New guidelines on national regional aid for 2007 – 2013

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1. Introduction

The compatibility of regional aid with the EC Treaty is governed by the Commission’s regional aid guidelines. The current regional aid guidelines were adopted in 1998 for an unlimited period of time. In April 2003, the Commission decided to apply these Guidelines until 2006, and to proceed to their review for the period after 2006, ‘in due course in order to give the Member States and the Commission time before the end of 2006 to draw up, notify and approve the regional aid maps for the period after 1 January 2007’. These new guidelines should apply for the whole of the next structural fund programming period, from 2007 to 2013.

In order to prepare new guidelines, the Commission has undertaken an extensive consultation process, which began in April 2003. Several discussion papers have been circulated to Member States and placed on the web and two multilateral meetings with experts from the Member States, EEA countries, Romania and Bulgaria were organised in February and September 2005, and numerous meetings have taken place at all levels with representatives of the regions concerned. The Committee of the Regions and the Economic and Social Committee have given an opinion on the review of the guidelines, which has been very largely taken into account. The European Parliament has adopted an own initiative report on the guidelines on 15 December 2005, which was also largely taken into account.


2. Key features of the review of the Guidelines

Two principles have been of fundamental importance, in drafting the Guidelines:

— the need to provide a solid contribution to the cohesion policy of the Union, by ensuring the maximum possible coherence with the structural fund regulations;
— the need to give effect to the conclusions of successive European Councils calling for less and better-targeted aid, following the general approach set out in the State aid action plan.

In line with these principles, the three key features of the new Guidelines are:

(1) The need to re-focus regional aid on the most deprived regions of our Union of 25, and soon to be 27 Member States, whilst allowing sufficient flexibility for the Member States themselves to designate other regions as eligible for support based on local conditions in terms of wealth and unemployment.

(2) The need to improve the overall competitiveness of the Union, its Member States and its regions by means of clearly differentiated and well-balanced aid intensity ceilings, to reflect the importance of the individual regional problems as well as concerns about the spill-overs to the non-assisted areas, and

(3) The need to ensure a smooth transition from the present system to the new approach that gives enough time to adjust and does not put at risk what has been achieved in the past.

In regions which are not eligible for support under the regional aid guidelines, other forms of aid can be given to promote regional development (such as support for R&D, risk capital, training and environmental aid, etc.). As announced in the State Aid Action Plan, these horizontal aids are being reformed, and should allow ample scope for the Member States to implement the regional competitiveness and employment objectives set out in the structural fund regulations, and to address specific market failures that can occur within those regions.

3. Summary of the Guidelines

3.1. Population coverage

The overall population coverage to be eligible for regional aid during 2007-2013 is fixed at 42% of the population of the Community of 25 Member States (EU 25), made up as follows:

— Areas with less than 75% average EU 25 GDP per capita (i.e. areas covered by Article 87(3)(a) of EC Treaty);

— Statistical effect regions (those regions with less than 75% average EU 15 GDP per capita, but more than 75% average EU 25 GDP);

— Economic development regions (regions which are today covered by Article 87(3)(a), but which would no longer qualify, even on an EU 15 basis) and low population density areas (regions with less than 12.5 inhabitants/km²);

— Additional Article 87(3)(c) allocation to allow flexibility for Member States.

In addition, a safety net will be applied to ensure that each Member State maintained a minimum of at least 50% of its current total population coverage for (a) and (c) regions combined. This increases the total coverage to 43.1% of EU-25 population, or 46.6% for EU-27. The total additional 87(3)(c) coverage of 7.8% (6.7% plus the safety net) is allocated between the Member States according to a distribution key that takes variations in GDP and unemployment at national level into account.

The allocations for each Member State are set out in Table 1.

3.2. Aid intensities

In accordance with recent case law, and in order to simplify and improve the transparency of the system, all aid intensities should in future be expressed in terms of gross grant equivalents, in exactly the same way as all other forms of State aid.

The effects of the changes in aid intensity are summarised in Table 2.

3.2.1. Article 87(3)(a)

Because of the huge variation in the relative wealth of the regions eligible under Article 87(3)(a), ranging from 32.2% to 74.9% of EU-25 GDP/cap in order to reflect these differences three distinct categories of 87(3)(a) regions are introduced. The new maximum aid intensities for aid to large companies are:

- < 75% EU-25 GDP/cap: 30%
- < 60% EU-25 GDP/cap: 40%
- < 45% EU 25 GDP/cap: 50%.

The outermost regions (ORs) also receive Article 87(3)(a) status irrespective of their GDP. The ORs with greater than 75% EU-25 average GDP/cap receive an aid intensity of 30% plus a 10% bonus. The others receive the relevant aid intensity above plus a 20% bonus.

In case any region will have an aid intensity reduction of more than 15% net to gross, the reduction may be phased in two stages.

3.2.2. Statistical effect regions

The regions with less than 75% EU-15 GDP/cap (de facto 82.2% EU-25 GDP/cap) will benefit from Article 87(3)(a) status, and a 30% aid intensity for aid to large companies, until 31.12.2010 as well as having the possibility of granting operating aid. The situation of these regions will be reviewed in 2010. If their GDP has declined below 75% EU-25 GDP/cap, they will continue to benefit from Article 87(3)(a). Otherwise, they will be eligible under Article 87(3)(c) with an aid intensity of 20%, as from 1.1.2011. They will have the possibility of granting operating aid until 31.12.2012.

3.2.3. Article 87(3)(c) regions

Low population density regions (<12.5 inhabitants/km²) and regions bordering an Article 87(3)(a) region are always eligible for an aid intensity of 15%. In the case of bordering regions, this may be increased where necessary to ensure that the differential between the two neighbouring regions does not exceed 20%. Other Article 87(3)(c) regions, including both the economic development regions and regions designated by Member States are eligible for an aid intensity of 10% or 15% depending on the relative wealth of the region.

Member States are allowed a wide margin of discretion in designating regions to be eligible for aid under Article 87(3)(c). However, apart from economic development regions and low population density areas, only regions that have a certain minimum size or homogeneity or face particular challenges (e.g. islands and border zones) will be eligible for aid for large companies. Other regions, which do not meet these conditions, will only be eligible for higher rates of aid for SMEs.

3.2.4. SME bonuses

A bonus of 20% will be allowed for aid for small enterprises and 10% for medium-sized enterprises in all assisted areas.

3.2.5. Transitional provisions for the economic development regions

Since these regions may have the highest reductions in aid intensity (in some cases from 40% net to 10% gross) the necessary reductions are to be implemented in two stages, on 1.1.2007 and 1.1.2011.

3.2.6. Transitional phasing out for existing Article 87(3)(c) regions

A further transitional provision allows the Member States concerned the possibility to continue to give regional aid in up to two-thirds of the
regions which will otherwise lose their eligibility under Article 87(3)(c) at an intensity of 10% until 1.1.2009.

3.3. Changes to the rules on investment aid

A number of other detailed changes introduced to the current rules on regional investment aid, in particular to improve the effectiveness of such aid, clarify the current rules, or in some cases, to simplify them. The main changes are presented hereinafter:

(1) **Definition of investment and eligible expenses**

The notions of ‘initial investment’ and ‘eligible expenditure’ have been clarified. Thus, an investment will be eligible for investment aid if there is a diversification of the output of the existing establishment into new, additional products or if there is a fundamental change in the overall production process of an existing establishment (2).

As far as the eligible expenditure is concerned, the eligibility conditions for assets under lease have been clarified (3) and the consultancy costs for SMEs have been included in the Guidelines (4). Furthermore, the Guidelines provide for more generous conditions for the eligibility of investments in intangible assets by large companies (5).

(2) **Incentive effect**

The new Guidelines introduce stricter rules on the incentive effect of the aid, in order to ensure that regional aid produces a real incentive effect to undertake investments which would not otherwise be made in the assisted areas. Aid may only be granted under aid schemes if the beneficiary has submitted an application for aid and the authority responsible for administering the scheme has subsequently confirmed in writing that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project. An express reference to both conditions must also be included in all aid schemes. If work begins before these conditions are fulfilled, the whole project will not be eligible for aid.

(3) **Integration of the MSF 2002 into the Guidelines**

The provisions of the multi-sectoral framework have been integrated in the Guidelines, with a more flexible approach to the assessment of large-scale projects. In the context of improving the economic approach to state aid cases, in particular to large investment projects, not only in traditional but also in more innovative sectors, the rules for the assessment of these projects have been amended. In particular:

- A safe harbour will exist for individually notifiable projects, provided that the Member State can demonstrate that they meet the conditions of the RAG and remain below the cut-offs in terms of market share and capacity increase as defined in point 68 of the new Guidelines.

- Where a project exceeds the cut-offs defined in point 68 of the new Guidelines, or where serious difficulties arise in defining the relevant market, the Commission will systematically open a formal investigation to collect information for a detailed economic assessment of the aid. The Member State concerned will be expected to provide at least:
  - a demonstration of the necessity and incentive effect of the aid on the localisation of the investment;
  - a justification of the contribution of the project to regional development, for example in terms of job creation, clustering effect, value added, and other positive spill-over effects for the assisted region, the Member State or the Community as a whole;
  - the information necessary to analyse the distortions of competition created by the measure and its effects on trade between Member States.

If the overall proportionality assessment of the measure is positive, the Commission can approve the aid, although possibly with a lower aid intensity than the maximum allowed under the Guidelines. The Commission would aim to close the procedure within six months, provided all parties involved cooperated fully with the investigation. The Commission will issue Guidance on the criteria it will take into account during this assessment during 2006.

This dynamic approach will give more flexibility to Member States and to the Commission and is in line with the Commission’s commitment in integrating more economics in its analysis.

(4) **Cumulation of aid**

More detailed rules on cumulation of aid are introduced in the new Guidelines. In particular, regional investment aid may not be cumulated with de minimis support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the guidelines.

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(2) Paragraph 34 of the RAG.
(3) Paragraph 53 of the RAG.
(4) Paragraph 51 of the RAG.
(5) Paragraph 55 of the RAG.
(5) Border regions

The new Guidelines foresee that regions or parts of regions adjacent to Article 87(3)(a) regions are eligible for support. Thus, the aid differential in border regions is limited to 20%, regions adjacent to 87(3)(a) regions are eligible for support and the investment has to be maintained in the assisted region for 5-years. With these provisions Member States can tackle the problem of border regions and in particular the risk of local delocalisation, which might be induced by too high aid differentials in adjacent regions.

3.4. Operating aid

The forms of operating aid allowed under the current guidelines will continue to apply, and a new form of operating aid will be permitted to combat depopulation in the lowest population density regions (<8 inhabitants km²). In addition, a safe harbour is created for operating aid in the outermost regions of up to 10% of the turnover of the company.

Regions which lose eligibility to grant operating aid will be allowed a period of two years from the date of loss of eligibility in which to phase out the aid.

3.5. Aid for newly created small enterprises

A new form of aid is envisaged to encourage business start-ups in the assisted areas. This will allow aid to be given to support costs of starting a business that are not currently eligible for aid. The aid will be limited to the establishment and expansion phases of small enterprises for the first five years and can be combined with investment aid.

TABLE 1 — REGIONAL AID COVERAGE, 2007 – 2013

<table>
<thead>
<tr>
<th>Region Type</th>
<th>Coverage In %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 87(3)(a) Large companies</td>
<td>0-15%</td>
</tr>
<tr>
<td>Stat. effect Large companies</td>
<td>10-40%</td>
</tr>
<tr>
<td>Ec dvp + lpd Large companies</td>
<td>20-50%</td>
</tr>
<tr>
<td>Other (c) Large companies</td>
<td>10-30%</td>
</tr>
<tr>
<td>Total</td>
<td>50-80%</td>
</tr>
</tbody>
</table>

NB: Estonia, Latvia, Lithuania, Malta, Poland and Slovenia all have 100% coverage under Article 87(3)(a) and are therefore omitted from the table, but are included in the EU-25 total. Bulgaria and Romania will also have 100% coverage under Article 87(3)(a) and are included in the EU-27 totals.

Transitional phasing-out provisions apply for existing 87(3)(c) regions.

TABLE 2 — REGIONAL AID INTENSITIES

<table>
<thead>
<tr>
<th>Region Type</th>
<th>2000-2006 NGE</th>
<th>2007-2013 GGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 87(3)(a) Large companies</td>
<td>40-50%</td>
<td>30%</td>
</tr>
<tr>
<td>&lt; 75% EU-25 GDP/cap</td>
<td>50%</td>
<td>40%</td>
</tr>
<tr>
<td>&lt; 60% EU-25 GDP/cap</td>
<td>50%</td>
<td>40%</td>
</tr>
<tr>
<td>&lt; 45% EU-25 GDP/cap</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Outermost regions Large companies</td>
<td>50% – 65%</td>
<td>40% – 60%</td>
</tr>
<tr>
<td>Statistical effect Large companies</td>
<td>40%</td>
<td>30% → 20%</td>
</tr>
<tr>
<td>Economic development Large companies</td>
<td>40%</td>
<td>15/10%* (subject to transitional provisions)</td>
</tr>
<tr>
<td>Low population density Large companies</td>
<td>30/20%</td>
<td>15%*</td>
</tr>
<tr>
<td>Other Article 87(3)(c) Large companies</td>
<td>20/10%</td>
<td>15/10%*</td>
</tr>
<tr>
<td>Small enterprises</td>
<td>+ 15% (a) + 10% (c)</td>
<td>+ 20%</td>
</tr>
<tr>
<td>Medium enterprises</td>
<td>+ 15% (a) + 10% (c)</td>
<td>+ 10%</td>
</tr>
</tbody>
</table>

# These are the maximum intensities theoretically possible under the 1998 RAG (taking account of regional disparities in the EU-15). Actual aid intensities, as laid down in the approved regional aid maps, are frequently lower.

* Subject to special provisions for border regions.