A scheme of the Land of Saxony in favour of small and medium enterprises: a clarification on the application of the block exemption regulation

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On 24 September 2002 the Commission took a final negative decision concerning a scheme of the Land of Saxony as far as the provisions exceed the scope of the Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (1), which has replaced the Community guidelines on State aid for SMEs (hereinafter referred to ‘SME Exemption Regulation’) (2).

Factual description

The scheme provided aid ceilings of up to 65% — 80% for external consultancy measures such as ‘coaching of firms’, ‘co-operation’ and ‘design-promotion’ for small enterprises active in the Land of Saxony, which is an assisted area under Article 87(3)(a) EC Treaty. The Commission considered the measures predominantly to fall into the scope of Article 5 of the SME Exemption Regulation, but the maximum aid amount was not limited to the 50% aid ceiling laid down by it.

Main arguments brought forward by Germany

In its comments Germany referred to recital (4) of the SME Exemption Regulation (1) and took the view that even though Article 5 of the SME Exemption Regulation foresees no higher aid ceilings for aid to small enterprises this does not mean that a more favourable treatment of small firms or assisted regions pursuant to Article 87(3)(a) EC Treaty cannot be approved by the Commission — only that higher aid ceilings have to be notified before.

With reference to the wording of recitals (11) and (14) of the SME Exemption Regulation, Germany argued that in assisted areas higher aid ceilings should be set out for small enterprises than for medium-sized firms. (3) These ceilings should thus exceed the maximum foreseen in the SME Exemption Regulation.

Assessment

The Commission assessed on the basis of Article 87(3)(c) EC Treaty whether or not the additional aid amount exceeding the provisions of the SME Exemption Regulation should be approved with regard to recital (4) of the SME Exemption Regulation. The Commission concluded that for external consultancy measures such as ‘coaching’, ‘co-operation’ and ‘design-promotion’ an aid intensity in excess of 50% would exceed the amount necessary to incentivise undertakings to incur this type of expenditure. In particular the Commission took the view that the fact that the undertaking would be obliged to contribute at least half of the cost for this type of aid should effectively contribute to the efficiency and necessity of the measure envisaged. Consequently the Commission concluded that a higher percentage would adversely affect trading conditions to an extent contrary to the common interest.

The Commission did not follow Germany’s line of reasoning based on recital (11) of the SME Exemption Regulation that a higher aid intensity for external consultancy measures should be available for small undertakings. Recital (11) refers to the specific situation of investment aid outside assisted areas — it does not refer to external consultancy measures. The Commission considered that a single rate of 50% of external consultancy aid is appropriate for all SMEs, whether small or medium sized. Such aid would generally represent a relatively modest amount compared to new investment, and would be in the nature of an one-off cost, bearing in mind that operating aid is according to Article 5 of the SME Exemption Regulation excluded. As such, the Commission would not normally expect SMEs to finance such

(2) The SME Exemption Regulation exempts any aid that, in accordance with Article 87 of the EC Treaty, under certain conditions is compatible with the common market and not subject to the notification requirement of Article 88(3) of the EC Treaty.
(3) Recital (4) of the SME Exemption Regulation reads as follows: ‘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’.
(4) Recital (11) of the SME Exemption Regulation reads as follows: ‘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.’
costs from medium term borrowing. It is mainly in the area of medium term borrowing for the purposes of investment that SMEs experience a disadvantage as a function of their relative size. In this respect, small undertakings experience a greater disadvantage than medium sized undertakings. That is why the Commission considered that a difference in aid intensity is justified in the case of investment aid. But not in the case of external consultancy aid, where that relative disadvantage is less acutely experienced.

The Commission did not agree with Germany that — based on recital (14) of the SME Exemption Regulation (1) — higher aid intensities for external consultancy aid should be available for small firms in assisted regions under Article 87(3)(a) and (c) EC Treaty. Recital (14) refers to the specific situation of investment aid. It does not refer to external consultancy aid. The Commission considered that a single rate of 50% of external consultancy aid is appropriate for all SMEs, whether or not in assisted regions. Such aid does not generally have an immediate nor long lasting impact on regional development nor on job creation, in the way that investment regional aid does. The Commission consequently observed no necessity for higher aid intensities to be available in the Land of Saxony.

(1) Recital (14) of the SME Exemption Regulation states: ‘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 (less favoured) 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.’