REVIEW OF THE REGIONAL AID GUIDELINES

Non-Paper from the services of DG Competition for discussion at a first Multilateral Meeting with experts from the Member States

1. INTRODUCTION

Following informal bilateral contacts with Member States during 2003, a first consultation paper containing initial ideas for future Guidelines for Regional Aid (hereafter RAG) was sent by DG COMP to all Permanent Representations and to ESA on 30 April 2004, requesting comments from their experts by 30 June and indicating our willingness to discuss the paper bilaterally.

22 of the Member States have now reacted in writing. In addition, some 40 meetings with representatives of Member States, regions and regional organisations have taken place. ESA and Norway have also sent written comments.

All the written comments received have been made available via CIRCA. The consultation paper has also been put on the DG COMP website in the 11 existing language versions and made widely available to interested parties. A large number of regions and their organisations have submitted their views.

Following a careful analysis of the comments received, this paper sets out in summary form for discussion in a first multilateral meeting with experts from the Member States the key provisional conclusions which the services of DG COMP have drawn from the consultation process so-far. In the light of the outcome of that discussion, and further written comments to be presented by Member States no later than 1 March 2005, the services of DG COMP intend to produce a detailed proposal for the new RAG which will be the subject of further bilateral contacts and consultations with Member States at a second multilateral meeting to be held later in 2005.

In order to encourage further contributions from other interested parties, this document will also be placed on CIRCA and on the web-site of DG COMP.

2. THE BROADER CONTEXT OF THE RAG REVIEW

The RAG review must not be approached as an isolated issue, but has to be conceived as an integral part of a general reform of state aid policies designed to give a practical effect to the conclusions of the European Council calling for less and better targeted State aid. This implies a strict control on the potentially more distortive forms of aid while allowing Member States a sufficient degree of flexibility to design aid measures to promote the realisation of the objectives and targets set as part of the process of implementing the Lisbon Agenda.

In its Communication of 20 April 2004 on a Proactive Competition Policy for a Competitive Europe, the Commission set out the key elements of a legislative programme which is intended to ensure the review of practically all the State aid instruments, with the exception of the environmental aid guidelines, before the end of 2006. In addition to the review of the RAG, the key elements of this programme are:

- a communication on State aid and innovation (by mid 2005); in principle this communication will essentially be a consultation document which would set out the main changes to the State aid rules necessary in order to achieve a more innovation-friendly system, which would then be implemented through changes to the rules on regional aid, R&D, risk capital, SMEs etc.
- review of the research and development guidelines (by end 2005)
- review of the communication on risk capital (by end 2005)
- to simplify all the existing block exemptions (covering SMEs, including research and development for SMEs, employment aid and training aid) into a single regulation and consolidate them, including a new exemption for certain types of regional aid (adoption of a detailed draft regulation by the Commission before the end of 2005, with a view to completing the legislative procedure by the end of 2006)
- the need for further procedural reform to be analysed in particular in the light of any experience acquired under the implementing regulation which is currently entering into force.

In addition draft measures relating to State aid and services of general economic interest have been proposed by the Commission and are currently under consideration by the European Parliament.

The Commission/services of DG COMP intend to further elaborate their ideas on the necessary changes to the horizontal State aid rules which should apply throughout the territory of the European Union after 2006 in a communication to be transmitted to Member States as soon as possible.

3. KEY PROPOSALS FOR THE NEW RAG

The proposals for the review of the RAG set out below are based on two main principles; a very strict concentration of regions eligible for regional aid on the regions most in need and a substantial reduction of aid intensities for regional investment projects.

3.1. Definition of Article 87(3)(a) regions

Article 87(3)(a) regions will be those with 75% or less of the EU-25 average GDP per capita measured in purchasing power standards. For the purpose of establishing aid intensities, these regions will be sub-divided into three groups:

- regions with 45% or less EU average GDP per capita;

- regions with more than 45% but 60% or less;

- regions with more than 60% but 75% or less.

In anticipation of the entry into force of Article III 56 (3)(a) of the Constitution, the outermost regions will also automatically receive Article 87(3)(a) status.

In line with the Third Cohesion Report and in order to avoid statistical anomalies, compliance with the 75% criterion should be assessed at NUTS II level, on the basis of EU 25.

3.2. Definition of Article 87(3)(c) regions

Three categories of regions will be earmarked as eligible for aid under Article 87(3)(c):

- current Article 87(3)(a) NUTS-II regions with more than 75% EU-25 average GDP per capita, but 75% or less EU-15 average GDP per capita ("the statistical effect regions"): regions which did not have Article 87(3)(a) status in 2000-2006 but which would qualify for this status after 2006 on an EU-15 basis will also qualify as statistical effect regions;

- current Article 87(3)(a) NUTS-II regions with more than 75% or EU-15 average GDP per capita ("the economic development regions");

- low population density NUTS-III regions with a population of less than 12.5/km² as defined in the Commission Notice of 10.12.1994.

3.3. Other regions

All other regions will be excluded from receiving regional aid, but see further point 5 below.

3.4. Aid intensities

The aid intensities proposed for regional aid are set out in Annex I.

In order to simplify the administration of aid schemes by the public authorities, taking account of the uncertain tax treatment of aid in some cases, as well as the case law of the Court, it is proposed that all aid intensities should be expressed as gross grant equivalents.

3.5. Operating aid

Temporary and degressive operating aid will continue to be allowed in Article 87(3)(a) regions provided it addresses clearly defined bottlenecks in regional development and is proportionate. The burden of adducing evidence to demonstrate that these conditions are met will rest with the Member State and will be subject to rigorous economic analysis by the Commission and control of cumulation.

Transport operating aid which is not temporary or degressive will continue to be allowed in the outermost regions and the low population density regions (< 12.5 inhabitants/km²) in accordance with the conditions of the current guidelines.

In the outermost regions aid which is not both progressively reduced and limited in time will continue to be permitted in accordance with the conditions fixed in point 4.16.2 of the current RAG as amended on 9.9.2000.

In addition, the least populated regions (< 8 inhabitants/km²) will be allowed, subject to periodic review, to grant other forms of operating aid to counter the depopulation of these regions.

3.6. Eligible expenses

In the light of the comments received, DG COMP proposes to leave the definition of initial investment largely unchanged. However, when drafting the guidelines themselves for consultation at a second multi-lateral, DG COMP may bring forward suggestions to clarify the distinction between initial investment and replacement investment, having regard, in particular to the ongoing reflections on innovation. Consideration will also be given to the possibility to use a balance sheet approach to the definition of eligible expenses.

In addition it is proposed to exclude the transfer of plant or equipment within the same multinational group of companies from eligible expenses.

It is also proposed to amend the definition of intangible investment costs to explicitly include the costs of feasibility studies and advice.[1]

3.7. Relocation or displacement investment

The current regional aid guidelines impose an obligation on enterprises to maintain an aided investment within the region for 5 years. The Commission's proposals for the structural funds regulations include provisions to penalise relocations within 7 years of an aided investment. On the other hand, in the employment context, Regulation (EC) 2204/2002 only requires the maintenance of aided jobs for 3 years, or two years in the case of SMEs.

While a seven year rule may appear appropriate in order to avoid delocalisation, some concern has been expressed that, if applied in a State aid context, such a rule could in fact prove counter-productive in creating unduly rigid investment and employment conditions within the EU, particularly in sectors subject to rapid technological change. According to the latter school of thought, it would be more appropriate to maintain the current 5 year rule for State aid control purposes. Moreover, it may be necessary to consider a differentiated approach with a strict rule for all/large-scale investments by large companies and a more flexible approach for SMEs.

Accordingly DG COMP would welcome further comments on this issue as well as on the question of whether the RAG should provide more detailed rules for the recovery of aid in case the obligations are not respected.

3.8. Integration of the MSF into the RAG

In view of the general support expressed by Member States on this point, DG COMP is maintaining its proposal to integrate the Multi-Sectoral Framework 2002 into the RAG.

[1] In addition, the costs of feasibility studies and advice prepared by outside consultants for SMEs are eligible for aid of up to 50% under Regulation (EC) 70/2001.

In order to prepare a more detailed proposal for discussion at a second multilateral, DG COMP would specifically seek further comments on the need to maintain transitional provisions for the motor vehicle and synthetic fibres sectors (section 8 of the MSF) after 2006 as well as on the need for special arrangements for the treatment of investment projects in other sectors with structural problems (section 5 of the MSF).

3.9. Block exemption of regional investment aid

Member States have expressed general support for the proposal to exempt transparent forms of regional investment aid from prior notification to the Commission, in order to reduce administrative formalities to a minimum.

For legal and procedural reasons, such an exemption cannot be included in the RAG themselves, but will require a second legal instrument, a Commission Regulation to be adopted in accordance with the procedures laid down in Regulation (EC) 994/1998. As indicated in the introduction to this non-paper, at this stage DG COMP envisages that this exemption will constitute part of a wider State aid exemption regulation which will also cover aid for SMEs, training, employment, R&D etc.

As regards the scope of the exemption, the services of DG COMP seek comments on the following proposals which would apply subject to any specific provisions applicable to sensitive sectors:

- transparent regional initial investment aid schemes in Article 87 3 (a) and (c) regions which respect the conditions laid down in the RAG would be exempted from notification;

- individual aid awarded under those schemes would be exempted from notification up to the thresholds set out in point 21 of MSF 2002.

- in addition to the general monitoring obligations under the exemption regulations, the transparency procedure set out in section 6 of MSF 2002 would continue to apply in the case of aid under existing schemes for investments above € 50 million.

- ad hoc aid which meets the conditions of the RAG would be exempted from notification if (1) the investment does not exceed € 25 million and (2) the market share of the beneficiary, defined at the EEA level, does not exceed 10%. In addition to the general monitoring obligations under the exemption regulations, a new transparency procedure, modelled on that set out in section 6 of MSF 2002, would apply in the case of aid for investments above € 10 million.

4. NON-INVESTMENT AID IN ELIGIBLE REGIONS

The new RAG will define the aid intensities for investment and employment aid for large companies and SMEs in the assisted areas.

However, some of the State aid guidelines and frameworks relating to non-investment aid also provide for higher aid intensities inside the assisted areas. This is particularly the case for the training aid block exemption, the research and development framework, the environmental aid guidelines and the risk capital guidelines. During the review of these instruments, the Commission will re-consider whether such higher intensities continue to be justified for the Article 87(3)(a) regions and the ear-marked Article 87(3)(c) regions, defined in points 3.1 and 3.2 above.

5. AID IN REGIONS NOT ELIGIBLE FOR REGIONAL AID

Unsurprisingly, many of the comments of the Member States most directly concerned focus on the situation in those regions which will no longer be eligible for regional aid under the proposals outlined above. A variety of proposals have been put forward to address this problem, most of which require the maintenance after 2006 of some form of investment aid for large companies outside of the assisted areas as defined above.

DG COMP has examined these comments carefully, in the light of the policy orientations laid down by the European Council which call both for a reduction in overall aid levels and the better targeting of aid measures towards measures which promote the overall competitiveness of the European economy.

During the consultation process concerns have been expressed about the distortive effect on competition of investment aid for large companies which has to be balanced against the ambiguous results of the studies which have been undertaken on the effectiveness of such aid in promoting overall competitiveness. It therefore appears entirely appropriate that for equity reasons regional investment aid should be targeted exclusively on the poorest regions of the Community, and that any aid which is given to large companies outside of those regions should be to support measures which are more directly linked to the realisation of the objectives of the Lisbon Agenda, in particular through support for research, development and innovation, as well as for training and attracting skilled workers.

As mentioned above, in the Communication on a proactive competition policy, the Commission has committed itself to a wide-ranging review of the rules governing State aid for research and development, and to examine in detail the relationship between State aid and innovation as well as the risk capital rules. As a first step in this process, a vade-mecum on State aid and innovation has been transmitted by the services of the Commission to the Council and Member States and further work will be undertaken in parallel with the review of the RAG.

Furthermore, it is generally recognised that large companies do not face the same difficulties in obtaining funding as SMEs, and it is for this reason that the Lisbon Agenda itself focuses on support for SMEs. These make up over 99% of all enterprises in the EU (in 2003 around 19.3 million SMEs in the EEA and Switzerland, compared to around 40,000 large companies). SMEs contribute over 65% of EU GDP and over two-thirds of employment (compared with 33% in Japan and 46% in the US). Aid for investment outside of the poorest regions should therefore focus on the needs of this category of enterprise, and it is in this context that a significant increase in the aid intensities available to support investments by SMEs is envisaged. Other proposals for change will be examined during the review of the SME regulation.

It is DG COMPs intention that the review of these instruments, which will also include the development of further proposals for aids which will not significantly affect competition at Community level, should provide the basis for the development of policies adapted to the specific needs of each region, without the need for further spatial differentiation at Community level going beyond what is envisaged in this paper.

6. NEXT STEPS

As indicated above, Member States are invited to transmit any further written comments on this paper before 1 March 2005.

Thereafter it would be the objective of the services of DG COMP to circulate draft guidelines in early May 2005 for discussion at a second multilateral which would take place in mid-June 2005, so that the new RAG can be adopted by the Commission in September 2005.

Annex I
Table of proposed aid intensities

Region	Large enterprises			Medium-sized enterprises			Small enterprises		
Article 87(3)a)[2] ≤ 45% GDP	40%			50%			60%		
Article 87(3)a)[2] 45.01% - 60% GDP	35%			45%			55%		
Article 87(3)a) 60.01% - 75% GDP	30%			40%			50%		
Article 87(3)c) "statistical effect"	1.1.07	1.1.10	1.1.12	1.1.07	1.1.10	1.1.12	1.1.07	1.1.10	1.1.12
	30%	22.5%	15%	40%	32.5%	25%	50%	42.5%	35%
Article 87(3)c) low population density	20%			30%			40%		
Article 87(3)c) "economic development"	15%			25%			35%		
Non-assisted areas	0			10%			20%		

Outermost regions are all eligible to Article 87(3) a). Furthermore, outermost regions with a GDP/capita higher than 60% are entitled to a bonus of 10 %, those with a GDP/capita below 60% are entitled to a bonus of 15%.

2 [Where the difference in regional aid intensities between an assisted region in one Member State and a region in another Member State with which it shares a land border exceeds 30%; the regional aid intensity in the former region (identified at the NUTS-III level) shall be limited to 30% above the regional aid intensity in the latter region.]