EU — rules on State aid do not allow for export aid

Dagmar HEINISCH, Directorate-General Competition, unit G-1

On 5 March 2003 the Commission took a partly negative decision concerning an export-promotion scheme of the Land of Mecklenburg-Vorpommern and clarified again that even low amounts of export subsidies are not compatible with the Common Market.

Factual description

The trade and export promotion scheme of the Land of Mecklenburg-Vorpommern provided for four different measures: (1) ‘Market-launch activities’ including external consultancy services and workshops, (2) ‘fairs and participation in exhibitions in Germany and abroad’, (3) promotion of ‘offices shared abroad’, which consisted of expenditure directly necessary for the establishment and operation of shared offices, and (4) support for ‘foreign trade assistants’, meaning the gross salary of one foreign sales assistant for a period of one year.

As only small amounts of aid were awarded under the scheme, the Land of Mecklenburg-Vorpommern intended to run the scheme as a de minimis aid scheme.

Assessment

The Commission examined the scheme under its Commission Regulation (EC) No 69/2001 of 12 January 2001 (1) (hereinafter referred to as ‘de minimis-Regulation’). Article 1(b) of this regulation sets a definition of ‘export-aid’ and states explicitly that such export aid is excluded from the benefit of the de minimis rules. Corresponding ‘export-aid’ comprises:

— aid directly linked to the quantities exported,
— aid to the establishment and operation of a distribution network, or
— aid to other current expenditure linked to the export activity.

The Commission investigated whether the four measures under the scheme constitute ‘export-aid’ in the meaning of Article 1(b) of the de minimis-Regulation and came to the conclusion that the first measure ‘market launch activities’ did not fall under the definition of export-aid pursuant to Article 1(b) of the de minimis-Regulation. In fact, according to recital (4) of said regulation (2), such measures do normally not constitute export aid. The word ‘normally’ should make clear that aid for consultancy services is not an absolute safe harbour clause. However, at this point the Commission took the view that external consultancy services under the scheme did not constitute ‘export-aid’ as defined in the de minimis-Regulation.

The Commission decided that the second measure ‘fairs and exhibitions in Germany and abroad’ was also covered by recital (4) of the de minimis-Regulation and thus did not constitute ‘export-aid’ in the meaning of Article 1(b) of this regulation.

The third measure ‘grants for offices shared abroad’ aimed at the establishment of joint-offices in the European Union, the EEA and countries with the official status of a candidate for accession to the EU. Eligible costs were necessary expenditures for the establishment and the operation of shared offices, such as non-fixed office equipment and machines, expenditure on current business necessities and expenditure on foreign staff. The joint-offices had the objective to provide SMEs with information about the foreign market and to set up an initial contact point for SMEs interested in entering this market. The Commission took the view that this kind of aid could be used to set up and to run a commercial trade representation, which might be the start-up for a distribution network abroad. Therefore the measure could be linked to the ‘establishment and operation of a distribution network abroad’, or could constitute ‘aid to other current expenditure linked to the export activity’, both being excluded from the scope of the de minimis-Regulation as representing export-aid.

(2) Recital (4) of the Commission Regulation (EC) No 69/2001 reads as follows: ‘In the light of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (OJ L 336, 23.12.1994, p. 156), 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 normally not constitute export aid.’
The **fourth measure** ‘foreign trade assistants’ provided subsidies for the gross salary of one foreign trade assistant. It had the objective to encourage SMEs to hire staff with necessary language skills and knowledge of international trade in order to support the firms in entering a foreign market. The Commission decided that this measure was per definition a measure, which had to be considered as current expenditure linked to export activities in the meaning of Article 1(b) of the *de minimis*-Regulation.

Finally, the Commission assessed whether the **third and fourth measure**, which both did not comply with the conditions of a *de minimis* aid pursuant to the *de minimis*-Regulation, could be compatible with the Common Market under other State aid rules. The Commission negated this question and concluded that, as a general principle of State aid policy, export-aid cannot be considered as compatible with the Common Market. The Commission is particularly concerned when aid is given for intra-Community exports, since those have the most direct impact on the market of another Member State. Distorting competition by financing an increased presence on the market of another Member State within the EU breaches not only state aid rules, but also Article 10 EC Treaty. It is contrary to the overall economic goal of the Community, which is to set up a homogenous market free from obstacles, restrictions, distortion, and devoted to the principle of an open market economy with free competition. With regard to the case law of the Court of Justice (¹) and to the specific situation of the relevant territories, the same applies to aid measures involving exports from a Member State to the EEA, but also to the candidate countries (²), because the economic interconnection between the Community and the future Member States has permanently increased since the enforcement of the Europe Agreements.

---

(¹) Notably Case C-142/87 Belgium v Commission (*Tubemeuse*), ECR 1990, p. I-00959, paras 31 to 44.

(²) At present the following 13 countries are considered as ‘candidate countries’ since their application to join the European Union has been accepted by the European Council: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, and Turkey – as recognised by the relevant European Councils.