COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION STAFF PAPER

PRELIMINARY DRAFT

Proposal for a

COUNCIL REGULATION

Amending 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

(presented by the Commission)

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EXPLANATORY MEMORANDUM

1) Objective and context of the proposal

To ensure efficient supervision and simplify administration without weakening Commission monitoring, 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\(^1\) allows the Commission to declare by means of regulations that certain categories of aid are compatible with the common market and are exempted from the notification requirement provided for in Article 88(3) of the Treaty. The categories concerned include de minimis aid,\(^2\) aid to small and medium-sized enterprises, for research and development, environmental protection or employment and training, and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid.

In its state aid action plan,\(^3\) published in June 2005, the Commission initiated consultations with interested parties\(^4\) and presented a roadmap for reform of the state aid system over the period 2005-2009 which it would conduct in close cooperation with Member States and all stakeholders.

The Commission indicated in the action plan that it would assess the need to extend the scope of Council Regulation (EC) No 994/98 to enable it to exempt further categories of aid, e.g. aid for culture and heritage conservation, from the notification requirement. The need to extend the scope of the enabling regulation is noted in the evaluation report on its implementation, which the Commission is required to submit to the European Parliament and the Council every five years pursuant to its Article 5\(^5\). This report highlights the need to extend the scope of the current exemption regulations in order to reduce the requirements of notification, while ensuring that the regulations concerned cover only aid categories that do not give rise to serious difficulties as regards competition.

**State aid in the culture and heritage conservation sectors**

The current Council Regulation No 994/98 authorises the Commission to adopt an exemption regulation for all categories of state aid to SMEs. On this basis, therefore, the Commission could exempt state aid granted to SMEs in the culture and heritage conservation sectors from the notification requirement. Yet the real usefulness of an exemption regulation to this effect would be limited, as the recipients of state aid, particularly in the cinema and audiovisual sectors, are often large companies. It would generate a substantial workload for the Commission and Member States even though these are often routine cases with low budgets;

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\(^2\) Exemption is possible in this case under Article 2 of Regulation (EC) No 994/98.
\(^3\) EUR-Lex site, http://europa.eu.int/eurlex/lex/Result.do?code=52005DC0107&Submit=Search&RechType=RECH&RechLex=ex&Submit=Search
\(^5\) When drafting the report, the Commission based its evaluation on questionnaires concerning the experiences of the EU Member States and EFTA countries, and on the conclusions of the multilateral meeting of 27 June 2006 with the Member State authorities. The report was submitted for consideration by the Advisory Committee on State Aid on xx.xx.2006.
some small projects (films of a personal nature or high cultural significance and low-budget films) can even be produced by large companies, but their monitoring does not justify a substantial investment in resources by the Commission. In the light of its experience of processing notifications, the Commission believes that it should be possible in some cases, subject to certain conditions, to exempt the aid measures in question from notification, and that Council Regulation No 994/98 should be amended accordingly.

**State aid in relation to natural disasters**

For the same reasons as above, Council Regulation No 994/98 authorises the Commission to exempt state aid granted to SMEs in relation to natural disasters from the notification requirement, but does not allow aid to large companies to be covered.

In recent years, several major floods have occurred in Europe and necessitated the financial intervention of Member States. When such situations arise, Member States must be able to adopt measures and rapidly disburse aid to the firms concerned. The prior notification requirement not only entails a significant administrative workload for the relevant departments of the Commission and Member States, but also imposes absolute time-limits for aid payments to the firms concerned. However, experience of processing such notifications suggests that the risk of serious distortion of competition is limited.

In general, aid granted to large companies is likely to cause more serious distortions of competition and the financial difficulties caused by natural disasters are generally less severe than they are for SMEs. However, if the aid is clearly defined, limited to material damage caused in the disaster and for an amount verified by an independent body, exemption from the notification obligation would be justified. Council Regulation No 994/98 should be amended accordingly to cover these categories of state aid.

**State aid in the agricultural sector**

Article 36 of the EC Treaty specifies that the rules on competition apply to production of and trade in agricultural products, otherwise known as Annex 1 products, only to the extent determined by the Council. In contrast to other sectors, the Commission’s authority to control and supervise state aid in the agricultural sector does not, therefore, derive directly from the Treaty, but from legislation adopted by the Council under Article 37 and is subject to any restrictions which may have been laid down by the Council. In practice, however, all the regulations establishing the common market organisations provide for the application of the state aid rules of Articles 87 to 89 of the Treaty to the products concerned. Consequently, it is appropriate to apply the same procedural rules to the agricultural sector as to the other sectors.

Council Regulation No 994/98 authorises the Commission to exempt from the notification requirement state aid granted to SMEs for the production, processing and marketing of agricultural products within the meaning of Commission Regulation (EC) No 1/2004 of 23 December 2003, currently being revised. However, this regulation does not cover aid granted to firms larger than SMEs. The Commission’s past experience in this area is that it receives many agricultural state aid notifications relating to firms other than SMEs which are ineligible for exemption from the notification requirement, even though the aid budget is low.

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Council Regulation No 994/98 should be amended accordingly to cover these categories of state aid.

**State aid having a social character in the transport sector**

Article 87(2)(a) deems aid having a social character, granted to individual consumers, as compatible with the common market provided that it is granted without discrimination related to the origin of the products concerned.

Over the last ten years, the Commission has seen a sharp increase in notifications of aid having a social character in the transport sector, which has led to an increase in the administrative burden on Commission and Member State departments. However, the Commission’s experience of aid having a social character in the transport sector has shown that, given compliance with the principle of non-discrimination in relation to the origin of the products or services and the choice of the categories of beneficiary consumers, such projects do not raise any special difficulties. Consequently, the Commission believes that, subject to certain conditions, it should be possible to exempt such aid from the notification requirement, including aid for large companies, and that Regulation (EC) No 994/98 should be amended accordingly.

**Provisions concerning transparency**

In its state aid action plan, the Commission indicated its intention to increase transparency in the area of state aid, while avoiding unnecessary administrative burdens and ensuring effective monitoring of the cases most likely to adversely affect competition. The Commission’s evaluation report on the application of the enabling regulation also highlights the Member States’ wish that the introduction of exemption regulations should not go hand-in-hand with excessive administrative burdens.

Article 3(2) of Regulation No 994/98 comments in this respect, “On implementation of aid systems or individual aids granted outside any system, which have been exempted pursuant to such regulations, Member States shall forward to the Commission, with a view to publication in the Official Journal of the European Communities, summaries of the information regarding such systems of aid or such individual aids as are not covered by exempted aid systems.”

In 1998, when Regulation No 994/98 was adopted, the publication of these summaries in the Official Journal was the most appropriate means available. However, in view of the substantial increase in language versions required following the successive enlargements and

the development of new electronic communications media, the Commission believes that publication of the summaries on the Commission's website would help to increase transparency, shorten publication deadlines and reduce the administrative workload. Nowadays it is easier for interested parties, particularly businesses, to consult the Commission’s website than the Official Journal to keep abreast of the latest news on state aid.

The obligation to publish the above summaries in the Official Journal should therefore be replaced by the obligation to publish on the Commission’s website.

**Provisions on monitoring**

Article 3(3) of Regulation No 994/98 provides that “Member States shall record and compile all the information regarding the application of the group exemptions. If the Commission has information which leads it to doubt that an exemption regulation is being applied properly, the Member States shall forward to it any information it considers necessary to assess whether an aid complies with that regulation.”

As indicated in the state aid action plan, the Commission intends to considerably broaden the scope of the exemption regulations and thereby reduce the Member States' administrative workload associated with notifications. However, removing the notification requirement will entail a loss of visibility for the Commission before the aid is granted. The Commission should therefore carry out appropriate, but effective retrospective checks to ensure actual compliance with the relevant Community law provisions. The checks should be conducted on a random basis in the different fields of activity covered by the exemption regulations. For these checks to be effective, the Commission must be able to request information from the Member States concerning the conformity of certain aid measures even if it does not possess evidence leading it to doubt whether a regulation is being applied properly.

The Commission therefore considers that the abovementioned provisions in Article 3(3) should be amended accordingly.

Article 3(4) of Regulation 994/98 states that "At least once a year, Member States shall supply the Commission with a report on the application of group exemptions, in accordance with the Commission's specific requirements, preferably in computerised form." In view of the development of new electronic communications media, the Commission believes that the fastest and most effective way to transmit the abovementioned report to the Commission now is to send it in electronic form.

Instead of having the option of sending the annual report electronically, in accordance with the Commission's specific requirements, the Member States should therefore be required to transmit the report to the Commission in electronic form.

**Provisions relating to the procedure for the adoption of exemption regulations by the Commission**

Pursuant to Article 8 of Regulation No 994/98, before adopting an exemption regulation, the Commission must:

- consult the Advisory Committee on State Aid about a draft regulation;

- publish the draft to enable interested parties to submit their comments within a time limit which may not be less than one month;
- consult the Advisory Committee on State Aid about the draft once again.

The consultation takes place at a meeting held no earlier than two months after the documents have been sent to the Member States. This period may be reduced for the second consultation or when urgent or if a regulation is simply being extended.

In its state aid action plan, the Commission indicated its desire to cut red tape, reduce the number of aid measures notified and speed up the decision-making process. The procedure therefore needs to be simplified, while ensuring full cooperation with the Member States.

The obligation to hold two meetings with representatives of the Member States, as laid down in the current regulation, entails delays and considerable cost.

There does not appear to be any need to arrange meetings when an existing regulation is simply being extended or minor amendments introduced, e.g. adjustments for new legal instruments, the repeal of obsolete provisions, updating of monitoring arrangements, etc. In such cases it is proposed to dispense with the meeting held prior to the publication of a draft regulation for comments. After considering the comments received following publication of the draft, the Member States need to be consulted, but there is no need to organise a meeting. It is proposed to replace this meeting by a written consultation procedure for Member States, although, if a majority of Member States request, provision for holding a meeting would be justified.

Where a new regulation is to be adopted or substantial amendments made, the first meeting with the Member States prior to publication of a draft should also be waived. After consideration of the comments received following publication of the draft, the Member States should be consulted. Provision should also be made for a second meeting if a majority of Member States require one.

In the interests of greater transparency, the Commission also considers it necessary to publish all draft regulations on its website to give interested parties the opportunity to comment. The drafts should be sent to the Member States electronically to speed up the flow of information.

2) Consistency with the Union's other policies and objectives

This proposal is consistent with the overall objectives of the Union, particularly implementation of the Lisbon strategy. It is also in keeping with the state aid reform process covering the period 2005-2009, drawn up in answer to the new challenges arising under the fresh start for the Lisbon Strategy. In its state aid action plan, the Commission outlined the guidelines of the state aid reform and indicated how it proposed to use the state aid rules in the EC Treaty to encourage Member States to contribute to the strategy for growth and jobs.

In order to achieve the objectives of the strategy, the Commission proposes simplifying and rationalising the current rules and cutting red tape so as to reduce the number of aid measures that have to be notified and speed up the decision-making process. This proposal is accordingly fully consistent with the goal of better regulation.

(3) Legal aspects

- Legal basis
The legal basis of this proposal is Article 89 of the EC Treaty which allows the Council to make any appropriate regulations, in particular so as to determine the conditions in which Article 88(3) shall apply and the categories of aid exempted from this procedure. The Council must decide by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

- **Subsidiarity and proportionality**

  The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

  The present initiative does not go beyond what is necessary to achieve its objective and, therefore, complies with the proportionality principle.

- **Choice of instruments**

  Proposed instrument: regulation.

  The regulation is the only appropriate legal instrument for the purposes of amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal state aid.

2) **Budgetary implication**

  The proposal has no implication for the Community budget.
Proposal for a  

COUNCIL REGULATION  

amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal state aid

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 89 thereof,

Having regard to the proposal from the Commission,8

Having regard to the opinion of the European Parliament,9

Having regard to the opinion of the European Economic and Social Committee,10

Having regard to the opinion of the Committee of the Regions,11

Whereas:

(1) 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,12 allows the Commission to declare by means of regulations that certain categories of aid are compatible with the common market and are exempted from the notification requirement. One such category includes aid to small and medium-sized enterprises.

(2) Where no exemption regulation exists, Member States are currently required to notify the Commission of draft state aid measures in the culture and heritage conservation sector. In the Commission's experience, such notifications tend to relate to projects which do not give rise to any significant difficulties as regards state aid policy. In some cases, subject to certain conditions, these draft aid measures could therefore be exempted from notification.

(3) Regulation (EC) No 994/98 authorises the Commission to exempt aid from notification in the culture and heritage conservation sector only where it is granted to small and medium-sized enterprises. The recipients of aid in this field, particularly in the cinema and audiovisual sectors, are often large companies, yet some small projects

8 OJ C [...], […], p. […].
9 OJ C […], […], p. […].
10 OJ C […], […], p. […].
11 OJ C […], […], p. […].
(films of a personal nature or high cultural significance and low-budget films), even if produced by a large company, do not justify a substantial investment in resources by the Commission for the purposes of monitoring. To avoid unnecessary state aid notification procedures and allow the Commission to focus on the types of state aid that most distort competition, the scope of Regulation (EC) No 994/98 should therefore be extended to include aid measures which promote culture and heritage conservation.

(4) Where no exemption regulation exists, Member States are also obliged to notify the Commission of state aid projects related to natural disasters. In the Commission's experience, such notifications tend to relate to projects which do not give rise to any significant difficulties as regards state aid policy. Moreover, the firms concerned often face serious economic difficulties which require an early intervention by the Member States. Subject to certain conditions therefore, these projects could be exempted from notification.

(5) Regulation (EC) No 994/98 authorises the Commission to exempt aid in relation to natural disasters from the notification requirement only where granted to small and medium-sized enterprises. In the event of natural disasters, however, most Member States put aid schemes into place which cover all enterprises. Moreover, although aid to large companies is likely to cause more serious distortion of competition than aid to small and medium-sized enterprises, it can still be exempted from the notification requirement subject to certain conditions that would avoid the unjustified granting of aid. The scope of Regulation (EC) No 994/98 should therefore be extended to include aid for making good the damage caused by natural disasters.

(6) Regulation (EC) No 994/98 authorises the Commission to exempt from the notification requirement state aid granted to SMEs for the production, processing and marketing of agricultural products within the meaning of Commission Regulation (EC) No 1/2004 of 23 December 2003, currently being revised. However, this regulation does not cover aid granted to firms larger than SMEs. The Commission’s past experience in this area is that it receives many agricultural state aid notifications relating to firms other than SMEs which are ineligible for exemption from the notification requirement, even though the aid budget is low. Regulation (EC) No 994/98 should be amended accordingly to cover these categories of state aid too.

(7) Where no exemption regulation exists, Member States are also obliged to notify the Commission of draft aid schemes having a social character, particularly in the transport sector. Given compliance with the principle of non-discrimination in relation to the origin of the products or services and the choice of the categories of beneficiary consumers, however, experience in this sector shows that such projects do not raise any special difficulties. The scope of Regulation (EC) No 994/98 should be extended accordingly to facilitate the implementation, subject to certain conditions, of aid schemes having a social character in the transport sector.

(8) The publication of the summaries referred to in Article 3(2) of Regulation (EC) No 994/98 is necessary to ensure the transparency of the measures adopted by the Member States and their publication in the Official Journal of the European

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Communities was the most effective means for doing so at the time when the Regulation was adopted. However, in view of the development of new electronic communications media, publishing the summaries on the Commission website would appear to be a faster and more effective method that would increase transparency to the benefit of interested parties. Instead of being published in the Official Journal, therefore, these summaries should be published on the Commission’s website.

(9) The information referred to in Article 3(3) of Regulation (EC) No 994/98 is necessary to allow the Commission to keep the existing systems of aid in Member States under constant review in accordance with Article 88(1) of the Treaty. A significant extension of the scope of the exemption regulations will reduce the prior checking by the Commission and require it to carry out more effective retrospective checks to ensure compliance with Community law. For the checks to be effective, the Commission should be authorised to request information from the Member States concerning the conformity of certain aid measures even if it does not possess evidence that leads it to doubt whether a regulation is being properly applied.

(10) Pursuant to Article 3(4) of Regulation (EC) No 994/98, the Member States are required to supply the Commission with a report on the application of group exemptions. In view of the development of new electronic communications media, it would now be faster and more effective to transmit this report electronically in accordance with arrangements specified by the Commission.

(11) Experience with the adoption of exemption regulations suggests that the procedure provided for in Article 8 of Regulation (EC) No 994/98 should be modified to make it shorter and to allow regular review of the exemption regulations in the light of economic and legal developments. If a regulation is merely being extended or minor amendments made to it, consultation of the Advisory Committee prior to publication of a draft does not appear necessary. Following publication of a draft, provision should be made for consulting the Advisory Committee by written procedure. However, a meeting should be allowed at the request of a majority of Member States.

(12) If a new regulation is to be adopted or substantial amendments made, the consultation of the Advisory Committee prior to publication of a draft must also be waived. Following publication of a draft, a meeting of the Advisory Committee should still be held and provision allowed for a majority of Member States to request a second meeting.

(13) Regulation (EC) No 994/98 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 994/98 is amended as follows:

1) The following points (v), (vi) and (vii) are added to Article 1(1)(a):

“(v) promoting culture and heritage conservation;

(vi) repairing damage caused by natural disaster;
(vii) the production, processing and marketing of agricultural products.”

2) A point (c) is added in Article 1(1):

“(c) aid having a social character in the transport sector.”

3) Paragraphs (2), (3) and (4) of Article 3 are replaced by the following:

«2. On implementation of aid systems or individual aid measures granted outside any system, which have been exempted pursuant to such regulations, Member States shall forward to the Commission, in electronic form in accordance with detailed arrangements specified by the Commission, summaries of the information regarding such systems of aid or such individual aid measures as are not covered by exempted aid systems, with a view to their publication on the Commission's website in their original language.

3. Member States shall record and compile all the information regarding the application of the group exemptions. At the Commission's request, the Member States shall forward to it any information it considers necessary to assess whether an aid measure or system complies with the regulation concerned.

4. At least once a year, Member States shall send the Commission a report in computerised form on the application of group exemptions in accordance with detailed arrangements specified by the Commission. The Commission shall make access to those reports available to all the Member States. The Advisory Committee referred to in Article 7 shall examine and evaluate those reports once a year.”

4) Article 8 is replaced by the following text:

«1. The Commission shall consult the Advisory Committee on State Aid before adopting any regulation.

2. (a) Where the Commission proposes to adopt or amend a regulation, consultation of the Committee shall take place at a meeting called by the Commission. The drafts and documents to be examined shall be annexed to the notification. At that meeting, provision may be made for the committee to be consulted a second time at the request of a simple majority of its members.

2. (b) Where the Commission proposes to extend the validity of a regulation or to adopt minor amendments, it shall invite the members of the Advisory Committee to submit written comments within one month. The drafts and documents to be examined shall be annexed to the notification. However, a meeting shall be arranged on request by a simple majority of committee members.

3. When requested, the Advisory Committee meeting shall take place no earlier than two months after the notification has been sent. That period shall be reduced to one month in the case of the consultations referred to in paragraph 2(b) or at the request of a simple majority of committee members; it may also be reduced in urgent cases.

4. At the meeting, the representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion, if necessary by taking a vote."
5. The opinion shall be recorded in the minutes of meetings or in a summary note in the case of written consultations; in addition, each Member State shall have the right to ask to have its position recorded in the minutes or summary note. The Advisory Committee may recommend publication of the opinion in the Official Journal of the European Communities.

6. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.”

Article 2

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

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

Done at Brussels, […]

For the Council
The President
[...]
