be considered as individually concerned by the decision of the Commission.

Apart from the decisions concluding the formal investigation procedure, decisions of the Commission to initiate the investigation procedure may under certain circumstances likewise be contested before the Court of Justice.

⁹¹ ECJ 11 December 1973, C-120/73, Lorenz

⁹² ECJ 23 May 2000, C-106/98 P. Comité d'entreprises de la Société française de production vs. Commission

Moreover, Article 232 of the EC Treaty provides that parties concerned may bring an action before the Court of Justice of the European Communities for the Commission's failure to act (e.g. in relation to a complaint lodged with the Commission).

2.5.3 Infringement proceedings

If the Member State concerned does not comply with a decision of the Commission or any conditions to which the decision is subject within the time-limit set by the Commission, the Commission and any Member State affected by this non-compliance may directly appeal to the Court of Justice, according to the second subparagraph of Article 88(2) of the EC Treaty, to institute **infringement proceedings** and, if appropriate, may apply for interim measures according to Article 243 of the EC Treaty.

In its judgments of 22 March 2001⁹³ and 3 July 2001⁹⁴, the Court of Justice stressed that according to established case-law only the absolute impossibility of implementing a decision of the Commission could be a valid defence for a Member State's non-compliance with this decision. If a Member State encounters unforeseen and unforeseeable difficulties in the implementation of the decision, it has to submit such problems to the Commission together with proposals for suitable amendments to the decision in question. In such circumstances, the Commission and the Member State concerned are both bound by the principle of Article 10 of the EC Treaty, which imposes a duty of genuine co-operation in order to overcome the difficulties, whilst fully observing the State aid rules.

If a Member State fails to take the measures resulting from a judgment of the Court of Justice, the Commission is entitled, according to Article 228 of the EC Treaty, to institute further proceedings against this Member State, which ultimately may entail the imposition of a penalty payment. On 18 July 2001, the Commission decided for the first time in a case concerning the recovery of State aid to address a reasoned opinion to Italy, specifying the points in which Italy had not complied with the judgment of the Court of Justice in the case *Commission vs. Italian Republic*⁹⁵.

⁹³ ECJ 22 March 2001, C-261/99, *Commission vs. French Republic*

⁹⁴ ECJ 3 July 2001, C-378/98, *Commission vs. Kingdom of Belgium*

⁹⁵ ECJ 29 January 1998, C-280/95, *Commission vs. Italian Republic*. This judgment ruled that Italy had not complied with the recovery order laid down in the Decision of the Commission of 9 June 1993 on a State aid.

3 Compendium of relevant EC/EEA rules on aid legislation

3.1 Regulations of ec-Treaty

Article 16

Article 73

Article 86

Article 87-89

3.2 General procedural rules⁹⁶

3.2.1 Procedural regulation⁹⁷

Council Regulation No 659/99 laying down detailed rules for the application of Article 93 EC [now Art. 88], *OJ L 83, 27.03.1999, p. 1-9*

3.2.2 Enabling regulation and block exemption regulations

Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 [now 87 and 88] of the EC Treaty to certain categories of horizontal aid, *OJ L 142, 14.5.1998, p. 0001-0004*

Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid, *OJ L 10, 13.01.2001, p. 0020-0029*

⁹⁶ A number of other notices und communications (soft law), which currently have not been superseded yet but are applicable less frequently, can be found in the "Yellow Paper", Competition Law in the European Communities, Volume IIA, Rules applicable to State Aid, Brussels 1999, http://europa.eu.int/comm/competition/state_aid/legislation/

⁹⁷ On the legal basis of 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, the Commission has the power to adopt implementing provisions concerning the form, content and other details of notifications and the calculation of time-limits as well as interest rates. The adoption of such an implementing regulation by the Commission, which implements Regulation (EC) No. 659/1999 of the Council and lays down detailed rules concerning the notification obligation, annual reports, time-limits and the recovery of unlawful aid, is planned for April 2004. After the adoption of this implementing regulation, the Commission plans a Communication in which it will inform the Member States that the texts (Commission Notices, Commission Communications) which have become obsolete as a result of the adoption of the implementing regulation shall no longer be applicable as per the publication day of this Communication in the Official Journal of the European Union.

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, *OJ L 10, 13.01.2001, p. 0030-0032*

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, *OJ L 10, 13.01.2001, p. 0033-0042*⁹⁹

Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment, *OJ L 337, 13.12.2002, p. 0003-0014*

3.2.3 Reference and discount rates

Commission notice on the reference/discount rates applicable from 1. January 2002, *OJ C 21, 24.1.2002, p. 0032*

Commission notice on a technical adjustment to the reference rates for Greece, *OJ C 66, 1.3.2001, p. 0007*

Commission notice on technical adaptations to the method for setting the reference and discount rates, *OJ C 241, 26.08.1999, p. 0009*

Commission notice on the method for setting the reference and discount rates, *OJ C 273, 9.9.1997, p. 0003*

Commission letter to MS on reference/discount rates SG(97) D/7114, 18.8.1997, http://europa.eu.int/comm/competition/state_aid/legislation/18081997_en.html

Historic table on reference and discount rates since 1.8.1997, http://www.europa.eu.int/comm/competition/state_aid/others/reference_rates.html

Commission communication on the interest rates to be applied when aid granted unlawfully is being recovered, *OJ C 110, 8.5.20 2003, p. 0021-0022*

⁹⁹ Modifications concerning the new SME definition were already proposed, cf. footnote 100

3.3 Financial transfers and transactions

3.3.1 Government Capital Injections

Application of Articles 92 and 93 [now 87 and 88] of the EEC Treaty to public authorities' holdings, *Bulletin EC 9-1984*

3.3.2 Financial Transfers to public enterprises

Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings, *OJ L 195, 29.07.1980, p. 0035-0037*

Commission Directive 85/413/EEC of 24 July 1985 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, *OJ L 229, 28.08.1985, p. 0020-0021*

Commission Directive 93/84/EEC of 30 September 1993 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, *OJ L 254, 12.10.1993, p. 0006-0018*

Commission communication to the Member States on the Application of the Articles 92 and 93 of the EEC Treaty and of Article 5 of the Commission Directive 80/723/EEC to public undertakings in the manufacturing sector, *OJ C 307, 13.11.1993, p. 0003-0014*

Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, *OJ L 193, 29.07.2000, p. 0075-0078*

3.3.3 State Guarantees

Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, *OJ C 71, 11.03.2000, p. 0014-0018*

3.3.4 Public Land Sales

Commission communication concerning aid elements in land sales by public authorities, *OJ C 209, 10.7.1997, p. 0003-0005*

3.4.3 Rescue and restructuring aid

Community guidelines on State aid for rescuing and restructuring firms in difficulty, *OJ C 288, 09.10.1999, p. 0002-0018*

Communication from the Commission: Rescue and restructuring aid and closure aid for the steel sector, *OJ C 70, 19.3.2002, p. 0021-0022*

3.4.4 SMEs*¹⁰⁰

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, *OJ L 10, 13.01.2001, p. 00 33-0042*

3.4.5 Employment

Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment, *OJ L 337, 13.12.2002, p. 003-0014*

3.4.6 Deprived urban areas

Commission notice on the expiry of the guidelines on State aid for undertakings in deprived urban areas, *OJ C 119, 22.05.2002, p. 0021*

3.4.7 Training

Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 und 88 of the EC Treaty to training aid, *OJ L 10, 13.01.2001. p. 0020-0029*

3.4.8 Risk capital

Commission communication on State aid and risk capital, *OJ C 235, 21.08.2001, p. 003-0011*

¹⁰⁰ * Please note that a new definition of SMEs will in principle apply from 1.1.2005. See Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003)1422) (OJ L 124, 20.5.2003, p. 36) and Commission communication — Model declaration on the information relating to the qualification of an enterprise as an SME (OJ C 118, 20.3 2003, p. 0005)

3.7 Rules on the assessment for approval of aid to particular industries

3.7.1 Broadcasting

Communication from the Commission on the application of State aid rules to public service broadcasting, *OJ C 320, 15.11.2001, p. 005-0011*

3.7.2 Audiovisual production

Communication from the Commission on certain legal aspects relating to cinematographic and other audiovisual works, *OJ C 043, 16.02.2002, p. 006-0017*

3.7.3 Electricity (stranded costs)

Commission communication relating to the methodology for analysing State aid linked to stranded costs, adopted by the Commission on 26.07.2001, *Commission Letter SG (2001) D/290869 of 6.8.2001*

http://europa.eu.int/comm/competition/state_aid/legislation/aid3.html

3.7.4 Shipbuilding

Council Regulation (CC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding, *OJ L 202, 18.7.1998, p. 0001-0010*

Council Regulation (EC) No 1013/97 of 2 June 1997 on aid to certain shipyards under restructuring, *OJ L 148, 6.6.1997, p. 0001-0003*

Council Regulation (EG) No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding, *OJ L 172, 2.7.2002, p. 0001-0003*

Commission Letter to Member States SG (89) D/311 of 3 January 1989

Commission Letter to Member States SG (97) D/4345 of 10 June 1997 amending letter SG(89) D/311

Commission Letter to Member States SG (88) D/6181 of 26 May 1988

Commission Letter to Member States SG (92) D/06981 of 19 March 1992

The following pages feature the full text of a number of legal instruments that are of relevance for cities, towns and local authorities. In this, the main focus of selection was on documents not contained in the publication "Competition Law in the

European Communities, Volume IIA, Situation at 30 June 1998“
(http://europa.eu.int/comm/competition/state_aid/legislation/iaa/en.pdf).

Article 16

Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

Article 73

Aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article 86

(1) In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

(2) Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

(3) The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

Article 87

(1) Save as otherwise provided in this Treaty, any aid 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 shall, insofar as it affects trade between Member States, be incompatible with the common market.

(2) The following shall be compatible with the common market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division.

(3) The following may be considered to be compatible with the common market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission

Article 88

(1) The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

(2) If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 87, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 226 and 227, refer the matter to the Court of Justice direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 87 or from the regulations provided for in Article 89, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

(3) The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 87, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall



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COMMISSION DIRECTIVE
of 25 June 1980
on the transparency of financial relations between Member States and public undertakings as well
as on financial transparency within certain undertakings

(80/723/EEC) ◀

(OJ L 195, 29.7.1980, p. 35)

Amended by:

	Official Journal		
	No	page	date
<u>Commission Directive 85/413/EEC of 24 July 1985</u>	L 229	20	28.8.1985
▶ <u>Commission Directive 93/84/EEC of 30 September 1993</u>	L 254	16	12.10.1993
▶ <u>Commission Directive 2000/52/EC of 26 July 2000</u>	L 193	75	29.7.2000

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

COMMISSION DIRECTIVE**of 25 June 1980****on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings**

(80/723/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 90 (3) thereof,

Whereas public undertakings play a substantial role in the national economy of the Member States;

Whereas the Treaty in no way prejudices the rules governing the system of property ownership in Member States and equal treatment of private and public undertakings must therefore be ensured;

Whereas the Treaty requires the Commission to ensure that Member States do not grant undertakings, public or private, aids incompatible with the common market;

Whereas, however, the complexity of the financial relations between national public authorities and public undertakings tends to hinder the performance of this duty;

Whereas a fair and effective application of the aid rules in the Treaty to both public and private undertakings will be possible only if these financial relations are made transparent;

Whereas such transparency applied to public undertakings should enable a clear distinction to be made between the role of the State as public authority and its role as proprietor;

Whereas Article 90 (1) confers certain obligations on the Member States in respect of public undertakings; whereas Article 90 (3) requires the Commission to ensure that these obligations are respected, and provides it with the requisite means to this end; whereas this entails defining the conditions for achieving transparency;

Whereas it should be made clear what is to be understood by the terms 'public authorities' and 'public undertakings';

Whereas public authorities may exercise a dominant influence on the behaviour of public undertakings not only where they are the proprietor or have a majority participation but also by virtue of powers they hold in management or supervisory bodies as a result either of the rules governing the undertaking or of the manner in which the shareholdings are distributed;

Whereas the provision of public funds to public undertakings may take place either directly or indirectly; whereas transparency must be achieved irrespective of the manner in which such provision of public funds is made; whereas it may also be necessary to ensure that adequate information is made available as regards the reasons for such provision of public funds and their actual use;

Whereas Member States may through their public undertakings seek ends other than commercial ones; whereas in some cases public undertakings are compensated by the State for financial burdens assumed by them as a result; whereas transparency should also be ensured in the case of such compensation;

Whereas certain undertakings should be excluded from the application of this Directive by virtue either of the nature of their activities or of the size of their turnover; whereas this applies to certain activities which stand outside the sphere of competition or which are already covered by specific Community measures which ensure adequate transparency, to public undertakings belonging to sectors of activity for which distinct

provision should be made, and to those whose business is not conducted on such a scale as to justify the administration burden of ensuring transparency;

Whereas this Directive is without prejudice to other provisions of the Treaty, notably Articles 90 (2), 93 and 223;

Whereas, the undertakings in question being in competition with other undertakings, information acquired should be covered by the obligation of professional secrecy;

Whereas this Directive must be applied in close cooperation with the Member States, and where necessary be revised in the light of experience,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The Member States shall ensure that financial relations between public authorities and public undertakings are transparent as provided in this Directive, so that the following emerge clearly:

- (a) public funds made available directly by public authorities to the public undertakings concerned;
- (b) public funds made available by public authorities through the intermediary of public undertakings or financial institutions;
- (c) the use to which these public funds are actually put.

2. Without prejudice to specific provisions laid down by the Community the Member States shall ensure that the financial and organisational structure of any undertaking required to maintain separate accounts is correctly reflected in the separate accounts, so that the following emerge clearly:

- (a) the costs and revenues associated with different activities;
- (b) full details of the methods by which costs and revenues are assigned or allocated to different activities.

Article 2

1. For the purpose of this Directive:

- (a) 'public authorities' means all public authorities, including the State and regional, local and all other territorial authorities;
- (b) 'public undertakings' means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;
- (c) 'public undertakings operating in the manufacturing sector' means all undertakings whose principal area of activity, defined as being at least 50 % of total annual turnover, is in manufacturing. These undertakings are those whose operations fall to be included in Section D — Manufacturing (being subsection DA up to and including subsection DN) of the NACE (Rev.1) classification⁽¹⁾;
- (d) 'undertaking required to maintain separate accounts' means any undertaking that enjoys a special or exclusive right granted by a Member State pursuant to Article 86(1) of the Treaty, or that is entrusted with the operation of a service of general economic interest pursuant to Article 86(2) of the Treaty and receives State aid in any form whatsoever, including any grant, support or compensation, in relation to such service and which carries on other activities;
- (e) 'different activities' means, on the one hand, all products or services in respect of which a special or exclusive right is granted to an

⁽¹⁾ OJ L 83, 3.4.1993, p. 1.

undertaking or all services of general economic interest with which an undertaking is entrusted and, on the other hand, each other separate product or service in respect of which the undertaking is active;

- (f) 'exclusive rights' means rights that are granted by a Member State to one undertaking through any legislative, regulatory or administrative instrument, reserving it the right to provide a service or undertake an activity within a given geographical area;
- (g) 'special rights' means rights that are granted by a Member State to a limited number of undertakings, through any legislative, regulatory or administrative instrument, which, within a given geographical area:
 - limits to two or more the number of such undertakings, authorised to provide a service or undertake an activity, otherwise than according to objective, proportional and non-discriminatory criteria, or
 - designates, otherwise than according to such criteria, several competing undertakings, as being authorised to provide a service or undertake an activity, or
 - confers on any undertaking or undertakings, otherwise than according to such criteria, any legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same service or to operate the same activity in the same geographical area under substantially equivalent conditions.

2. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

- (a) hold the major part of the undertaking's subscribed capital; or
- (b) control the majority of the votes attaching to shares issued by the undertakings; or
- (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

Article 3

The transparency referred to in Article 1 shall apply in particular to the following aspects of financial relations between public authorities and public undertakings:

- (a) the setting-off of operating losses;
- (b) the provision of capital;
- (c) non-refundable grants, or loans on privileged terms;
- (d) the granting of financial advantages by forgoing profits or the recovery of sums due;
- (e) the forgoing of a normal return on public funds used;
- (f) compensation for financial burdens imposed by the public authorities.

Article 3a

1. To ensure the transparency referred to in Article 1(2), the Member States shall take the measures necessary to ensure that for any undertaking required to maintain separate accounts:

- (a) the internal accounts corresponding to different activities are separate;
- (b) all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles;
- (c) the cost accounting principles according to which separate accounts are maintained are clearly established.

2. Paragraph 1 shall only apply to activities which are not covered by specific provisions laid down by the Community and shall not affect any obligations of Member States or undertakings arising from the Treaty or from such specific provisions.

Article 4

1. As far as the transparency referred to in Article 1(1) is concerned, this Directive shall not apply to financial relations between the public authorities and

- (a) public undertakings, as regards services the supply of which is not liable to affect trade between Member States to an appreciable extent;
- (b) central banks;
- (c) public credit institutions, as regards deposits of public funds placed with them by public authorities on normal commercial terms;
- (d) public undertakings whose total annual net turnover over the period of the two financial years preceding that in which the funds referred to in Article 1(1) are made available or used has been less than EUR 40 million. However, for public credit institutions the corresponding threshold shall be a balance sheet total of EUR 800 million.

2. As far as the transparency referred to in Article 1(2) is concerned, this Directive shall not apply

- (a) to undertakings, as regards services the supply of which is not liable to affect trade between Member States to an appreciable extent;
- (b) to undertakings whose total annual net turnover over the period of the two financial years preceding any given year in which it enjoys a special or exclusive right granted by a Member State pursuant to Article 86(1) of the Treaty, or in which it is entrusted with the operation of a service of general economic interest pursuant to Article 86(2) of the Treaty is less than EUR 40 million; however, for public credit institutions the corresponding threshold shall be a balance sheet total of EUR 800 million;
- (c) to undertakings which have been entrusted with the operation of services of general economic interest pursuant to Article 86(2) of the Treaty if the State aid in any form whatsoever, including any grant, support or compensation they receive was fixed for an appropriate period following an open, transparent and non-discriminating procedure.

Article 5

1. Member States shall ensure that information concerning the financial relations referred to in Article 1(1) be kept at the disposal of the Commission for five years from the end of the financial year in which the public funds were made available to the public undertakings concerned. However, where the same funds are used during a later financial year, the five-year time limit shall run from the end of that financial year.

2. Member States shall ensure that information concerning the financial and organisational structure of undertakings referred to in Article 1(2) be kept at the disposal of the Commission for five years from the end of the financial year to which the information refers.

3. Member States shall, where the Commission considers it necessary so to request, supply to it the information referred to in paragraphs 1 and 2, together with any necessary background information, notably the objectives pursued.

Article 5a

1. Member States whose public undertakings operate in the manufacturing sector shall supply the financial information as set out

in paragraph 2 to the Commission on an annual basis within the timetable contained in paragraph 4.

2. The financial information required for each public undertaking operating in the manufacturing sector and in accordance with paragraph 3 shall be as follows:

(i) the annual report and annual accounts, in accordance with the definition of Council Directive 78/660/EEC⁽¹⁾. The annual accounts and annual report include the balance sheet and profit/loss account, explanatory notes, together with accounting policies, statements by directors, segmental and activity reports. Moreover, notices of shareholders' meetings and any other pertinent information shall be provided.

The following details, in so far as not disclosed in the annual report and annual accounts of each public undertaking, shall also be provided:

- (ii) the provision of any share capital or quasi-capital funds similar in nature to equity, specifying the terms of its or their provision (whether ordinary, preference, deferred or convertible shares and interest rates; the dividend or conversion rights attaching thereto);
- (iii) non-refundable grants, or grants which are only refundable in certain circumstances;
- (iv) the award to the enterprise of any loans, including overdrafts and advances on capital injections, with a specification of interest rates and the terms of the loan and its security, if any, given to the lender by the enterprise receiving the loan;
- (v) guarantees given to the enterprise by public authorities in respect of loan finance (specifying terms and any charges paid by enterprises for these guarantees);
- (vi) dividends paid out and profits retained;
- (vii) any other forms of State intervention, in particular, the forgiving of sums due to the State by a public undertaking, including *inter alia* the repayment of loans, grants, payment of corporate or social taxes or any similar charges.

3. The information required by paragraph 2 shall be provided for all public undertakings whose turnover for the most recent financial year was more than EUR 250 million.

The information required above shall be supplied separately for each public undertaking including those located in the Member States, and shall include, where appropriate, details of all intra and inter-group transactions between different public undertakings, as well as transactions conducted directly between public undertakings and the State. The share capital referred to in paragraph 2 (ii) shall include share capital contributed by the State directly and any share capital received contributed by a public holding company or other public undertaking (including financial institutions), whether inside or outside the same group, to a given public undertaking. The relationship between the provider of the finance and the recipient shall always be specified. Similarly, the reports required in paragraph 2 shall be provided for each individual public undertaking separately, as well as for the (sub-)holding company which consolidates several public undertakings in so far as the consolidated sales of the (sub-)holding company lead to its being classified as 'manufacturing'.

Certain public enterprises split their activities into several legally distinct undertakings. For such enterprises the Commission is willing to accept one consolidated report. The consolidation should reflect the economic reality of a group of enterprises operating in the same or closely related sectors. Consolidated reports from diverse, and purely financial, holdings shall not be sufficient.

4. The information required under paragraph 2 shall be supplied to the Commission on an annual basis. The information in respect of the

⁽¹⁾ OJ No L 222, 14. 8. 1978, p. 11.

financial year 1992 shall be forwarded to the Commission within two months of publication of this Directive.

For 1993 and subsequent years, the information shall be provided within 15 working days of the date of publication of the annual report of the public undertaking concerned. In any case, and specifically for undertakings which do not publish an annual report, the required information shall be submitted not later than nine months following the end of the undertaking's financial year.

In order to assess the number of companies covered by this reporting system, Member States shall supply to the Commission a list of the companies covered by this Article and their turnover, within two months of publication of this Directive. The list is to be updated by 31 March of each year.

5. This Article is applicable to companies owned or controlled by the Treuhandanstalt only from the expiry date of the special reporting system set up for Treuhandanstalt investments.

6. Member States will furnish the Commission with any additional information that it deems necessary in order to complete a thorough appraisal of the data submitted.

Article 6

1. The Commission shall not disclose such information supplied to it pursuant to Article 5(3) as is of a kind covered by the obligation of professional secrecy.

2. Paragraph 1 shall not prevent publication of general information or surveys which do not contain information relating to particular public undertakings to which this Directive applies.

Article 7

The Commission shall regularly inform the Member States of the results of the operation of this Directive.

Article 8

Member States shall take the measures necessary to comply with the Directive by 31 December 1981. They shall inform the Commission thereof.

Article 9

This Directive is addressed to the Member States.

Community guidelines on State aid for environmental protection

(2001/C 37/03)

A. INTRODUCTION

1. In 1994 the Commission adopted the Community guidelines on State aid for environmental protection ⁽¹⁾, which expired on 31 December 1999. In accordance with point 4.3 of the guidelines, it conducted a review in 1996 and concluded that there was no need to make any amendments in the meantime. On 22 December 1999 it decided to extend the validity of the guidelines until 30 June 2000 ⁽²⁾. On 28 June 2000 the Commission decided to extend the validity of the guidelines to 31 December 2000 ⁽³⁾.
2. Since the guidelines were adopted in 1994, action in the field of the environment has evolved at the initiative of the Member States and the Community and at world level, in particular following the adoption of the Kyoto Protocol. Member States are granting State aid more frequently in the energy sector, for example, and the aid they provide is frequently in forms which have been rather uncommon until recently, such as tax reductions and exemptions. New forms of operating aid are also on the increase. The Commission ought therefore to adopt new guidelines, which will be needed in order to familiarise Member States and firms with the criteria that it will apply in deciding whether or not aid measures planned by the Member States are compatible with the common market.
3. Under Article 6 of the EC Treaty, environmental policy objectives must be integrated into the Commission's policy on aid controls in the environmental sector, in particular with a view to promoting sustainable development. Accordingly, competition policy and environmental policy are not mutually antagonistic, but the requirements of environmental protection need to be integrated into the definition and implementation of competition policy, in particular so as to promote sustainable development ⁽⁴⁾.
4. However, taking long-term environmental requirements into account does not mean that all aid must be authorised. Consideration has to be given to the effects the aid may have in terms of sustainable development and full application of the 'polluter pays' principle. Some forms of aid certainly do satisfy these tests, particularly where they make it possible to achieve a high level of environmental protection while avoiding any conflict with the principle of the internalisation of costs. But other forms of aid, as well as having adverse effects on

trade between Member States and on competition, may run counter to the 'polluter pays' principle and may hinder the establishment of a process of sustainable development. This might be the case, for example, where aid is designed merely to facilitate compliance with new mandatory Community standards.

5. The Commission's approach in these guidelines therefore consists in determining whether, and under what conditions, State aid may be regarded as necessary to ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth. This analysis must be carried out in the light of the lessons that can be drawn from the functioning of the 1994 guidelines and in the light of the changes in environmental policy that have occurred since then.

B. DEFINITIONS AND SCOPE

6. The concept of environmental protection: for the purposes of these guidelines, the Commission takes 'environmental protection' to mean any action designed to remedy or prevent damage to our physical surroundings or natural resources, or to encourage the efficient use of these resources.

The Commission regards energy-saving measures and the use of renewable sources of energy as action to protect the environment. Energy-saving measures should be understood as meaning among other things action which enables companies to reduce the amount of energy used in their production cycle. The design and manufacture of machines or means of transport which can be operated with fewer natural resources are not covered by these guidelines. Action taken within plants or other production units with a view to improving safety or hygiene is important and may be eligible for certain types of aid, but it is not covered by these guidelines.

The concept of the internalisation of costs: in these guidelines the 'internalisation of costs' means the principle that all costs associated with the protection of the environment should be included in firms' production costs.

The 'polluter pays' principle: this is the principle that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution.

Polluter: a polluter is someone who directly or indirectly damages the environment or who creates conditions leading to such damage ⁽⁵⁾.

⁽¹⁾ OJ C 72, 10.3.1994, p. 3.

⁽²⁾ OJ C 14, 19.1.2000, p. 8.

⁽³⁾ OJ C 184, 1.7.2000, p. 25.

⁽⁴⁾ The Commission also set out its commitment to integrating environmental policy into other policy areas in its working paper of 26 May 1999 entitled 'Integrating environmental aspects into all relevant policy areas' and in its report to the Helsinki European Council on integrating environmental concerns and sustainable development into Community policies (SEC(1999) 1941 final).

⁽⁵⁾ Council Recommendation of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters (OJ L 194, 25.7.1975, p. 1).

Prices to reflect costs: this principle states that the prices of goods or services should incorporate the external costs associated with the negative impact on the environment of their production and marketing.

Community standard: mandatory Community standard setting the levels to be attained in environmental terms and the obligation under Community law to use the best available techniques (BAT) ⁽⁶⁾ which do not entail excessive costs.

Renewable energy sources: renewable non-fossil energy sources, viz. wind energy, solar energy, geothermal energy, wave energy, tidal energy, hydroelectric installations with a capacity below 10 MW and biomass, where biomass is defined as products from agriculture and forestry, vegetable waste from agriculture, forestry and the food production industry, and untreated wood waste and cork waste ⁽⁷⁾.

Electric power generated from renewable energy sources: electric power generated by plant using only renewable energy sources, and that share of electric power generated from renewable energy sources in hybrid plant using traditional energy sources, in particular for contingency purposes ⁽⁸⁾.

Environmental tax: 'One likely feature for a levy to be considered as *environmental* would be that the taxable base of the levy has a clear negative effect on the environment. However, a levy could also be regarded as environmental if it has a less clear, but nevertheless discernible positive environmental effect. [...] In general, it is up to the Member State to show the estimated environmental effect of the levy [...]'.⁽⁹⁾

⁽⁶⁾ The concept of best available techniques was introduced into Community legislation by Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ L 129, 18.5.1976, p. 23) and appeared again, in slightly amended form, in Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants (OJ L 188, 16.7.1984, p. 20). Council Directive 96/61/EEC of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, 10.10.1996, p. 26; 'the IPPC Directive') developed and confirmed this concept. The scope of the IPPC Directive covers industrial installations with a high pollution potential. The Directive has applied since November 1999 to new installations or existing installations which have undergone substantial changes. Existing installations must comply with the rules of the IPPC Directive by October 2007. Until that date the provisions of the two abovementioned directives relating to the concept of BAT continue to apply. As a rule, the concrete standards — i.e. the emission or consumption limit values based on the use of the best available techniques — are not set by the Community but by the national authorities.

⁽⁷⁾ This definition is contained in the Commission proposal for a Parliament and Council Directive on the promotion of electricity from renewable sources in the internal electricity market (OJ C 311 E, 31.10.2000, p. 320). Once the Directive has been adopted by Parliament and the Council, the Commission will apply the definition given in the final text.

⁽⁸⁾ Same observation as for footnote 7.

⁽⁹⁾ Environmental taxes and charges in the single market (COM(97) 9 final, 26.3.1997).

7. Scope: These guidelines apply to aid ⁽¹⁰⁾ to protect the environment in all sectors governed by the EC Treaty, including those subject to specific Community rules on State aid (steel processing ⁽¹¹⁾, shipbuilding, motor vehicles, synthetic fibres, transport, and fisheries), but excluding the field covered by the Community guidelines for State aid in the agriculture sector ⁽¹²⁾. These guidelines apply to fisheries and aquaculture, without prejudice to the application of the provisions set out in Council Regulation (EC) No 2792/99 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector ⁽¹³⁾ and in the guidelines for examining State aid in the fisheries and aquaculture sector ⁽¹⁴⁾. State aid for R & D in the environmental field is subject to the rules set out in the Community framework for State aid for research and development ⁽¹⁵⁾. Similarly, the Commission considers that the characteristics of aid for environmental training activities do not justify such aid being treated separately, and it will therefore examine it in accordance with the provisions of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽¹⁶⁾.

By virtue of Article 3 of Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry ⁽¹⁷⁾, aid for environmental protection in the steel industry will continue to be analysed in accordance with the Community guidelines on State aid for environmental protection published in Official Journal C 72 of 10 March 1994 until the expiry of the ECSC Treaty.

These guidelines do not apply to stranded costs, which will be dealt with separately ⁽¹⁸⁾. The Commission would point out that, by virtue 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* ⁽¹⁹⁾ aid, aid of not more than EUR 100 000 granted to a firm for a period of three years is not caught by Article 87. That Regulation does not, however, apply to agriculture, fisheries, and transport, nor to the sectors covered by the ECSC Treaty.

⁽¹⁰⁾ The purpose of these guidelines is not to discuss the concept of State aid, which derives from Article 87(1) of the EC Treaty and from the case law of the Court of Justice and the Court of First Instance.

⁽¹¹⁾ Within the limits laid down in the second paragraph of point 7.

⁽¹²⁾ OJ C 28, 1.2.2000, p. 2.

⁽¹³⁾ OJ L 337, 30.12.1999, p. 10.

⁽¹⁴⁾ The Commission would point out that these guidelines concern only environmental aid, without prejudice to the applicability of other provisions governing State aid, subject to the limitations of the rules on combinations of aid in point 74 below.

⁽¹⁵⁾ OJ C 45, 17.2.1996, p. 5.

⁽¹⁶⁾ OJ L 10, 13.1.2001, p. 20.

⁽¹⁷⁾ OJ L 338, 28.12.1996, p. 42.

⁽¹⁸⁾ Stranded costs are costs which firms must bear because of commitments they made and are no longer able to honour as a result of the liberalisation of the sector in question.

⁽¹⁹⁾ OJ L 10, 13.1.2001, p. 30.

C. POLICY FOR CONTROLLING STATE AID AND ENVIRONMENTAL POLICY

8. During the 1970s and 1980s Community policy on the environment took an essentially corrective approach. The emphasis was on standards intended to reflect the main concerns of environmental policy.
9. The fifth action programme on the environment, entitled 'Towards sustainability' and adopted in 1993⁽²⁰⁾, represents something of a break with that approach. It emphasises the need to conduct a long-term policy with the aim of promoting sustainable development. The objective is to reconcile on a lasting basis the development of the European economy with the need to protect the environment. Community action must no longer be limited to reacting to environmental problems but, as explicitly provided for in Article 6 of the EC Treaty as amended by the Treaty of Amsterdam, environmental protection requirements must be integrated into the definition and implementation of all Community policies and activities, and must foster the active involvement of socio-economic operators.
10. Article 174 of the Treaty also provides for Community policy to be based on the 'polluter pays' principle. The costs associated with protecting the environment should be internalised by firms just like other production costs. In order to implement this policy, the Community will have to use a series of instruments: regulation, and in particular the adoption of standards, but also voluntary agreements or economic instruments.
11. In 1996 the Commission drew up a progress report on the fifth action programme on the environment. The report states that the programme's overall strategy and objectives are still valid. There can be no doubt that progress has been made in integrating environmental and sustainability aspects into the other Community policies. However, what has still not occurred is a genuine change in attitude on the part of all the interested parties: policymakers, firms and the general public. It is important to develop the concept of shared responsibility for the environment and to make the general public aware of the issues at stake.
12. In 1999 the Commission adopted a global assessment of the fifth action programme. The assessment noted that, although the programme raised awareness of the need for stakeholders, citizens and decision-makers in other sectors to pursue environmental objectives actively, less progress had been made overall in changing economic trends and modes of conduct which were harmful to the environment.
13. The assessment also noted that 'it is increasingly clear that damages to the environment have costs to society as a whole and, conversely, that environmental action can generate benefits in the form of economic growth, employment and competitiveness' and that 'the effective application of the "polluter pays" principle and the full internalisation of environmental costs onto polluters remains a critical process'⁽²¹⁾.
14. The Commission's policy on the control of State aid for environmental purposes therefore needs to satisfy a double imperative:
- (a) to ensure the competitive functioning of markets, while promoting the completion of the single market and increased competitiveness in firms;
 - (b) to ensure that the requirements of environmental protection are integrated into the definition and implementation of competition policy, in particular in order to promote sustainable development. The Commission here believes that internalisation of costs is a priority objective that can be achieved in various ways, including by way of instruments based on market laws or those based on a regulatory approach, these being the most effective tools for achieving the objectives described above.
15. Cost internalisation helps to ensure that prices accurately reflect costs in so far as economic operators allocate their financial resources on the basis of the prices of the goods and services they wish to buy. The progress report on the fifth programme emphasises that this aim has not been realised because prices do not reflect ecological costs. This in turn makes it more difficult to raise public awareness and promotes overexploitation of natural resources.
16. Ensuring that prices reflect costs at all stages of the economic process is the best way of making all parties aware of the cost of protecting the environment. Apart from its potentially adverse effects on trade and competition, State aid generally undermines that aim because it enables certain firms to reduce costs artificially and not to reveal the costs of environmental protection to consumers. In the long term, therefore, some forms of State aid run counter to the objectives of sustainable development.
17. The Community guidelines on State aid adopted by the Commission in 1994 form an integral part of this Community policy. In general, the 'polluter pays' principle and the need for firms to internalise the costs associated with protecting the environment would appear to militate against the granting of State aid.
18. Nevertheless, the guidelines state that aid can be justified in two instances:
- (a) in certain specific circumstances in which it is not yet possible for all costs to be internalised by firms and the aid can therefore represent a **temporary second-best solution** by encouraging firms to adapt to standards;

⁽²⁰⁾ OJ C 138, 17.5.1993, p. 1.

⁽²¹⁾ Europe's environment: what directions for the future? The global assessment of the European Community programme of policy and action in relation to the environment and sustainable development, 'Towards sustainability' (COM(1999) 543 final of 24.11.1999).

- (b) the aid may also act as an **incentive** to firms to improve on standards or to undertake further investment designed to reduce pollution from their plants.
19. In the Community guidelines adopted in 1994, the Commission took the view that, in certain cases, total cost internalisation was not yet possible and that aid might be necessary on a temporary basis. The following changes have nevertheless taken place since 1994:
- (a) since the adoption of the fifth action programme on the environment, which was already based on the 'polluter pays' principle and cost internalisation, firms have had seven years in which to adapt to the gradual application of the principle;
- (b) the Commission's 1996 progress report on the fifth action programme and the 1999 evaluation report restate the need to provide for cost internalisation and to use market instruments in order to make significant progress in improving the environment;
- (c) the use of market instruments and proper pricing is also advocated by the Kyoto Protocol on climate change.
20. The Commission's position is therefore that aid should no longer be used to make up for the absence of cost internalisation. If environmental requirements are to be taken into account in the long term, prices must accurately reflect costs and environmental protection costs must be fully internalised. Consequently, the Commission takes the view that aid is not justified in the case of investments designed merely to bring companies into line with new or existing Community technical standards. In its view, however, in order to address the special difficulties encountered by SMEs, it should be possible to grant them aid for adapting to new Community standards for a period of three years from the adoption of such standards. Aid may though be useful where it serves as an incentive to achieve levels of protection which are higher than those required by Community standards. This is the case when a Member State decides to adopt standards which are more stringent than the Community standards so as to achieve a higher level of environmental protection. It will also apply when a firm invests in environmental protection over and above the strictest existing Community standards or where no Community standards exist.
21. However, it has not been shown that aid has an incentive effect of this kind where it is designed merely to help firms to comply with existing or new Community technical standards. Such standards constitute the ordinary law with which firms must comply, and it is not necessary to provide them with aid in order to encourage them to obey the law ⁽²²⁾.

⁽²²⁾ With the exception of SMEs, as provided for in point 20.

Specific case of the energy sector and tax reductions

22. Since the guidelines were adopted in 1994, the energy sector has undergone major changes which need to be taken into consideration.
23. Certain Member States have adopted, are in the process of adopting or might consider adopting taxes the effects of which are conducive to environmental protection. In some cases, exemptions from or reductions in taxes are granted to firms in particular categories in order to avoid placing them in a difficult competitive situation. The Commission takes the view that such measures may constitute State aid within the meaning of Article 87 of the Treaty. However, the adverse effects of such aid can be offset by the positive effects of adopting taxes. Accordingly, if such exemptions are necessary to ensure the adoption or continued application of taxes applicable to all products, the Commission takes the view that they are acceptable, subject to certain conditions and for a limited period of time. This period may last for 10 years if the conditions are met. Thereafter, Member States will remain free to renotify the measures in question to the Commission, which could adopt the same approach in its analysis while taking into consideration the positive results obtained in environmental terms.
24. Member States have also taken action in recent years to promote the use of renewable sources of energy and combined heat and energy production, which has the encouragement of the Commission given the major advantages for the environment. The Commission therefore takes the view that, where measures to promote renewable sources of energy and the combined production of electric power and heat constitute State aid, they are acceptable subject to certain conditions. It must be certain, however, that such aid is not in breach of other provisions of the Treaty or secondary legislation.
- #### D. RELATIVE IMPORTANCE OF ENVIRONMENTAL AID
25. The data in the eighth survey on State aid in the European Union in the manufacturing and certain other sectors ⁽²³⁾ show that between 1996 and 1998 environmental aid accounted on average for only 1,85 % of total aid granted to the manufacturing and service sectors.
26. In the period 1994-1999 environmental aid was provided predominantly in the form of grants. Proportionally speaking, little use was made of the other forms of aid: low-interest loans, State guarantees, etc.
27. As to the sectors receiving aid, the period 1998-1999 saw an increase in aid for measures in the energy sector, whether in support of energy saving or to promote the use of new or renewable sources of energy, especially in the form of ecotaxes.

⁽²³⁾ COM(2000) 205 final, 11.4.2000.

E. GENERAL CONDITIONS FOR AUTHORISING ENVIRONMENTAL AID

E.1. Investment aid

E.1.1. *Transitional investment aid to help SMEs adapt to new Community standards*

28. For a period of three years from the adoption of new compulsory Community standards, investment aid to help SMEs meet new standards may be authorised up to a maximum of 15 % gross of eligible costs.

E.1.2. *General conditions for authorising investment aid to firms improving on Community standards*

29. Investment aid enabling firms to improve on the Community standards applicable may be authorised up to not more than 30 % gross of the eligible investment costs as defined in point 37. These conditions also apply to aid where firms undertake investment in the absence of mandatory Community standards or where they have to undertake investment in order to comply with national standards that are more stringent than the applicable Community standards.

E.1.3. *Investment in energy*

30. Investments in energy saving as defined in point 6 are deemed equivalent to investments to promote environmental protection. Such investments play a major role in achieving economically the Community objectives for the environment⁽²⁴⁾. They are, therefore, eligible for investment aid at the basic rate of 40 % of eligible costs.

31. Investments in the combined production of electric power and heat may also qualify under these guidelines if it can be shown that the measures beneficial in terms of the protection of the environment because the conversion efficiency⁽²⁵⁾ is particularly high, because the measures will allow energy consumption to be reduced or because the production process will be less damaging to the environment. In this connection, the Commission will take into particular consideration the type of primary energy used in the production process. It should also be borne in mind that increased energy use from combined production of heat and power is a Community priority for the environment⁽²⁶⁾. Such investment may, therefore, be given aid at the basic rate of 40 % of eligible cost.

⁽²⁴⁾ Action plan to improve energy efficiency in the European Community (COM (2000) 247 final, 26.4.2000).

⁽²⁵⁾ By 'conversion efficiency' is meant the ratio between the quantity of primary energy used to produce a secondary form of energy and the quantity of secondary energy actually produced. It is calculated as follows: electric energy produced + thermal energy produced/energy used.

⁽²⁶⁾ Council Resolution of 18 December 1997 on a Community strategy to promote combined heat and power (OJ C 4, 8.1.1998, p. 1).

32. Investments to promote renewable sources of energy are deemed equivalent to environmental investments undertaken in the absence of mandatory Community standards. It should also be borne in mind that measures in support of renewable sources of energy are one of the Community's environmental priorities⁽²⁷⁾ and one of the long-term objectives that should be encouraged most. The rate of aid for investment in support of these forms of energy is therefore 40 % of eligible costs.

The Commission takes the view that renewable energy installations serving all the needs of an entire community such as an island or residential area should also benefit. Investments made in this connection may qualify for a bonus of 10 percentage points on top of the basic rate of 40 % of eligible costs.

The Commission considers that, where it can be shown to be necessary, Member States will be able to grant investment aid to support renewable energy, up to 100 % of eligible costs. The installations concerned will not be entitled to receive any further support.

E.1.4. *Bonus for firms located in assisted regions*

33. In regions which are eligible for national regional aid, firms may receive aid to promote regional development. To encourage them to invest further in the environment, it should be possible, where appropriate, to provide additional aid towards any environmental investment carried out in accordance with point 29⁽²⁸⁾.

34. Consequently, in regions eligible for regional aid, the maximum rate of environmental aid applicable to eligible costs as defined in point 37 below is determined as follows.

In assisted regions the maximum rate of aid applicable is the higher of the following two options:

- (a) either the basic rate for environmental investment aid, i.e. 30 % gross (standard system), 40 % gross (investments in energy saving, in renewable sources of energy or to promote the combined production of electric power and heat) or 50 % gross (investments in renewable sources of energy that supply an entire community), plus 5 percentage points gross in the regions covered by Article 87(3)(c) and 10 percentage points in the regions covered by Article 87(3)(a)⁽²⁹⁾;

⁽²⁷⁾ Council Resolution of 8 June 1998 on renewable sources of energy (OJ C 198, 24.6.1998, p. 1).

⁽²⁸⁾ These bonuses are not available where the Member State grants investment aid in accordance with the third paragraph of point 32 (aid of up to 100 % of eligible costs).

⁽²⁹⁾ Investments in assisted regions are eligible for investment aid if the conditions of the guidelines on regional State aid (OJ C 74, 10.3.1998, p. 9) are met.

- (b) or the regional aid rate plus 10 percentage points gross.

E.1.5. *Bonus for SMEs*

35. Where investments of the kind referred to in points 29 to 32 are carried out by small or medium-sized enterprises, an increase of 10 percentage points gross may be authorised⁽³⁰⁾. For the purposes of these guidelines, the definition of SMEs is that given by the relevant Community texts⁽³¹⁾.

The above bonuses for assisted regions and SMEs may be combined, but the maximum rate of environmental aid may never exceed 100 % gross of the eligible costs. SMEs do not qualify for a double bonus either under the provisions applicable to regional aid or under those applicable in the environmental field⁽³²⁾.

E.1.6. *The investments concerned*

36. The investments concerned are investments in land which are strictly necessary in order to meet environmental objectives, investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances, and investments to adapt production methods with a view to protecting the environment.

Spending on technology transfer through the acquisition of operating licences or of patented and non-patented know-how may also qualify. But any such intangible asset must satisfy the following tests:

- (a) it must be regarded as a depreciable asset;
- (b) it must be purchased on market terms, from a firm in which the acquirer has no power of direct or indirect control;
- (c) it must be included in the assets of the firm, and remain in the establishment of the recipient of the aid and be used there for at least five years. This condition does not apply if these intangible assets are technically out of date. If it is sold during those five years, the yield from the sale must be deducted from the eligible costs and all or part of the amount of aid must, where appropriate, be reimbursed.

⁽³⁰⁾ This bonus is not available where the Member State grants investment aid in accordance with the third paragraph of point 32 (aid of up to 100 % of eligible costs).

⁽³¹⁾ Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4).

⁽³²⁾ Investments by SMEs are eligible for investment aid under the provisions of 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 for small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33).

E.1.7. *Eligible costs*

37. Eligible costs must be confined strictly to the extra investment costs necessary to meet the environmental objectives.

This has the following consequences: where the cost of investment in environmental protection cannot be easily identified in the total cost, the Commission will take account of objective and transparent methods of calculation, e.g. the cost of a technically comparable investment that does not though provide the same degree of environmental protection.

In all cases, eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period⁽³³⁾.

For renewable energy, eligible investment costs are normally the extra costs borne by the firm compared with a conventional power plant with the same capacity in terms of the effective production of energy.

Where SMEs adapt to new Community standards, eligible costs include additional investments needed to attain the level of environmental protection required by those standards.

Where the firm is adapting to national standards adopted in the absence of Community standards, the eligible costs consist of the additional investment costs necessary to achieve the level of environmental protection required by the national standards.

Where the firm is adapting to national standards which are more stringent than the Community standards or undertakes a voluntary improvement on Community standards, the eligible costs consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards. The cost of investments needed to reach the level of protection required by the Community standards is not eligible.

Where no standards exist, eligible costs consist of the investment costs necessary to achieve a higher level of environmental protection than that which the firm or firms in question would achieve in the absence of any environmental aid.

⁽³³⁾ If the investments are concerned solely with environmental protection without any other economic benefits, no additional reduction will be applied in determining the eligible costs.

E.1.8. *Rehabilitation of polluted industrial sites*

38. Interventions made by firms repairing environmental damage by rehabilitating polluted industrial sites may come within the scope of these guidelines⁽³⁴⁾. The environmental damage concerned may be damage to the quality of the soil or of surface water or groundwater⁽³⁵⁾.

Where the person responsible for the pollution is clearly identified, that person must finance the rehabilitation in accordance with the 'polluter pays' principle, and no State aid may be given. By 'person responsible for the pollution' is meant the person liable under the law applicable in each Member State, without prejudice to the adoption of Community rules in the matter.

Where the person responsible for the pollution is not identified or cannot be made to bear the cost, the person responsible for the work may receive aid⁽³⁶⁾.

Aid for the rehabilitation of polluted industrial sites may amount to up to 100 % of the eligible costs, plus 15 % of the cost of the work. The eligible costs are equal to the cost of the work less the increase in the value of the land.

The total amount of aid may under no circumstances exceed the actual expenditure incurred by the firm.

E.1.9. *Relocation of firms*

39. The Commission takes the view that as a rule the relocation of firms to new sites does not constitute environmental protection and does not therefore give entitlement to aid under these guidelines.

The granting of aid may, however, be justified when a firm established in an urban area or in a Natura 2000 designated area lawfully carries on an activity that creates major pollution and must, on account of this location, move from its place of establishment to a more suitable area.

All the following criteria must be satisfied at the same time:

- (a) The change of location must be dictated on environmental protection grounds and must have been ordered by administrative or judicial decision.

⁽³⁴⁾ The Commission would point out that rehabilitation work carried out by public authorities is not as such caught by Article 87 of the Treaty. Problems of State aid may, however, arise if the land is sold after rehabilitation at a price below its market value.

⁽³⁵⁾ All expenditure incurred by a firm in rehabilitating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, ranks as eligible investment in the case of the rehabilitation of polluted sites.

⁽³⁶⁾ The person responsible for performing the work need not necessarily be the person responsible for the pollution in the meaning in which that expression is used here.

- (b) The firm must comply with the strictest environmental standards applicable in the new region where it is located.

A firm satisfying the above conditions may receive investment aid in accordance with point 29. The provisions of point 35 concerning the granting of a bonus for SMEs will apply.

In order to determine the amount of eligible costs in the case of relocation aid, the Commission will take into account the yield from the sale or renting of the plant or land abandoned, the compensation paid in the event of expropriation and the costs connected with the purchase of land or the construction or purchase of new plant of the same capacity as the plant abandoned. Account may also be taken of any other gains connected with the transfer of the plant, notably gains resulting from an improvement, on the occasion of the transfer, in the technology used and accounting gains associated with better use of the plant. Investments relating to any capacity increase may not be taken into consideration in calculating the eligible costs conferring entitlement to the granting of environmental aid.

If the administrative or judicial decision ordering the change of location results in the early termination of a contract for the renting of land or buildings, any penalties imposed on the firm for having terminated the contract may be taken into consideration in calculating the eligible costs.

E.1.10. *Common rules*

40. Aid for investment to improve on Community standards or undertaken where no Community standards exist may not be granted where such improvements merely bring companies into line with Community standards already adopted but not yet in force. A firm may be given aid to enable it to comply with national standards which are more stringent than Community standards or where no Community standards exist only if it complies with the national standards by the final date laid down in the relevant national measures. Investments carried out after that date do not qualify⁽³⁷⁾.

E.2. *Aid to SMEs for advisory/consultancy services in the environmental field*

41. Advisory/consultancy services play an important part in helping SMEs to make progress in environmental protection. The Commission therefore takes the view that aid may be granted under the provisions of Regulation (EC) No 70/200138⁽³⁸⁾.

⁽³⁷⁾ The rules set out in this point are without prejudice to point 28 concerning aid for SMEs.

⁽³⁸⁾ Reference given in footnote 32.

E.3. Operating aid

E.3.1. *Rules applicable to all operating aid to promote waste management and energy saving*

42. The following rules apply to two types of operating aid, namely:

(a) aid for the management of waste where such management is in line with the hierarchical classification of the principles of waste management ⁽³⁹⁾;

(b) aid in the energy-saving field.

43. Where such aid is shown to be absolutely necessary, it should be strictly limited to compensating for extra production costs by comparison with the market prices of the relevant products or services ⁽⁴⁰⁾. Such aid must also be temporary and, as a general rule, must be wound down over time, so as to provide an incentive for prices to reflect costs reasonably rapidly.

44. The Commission takes the view that firms should normally bear the costs of treating industrial waste in accordance with the 'polluter pays' principle. However, operating aid may be necessary where national standards are introduced which are more stringent than the applicable Community rules, or where national standards are introduced in the absence of Community rules, so that firms temporarily lose competitiveness at international level.

Firms receiving operating aid towards the treatment of industrial or non-industrial waste must finance the service provided in proportion to the amount of waste they produce and/or the cost of treatment.

45. All such operating aid is subject to a limited duration of five years where the aid is 'degressive'. Its intensity may amount to 100 % of the extra costs in the first year but must have fallen in a linear fashion to zero by the end of the fifth year.

46. In the case of 'non-degressive' aid, its duration is limited to five years and its intensity must not exceed 50 % of the extra costs.

⁽³⁹⁾ Classification given in the Community strategy for waste management (COM(96) 399 final of 30.7.1996). In this communication, the Commission recalls that waste management is a priority objective for the Community in order to reduce the risks to the environment. The concept of waste treatment must be looked at from three angles: re-utilisation, recycling and recovery. Waste whose production is unavoidable must be treated and eliminated without danger.

⁽⁴⁰⁾ The concept of production costs must be understood as being net of any aid but inclusive of a normal level of profit.

E.3.2. *Rules applicable to all operating aid in the form of tax reductions or exemptions*

47. When adopting taxes that are to be levied on certain activities for reasons of environmental protection, Member States may deem it necessary to make provision for temporary exemptions for certain firms notably because of the absence of harmonisation at European level or because of the temporary risks of a loss of international competitiveness. In general, such exemptions constitute operating aid caught by Article 87 of the EC Treaty. In analysing these measures, it has to be ascertained among other things whether the tax is to be levied as the result of a Community decision or an autonomous decision on the part of a Member State.

48. If the tax is to be levied as the result of an autonomous decision on the part of a Member State, the firms affected may have some difficulty in adapting rapidly to the new tax burden. In such circumstances there may be justification for a temporary exemption enabling certain firms to adapt to the new situation.

49. If the tax is to be levied as the result of a Community directive, there are two possible scenarios:

(a) a Member State applies tax to certain products at a rate higher than the minimum rate laid down in the Community directive and grants an exemption to certain firms, which, as a result, pay tax at a rate which is lower but nevertheless at least equal to the minimum rate set by the directive. The Commission takes the view that, in those circumstances, a temporary exemption may be justified to enable firms to adapt to higher taxation and to provide them with an incentive to act in a more environmentally friendly manner;

(b) a Member State applies tax to certain products at the minimum rate laid down in the Community directive and grants an exemption to certain firms, which are thus subject to taxation at a rate below the minimum rate. If such an exemption is not authorised by the directive in question, it will constitute aid which is incompatible with Article 87 of the Treaty. If it is authorised by the directive, the Commission may take the view that it is compatible with Article 87 in so far as it is necessary and is not disproportionate in the light of the Community objectives pursued. The Commission will be specially concerned to ensure that any such exemption is strictly limited in time.

50. In general, the tax measures in question should make a significant contribution to protecting the environment. Care should be taken to ensure that the exemptions do not, by their very nature, undermine the general objectives pursued.

51. These exemptions can constitute operating aid which may be authorised on the following conditions:

1. When, for environmental reasons, a Member State introduces a **new tax** in a sector of activity or on products in respect of which no Community tax harmonisation has been carried out or when the tax envisaged by the Member State exceeds that laid down by Community legislation, the Commission takes the view that exemption decisions covering a 10-year period with no degressivity may be justified in two cases:

- (a) these exemptions are conditional on the conclusion of agreements between the Member State concerned and the recipient firms whereby the firms or associations of firms undertake to achieve environmental protection objectives during the period for which the exemptions apply or when firms conclude voluntary agreements which have the same effect. Such agreements or undertakings may relate, among other things, to a reduction in energy consumption, a reduction in emissions or any other environmental measure. The substance of the agreements must be negotiated by each Member State and will be assessed by the Commission when the aid projects are notified to it. Member States must ensure strict monitoring of the commitments entered into by the firms or associations of firms. The agreements concluded between a Member State and the firms concerned must stipulate the penalty arrangements applicable if the commitments are not met.

These provisions also apply where a Member State makes a tax reduction subject to conditions that have the same effect as the agreements or commitments referred to above;

- (b) these exemptions need not be conditional on the conclusion of agreements between the Member State concerned and the recipient firms if the following alternative conditions are satisfied:

— where the reduction concerns a Community tax, the amount effectively paid by the firms after the reduction must remain higher than the Community minimum in order to provide the firms with an incentive to improve environmental protection,

— where the reduction concerns a domestic tax imposed in the absence of a Community tax, the firms eligible for the reduction must nevertheless pay a significant proportion of the national tax.

2. The provisions in point 51.1 may be applied to existing taxes if the following two conditions are satisfied at the same time:

(a) the tax in question must have an appreciable positive impact in terms of environmental protection;

(b) the derogations for the firms concerned must have been decided on when the tax was adopted or must have become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. In the latter instance, the amount of the reduction may not exceed the increase in costs resulting from the change in economic conditions. Once there is no longer any increase in costs, the reduction must no longer apply.

3. Member States may also encourage the development of processes for producing electric power from conventional energy sources such as gas that have an energy efficiency very much higher than the energy efficiency obtained with conventional production processes. In such cases, given the importance of such techniques for environmental protection and provided that the primary energy used reduces significantly the negative effects in terms of environmental protection, the Commission takes the view that total exemptions from taxes may be justified for a period of five years where aid is non-degressive. Derogations for 10 years may also be granted in accordance with the conditions set out in points 51.1 and 51.2.

52. Where an existing tax is increased significantly and where the Member State concerned takes the view that derogations are needed for certain firms, the conditions set out in point 51.1 as regards new taxes are applicable by analogy.

53. When the reductions concern a tax that has not been harmonised at Community level and when the domestic tax is lower than or equal to the Community minimum, the Commission takes the view that long-term exemptions are not justified. In this case, any exemptions granted must satisfy the conditions laid down in points 45 and 46 and must, in any event, be covered by an express authorisation to derogate from the Community minimum.

In all cases of reduction of tax, the Member State may grant operating aid in accordance with points 45 and 46.

E.3.3. **Rules applicable to operating aid for renewable energy sources**

54. As regards the production of renewable energy, operating aid will usually be allowable under these guidelines.

55. The Commission takes the view that such aid qualifies for special treatment because of the difficulties these sources of energy have sometimes encountered in competing effectively with conventional sources. It must also be borne in mind that it is Community policy to encourage the development of these sources of energy, notably on environmental grounds. Aid may be necessary in particular where the technical processes available do not allow energy to be produced at unit costs comparable to those of conventional sources.
56. Operating aid may be justified here in order to cover the difference between the cost of producing energy from renewable energy sources and the market price of that energy. The form of such aid may vary depending on the kind of energy involved and the support mechanism worked out by the Member State. Moreover, when studying cases, the Commission will take account of the competitive position of each form of energy involved.
57. Member States may grant aid for renewable energy sources as follows:

E.3.3.1. Option 1

58. In the renewable energy field, unit investment costs are particularly high and generally account for a significant proportion of firms' costs and do not allow firms to charge competitive prices on the markets where they sell energy.
59. In order to take better account of this market-access barrier for renewable energies, Member States may grant aid to compensate for the difference between the production cost of renewable energy and the market price of the form of power concerned. Any operating aid may then be granted only for plant depreciation. Any further energy produced by the plant will not qualify for any assistance. However, the aid may also cover a fair return on capital if Member States can show that this is indispensable given the poor competitiveness of certain renewable energy sources.

In determining the amount of operating aid, account should also be taken of any investment aid granted to the firm in question in respect of the new plant.

When notifying aid schemes to the Commission, Member States must state the precise support mechanisms and in particular the methods of calculating the amount of aid. If the Commission authorises the scheme, the Member State must then apply those mechanisms and methods of calculation when it comes to granting aid to firms.

60. Unlike most other renewable sources of energy, biomass requires relatively less investment but brings higher

operating costs. The Commission will, therefore, be amenable to operating aid exceeding the amount of investment where Member States can show that the aggregate costs borne by the firms after plant depreciation are still higher than the market prices of the energy.

E.3.3.2. Option 2

61. Member States may grant support for renewable energy sources by using market mechanisms such as green certificates or tenders. These systems allow all renewable energy producers to benefit indirectly from guaranteed demand for their energy, at a price above the market price for conventional power. The price of these green certificates is not fixed in advance but depends on supply and demand.
62. Where they constitute State aid, these systems may be authorised by the Commission if Member States can show that support is essential to ensure the viability of the renewable energy sources concerned, does not in the aggregate result in overcompensation for renewable energy and does not dissuade renewable energy producers from becoming more competitive. With a view to verifying that these criteria are met, the Commission intends to authorise these aid systems for a period of ten years, after which it will have to be assessed whether the support measure needs to be continued.

E.3.3.3. Option 3

63. Member States may grant operating aid to new plants producing renewable energy that will be calculated on the basis of the external costs avoided. These are the environmental costs that society would have to bear if the same quantity of energy were produced by a production plant operating with conventional forms of energy. They will be calculated on the basis of the difference between, on the one hand, the external costs produced and not paid by renewable energy producers and, on the other hand, the external costs produced and not paid by non-renewable energy producers. To carry out these calculations, the Member State will have to use a method of calculation that is internationally recognised and has been communicated to the Commission. It will have to provide among other things a reasoned and quantified comparative cost analysis, together with an assessment of competing energy producers' external costs, so as to demonstrate that the aid does genuinely compensate for external costs not covered.

At any event, the amount of the aid thus granted to the renewable energy producer must not exceed EUR 0,05 per kWh.

Furthermore, the amount of aid granted to producers that exceeds the amount of aid resulting from option 1 must be reinvested by the firms in renewable sources of energy. It will be taken into account by the Commission if this activity also qualifies for State aid.

64. If Option 3 is to remain consistent with the general rules on competition, the Commission must be certain that the aid does not give rise to any distortion of competition contrary to the common interest. In other words, it must be certain that the aid will result in an actual overall increase in the use of renewable energy sources at the expense of conventional energy sources, and not in a simple transfer of market shares between renewable energy sources. The following conditions will therefore have to be met:

- aid granted under this option must form part of a scheme which treats firms in the renewable energy sector on an equal footing;
- the scheme must provide for aid to be granted without discrimination as between firms producing the same renewable energy;
- the scheme must be re-examined by the Commission every five years.

E.3.3.4. Option 4

65. Member States may still grant operating aid in accordance with the general rules governing such aid in points 45 and 46.

E.3.4. Rules applicable to operating aid for the combined production of electric power and heat

66. The Commission takes the view that operating aid for the combined production of electric power and heat may be justified provided that the conditions set out in point 31 are met. Such aid may be granted to firms distributing electric power and heat to the public where the costs of producing such electric power or heat exceed its market price. In similar circumstances, operating aid may be granted in accordance with the rules in points 58 to 65. The decision as to whether the aid is essential will take account of the costs and revenue resulting from the production and sale of the electric power or heat.

67. Operating aid may be granted on the same conditions as for the industrial use of the combined production of electric power and heat where it can be shown that the production cost of one unit of energy using that technique exceeds the market price of one unit of conventional energy. The production cost may include the plant's normal return on capital, but any gains by the firm in terms of heat production must be deducted from production costs.

F. POLICIES, MEASURES AND INSTRUMENTS FOR REDUCING GREENHOUSE GASES

68. The Kyoto Protocol, signed by the Member States and by the Community, provides that the parties undertake to limit or reduce greenhouse gas emissions during the period 2008-2012. For the Community as a whole, the

target is to reduce greenhouse gas emissions by 8 % of their 1990 level.

69. Member States and the Community, as parties to the Protocol, will have to achieve the greenhouse gas reductions by means of common and coordinated policies and measures⁽⁴¹⁾, including economic instruments, and also by means of the instruments established by the Kyoto Protocol itself, namely international emissions trading, joint implementation, and the clean development mechanism.

70. In the absence of any Community provisions in this area and without prejudice to the Commission's right of initiative in proposing such provisions, it is for each Member State to formulate the policies, measures and instruments it wishes to adopt in order to comply with the targets set under the Kyoto Protocol.

71. The Commission takes the view that some of the means adopted by Member States to comply with the objectives of the Protocol could constitute State aid but it is still too early to lay down the conditions for authorising any such aid.

G. BASIS OF EXEMPTION FOR ALL PROJECTS EXAMINED BY THE COMMISSION

72. Subject to the limits and conditions set out in these guidelines, environmental aid will be authorised by the Commission pursuant to Article 87(3)(c) of the EC Treaty for 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

73. Aid to promote the execution of important projects of common European interest which are an environmental priority and will often have beneficial effects beyond the frontiers of the Member State(s) concerned can be authorised under the exemption provided for in Article 87(3)(b) of the EC Treaty. However, the aid must be necessary for the project to proceed, and the project must be specific, well defined and qualitatively important and must make an exemplary and clearly identifiable contribution to the common European interest. When this exemption is applied, the Commission may authorise aid at higher rates than the limits laid down for aid authorised pursuant to Article 87(3)(c).

H. OVERLAPPING AID FROM DIFFERENT SOURCES

74. The aid ceilings stipulated in these guidelines are applicable irrespective of whether the aid in question is financed wholly or in part from State resources or from Community resources. Aid authorised under these guidelines may not be combined with other forms of State aid within the meaning of Article 87(1) of the Treaty or with other forms of Community financing if such overlapping produces an aid intensity higher than that laid down in these guidelines.

⁽⁴¹⁾ For details of common and coordinated policies and measures see in particular 'Preparing for Implementation of the Kyoto Protocol' (COM(1999) 230 of 19.5.1999).

In the case of aid serving different purposes and involving the same eligible costs, the most favourable aid ceiling will apply.

I. 'APPROPRIATE MEASURES' WITHIN THE MEANING OF ARTICLE 88(1) OF THE EC TREATY

75. Acting under Article 88(1) of the Treaty, the Commission will propose the following appropriate measures to the Member States in respect of their existing systems of aid.
76. In order to enable it to assess any substantial amounts of aid granted under authorised schemes and to decide whether such aid is compatible with the common market, the Commission will propose, as an appropriate measure under Article 88(1) of the Treaty, that Member States should notify it in advance of any individual case of investment aid granted under an authorised scheme where the eligible costs exceed EUR 25 million and where the aid exceeds the gross grant equivalent of EUR 5 million. Notification will be given by means of the form of which a model is shown in the Annex.
77. The Commission will also propose, as an appropriate measure under Article 88(1), that Member States should bring their existing environmental aid schemes into line with these guidelines before 1 January 2002.
78. The Commission will ask the Member States to confirm within one month of receipt of the proposed measures referred to in points 75 to 77 that they agree to the proposals. In the absence of any reply, the Commission will take it that the relevant Member State does not agree.
79. The Commission would point out that, with the exception of aid classed as *de minimis* aid under Regulation (EC) No 69/2001⁽⁴²⁾, these guidelines do not affect the obligation incumbent on Member States under Article 88(3) of the Treaty to notify any aid schemes, any changes to those schemes and any individual aid granted to firms outside the framework of authorised schemes.
80. The Commission intends to ensure that any authorisation for a future scheme complies with these guidelines.

J. APPLICATION OF THE GUIDELINES

81. These guidelines will become applicable when they are published in the *Official Journal of the European Communities*. They will cease to be applicable on 31 December 2007. After consulting the Member States, the Commission may amend them before that date on the basis of important competition policy or environmental policy considerations or in order to take account of other Community policies or international commitments.
82. The Commission will apply these guidelines to all aid projects notified in respect of which it is called upon to take a decision after the guidelines are published in the *Official Journal*, even where the projects were notified prior to their publication.

In the case of non-notified aid, the Commission will apply:

- (a) these guidelines if the aid was granted after their publication in the *Official Journal of the European Communities*;
- (b) the guidelines in force when aid is granted in all other cases.

K. INTEGRATION OF ENVIRONMENTAL POLICY INTO OTHER STATE AID GUIDELINES

83. Article 6 of the Treaty states that:

'Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.'

When the Commission adopts or revises other Community guidelines or frameworks on State aid, it will consider how those requirements can best be taken into account. It will also examine whether it would not be expedient to ask the Member States to provide an environmental impact study whenever they notify it of an important aid project, irrespective of the sector involved.

⁽⁴²⁾ OJ L 10, 13.1.2001, p. 30.

ANNEX

ADDITIONAL INFORMATION ORDINARILY TO BE SUPPLIED WHEN NOTIFYING STATE AID FOR ENVIRONMENTAL PURPOSES UNDER ARTICLE 88(3) OF THE TREATY**(Schemes, cases of aid granted under an approved scheme, and one-off aid measures)**

To be attached to the general questionnaire in Section A of Annex II to the Commission letter to Member States of 2 August 1995 on notifications and standardised annual reports:

1. Objectives.

Detailed description of the objectives of the measure, and of the type of environmental protection it is intended to promote.

2. Description of the measure.

Detailed description of the measure and of the recipients.

Description of the total costs of the investments involved and of the eligible costs.

If the measure in question has already been applied in the past, what environmental results have been obtained?

If the measure is a new one, what environmental results are anticipated, and over what period?

If the aid is to be granted towards an improvement on standards, what are the standards applicable, and in what way does the measure allow an appreciably higher level of environmental protection to be achieved?

If the aid is to be granted in the absence of mandatory standards, please give a detailed description of the way.

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

the Commission should make use of the powers conferred by Regulation (EC) No 994/98.

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,

(4) This Regulation is without prejudice to the possibility for Member States of notifying aid to small and medium-sized enterprises. Such notifications will be assessed by the Commission in particular in the light of the criteria set out in this Regulation. The guidelines on State aid for small and medium-sized enterprises should be abolished from the date of entry into force of this Regulation, since their contents are replaced by this Regulation.

Having published a draft of this Regulation ⁽²⁾,

Having consulted 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 to small and medium-sized enterprises is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.

(2) Regulation (EC) No 994/98 also empowers the Commission to declare, in accordance with Article 87 of the Treaty, that 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.

(3) The Commission has applied Articles 87 and 88 of the Treaty to small and medium-sized enterprises in and outside assisted areas in numerous decisions and has also stated its policy, most recently in the Community guidelines on State aid for small and medium-sized enterprises ⁽³⁾ and in the guidelines on national regional aid ⁽⁴⁾. In the light of the Commission's considerable experience in applying those Articles to small and medium-sized enterprises and in the light of the general texts relating to small and medium-sized enterprises and to 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

(5) Small and medium-sized enterprises play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive. However, their development may be limited by market imperfections. They often have difficulties in obtaining capital or credit, given the risk-shy nature of certain financial markets and the limited guarantees that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. Having regard to those considerations, the purpose of the aid exempted by this Regulation should be to facilitate the development of the economic activities of small and medium-sized enterprises, provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(6) This Regulation should exempt any aid that meets all the relevant requirements of this Regulation, and any aid scheme, provided that any aid that could be granted under such scheme meets all the relevant requirements of this Regulation. With a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, aid schemes and individual grants outside any aid scheme should contain an express reference to this Regulation.

(7) This Regulation should apply without prejudice to special rules in regulations and directives concerning State aid in certain sectors, such as currently exist for shipbuilding, and should not apply to agriculture and fisheries and aquaculture.

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 89, 28.3.2000, p. 15.

⁽³⁾ OJ C 213, 23.7.1996, p. 4.

⁽⁴⁾ OJ C 74, 10.3.1998, p. 9.

- (8) In order to eliminate differences that might give rise to distortions of competition, in order to facilitate coordination between different Community and national initiatives concerning small and medium-sized enterprises, and for reasons of administrative clarity and legal certainty, the definition of 'small and medium-sized enterprises' used in this Regulation should be that laid down in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises⁽⁵⁾. That definition was also used in the Community guidelines on State aid for small and medium-sized enterprises⁽⁶⁾.
- (9) 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.
- (10) 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 and aid in the form of a soft loan 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, provided that, in the case of a soft loan, the loan is backed by normal security and does not involve abnormal risk. The reference rates should be those which are periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Communities* and on the Internet.
- (11) Having regard to the differences between small enterprises and medium-sized enterprises, different ceilings of aid intensity should be set for small enterprises and for medium-sized enterprises.
- (12) The ceilings of aid intensity should be fixed, in the light of the Commission's experience, at a level that strikes the appropriate balance between minimising distortions of competition in the aided sector and the objective of facilitating the development of the economic activities of small and medium-sized enterprises.
- (13) 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 aid granted in relation to certain tangible and intangible investments, certain services supplied to beneficiaries and certain other activities. In the light of Community overcapacity in the transport sector, with the exception of railway rolling stock, eligible investment costs for enterprises having their main economic activity in the transport sector should not include transport means and equipment.
- (14) This Regulation should exempt aid to small and medium-sized enterprises regardless of location. Investment and job creation can contribute to the economic development of less favoured regions in the Community. Small and medium-sized enterprises in those regions suffer from both the structural disadvantage of the location and the difficulties deriving from their size. It is therefore appropriate that small and medium-sized enterprises in assisted regions should benefit from higher ceilings.
- (15) 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 costs of the investment or the costs of new employment linked to the carrying-out of the investment project.
- (16) In the light of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures⁽⁷⁾, this Regulation should not exempt export aid or aid favouring domestic over imported products. Aid towards the costs of participation in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market does not normally constitute export aid.
- (17) Having regard to the need to strike the appropriate balance between minimising distortions of competition in the aided sector and the objectives of this Regulation, it should not exempt individual aid grants which exceed a fixed maximum amount, whether or not made under an aid scheme exempted by this Regulation.

⁽⁵⁾ OJ L 107, 30.4.1996, p. 4.

⁽⁶⁾ See footnote 3.

⁽⁷⁾ OJ L 336, 23.12.1994, p. 156.

- (18) In order to ensure that the aid is necessary and acts as an incentive to develop certain activities, this Regulation should not exempt aid for activities in which the beneficiary would already engage under market conditions alone.
- (19) 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.
- (20) 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 in which Member States should provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme is implemented or an individual aid outside such schemes is granted, with a view to publication in the *Official Journal of the European Communities*. For the same reasons, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation. For the purposes of the annual report to be submitted to the Commission by Member States, it is appropriate for the Commission to establish its specific requirements, including, in view of the wide availability of the necessary technology, information in computerised form.
- (21) Having regard to 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. Should this Regulation expire without being extended, aid schemes already exempted by this Regulation should continue to be exempted for six months,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. Without prejudice to special Community Regulations or Directives under the EC Treaty governing the granting of State aid in specific sectors, whether more or less restrictive than this Regulation, this Regulation applies to aid granted to small and medium-sized enterprises in all sectors.

2. This Regulation shall not apply:

- (a) to activities linked to the production, processing or marketing of products listed in Annex I to the Treaty;
- (b) to aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- (c) to aid contingent upon the use of domestic over imported goods.

Article 2

Definitions

For the purpose of this Regulation:

- (a) 'aid' shall mean any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
- (b) 'small and medium-sized enterprises' shall mean enterprises as defined in Annex I;
- (c) 'investment in tangible assets' shall mean an investment in fixed physical assets relating to the creation of a new establishment, the extension of an existing establishment, or the engagement in an activity involving a fundamental change in the product or production process of an existing establishment (in particular through rationalisation, diversification or modernisation). An investment in fixed assets undertaken in the form of the takeover of an establishment which has closed or which would have closed had it not been purchased shall also be regarded as tangible investment;
- (d) 'investment in intangible assets' shall mean investment in transfer of technology by the acquisition of patent rights, licences, know-how or unpatented technical knowledge;
- (e) 'gross aid intensity' shall mean the aid amount expressed as a percentage of the project's eligible costs. All figures used shall be taken before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid. Aid payable in several instalments shall be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in a soft loan shall be the reference rate applicable at the time of grant;
- (f) 'net aid intensity' shall mean the aid amount net of tax expressed as a percentage of the project's eligible costs;
- (g) 'number of employees' shall mean the number of annual labour units (ALU), namely the number of persons employed full time in one year, part-time and seasonal work being ALU fractions.

Article 3

Conditions for exemption

1. Individual aid outside any scheme, 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 it contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Communities*.

2. 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 that could be awarded under such scheme fulfils all the conditions of this Regulation;
- (b) the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Communities*.

3. Aid granted under the schemes referred to in paragraph 2 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 granted directly fulfils all the conditions of this Regulation.

Article 4

Investment

1. Aid for investment in tangible and intangible assets inside or outside the Community 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 if it fulfils the conditions of paragraphs 2 to 6.

2. 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 which qualify for regional aid, 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 that the beneficiary's contribution to its financing is at least 25 %.

4. The ceilings fixed in paragraphs 2 and 3 shall apply to intensity of the aid calculated either as a percentage of the investment's eligible costs or as a percentage of the wage costs of employment created by the carrying-out of an investment (aid to job creation) or a combination thereof, provided the aid does not exceed the most favourable amount resulting from the application of either calculation.

5. In cases where the aid is calculated on the basis of the investment's costs, the eligible costs of tangible investment shall be the costs relating to investment in land, buildings, machinery and equipment. In the transport sector, except for railway rolling stock, transport means and transport equipment shall not be included in the eligible costs. The eligible costs of intangible investment shall be the costs of acquisition of the technology.

6. In cases where the aid is calculated on the basis of jobs created, the amount of the aid shall be expressed as a percentage of the wage costs over a period of two years relating to the employment created under the following conditions:

- (a) job creation shall be linked to the carrying-out of a project of investment in tangible or intangible assets. Jobs shall be created within three years of the investment's completion;
- (b) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous twelve months; and
- (c) the employment created shall be maintained during a minimum period of five years.

Article 5

Consultancy and other services and activities

Aid to small and medium-sized enterprises that fulfil the following conditions 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:

- (a) for services provided by outside consultants, the gross aid shall not exceed 50 % of the costs of such services. The services concerned shall not be a continuous or periodic activity nor relate to the enterprise's usual operating expenditure, such as routine tax consultancy services, regular legal services, or advertising;

- (b) for participation in fairs and exhibitions, the gross aid shall not exceed 50 % of the additional costs incurred for renting, setting up and running the stand. This exemption shall only apply to the first participation of an enterprise in a particular fair or exhibition.

Article 6

Large individual aid grants

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 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 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.

Article 7

Necessity for the aid

This Regulation shall only exempt aid if, before work on the aided project is started:

- either an application for aid has been submitted to the Member State by the beneficiary, or
- the Member State has adopted legal provisions establishing a legal right to aid according to objective criteria and without further exercise of discretion by the Member State.

Article 8

Cumulation

1. The aid ceilings fixed in Articles 4, 5 and 6 shall apply regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community.
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 funding, in relation to the same eligible costs, if such cumulation would result in an aid intensity exceeding that fixed by this Regulation.

Article 9

Transparency and monitoring

1. On implementation of an aid scheme, or grant of individual aid outside any scheme, 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 Communities*, a summary of the information regarding such aid scheme or individual aid in the form laid down in Annex II.

2. Member States shall maintain detailed records regarding the aid schemes exempted by this Regulation, the individual aid granted under those schemes, and the individual aid exempted by this Regulation that is granted outside any existing aid scheme. 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 the company as an SME. Member States shall keep a record regarding an individual aid for 10 years from the date on which it was granted, and regarding an aid scheme, for 10 years from the date on which the last individual aid was granted 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.

3. Member States shall compile a report 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 Annex III, also in computerised form. Member States shall provide the Commission with such report no later than three months after the expiry of the period to which the report relates.

Article 10

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 Communities*.

It shall remain in force until 31 December 2006.

2. At the end of the period of validity of this Regulation, aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months.

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

Done at Brussels, 12 January 2001.

For the Commission
Mario MONTI
Member of the Commission

ANNEX I

Definition of small and medium-sized enterprises

(extract from the Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4))

'Article 1

1. Small and medium-sized enterprises, hereinafter referred to as "SMEs", are defined as enterprises which:
 - have fewer than 250 employees, and
 - have either,
 - an annual turnover not exceeding EUR 40 million, or
 - an annual balance-sheet total not exceeding EUR 27 million,
 - conform to the criterion of independence as defined in paragraph 3.
 2. Where it is necessary to distinguish between small and medium-sized enterprises, the "small enterprise" is defined as an enterprise which:
 - has fewer than 50 employees and
 - has either,
 - an annual turnover not exceeding EUR 7 million, or
 - an annual balance-sheet total not exceeding EUR 5 million,
 - conforms to the criterion of independence as defined in paragraph 3.
 3. Independent enterprises are those which are not owned as to 25 % or more of the capital or the voting rights by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply. This threshold may be exceeded in the following 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.
 4. In calculating the thresholds referred to in paragraphs 1 and 2, it is therefore necessary to cumulate the relevant figures for the beneficiary enterprise and for all the enterprises that it directly or indirectly controls through possession of 25 % or more of the capital or of the voting rights.
 5. Where it is necessary to distinguish microenterprises from other SMEs, these are defined as enterprises having fewer than 10 employees.
 6. Where, at the final balance sheet date, an enterprise exceeds or falls below the employee thresholds or financial ceilings, this is to result in its acquiring or losing the status of "SME", "medium-sized enterprise", "small enterprise" or "microenterprise" only if the phenomenon is repeated over two consecutive financial years.
 7. The number of persons employed corresponds to the number of annual working units (AWU), that is to say, the number of full-time workers employed during one year with part-time and seasonal workers being fractions of AWU. The reference year to be considered is that of the last approved accounting period.
 8. The turnover and balance sheet total thresholds are those of the last approved 12-month accounting period. In the case of newly-established enterprises whose accounts have not yet been approved, the thresholds to apply shall be derived from a reliable estimate made in the course of the financial year.'
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ANNEX II

Form of summary information to be provided whenever an aid scheme exempted by this Regulation is implemented and whenever an individual aid exempted by this Regulation is granted outside any aid scheme

Summary information on State aid granted in conformity with Commission Regulation (EC) No 70/2001	
Summary information to be filled in	Explanatory remarks
Member state	
Region	Indicate the name of the region if the aid is granted by a subcentral authority
Title of aid scheme or name of company receiving an individual aid	Indicate the name of the aid scheme or in case of individual aid, the name of the beneficiary. In the latter case, no subsequent annual report is necessary!
Legal basis	Indicate the precise national legal reference for the aid scheme or for the individual aid
Annual expenditure planned under the scheme or overall amount of individual aid granted to the company	Amounts are to be given in euro or, if applicable, national currency. In case of an aid scheme: 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. In case of an individual aid award: indicate the overall aid amount/tax loss. If appropriate, indicate also for how many years the aid will be paid in instalments or over how many years tax losses will be incurred. For guarantees in both cases, indicate the (maximum) amount of loans guaranteed
Maximum aid intensity	Indicate the maximum aid intensity or the maximum aid amount per eligible item
Date of implementation	Indicate the date from which aid may be granted under the scheme or when the individual aid is granted
Duration of scheme or individual aid award	Indicate the date (year and month) until which aid may be granted under the scheme or in case of an individual aid and if appropriate the expected date (year and month) of the last instalment to be paid
Objective of aid	It is understood that the primary objective is aid to SME. This field gives the opportunity to indicate further (secondary) objectives pursued (e.g. small enterprises only or SME; investment aid/consultancy)

Summary information to be filled in	Explanatory remarks
<p>Economic Sector(s) concerned</p> <p><input type="checkbox"/> All sectors</p> <p>or</p> <p><input type="checkbox"/> Coalmining</p> <p><input type="checkbox"/> All manufacturing</p> <p>or</p> <p><input type="checkbox"/> Steel</p> <p><input type="checkbox"/> Shipbuilding</p> <p><input type="checkbox"/> Synthetic fibres</p> <p><input type="checkbox"/> Motor vehicles</p> <p><input type="checkbox"/> Other manufacturing</p> <p><input type="checkbox"/> All services</p> <p>or</p> <p><input type="checkbox"/> Transport services</p> <p><input type="checkbox"/> Financial services</p> <p><input type="checkbox"/> Other services</p> <p>Remarks:</p>	<p>Choose from the list, where relevant</p>
Name and address of the granting authority	
Other information	

ANNEX III

Form of the periodic report to be provided to the Commission**Annual reporting format on aid schemes exempted under a group exemption regulation adopted pursuant to Article 1 of Council Regulation (EC) No 994/98**

Member States are required to use the format below for their reporting obligations to the Commission under group exemption regulations adopted on the basis of Council Regulation (EC) No 994/98.

The reports should also be provided in computerised form.

Information required for all aid schemes exempted under group exemption regulations adopted pursuant to Article 1 of Council Regulation (EC) No 994/98

1. Title of aid scheme
2. Commission exemption regulation applicable
3. Expenditure

Separate figures have to be provided for each aid instrument within a scheme or individual aid (e.g. grant, soft loans, etc.) The figures have to be expressed in euro or, if applicable, national currency. In the case of tax expenditure, annual tax losses have to be reported. If precise figures are not available, such losses may be estimated.

These expenditure figures should be provided on the following basis.

For the year under review indicate separately for each aid instrument within the scheme (e.g. grant, soft loan, guarantee, etc.):

- 3.1. amounts committed, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new assisted projects. In the case of guarantee schemes, the total amount of new guarantees handed out should be provided;
- 3.2. actual payments, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new and current projects. In the case of guarantee schemes, the following should be provided: total amount of outstanding guarantees, premium income, recoveries, indemnities paid out, operating result of the scheme under the year under review;
- 3.3. number of new assisted projects;
- 3.4. estimated overall number of jobs created or maintained by new projects (if appropriate);
- 3.5. estimated overall amount of investment aided by new projects;
- 3.6. Regional breakdown of amounts under point 3.1 either by regions defined at NUTS⁽¹⁾ level 2 or below or by Article 87(3)(a) regions, Article 87(3)(c) regions and non-assisted regions;
- 3.7. Sectorial breakdown of amounts under point 3.1. by beneficiaries' sectors of activity (if more than one sector is covered, indicate the share of each):

coalmining
 manufacturing
 of which:
 steel
 shipbuilding
 synthetic fibres
 motor vehicles
 other manufacturing (please specify)
 services
 of which:
 transport services
 financial services
 other services (please specify)
 other sectors (please specify)

4. Other information and remarks.

⁽¹⁾ NUTS is the nomenclature of territorial units for statistical purposes in the Community.

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

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 Article 2 thereof,

Having published a draft of this Regulation ⁽²⁾,

Having consulted the Advisory Committee on State aid,

Whereas:

- (1) Regulation (EC) No 994/98 empowers the Commission to set out in a regulation a threshold under which aid measures are deemed not to meet all the criteria of Article 87(1) of the Treaty and therefore do not fall under the notification procedure provided for in Article 88(3) of the Treaty.
- (2) The Commission has applied Articles 87 and 88 of the Treaty and in particular clarified, in numerous decisions, the notion of aid within the meaning of Article 87(1) of the Treaty. The Commission has also stated its policy with regard to a *de minimis* ceiling, under which Article 87(1) can be considered not to apply, most recently in the notice on the *de minimis* rule for State aid ⁽³⁾. In the light of this experience and with a view to increasing transparency and legal certainty, it is appropriate that the *de minimis* rule be laid down in a Regulation.
- (3) In view of the special rules which apply in the sectors of agriculture, fisheries and aquaculture, and transport, and of the risk that even small amounts of aid could fulfil the criteria of Article 87(1) of the Treaty in those sectors, it is appropriate that this Regulation should not apply to those sectors.
- (4) In the light of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures ⁽⁴⁾, this Regulation should not exempt export aid or aid favouring domestic over imported products. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market does not normally constitute export aid.
- (5) In the light of the Commission's experience, it can be established that aid not exceeding a ceiling of EUR 100 000 over any period of three years does not affect trade between Member States and/or does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty. The relevant period of three years has a mobile character, so that for each new grant of *de minimis* aid, the total amount of *de minimis* aid granted during the previous three years needs to be determined. The *de minimis* aid should be considered to be granted at the moment the legal right to receive the aid is conferred to the beneficiary. The *de minimis* rule is without prejudice to the possibility that enterprises receive, also for the same project, State aid authorised by the Commission or covered by a group exemption Regulation.
- (6) For the purpose of transparency, equal treatment and the correct application of the *de minimis* ceiling, it is appropriate that Member States should apply the same method of calculation. In order to facilitate this calculation and in accordance with the present practice of application of the *de minimis* rule, it is appropriate that aid amounts not taking the form of a cash grant should be converted into their gross grant equivalent. Calculation of the grant equivalent of aid payable in several instalments, and calculation of aid in the form of a soft loan, require 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, provided that, in the case of a soft loan, the loan is backed by normal security and does not involve abnormal risk. The reference rates should be those which are periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Communities* and on the Internet.
- (7) The Commission has a duty to ensure that State aid rules are respected and in particular that aid granted under the *de minimis* rules adheres to the conditions thereof. In accordance with the cooperation principle laid down in Article 10 of the Treaty, Member States should facilitate the achievement of this task by establishing the necessary machinery in order to ensure that the total amount of aid, granted to the same beneficiary under the *de minimis* rule, does not exceed the ceiling of EUR 100 000 over a period of three years. To that end, it is appropriate that Member States, when granting a *de minimis* aid, should inform the enterprise concerned of

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 89, 28.3.2000, p. 6.

⁽³⁾ OJ C 68, 6.3.1996, p. 9.

⁽⁴⁾ OJ L 336, 23.12.1994, p. 156.

the *de minimis* character of the aid, receive full information about other *de minimis* aid received during the last three years and carefully check that the *de minimis* ceiling will not be exceeded by the new *de minimis* aid. Alternatively respect of the ceiling may also be ensured by means of a central register.

- (8) Having regard to the Commission's experience 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. Should this Regulation expire without being extended, Member States should have an adjustment period of six months with regard to *de minimis* aid schemes which were covered by this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation applies to aid granted to enterprises in all sectors, with the exception of:

- (a) the transport sector and the activities linked to the production, processing or marketing of products listed in Annex I to the Treaty;
- (b) aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- (c) aid contingent upon the use of domestic over imported goods.

Article 2

De minimis aid

1. Aid measures shall be deemed not to meet all the criteria of Article 87(1) of the Treaty and shall therefore not fall under the notification requirement of Article 88(3) of the Treaty, if they fulfil the conditions laid down in paragraphs 2 and 3.

2. The total *de minimis* aid granted to any one enterprise shall not exceed EUR 100 000 over any period of three years. This ceiling shall apply irrespective of the form of the aid or the objective pursued.

3. The ceiling in paragraph 2 shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction for direct taxation. Where aid is awarded in a form other

than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments shall be discounted to its value at the moment of its being granted. The interest rate to be used for discounting purposes and to calculate the aid amount in a soft loan shall be the reference rate applicable at the time of grant.

Article 3

Cumulation and monitoring

1. Where a Member State grants *de minimis* aid to an enterprise, it shall inform the enterprise about the *de minimis* character of the aid and obtain from the enterprise concerned full information about other *de minimis* aid received during the previous three years.

The Member State may only grant the new *de minimis* aid after having checked that this will not raise the total amount of *de minimis* aid received during the relevant period of three years to a level above the ceiling set out in Article 2(2).

2. Where a Member State has set up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within that Member State, the requirement in the first subparagraph of paragraph 1 no longer applies from the moment the register covers a period of three years.

3. Member States shall record and compile all the information regarding the application of this Regulation. Such records shall contain all information necessary to demonstrate that the conditions of this Regulation have been respected. Records regarding an individual *de minimis* aid shall be maintained for 10 years from the date on which it was granted and regarding a *de minimis* aid scheme, for 10 years from the date on which the last individual aid was granted 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 that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied with, in particular the total amount of *de minimis* aid received by any enterprise.

Article 4

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 Communities*.

It shall remain in force until 31 December 2006.

2. At the end of the period of validity of this Regulation, *de minimis* aid schemes falling under this Regulation shall continue to benefit from it during an adjustment period of six months.

During the adjustment period, these schemes may continue to be applied under the conditions of this Regulation.

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

Done at Brussels, 12 January 2001.

For the Commission
Mario MONTI
Member of the Commission

no están destinadas a reparar los perjuicios causados por desastres naturales o por otros acontecimientos de carácter excepcional según lo dispuesto en la letra b) del apartado 2 del artículo 87 y no están sujetas a las disposiciones de la letra c) del apartado 2 del artículo 87 acerca de "las ayudas destinadas a facilitar el desarrollo de determinadas actividades [...]". Además, no tienen por objeto promover la realización de un proyecto importante de interés europeo común o poner remedio a una grave perturbación en la economía de un Estado miembro según lo dispuesto en la letra b) del apartado 3 del artículo 87. Por último, no están destinadas a promover la cultura ni la conservación del patrimonio según lo dispuesto en la letra d) del apartado 3 del artículo 87.

Habida cuenta de las consideraciones expuestas, la Comisión insta a las autoridades españolas, en el marco del procedimiento del apartado 2 del artículo 88 del Tratado CE, a que presente sus observaciones y facilite toda la información pertinente para la evaluación de las ayudas fiscales en forma de crédito fiscal del 45 % al Territorio Histórico de Álava en un plazo de un mes a partir de la fecha de recepción de la presente carta. En este caso, la información pertinente se refiere especialmente a las posibles ayudas fiscales en forma de crédito fiscal a las inversiones vigente durante todos o algunos de los años del período 1986-1994, copias de las decisiones de concesión de la ayuda para el período 1995-1997 y copias, en

modelo oficial, de las comunicaciones de los interesados a la Diputación Foral para el período 1998-1999, en las que figuren, como mínimo, la naturaleza de los costes de inversión que pueden acogerse a las ayudas, el importe del crédito fiscal de cada beneficiario, las ayudas pagadas a cada beneficiario y el saldo de las que quedan por pagar, la posible situación de crisis de la empresa de los beneficiarios sujeta a las citadas Directrices comunitarias sobre ayudas estatales de salvamento y de reestructuración de empresas en crisis, los detalles en caso de acumulación (importe, costes elegibles, regímenes de ayudas aplicados, si procede, etc.), la definición precisa y detallada de los términos "inversión" e "inversiones en la fase de preparación" contenidos en las disposiciones por las que se crearon las ayudas fiscales en cuestión a partir del 1 de enero de 1998. Por último, la Comisión insta a las autoridades españolas a que transmitan inmediatamente una copia de la presente carta a los beneficiarios potenciales de la ayuda.

Conviene precisar que la presente Decisión sólo afecta a las medidas fiscales que son examinadas explícitamente, y no se pronuncia sobre las otras medidas contenidas en el régimen fiscal específico del Territorio Histórico de Álava. La Comisión se reserva la posibilidad de examinar, sea en cuanto régimen general, como en su posible aplicación a una empresa específica, aquellas medidas que pudieran constituir ayudas.»

Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees

(2000/C 71/07)

1. INTRODUCTION

- 1.1. This notice outlines the Commission's approach to State aid granted in the form of guarantees. Guarantees are usually associated with a loan or other financial obligation to be contracted by a borrower with a lender. However, this notice covers all forms of guarantees, irrespective of their legal basis and the transaction covered. Guarantees may be granted as individual guarantees or within guarantee schemes. If aid is involved, this aid in most cases benefits the borrower. However, in certain circumstances, there may also be an aid to the lender.
- 1.2. This notice applies without prejudice to Article 295 and thus does not prejudice the rules in Member States governing the system of property ownership. The Commission is neutral as regards public or private ownership. This notice does not apply to export credit guarantees.
- 1.3. In 1989 the Commission addressed two letters on State guarantees to the Member States. In the first letter⁽¹⁾ it pointed out that it regards all guarantees given by a State as falling within the scope of Article 87(1). According to this letter, the Commission must

therefore be notified of any plans to give or alter such guarantees in sufficient time to enable it to submit its comments. In the second letter⁽²⁾ the Commission made it clear that it intended to examine the establishment of State guarantee schemes, and that individual guarantees given under an approved scheme would not need to be notified. In 1993 the Commission adopted a communication⁽³⁾ which addressed the subject of guarantees as well.

- 1.4. Experience gained in the meantime suggests that the Commission's policy in this area should be reviewed. This notice replaces the two Commission letters of 1989 and paragraph 38 of the Commission communication of 1993. Its purpose is to give Member States more detailed explanations about the principles on which the Commission intends to base its interpretation of Articles 87 and 88 and their application to State guarantees. The Commission intends in this way to make its policy in this area as transparent as possible, thereby ensuring that its decisions are predictable and that equal treatment is guaranteed.

⁽¹⁾ Commission letter to the Member States, SG(89) D/4328 of 5 April 1989.

⁽²⁾ Commission letter to the Member States, SG(89) D/12772 of 12 October 1989.

⁽³⁾ Commission Communication to the Member States on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3).

2. APPLICABILITY OF ARTICLE 87(1)

2.1. Aid to the borrower

2.1.1. Usually, the aid beneficiary is the borrower. The State guarantee enables the borrower to obtain better financial terms for a loan than those normally available on the financial markets. Typically, with the benefit of the State guarantee, the borrower can obtain lower rates and/or offer less security. In some cases, the borrower would not, without a State guarantee, find a financial institution prepared to lend on any terms. State guarantees may thus facilitate the creation of new businesses and enable certain undertakings to raise money in order to pursue new activities or simply remain active instead of being eliminated or restructured, thereby creating distortions of competition. State guarantees thus generally fall within the scope of Article 87(1), if trade between Member States is affected and no market premium is paid.

2.1.2. The benefit of a State guarantee is that the risk associated with the guarantee is carried by the State. This carrying of a risk by the State should normally be remunerated by an appropriate premium. Where the State forgoes such a premium, there is both a benefit for the undertaking and a drain on the resources of the State. Thus, even if no payments are ever made by the State under a guarantee, there may nevertheless be a State aid under Article 87(1). The aid is granted at the moment when the guarantee is given, not the moment at which the guarantee is invoked or the moment at which payments are made under the terms of the guarantee. Whether or not a guarantee constitutes State aid, and, if so, what the amount of that State aid may be, must be assessed at the moment the guarantee is given.

2.1.3. The Commission also regards as aid in the form of a guarantee, the more favourable funding terms obtained by enterprises whose legal form rules out bankruptcy or other insolvency procedures or provides an explicit State guarantee or coverage of losses by the State. The same applies to the acquisition by a State of a holding in an enterprise if unlimited liability is accepted instead of the usual limited liability⁽⁴⁾.

2.1.4. Article 87(1) covers aid granted by a Member State or through State resources. Therefore, in the same way as other forms of potential aid, guarantees given by the State directly, namely by central, regional or local authorities, as well as guarantees given by undertakings under the dominant influence of public authorities, may constitute State aid.

2.2. Aid to the lender

2.2.1. Even if usually the aid beneficiary is the borrower it cannot be ruled out that under certain circumstances the lender, too, will benefit from the aid. In such a case the Commission will certainly pursue the matter accordingly.

2.2.2. In particular, for example, if a State guarantee is given *ex post* in respect of a loan or other financial obligation already entered into without the terms of this loan or financial obligation being adjusted, or if one guaranteed loan is used to pay back another, non-guaranteed loan to the same credit institution, then there may also be an aid to the lender, in so far as the security of the loans is increased. Such aid is capable of favouring the lender and distorting competition, and generally falls within the scope of Article 87(1), if trade between Member States is affected.

3. AMOUNT OF THE AID

3.1. In the case of an individual State guarantee, the aid element must be assessed by reference to the details of the guarantee and loan (or other financial obligation). The relevant factors include in particular the duration and amount of the guarantee and loan, the risk of default by the borrower, the price paid by the borrower for the guarantee, the nature of any security given, how and when the State could be called upon to pay a debt and the means (e.g. declaration of bankruptcy) to be used by the State to recover amounts owed by the borrower once the guarantee has been invoked.

3.2. The cash grant equivalent of a loan guarantee in a given year can be:

— calculated in the same way as the grant equivalent of a soft loan, the interest subsidy representing the difference between the market rate and the rate obtained thanks to the State guarantee after any premiums paid have been deducted, or

— taken to be the difference between (a) the outstanding sum guaranteed, multiplied by the risk factor (the probability of default) and (b) any premium paid, i.e. (guaranteed sum × risk) – premium, or

— calculated by any other objectively justifiable and generally accepted method.

For individual guarantees, the first method should in principle be the standard form of calculation, for guarantee schemes the second one.

⁽⁴⁾ See footnote 3, paragraph 38.1 and 38.2.

The risk factor should be based on the past experience of defaults on loans given in similar circumstances (sector, size of firm, level of general economic activity). The yearly grant equivalents should be discounted to their present value using the reference rate, then added up to obtain the total grant equivalent.

Where, at the time the loan is granted, there is a strong probability that the borrower will default, e.g. because he is in financial difficulty, the value of the guarantee may be as high as the amount effectively covered by that guarantee.

- 3.3. If a financial obligation is wholly covered by a State guarantee, the lender has less incentive to assess properly, secure and minimise the risk arising from the lending operation, and in particular to assess properly the borrower's creditworthiness. Such risk assessment might also not always be taken over by the guarantor, for lack of means. This lack of incentive to minimise the risk of non-repayment of the loan might encourage lenders to contract loans with a greater than normal commercial risk and could thus increase the amount of higher-risk guarantees in the State's portfolio.
- 3.4. The Commission suggests that a percentage of at least 20 % not covered by a State guarantee will serve as an appropriate limit for inducing the lender to properly assess the creditworthiness of the borrower⁽⁵⁾, to properly secure its loans and to minimise the risk associated with the transaction⁽⁶⁾. The Commission will therefore, in general, examine critically any guarantees covering the entirety (or nearly the entirety) of a financial transaction.
- 3.5. In the case of State guarantee schemes, the specific features of the individual cases may not be known at the time when the scheme is to be assessed. In these circumstances, the aid element must be assessed by reference to the provisions of the scheme concerning amongst others the maximum amount and duration of loans, the category of enterprise and type of project eligible, the security required from the borrowers, the premium to be paid and the interest rates obtained by them.

⁽⁵⁾ This is under the assumption that the same level of security is provided by the company to the State and the credit institution.

⁽⁶⁾ From the answers to the questionnaire on State guarantees it can be seen that several Member States already apply this rule. The percentage covered varies widely from 20 % to 100 %. Nevertheless, a multitude of guarantees cover the full amount of the underlying financial operation, thereby exempting the lending institution from the necessity to assess properly the creditworthiness of the beneficiary in its own interest.

4. CONDITIONS EXCLUDING THE EXISTENCE OF AID

- 4.1. An individual guarantee or a guarantee scheme entered into by the State will be outside the scope of Article 87(1) when there is no aid which favours certain undertakings or the production of certain goods. In such cases, notification by the Member State is not necessary. Also, a guarantee does not constitute State aid under Article 87(1) when the measure does not affect trade between Member States.
- 4.2. The Commission considers that the fulfilment of all the following conditions ensures that an individual State guarantee does not constitute State aid under Article 87(1):
- (a) the borrower is not in financial difficulty;
 - (b) the borrower would in principle be able to obtain a loan on market conditions from the financial markets without any intervention by the State;
 - (c) the guarantee is linked to a specific financial transaction, is for a fixed maximum amount, does not cover more than 80 % of the outstanding loan or other financial obligation (except for bonds and similar instruments) and is not open-ended;
 - (d) the market price for the guarantee is paid (which reflects, amongst others, the amount and duration of the guarantee, the security given by the borrower, the borrower's financial position, the sector of activity and the prospects, the rates of default, and other economic conditions).
- 4.3. The Commission considers that the fulfilment of all the following conditions ensures that a State guarantee scheme does not constitute State aid under Article 87(1):
- (a) the scheme does not allow guarantees to be granted to borrowers who are in financial difficulty;
 - (b) the borrowers would in principle be able to obtain a loan on market conditions from the financial markets without any intervention by the State;
 - (c) the guarantees are linked to a specific financial transaction, are for a fixed maximum amount, do not cover more than 80 % of each outstanding loan or other financial obligation (except for bonds and similar instruments) and are not open-ended;
 - (d) the terms of the scheme are based on a realistic assessment of the risk so that the premiums paid by the beneficiary enterprises make it, in all probability, self-financing;

- (e) the scheme provides for the terms on which future guarantees are granted and the overall financing of the scheme to be reviewed at least once a year;
- (f) the premiums cover both the normal risks associated with granting the guarantee and the administrative costs of the scheme, including, where the State provides the initial capital for the start-up of the scheme, a normal return on that capital.
- 4.4. Failure to comply with any one of the above conditions set out in points 4.2 and 4.3 does not mean that such guarantee or guarantee scheme is automatically regarded as State aid. If there is any doubt as to whether a planned guarantee or scheme does constitute State aid, it should be notified.
- 4.5. There may be circumstances in which it is planned to use State guarantees to enable enterprises, and in particular small and medium-sized enterprises, to obtain loans that the market would not supply. The enterprises may be starting up, expanding fast or be small and hence unable to furnish the necessary security to secure a loan or obtain a guarantee. They may fall into the category of high-risk enterprises (expected to move into profitability only in the long term and/or having a particularly high failure rate). This may be the case, for example, with projects concerning new, innovative products or processes. The Commission considers that such circumstances will generally not take State guarantees outside the scope of Article 87(1). State guarantees given in such circumstances should therefore be notified to the Commission in sufficient time, in the same way as State guarantees given in other circumstances.
- 5. COMPATIBILITY OF STATE AID IN THE FORM OF GUARANTEES WITH THE COMMON MARKET**
- 5.1. State guarantees within the scope of Article 87(1) must be examined by the Commission with a view to determining whether or not they are compatible with the common market. Before such assessment of compatibility can be made, the beneficiary of the aid must be identified. As has been explained under point 2, this can be either the borrower, or the lender, or both.
- 5.2. In most cases the guarantee contains aid to the borrower (point 2.1). Whether or not this aid is compatible with the common market will be examined by the Commission according to the same rules as are applied to aid measures taking other forms. The concrete criteria for the compatibility assessment have been clarified and detailed by the Commission in frameworks and guidelines concerning horizontal, regional and sectoral aid⁽⁷⁾. The examination will take into account, in particular, the aid intensity, the characteristics of the beneficiaries and the objectives pursued.
- 5.3. The Commission will accept guarantees only if their mobilisation is contractually linked to specific conditions which may go as far as the compulsory declaration of bankruptcy of the beneficiary undertaking, or any similar procedure. These conditions will have to be agreed at the initial examination by the Commission of the proposed guarantee within the normal procedures of Article 88(3), at the stage when it is granted. In the event that a Member State wants to mobilise the guarantee under conditions other than those initially agreed at the granting stage, then the Commission will regard the mobilisation of the guarantee as creating a new aid which has to be notified under Article 88(3).
- 5.4. Where the guarantee contains aid to the lender (point 2.2), attention should be drawn to the fact that such aid might, in principle, constitute operating aid.
- 6. CONSEQUENCES OF THE INFRINGEMENT OF ARTICLE 88(3)**
- 6.1. Where Member States do not observe the obligations of prior notification and suspension laid down in Article 88(3), the aid element of the guarantee is to be qualified as unlawful in accordance with Article 1(f) 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⁽⁸⁾. As to the consequences of infringement of the third sentence of Article 88(3), various distinctions should be drawn. In the following the position of the aid beneficiary and that of lenders not being a beneficiary will be examined in turn.
- 6.2. First, where aid has been illegally granted, the beneficiaries of the aid contained in the guarantee will run a risk. The Commission may take interim measures in accordance with Article 11 of Regulation (EC) No 659/1999 pending the outcome of the examination as to the compatibility of the aid. If, after this examination, the Commission finds that the State aid is incompatible with the common market, it shall be recovered from the beneficiary in accordance with Article 14 of Regulation (EC) No 659/1999, even if this means the declaration of bankruptcy of the enterprise.
- ⁽⁷⁾ See Competition law in the European Community, Volume IIA, Rules applicable to State aid, published by the Office for Official Publications of the European Communities. Certain texts have also been published in the *Official Journal of the European Communities* and are available on the Internet.
- ⁽⁸⁾ OJ L 83, 27.3.1999, p. 1.

- 6.3. Moreover, aid beneficiaries also run a risk at national level, inasmuch as the third sentence of Article 88(3) has direct effect. The Court of Justice of the European Communities has repeatedly confirmed that it is the duty of national courts to safeguard the rights of the individuals concerned, such as competitors of firms receiving illegal aid, against breaches of the third sentence of Article 88(3). National courts have to draw all the appropriate conclusions from the illegality of State aid granted in breach of the procedural rules of the Treaty. If a national court is requested to order recovery of the unlawful aid, it must normally grant that application⁽⁹⁾.
- 6.4. Secondly, guarantees differ from other State aid measures, such as grants or tax exemptions, in the sense that in the case of a guarantee the State also enters into a legal relation with the lender. Therefore, consideration has to be given to whether the fact that a State aid has been illegally granted also has consequences for third parties. In the case of State guarantees for loans, this concerns mainly the financial lending institutions. In the case of guarantees for bonds issued to obtain financing for undertakings, this concerns the financial institutions involved in the issuance of the bonds.
- 6.5. The question whether the illegality of the aid affects the legal relations between the State and third parties is a matter which has to be examined under national law. National courts may have to examine whether national law prevents the guarantee contracts from being honoured, and in that assessment the Commission considers that they should take account of the breach of Community law. Accordingly, lenders may have an interest in verifying, as a standard precaution, that the Community rules on State aid have been observed, whenever guarantees are granted. The Member State should be able to provide a case number issued by

the Commission for an individual case or a scheme and eventually a non-confidential copy of the Commission's decision together with the relevant reference to the *Official Journal of the European Communities*. The Commission for its part will do its utmost to make available in a transparent manner information on cases and schemes approved by it.

7. REPORTS TO BE PRESENTED TO THE COMMISSION BY THE MEMBER STATES

- 7.1. As there may be new developments on the financial markets and as the value of State guarantees is difficult to assess, the constant review pursuant to Article 88(1) of State guarantee schemes approved by the Commission is of particular importance. In addition to the usual data on expenditure, the reports to be presented annually to the Commission should give (for schemes and individual guarantees as well) data on the total amount of State guarantees outstanding, the total amount paid in the preceding year by the State to defaulting debtors (net of any funds recovered), and the premiums paid for State guarantees in the same year. This information will help in calculating the rate of default and will be used to reassess the value of future guarantees and, if necessary, the premium to be paid in the future.
- 7.2. The Commission does not intend to use information supplied in the abovementioned reports and not known or foreseeable when it took an earlier decision, in order to revise its initial conclusions concerning the existence or scale of aid contained in State guarantee schemes. The Commission may, however, use such information to propose appropriate measures to a Member State under Article 88(1) in order to alter an existing State guarantee scheme.

⁽⁹⁾ See Case C-39/94 *Syndicat Français de l'Express International (SFEI) and Others v La Poste and Others* [1996] ECR I-3547.