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**STATE AID CONTROL AND REGENERATION OF DEPRIVED URBAN AREAS**

**Vademecum**

# STATE AID CONTROL AND REGENERATION OF DEPRIVED URBAN AREAS

## 1. The importance of urban regeneration

The urban question is an increasing political priority in the European Union. The majority of European citizens live in urban areas. Cities and other urban areas play a decisive role in economic growth, employment and competitiveness. The importance of an integrated approach to urban regeneration becomes even more apparent in this context.

The public policy discussion in the regeneration domain is predominantly focused on the specific needs of urban areas. Sustainable cities today must simultaneously accomplish economic competitiveness and social and environmental progress amidst major socio-economic transformations, illustrated by the remodelling of the industrial structure and the transition to service economies. These transformations have frequently engendered significant challenges for cities such as a lack of job opportunities, poverty, labour force migration, housing decline, derelict land, default of local business and commerce, poor quality of natural and built environments and increases of crime and vandalism. These challenges are generally interrelated and intertwined and threaten to precipitate the decay of whole urban neighbourhoods. As a result many cities in the EU, including the most prosperous ones, contain 'pockets of deprivation', i.e. areas that are characterised by a lack of social inclusion and poor physical environment in terms of infrastructure, housing and local amenities.

It is widely recognised that deprived urban areas suffer from several market failures<sup>1</sup> or socially undesirable results of functioning markets and that market forces alone will not redress the downward spiral that occurs once a certain level of deprivation has been reached. Public intervention is therefore considered necessary, including the use of public funds, to start a regeneration process. Redressing the market failures or socially undesirable outcome that have been perceived to characterise cities and rural areas requires new and innovative thinking, alternative policy vehicles and more transparent information flows regarding performance of regeneration areas. In view of the magnitude of the negative, inter-linked factors that must be overcome, any successful strategy for the regeneration of deprived urban areas must of necessity be *holistic*. Such a broad strategy, targeted at *efficiency*<sup>2</sup> or *equity*<sup>3</sup> objectives related to regeneration, will necessitate public spending, some of which may constitute state aid within the meaning of Article 87(1) EC Treaty.

This Vademecum on regeneration seeks to provide some clarity and awareness of the links between regeneration and state aid rules and describe the possibilities which Member States currently have to promote regeneration through state aids.

## 2. What is exactly meant by 'regeneration'?

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<sup>1</sup> A 'market failure' is consequently a situation where the market on its own fails to deliver an economically efficient outcome, for instance, due to externalities. Market failures have different origins. For further information please see the Commission's consultation document of 7 June 2005 "State aid action plan - less and better targeted state aid: a roadmap for state aid reform 2005-2009":

[http://www.europa.eu.int/comm/competition/state\\_aid/others/action\\_plan/saap\\_en.pdf](http://www.europa.eu.int/comm/competition/state_aid/others/action_plan/saap_en.pdf)

<sup>2</sup> 'Efficiency' here means correction of market failures.

<sup>3</sup> 'Equity' here means regional and social cohesion.

The concept of regeneration evades precise definition and leaves ample room for ambiguities and different interpretations. Regeneration typically designates a renewal process, i.e. some form of repair or improvement. In the context of public policy, the term is used to describe courses of action to transform some set of physical and socioeconomic variables. A regeneration process is therefore commonly targeted at revitalizing problem areas – namely by addressing shortcomings in natural and built environments, heritage conservation, social integration and employment and economic activities – in cities and their surroundings, but also in rural settings.

### **3. The call for a formal regeneration framework**

It is widely recognized that deprived urban areas are often small pockets of extreme poverty, poor quality environment and high unemployment located within wealthier regions. It would not be possible to include such small areas of deprivation in the national regional map of assisted areas and hence it has been suggested that the Commission should allow for investment aid to be granted to undertakings in deprived urban areas under conditions different than those laid down in the Guidelines on national regional aid for 2007-2013<sup>4</sup> and Commission Regulation (EC) N° 70/2001 on the application of Article 87 and 88 of the EC Treaty to state aid to small and medium-sized enterprises (SMEs)<sup>5</sup>. Furthermore, it is argued that a special set of rules or a specific framework should apply in the regeneration domain.

Frameworks and guidelines typically specify the Commission's position on a certain policy issue. For the purpose of state aid control, a framework would outline the conditions that would have to be met in a specified policy area in order for an aid measure to be declared compatible. Frameworks and guidelines have proven to be important and successful instruments, promoting predictability and transparency. Unfortunately, they can also fall short of their potential if the subject area is not sufficiently defined.

Regeneration guidelines were introduced by the Commission in 1996 ('Guidelines on state aid for undertakings in deprived urban areas'<sup>6</sup>). These guidelines identified deprived urban areas eligible for state aid. However, no Member State made use of these guidelines as they were apparently found to be too restrictive and inflexible. The Commission has therefore decided that they should not apply in the future<sup>7</sup>.

Although introduced with best intentions, the experience gained with these guidelines demonstrates the complexity of implementing an effective regeneration framework. A regeneration process is multi-faceted. The Commission appreciates that different Member States tackle regeneration problems in different ways: they may wish either to invest directly in regeneration schemes or decide to also involve the private sector. The approach to regeneration from a state aid point of view must therefore bear this in mind and allow room for manoeuvre.

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<sup>4</sup> OJ C 54, 4.3.2006, p. 13.

<sup>5</sup> OJ L 10, 13.1.2001, p. 33, as amended by Commission Regulation (EC) No 364/2004 OJ L 63, 28.2.2004, p. 22 and by Commission Regulation (EC) No 1857/2006 OJ L 358, 16.12.2006, p. 3 and by Commission Regulation EC No 1976/2006 of 20 December 2006 amending Regulations (EC) No 2204/2002, (EC) No 70/2001 and (EC) No 68/2001 as regards the extension of the periods of application, OJ L 368 of 23.12.2006, p. 85.

<sup>6</sup> OJ C 146, 14.5.1997, p. 6.

<sup>7</sup> OJ C 119, 22.5.2002, p. 21.

A formal regeneration framework based upon limited experience can quickly turn out to restrict choices and options. Therefore, for the time being, the current state aid rules – applied by and enriched through extensive cooperation between Member States and the Commission – deliver the necessary flexibility to accommodate all differing and innovative measures in a field that is constantly evolving.

Based on the experience gained with actual and future regeneration cases, the Commission will however continue to assess whether there is a need for an additional, specific instrument on state aid for undertakings in deprived urban areas.

The Commission's regeneration track record demonstrates that the state aid regime is prepared to deal with challenges in regeneration field. Presently, there are a number of possibilities to support regeneration either through a direct application of Article 87, in particular 87(3)(c) of the EC Treaty, or through horizontal state aid rules, i.e. Block exemptions, Guidelines for environmental protection, Guidelines for risk capital, etc.

The sections below give an overview of state aid rules that are relevant for the assessment of regeneration measures.

#### **4. Overview of state aid rules applicable in the field of regeneration**

##### *4.1 Basic substantive rules*

The basic substantive rules on the control of state aid in the EU are set out in Article 87 of the EC Treaty. This article provides that state aid is in principle incompatible with the common market. Article 87(1) of the EC Treaty can be broken down into four tests to establish if a measure within an urban regeneration scheme constitutes state aid. A state aid will only be present if all four tests are met:

- Is the measure granted by the state or through state resources?
- Does the measure favour certain undertakings or the production of certain goods<sup>8</sup>?
- Does the measure distort or have the potential to distort competition by selectively<sup>9</sup> favouring certain beneficiaries?
- Does the measure produce an effect on intra-Community trade?

The principle of incompatibility of state aid with the Treaty is not, however, absolute. Article 87(2) and Article 87(3) contain a number of exemptions under which state aid shall or may be considered compatible by the Commission. In exercising its wide discretionary powers for the application in particular of Article 87(3) exemption, the Commission balances the importance and the necessity of the aid measure in achieving a Community objective versus the distortion of competition brought about by it. To publicise its approach and the actual criteria used in this assessment, the Commission has issued a number of documents based on Article 87(3)(c) in the form of regulations, communications, notices, frameworks, guidelines, and letters to Member States with regard to various categories of aid based on its form, its purpose,

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<sup>8</sup> The latter also covers provision of services.

<sup>9</sup> Selectivity could be with respect of the type of firms (e.g. small or medium size enterprises), their location (e.g. a specific region) or their sector of activity. In the extreme case, aid could be addressed to one specific firm.

the size of the undertakings, their location, or the sector of the economy<sup>10</sup>. Thus the yardsticks used to assess aid to promote physical, social and economic regeneration can further be found in these documents.

#### 4.2 Regeneration measures which do not involve state aid

In order to put matters in perspective, it should be emphasised that a successful regeneration strategy will contain many elements that do not necessarily constitute state aid within the meaning of the EC Treaty. As seen above, a measure constitutes state aid only if it meets the cumulative criteria laid down in Article 87(1) EC Treaty. The following are examples of measures devised by Member State which do not involve state aid and which are (also) relevant in the field of regeneration.

In order to improve the physical environment, public authorities may wish to carry out investment in infrastructure: streets, renovating public spaces, water-ways, schools, improvement of public transport infrastructure or road networks, public amenities, waste treatment facilities, sewage collection. If such expenditure is either not awarded as aid to specific undertakings, or if it has no effect on trade between Member States<sup>11</sup>, it falls outside the scope of Article 87(1) EC Treaty<sup>12</sup>.

Similarly, investment with public funds in the renewal or upgrading of residential areas or properties will usually fall outside the scope of Article 87(1) EC Treaty. Where the funding is made available to individual residents, who are the owner/occupiers of the new or renewed dwellings in question, no aid to undertakings is awarded.

Legislation and regulation to assist the market function will not necessarily entail any transfer of state resources. Such rules could concern city planning and restrictions on the use of natural resources, notably land. Public authorities can thus make the re-use of brownfield sites more attractive compared with investment on greenfield sites. Expropriations and the obligation to either put derelict sites at use, or else to sell, would also usually fall outside the scope of Article 87(1) EC Treaty.

From the social perspective of a regeneration strategy, efforts to promote education, to support families, to provide leisure and to fight crime are not likely to constitute state aid. Either no aid is given to undertakings, or there is no effect on competition or trade between Member States. Training aid given directly to unemployed persons, in order to enhance their situation on the labour market and to promote their integration, will also normally not favour certain undertakings or the production of certain goods and will hence not fall under Article 87(1) EC Treaty<sup>13</sup>.

Finally, even measures designed to promote economic activities in deprived urban areas need not constitute state aid in the meaning of Article 87(1) EC Treaty. In line with the former Guidelines on state aid for undertakings in deprived urban areas, aid

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<sup>10</sup> For further information on these documents, some of which are summarised below in the text and in Annex 2, please see [http://ec.europa.eu/comm/competition/state\\_aid/legislation/legislation.html](http://ec.europa.eu/comm/competition/state_aid/legislation/legislation.html)

<sup>11</sup> However, the concept of effect on trade in Article 87(1) of the EC Treaty is extremely broad in scope. The fact that aid is granted in respect of purely local activities does not in itself preclude the possibility of an effect on trade between Member States. See, for example, judgment of 24 July 2003 in Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, ECR 2003 p. I-07747, paragraphs 77 and 78; judgement of 3 March 2005 in Case C-172/03, *Wolfgang Heiser v Finanzamt Innsbruck*, Rec. 2005, p. I-1627, paragraph 35.

<sup>12</sup> However, other rules of the EC Treaty and secondary legislation must be respected, such as, for example, public procurement rules.

<sup>13</sup> Commission Regulation (EC) No. 2204/2002 on the application of Articles 87 and 88 of the EC Treaty to state aid for employment, OJ L 337, 13.12.2002, p. 3, recital 6.

to individual shops and enterprises in such areas that carry on a purely local activity will normally<sup>14</sup> not affect trade between Member States. Further, where the activity of the beneficiaries is the subject of intra-Community trade, and therefore competition with other enterprises might be distorted by state aid, aid up to a maximum of EUR 200,000 over any period of three years may nevertheless be granted without prior Commission approval (the '*de minimis*' rule). The *de minimis* rule is set out in Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid<sup>15</sup>. If all the conditions on the application of the *de minimis* rule specified in the above-mentioned Regulation are met, such aid does not fulfil the requirements in terms of effects on competition and trade and hence does not fall under Article 87(1) EC Treaty<sup>16</sup>.

#### 4.3 Regeneration measures which involve compatible state aid

Exemption regulations, guidelines and frameworks lay down the policy the Commission has adopted regarding various types of aid. Many of these will be relevant for a *holistic* regeneration strategy that integrates and reconciliates diverse sectoral policies.

The Commission's notice on the expiry of the guidelines on state aid for undertakings in deprived urban areas<sup>17</sup> emphasises that the non-prolongation of the guidelines does not imply that state aid for deprived urban areas is no longer possible. Such aid may be found compatible under the existing rules applicable to state aid, or, depending on the circumstances, directly under Article 87(3)(c) of the EC Treaty.

Article 87(3)(c) states that aid to facilitate the development of certain economic activities or of certain economic areas can be considered to be compatible with the common market, provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest. When examining whether aid is compatible directly under Article 87(3)(c) the Commission, firstly, will take into account the *Community's objectives* (which may also include regeneration of deprived urban areas) and, secondly, will analyse whether the proposed aid measure is *appropriate* and *proportionate* to its targeted objectives and does not have disproportionate effects on competition and trade. In other words, the compatibility of state aid depends on *balancing* its negative effects with its positive effects. In this regard it is up to the Member State to demonstrate the existence of clearly defined market failures<sup>18</sup> or of the situations when markets do not lead to socially desirable results<sup>19</sup>, which are directly responsible for problems of urban deprivation. The Member States have to show that the proposed measure is *well-designed*, *proportional* (i.e. minimum necessary to reach the objective but not going beyond) and *well targeted* to address these identified efficiency or equity

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<sup>14</sup> The exception would be an enterprise located sufficiently close to the border that clients might be tempted to cross the border for their purchases or for the services provided.

<sup>15</sup> OJ L 379 of 28.12.2006, p. 5.

<sup>16</sup> Note that this Regulation is not applicable to the undertakings active in the fishery and aquaculture sectors, in the coal sector, and in the primary production of agricultural products listed in Annex I to the EC Treaty. It applies, with a certain number of additional conditions, to undertakings active in processing or marketing of agricultural products. In the transport sector, *de minimis* aid cannot be used for the acquisition of road freight transport vehicles. Finally, undertakings in difficulty are not covered by this Regulation. See also Commission Regulation (EC) No. 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC treaty to '*de minimis*' aid in the agricultural and fisheries sectors, OJ L 325 of 28.10.2004, p. 4.

<sup>17</sup> OJ C 119, 22.5.2002, p. 21.

<sup>18</sup> For example, market failures in land and property development, enterprise development, etc.

<sup>19</sup> For example, when markets do not lead to a sufficient level of regional and social cohesion.

objectives. The Commission, on its turn, and in line with the State aid action plan<sup>20</sup>, will apply a refined economic approach in its assessment to ensure a proper and more transparent evaluation of the benefits and distortions to competition associated with the regeneration state aid measure.

In the past the Commission has indeed approved schemes directly under article 87(3)(c) in the field of regeneration, for example, a scheme to promote small businesses in depressed free urban zones in France<sup>21</sup>, housing schemes for England and Scotland<sup>22</sup> and a scheme to remediate derelict and contaminated land in the United Kingdom<sup>23</sup>. The schemes were found compatible (at least in part) in the first cases on the basis of the Community objective of economic and social cohesion, in the second case on the basis of the need for more affordable housing and in the latter under the Community objectives of environmental protection and sustainable development.

In order to improve the physical environment, measures may be called for to deal with contaminated former industrial sites. In line with Section E.1.8 of the Community Guidelines on state aid for environmental protection<sup>24</sup> the person responsible for the pollution must finance the rehabilitation of the site in accordance with the '*polluter pays principle*'<sup>25</sup>. However, where the person responsible for the pollution is not identified or cannot be made to bear the cost, aid for the rehabilitation of polluted industrial sites may amount to up to 100% of the eligible costs (the cost of the work less the increase of the value of the site), plus 15% of the cost of the work. The UK's Land Remediation<sup>26</sup> scheme is not confined solely to polluted sites and allows public authorities to provide state aid to bring land suffering from differing states of pollution or disrepair back into productive use to help avoid use of greenfield sites and urban sprawl<sup>27</sup>.

Article 87(3)(d) of the EC Treaty allows for aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent contrary to the common interest. This derogation has not been expanded upon in secondary legislation. The Commission, for example, has approved several heritage schemes<sup>28</sup> in England directly under this article. The purpose of these schemes is to protect, repair and renovate assets of a heritage nature. In these schemes the Commission allows Member States to cover all additional heritage related costs in regeneration projects by aid.

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<sup>20</sup> Commission consultation document of 7 June 2005 'State aid action plan - less and better targeted state aid: a roadmap for state aid reform 2005-2009':

[http://ec.europa.eu/comm/competition/state\\_aid/reform/saap\\_en.pdf](http://ec.europa.eu/comm/competition/state_aid/reform/saap_en.pdf)

<sup>21</sup> Prolongation and extension of Free Urban Zones (Zones Franches Urbaines) – see Annex 1 below.

<sup>22</sup> Grants for Owner Occupation – see Annex 1 below.

<sup>23</sup> Land Remediation Scheme – see Annex 1 below.

<sup>24</sup> OJ C 37, 3.2.2001, p. 3.

<sup>25</sup> By '*person responsible for the pollution*' is meant the person liable under the law applicable in each Member State, without prejudice to the adoption of Community rules in the matter. Community rules have been adopted in the field of environmental responsibility: Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30.4.2004, p. 56. According to Article 17, this Directive shall not apply to damage caused by an emission, event or incident that took place before 30 April 2007.

<sup>26</sup> Land Remediation Scheme – see Annex 1 below.

<sup>27</sup> '*Urban sprawl*' is usually defined as an unstructured expansion of urban areas into the surrounding countryside.

<sup>28</sup> Individual cases of application based on the English Heritage, Individual cases of application based on the National Heritage Memorial Fund and Individual cases of application based on the Historical Environment Regeneration Scheme – see Annex 1 below.

To promote social integration and employment, adequate training is of utmost importance. Commission Regulation (EC) No. 68/2001 on the application of Articles 87 and 88 of the EC Treaty to training aid<sup>29</sup> provides for a block exemption of such aid given to undertakings. This means that training aid, both for general and specific training, which meets the conditions of the Regulation, does not need to be notified to the Commission (subject to the need to submit summary information). Similarly, Commission Regulation (EC) No. 2204/2002 on the application of Articles 87 and 88 of the EC Treaty to state aid for employment<sup>30</sup> provides for a block exemption for the creation of employment by small and medium-sized enterprises (SMEs), and by larger firms in an assisted area within the meaning of the regional aid map 2007-2013 (see below). This means that aid for the creation of employment, which meets the conditions of the Regulation, does not need to be notified to the Commission (subject to the need to submit summary information).

A number of aid measures to promote economic activities in deprived urban areas may also be considered compatible with the common market. This is the case with aid to small and medium-sized enterprises which fulfils the conditions of Commission Regulation 70/2001 for aid to SMEs. Such aid does not have to be notified to the Commission (again subject to the need to submit summary information). Aid for initial investment carried out by larger companies may also be considered compatible with the common market, if the investment takes place in an assisted area within the meaning of the regional aid map 2007-2013, the aid respects the limits approved by the Commission for this period and complies with the provisions laid down in the Guidelines on national regional aid<sup>31</sup> or Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid, which provides for a block exemption of such aid<sup>32</sup>. A number of urban regeneration schemes have been approved or block exempted upon this basis<sup>33</sup>.

Regarding aid for SMEs, Regional aid guidelines for the period 2007-2013 foresee additional flexibility which will help to tackle the most pressing needs of urban and local pockets of deprivation, below the NUTS-III level, provided they have a minimum population of 20,000. Regional aid can be allowed in these areas for SMEs only<sup>34</sup>. In addition, the Guidelines on national regional aid for 2007-2013 also introduced a new

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<sup>29</sup> OJ L 10, 13.1.2001, p. 20, as amended by Commission Regulation (EC) No 363/2004 OJ L 63, 28.2.2004, p. 20 and by Commission Regulation EC No 1976/2006 of 20 December 2006 amending Regulations (EC) No 2204/2002, (EC) No 70/2001 and (EC) No 68/2001 as regards the extension of the periods of application, OJ L 368 of 23.12.2006, p. 85.

<sup>30</sup> OJ L 337, 13.12.2002, p. 3, as amended by Commission Regulation EC No 1976/2006 of 20 December 2006 amending Regulations (EC) No 2204/2002, (EC) No 70/2001 and (EC) No 68/2001 as regards the extension of the periods of application, OJ L 368 of 23.12.2006, p. 85.

<sup>31</sup> OJ C 54, 4.3.2006, p. 13.

<sup>32</sup> OJ L 302 of 1.11.2006, p. 29.

<sup>33</sup> For example, see the UK regional aid scheme XR 87/2007, which is block exempted pursuant to Regulation No 1628/2006 and which enables companies, which own or lease property that has been vacant for a year or more in designated disadvantaged areas of the UK, to claim full tax relief on their capital spending on the conversion or renovation of the property, in order to bring it back into business use, the summary sheet available at: [http://ec.europa.eu/comm/competition/state\\_aid/register/ii/doc/XR-87-2007-WLAL-en.pdf](http://ec.europa.eu/comm/competition/state_aid/register/ii/doc/XR-87-2007-WLAL-en.pdf)

<sup>34</sup> Pursuant to the Regional aid guidelines 2007-2013, because of the potential distortion of competition resulting from the spill-over effect into the more prosperous surrounding regions, the Commission will not approve aids for investments by large companies in these areas or aids for investments with eligible expenses exceeding EUR 25 million.

form of aid in order to provide incentives to support business start-ups and the early stage development of small enterprises in the assisted areas<sup>35</sup>.

The Community guidelines on state aid to promote risk capital investments in SMEs<sup>36</sup> sets out the criteria applied by the Commission to assess the compatibility of measures to provide risk capital or to promote venture capital funds. Without public intervention the capital market will be particularly reluctant to invest in start-up enterprises in deprived urban areas. It will hence be possible to demonstrate market failure as set out in the guidelines. In the past, venture capital fund schemes that have the broad aim of urban regeneration<sup>37</sup> have been approved by the Commission.

Aid exceeding the limits of the regulations, frameworks, communications and guidelines referred to above will raise doubts regarding its compatibility with the common market. Such aid must in any case be notified to the Commission pursuant to Article 88(3) EC Treaty and a full examination pursuant to Article 88(2) EC Treaty may have to take place.

#### *4.4 Public-Private Partnerships: Regeneration measures that might or might not involve state aid*

In order to engage the private sector to participate in regeneration activities, Member States and the Commission recognise the importance of public-private-partnerships (PPPs).

In assessing state aid implications in PPPs, the Commission generally considers the following to be essential:

- The arrangements for financing the PPP may or may not result in a transfer of state aid to one or more of the private partners. State aid could be involved if there is over-compensation of the costs of the private partners.
- For all types of PPPs, private partners must be chosen in accordance with EC rules on public procurement, where these rules apply. A properly conducted tender procedure will provide reasonable assurance that private partners will be remunerated in line with market conditions. In the absence of a tender procedure, the Commission will look at the detailed arrangements of the PPP and the safeguards put in place to avoid overcompensation in order to determine if state aid is involved.
- The contractual arrangements between the parties must be compatible with Community anti-trust rules (i.e. conditions in a PPP as regards the prices to be charged to consumers).

#### *4.5 Compensation for services of general economic interest ('SGEIs')*

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<sup>35</sup> According to the Regional aid guidelines 2007-2013, this new form of aid should be limited to small enterprises, should be limited in amount and degressive and shall not be cumulated with other public support (including *de minimis* support) in order to circumvent the maximum aid intensities or amounts laid down.

<sup>36</sup> OJ C 194, 18.8.2006, p. 2.

<sup>37</sup> Community Investment Tax Credit and Community Development Venture Fund – see Annex 1 below. Please note that the latter scheme was approved on the basis of the Commission's Communication on state aid and risk capital, OJ C 235, 21.8.2001, p. 3, which was replaced by the Community guidelines on state aid to promote risk capital investments in SMEs.

According to Article 16 of the EC Treaty, services of general economic interest play a significant role in promoting social and territorial cohesion within the European Union. The Community and Member States, each within their respective powers and within the scope of application of the Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

Member States have a wide margin of discretion regarding the nature of services that could be classified as being services of general economic interest. In the absence of Community legislation governing the matter, the Commission's task is to ensure that these provisions are applied with no manifest error.

In cases where market forces alone do not result to a satisfactory provision of such services, financial support from the State intended to cover some or all of the specific costs resulting from the public service obligations may prove necessary, so that the undertakings entrusted with SEIG can operate under conditions that enable them to fulfil their missions.

In the judgement of the case *Altmark Trans GmbH*<sup>38</sup> the Court of Justice of the European Communities held that public service compensation does not constitute state aid within the meaning of Article 87 EC Treaty provided that four criteria are met:

- The recipient undertaking is actually required to discharge public service obligations, and those obligations must be clearly defined.
- The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner.
- The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit.
- Where the undertaking, which is to discharge public service obligations, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation must be determined by a comparison with an analysis of the costs which a typical well run and adequately equipped undertaking would incur in discharging these obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

Where these four criteria are met, public service compensation does not constitute state aid, and therefore Articles 87 and 88 of the EC Treaty do not apply. However, if these criteria are not respected and if the general criteria for the applicability of Article 87(1) EC Treaty are met, public service compensation constitutes state aid that is subject to Articles 73, 86, 87 and 88 of the EC Treaty. Such state aid may be declared compatible with the EC Treaty under Article 86(2) if it is necessary to the operation of the SGEIs and does not affect the development of trade to such an extent as would be contrary to the interests of the Community.

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<sup>38</sup> Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, ECR 2003 p. I-07747.

The Commission's *Decision*<sup>39</sup> (based on Article 86(3) of the EC Treaty) specifies the conditions under which compensation to companies for the provision of public services is compatible with state aid rules (a clearly defined public service mandate and no over-compensation) and does not have to be notified to the Commission in advance. The Decision is applicable to compensation of less than EUR 30 million per year provided its beneficiaries have an annual turnover of less than EUR 100 million. Compensation granted to social housing for services of general economic interest also benefits from the Decision irrespective of the amounts involved: this will enable specific and targeted support for social housing, which is essential for urban regeneration, without the need for a separate notification to the Commission<sup>40</sup>.

The Commission's *Framework*<sup>41</sup> specifies the conditions under which compensation not covered by the above-mentioned Decision is compatible with state aid rules. Such compensation will have to be notified to the Commission due to the higher risk of distortion of competition. Compensation that exceeds the costs of the public service, or is used by companies on other markets open to competition, is not justified, and is incompatible with the Treaty's state aid rules.

Companies receiving compensation and operating on both public service and other markets must have separate accounts for their different activities, so that the absence of over-compensation can be checked<sup>42</sup>.

## **5. How does the EU support urban regeneration?**

The period 2000-2006 was marked by numerous cohesion policy interventions of the Funds (the Structural Funds – the European Regional Development Fund (ERDF) and the European Social Fund (ESF) – and the Cohesion Fund) in favour of urban areas. Some EUR 16 billion were explicitly allocated to urban policy for the period 2000-2006 under the Structural Funds<sup>43</sup>.

Since 1994, the URBAN Community initiative programme<sup>44</sup> has allowed the promotion of the design and implementation of innovative, integrated development models based on local partnership to promote economic and social regeneration in urban areas in crisis<sup>45</sup>.

The role of cohesion policy will expand in the new 2007-2013 programming period as the urban dimension and the guiding principles of the URBAN programme are integrated into the operational programmes proposed by the Member States and co-financed by the Structural Funds.

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<sup>39</sup> Commission Decision of 28 November 2005 on the application of Article 86(2) of the Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 312, 29.11.2005, p. 67.

<sup>40</sup> Compensation for hospitals, and for air and sea transport to islands as well as airports and ports below specific thresholds defined in passenger volumes, are also exempted from prior notification.

<sup>41</sup> Community Framework (adopted on 13 July 2005) for State Aid in the form of public service compensation, OJ C 297, 29.11.2005, p. 4.

<sup>42</sup> Commission Directive 2006/111/EC of 16 November 2006 transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (codified version) OJ L 318, 17.11.2006, p. 17.

<sup>43</sup> Commission's Guide 'The urban dimension in Community policies for the period 2007-2013', available on: [http://ec.europa.eu/regional\\_policy/sources/docgener/guides/urban/index\\_en.htm](http://ec.europa.eu/regional_policy/sources/docgener/guides/urban/index_en.htm)

<sup>44</sup> Communication from the Commission to the Member States of 28 April 2000 laying down guidelines for a Community Initiative concerning economic and social regeneration of cities and of neighbourhoods in crisis in order to promote sustainable urban development URBAN II, OJ C 141, 19.5.2000, p.8.

<sup>45</sup> Commission's Guide 'The urban dimension in Community policies for the period 2007-2013'.

In accordance with the Council Regulation laying down general provisions<sup>46</sup>, each Member State presents a national strategic reference framework (NSRF) which ensures the coherence of the interventions of the Funds with the 'Community Strategic Guidelines on cohesion'<sup>47</sup> and identifies the link between the Community priorities, on the one hand, and the national reform programme, on the other. The NSRF identifies the thematic and territorial priorities on the basis of an analysis of the development disparities, weaknesses and potential. Where appropriate, these priorities include actions relating to sustainable urban development.

The action by the Funds in the Member States takes the form of operational programmes (OPs) which contain a justification of the priorities chosen, information on the priority axes (including the urban axis) and their specific targets and an indicative financial breakdown. The OPs financed by the ERDF may include information on the approach to sustainable urban development, the list of cities chosen for addressing urban issues and the procedures for sub-delegation to urban authorities.

The Commission communication on cohesion policy and cities<sup>48</sup> proposes to strengthen the urban dimension, to concentrate the resources of the Funds to avoid them being spread too thinly. It makes 50 concrete recommendations to the cities and the actors in urban development so that they contribute to growth and employment with the support of the Structural Funds and the other Community financial instruments. The proposals cover a very broad range of fields, for example, *inter alia* to strengthen the attractiveness of cities in terms of transport, services, environment and culture; to promote balanced development between the various cities, to promote entrepreneurship, innovation and the knowledge economy and to support small and medium-sized enterprises; to improve employability and to reduce the disparities between districts, on the one hand, and social groups, on the other. This communication is based in particular on the data from the 'Urban audit'<sup>49</sup>. This provides a wide knowledge base, developed since 2001 by the Regional Policy DG with the support of Eurostat, which covers over 300 European cities.

Networking and the dissemination of best urban regeneration practice is supported through the URBACT programme which promotes the formation of thematic networks of European cities to address different aspects of urban regeneration, including social inclusion, citizens' participation, public-private partnerships, integration of approaches, immigration, participation of young people, the information society, security issues and physical regeneration. The Regional Policy DG has been developing the exchange of experience on urban issues through the URBACT programme since 2002. This programme, financed by the URBAN initiative, was set up in 2003 to enable the cities having benefited from urban pilot projects (1989-1999) and URBAN I (1994-2000) and URBAN II (2000-2006) programmes, to exchange their experience and good practices with the support of experts. More than 180 cities participated in the programme. For the period 2007-2013 there are four programmes: the URBACT II urban network support programme, the INTERREG

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<sup>46</sup> Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L 210 of 31.7.2006, p. 25.

<sup>47</sup> Council Decision of 6 October 2006 on Community strategic guidelines on cohesion, OJ L 291 of 21.10.2006, p. 11, available on: [http://ec.europa.eu/regional\\_policy/sources/docoffic/2007/osc/index\\_en.htm](http://ec.europa.eu/regional_policy/sources/docoffic/2007/osc/index_en.htm)

<sup>48</sup> Communication from the Commission to the Council and Parliament 'Cohesion policy and cities: the urban contribution to growth and jobs in the regions', COM Brussels, COM(2006) 385 final of 13.7.2006.

<sup>49</sup> <http://www.urbandaudit.org/>

IVC interregional cooperation programme, ESPON (European Spatial Planning Observatory Network) and INTERACT.

There are other EU programmes, which may be considered relevant in the field of regeneration of urban areas, for example:

- Under the CIVITAS Plus Initiative, the Commission is co-funding projects which address energy and transport issues in a coherent manner: the initiative is co-financed 50%-50% by the transport and energy priorities of the Framework Programmes<sup>50</sup>. The CIVITAS Plus Initiative helps cities to achieve more sustainable, clean and energy efficient urban transport systems by implementing, demonstrating and evaluating an ambitious integrated mix of technology and policy-based measures.
- The LIFE Plus Programme (2007-2013) supports the implementation of the 6th Environmental Action Programme, including the thematic strategies on urban environment, and finance measures and projects with European added value in Member States<sup>51</sup>. LIFE+ has three components, including LIFE+ Environment and Governance that are of interest to urban issues.
- On 11 January 2006 the Commission adopted the Thematic Strategy on the Urban Environment that builds on existing European policy initiatives for improving the quality of the urban environment<sup>52</sup>. It sets out new measures to support and facilitate the adoption of integrated approaches to the management of the urban environment by national, regional and local authorities<sup>53</sup>.

For more information concerning initiatives with direct and indirect implications for sustainable development of urban areas and for the overall overview of the urban dimension of all Community policies over the current programming period, 2007-2013, please consult the European Commission's new guide entitled 'Guide to the Urban Dimension in Community Policies'. The electronic version of Guide – including around a hundred specific documents and hyperlinks – is now available in English, French and German at the following web address: [http://ec.europa.eu/regional\\_policy/sources/docgener/guides/urban/index\\_en.htm](http://ec.europa.eu/regional_policy/sources/docgener/guides/urban/index_en.htm)

### **Measures targeted towards assisting deprived urban areas**

Annex1 attached provides short summaries of the most important measures approved by the Commission in the field of urban regeneration since 1996. In addition to it some of the current state aid guidelines/communications are summarized in Annex 2. The Annexes will be updated periodically.

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<sup>50</sup> Further information on CIVITAS is accessible on the Commission's Energy and Transport DG's website: <http://www.civitas-initiative.eu/main.phtml?id=&language=en>

<sup>51</sup> Further information on LIFE+ Programme can be found on the Commission's Environment DG website: <http://ec.europa.eu/environment/life/funding/lifeplus.htm>

<sup>52</sup> COM (2005) 718 final.

<sup>53</sup> Further information on the Thematic Strategy on the Urban Environment at: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005\\_0718en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0718en01.pdf)

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## **Annex 1**

### **LIST OF COMMISSION APPROVED REGENERATION MEASURES**

#### **INDEX**

##### **Direct Property Development:**

- **N657/1999(UK)**                    **Business Infrastructure Development**
- **C13/1999(D)**                    **Thüringer Landesentwicklungsgesellschaft M.B.H. (LEG)**

##### **Bespoke and Speculative Property Development Measures:**

- **N655/1999(UK)**                    **Property for Business (Bespoke)**
- **N656/1999(UK)**                    **Partnership Development (Speculative)**
- **N747/A/1999(UK)**                **Partnership Support for Regeneration (Speculative)**
- **N747/B/1999(UK)**                **Partnership Support for Regeneration (Bespoke)**
- **N546/B/2000(UK)**                **Partnership support for regeneration (5):  
Community/voluntary (neighbourhood) regeneration**
- **N82/2001(UK)**                    **English Cities Fund**
- **N680/2001(UK)**                    **Property Support Scheme**
- **NN78/2001(UK)**                **Urban Development Grant Scheme – Northern Ireland**
- **N317/2002(UK)**                **Scottish Property Support – Bespoke Development Scheme**
- **C33/2005(NL)**                    **Aid to the Marktpassageplan project**

##### **Provision of Social Housing:**

- **N209/2001(IRL)**                **Guarantee for Borrowings of the Housing Finance Agency**
- **N497/2001(UK)**                **Grants for Owner Occupation**
- **N239/2002(UK)**                **Partnership Support for Regeneration**
- **N40/2003(S)**                    **Measures to Promote Certain House Building**
- **N89/2004(IRL)**                **Guarantee in favour of the Housing Finance Agency Social  
Housing Schemes funded by the HFA**
- **N179/2004(SF)**                **Finnish Municipal Guarantees**
- **N343/2005(CZ)**                **Support for the revalorisation of prefabs**

##### **Remediation of Land and Rehabilitation of Polluted Sites:**

- **N546/A/2000(UK)**                **Partnership support for regeneration (4): support for  
environmental regeneration**
- **N385/2002(UK)**                **Support for Land Remediation**
- **N494/B/2002(F)**                **Rehabilitation of polluted sites**
- **N24/2003(GR)**                **Improvement of industrial estates**
- **N207/2003(I)**                **Rehabilitation of polluted industrial sites - Tuscany Region**
- **N85/2005(NL)**                **Soil rehabilitation of polluted industrial sites**

## **Preservation of Heritage:**

- **NN114/2000(UK)**      **Individual cases of application based on the English Heritage Scheme**
- **N560/2001(UK)**      **Brighton West Pier**
- **NN11/2002(UK)**      **Individual cases of application based on the National Heritage Memorial Fund**
- **NN95/2002(UK)**      **Individual cases of application based on the Historic Environment Regeneration**
- **N430/2002(D)**      **Subsidies for the Improvement of the Image of the “Handelshäfen” area (Bremen)**
- **NN55/2005(PL)**      **Heritage conservation**
- **N106/2005(PL)**      **Hala Ludowa in Wrocław**
- **N123/2005(HU)**      **Cultural heritage scheme to promote tourism**
- **N200/2006(NL)**      **Aid scheme in favour of urban conservation agencies**

## **Venture Capital:**

- **N606/2001(UK)**      **Community Development Venture Fund**
- **N711/2001 (UK)**      **Community Investment Tax Credit**

## **Tax Exemption:**

- **N159/1996(F)**      **Urban Renewal Pact**
- **N270/2002(IRL)**      **Urban renewal scheme (Ex N 563/1998)**
- **N271/2002(IRL)**      **Rural renewal scheme (Ex N 564/1998)**
- **N766/2002(F)**      **Free Urban Zones**
- **C13/2002(UK)**      **Stamp Duty Exemption for Non-residential Property in Disadvantaged Areas**
- **N211/2003(F)**      **New Free Urban Zones**
- **N70/A/2006(F)**      **Prolongation and Extension of Free Urban Zones**

## **R&D:**

- **N712/1999(D)**      **R&D Programme “Building and Living”**

The purpose of this scheme is to carry out business property developments which are not otherwise economically viable. It is a means for increasing investment in business premises in Wales by “providing a lead to demonstrate economic viability and provide evidence of market demand in order to encourage private sector provision in the future.” This scheme allows public authorities to intervene directly in the provision of new business premises development and avoid any state aid implications at the same time.

**The Business Infrastructure Development Scheme constructs business premises as well as providing land for development. The scheme operates exclusively through direct investment by the Welsh Authorities in development projects. Once completed, the land/premises will either be sold or leased for the market value to end purchasers/occupiers.**

There are a number of measures available to be used singly or in combination:

- (i) **Acquiring, developing and selling land;**
- (ii) **Acquiring or developing buildings for sale or lease;**
- (iii) **Providing general infrastructure and services** which enable land to be developed subsequently by another party.

The Commission’s decision on the Business Development Infrastructure scheme was that state aid was not in fact present. The Welsh authorities commit to the purchase or acquisition of land/buildings at no more than the market price.

All construction/development works undertaken throughout the project will be in line with the EC rules for public procurement. Finally, the sale or lease of the completed project will be achieved through a competitive process or independently valued. The Commission’s view was that such property development projects carried out directly by public bodies, does not confer state aid on the ultimate purchaser/occupier of the property as the latter is not acquiring or occupying them on terms more advantageous than those available under normal market conditions. Again, there is no special advantage to the end-user as the final price paid is not lower than the market price and the sale or lease was subject to an open competition or an independent valuation.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-1999/n657-99.pdf](http://ec.europa.eu/community_law/state_aids/comp-1999/n657-99.pdf)

Commission Communication on State aid elements in sales of land and buildings by public authorities (Annex 2 – Fiche 8):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0710\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0710(01):EN:HTML)

**C13/1999**

**Thüringer Landesentwicklungsgesellschaft  
M.B.H. (LEG)**

This measure promotes structural development, in particular building, infrastructure and economic development in the Land of Thuringia (Germany). The measure aims to tackle problems in industrial sites in Thuringia, which are in danger of decaying into wastelands of abandoned buildings and environmental hazards after 40 years in a socialist planned economy.

**Under this measure LEG Thüringen (GmbH) was set up by the Government of the Land of Thuringia which was given power to carry on infrastructure development work in the interests and on behalf of Thuringia Land.**

**LEG Thüringen dismantles plant that is no longer needed, demolishes buildings that are not worth maintaining, renovates buildings that can usefully be kept and put to use, plans and develops sites, and then sells, rents or leases the property. It operates as in this respect as a property developer, which handles the entire process from purchase to utilisation. LEG Thüringen received funding towards these activities from the budget of Thuringia.**

**There is no aid programme covering LEG Thüringen's activities. Therefore the measures taken by it may concern any firm, regardless of its size, business, or financial situation.**

The Commission had to investigate more than 100 individual cases, due to the lack of the aid programme covering LEG Thüringen's activities in relation to industrial plan, and to examine whether those cases would fall under any Commission's guidelines or communications in the state aid area. The Commission decided that Germany in the majority of the cases followed the rules as laid down in the Commission's communication concerning State aid elements in sales of land and buildings by public authorities.

For those cases where the rules of the communication have not been followed, the Commission investigated if the undertakings in question received an economic advantage. In this regard the Commission did not accept the transaction prices as fixed by an *ex-post* analysis of the market, because the market price was influenced by LEG Thüringen as a result of its specific market behaviour. Therefore, the Commission decided that it was necessary to take a specific year as the reference on which the interventions of LEG Thüringen on the market have had no repercussions yet. As the purchase prices actually paid were higher than the undistorted market price of that specific reference year, the Commission came to the conclusion that there was no economic advantage to any of those undertakings in question. Thus the Commission found that the measure did not contain any state aid element and did not constitute aid within the meaning of Article 87(1) of the EC Treaty.

**For Further Information:**

Decision:

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l\\_066/l\\_06620030311en00360040.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_066/l_06620030311en00360040.pdf)

Commission Communication on State aid elements in sales of land and buildings by public authorities (Annex 2 – Fiche 8):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0710\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0710(01):EN:HTML)

This scheme supports business property development projects that are not otherwise economically viable through “bespoke” development projects. Bespoke development projects are where the occupiers have already been identified. The scheme aims to tackle problems said to have been caused by historically low demand creating low market values for commercial property in Wales. It is hoped that such public intervention will eventually lead to a self-sustaining market where public support is no longer needed.

**The Property for Business scheme allows the Welsh authorities to encourage identified owners of business premises to develop their sites with the provision of “gap-funding” support (the difference between the estimated development costs and the estimated final value of the developed site). A number of the development costs of the investment can be supported by the public sector. Additionally, services which support the property development can also be funded by the public authorities.**

The scheme consists of 3 tools which can be used solely or in combination:

- (i) **Business Development Grant** supports the construction of standard buildings suitable for a wide range of uses;
- (ii) **Business Premises Improvement Grant** which complements the above allowing for the improvement/adaptation of property for individualised initial investments;
- (iii) **Development Services** where the Welsh authorities will support or manage property developments for free or for less than the market rate.

In its assessment of this scheme, the Commission found that state aid was present to the identified occupiers of these developments who undertake these projects which they would not undertake without the public sector assistance. Whilst this scheme does involve state aid, the Commission found it compatible with the guidelines on national regional aid and block exemption for SMEs.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-1999/n655-99.pdf](http://ec.europa.eu/community_law/state_aids/comp-1999/n655-99.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

SMEs Block Exemption (Annex 2 – Fiche 3):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_010/l\\_01020010113en00330042.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_010/l_01020010113en00330042.pdf)

The Partnership Development scheme was launched to support property development projects that are not otherwise economically viable. The scheme supports “speculative” (where the eventual occupier is unknown so the site does not have a determined use at the beginning of the project) development projects and works alongside the earlier mentioned Property for Business scheme (N655/99). Both schemes aim to tackle problems said to have been caused by historically low demand creating low market values for commercial property in Wales. It is hoped that such public intervention will eventually lead to a self-sustaining market where property support is no longer needed.

**This scheme allows the Welsh authorities to support speculative property development projects either by providing “gap funding” (the difference between the estimated development costs and the estimated final value of the developed site) to developers or by entering into joint partnerships with developers and investors. A number of the development costs of the investment can be supported by the public sector as can other services which support the property development.**

The scheme allows the public authorities to provide support either through “gap-funding” support to developers or by entering into joint partnerships with developers and investors. 4 tools are available:

- (i) **Development Grant** allows for “gap-funding” to be granted to support the construction of speculative development premises;
- (ii) **Joint projects** where the public authority and the private sector undertake joint, speculative development projects. The public authorities will either share the risk or will accept a higher share of the risk which is disproportionate to the investment;
- (iii) **Development Financing Aid** which supports the cost of financing business property development projects;
- (iv) **Development Services** where the public authorities will support or manage the property developments for free or for less than market price.

The Commission stated in its decision that state aid was present as the public authorities provide incentives to property owners, developers, investors and occupiers to undertake these speculative development projects which they would not otherwise do so. The scheme, however, was compatible with both the guidelines on national regional aid and SMEs block exemption.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-1999/n655-99.pdf](http://ec.europa.eu/community_law/state_aids/comp-1999/n655-99.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

SMEs Block Exemption (Annex 2 – Fiche 3):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_010/l\\_01020010113en00330042.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_010/l_01020010113en00330042.pdf)

## **N747/A/1999 Partnership Support for Regeneration (1): (Speculative Developments)**

The objectives of this scheme are to promote regional development and SMEs by contributing to sustainable and balanced economic growth across England and also enhancing and improving the physical environment in areas where the standard of living is abnormally low or where there is serious unemployment. The scheme aims to tackle problems said to have been caused by historically low demand creating low market values for commercial property by providing public support to “speculative” (where the eventual occupier is unknown) development projects.

**Under this scheme the UK authorities can support speculative property development either by providing “gap-funding” (the difference between the estimated development costs and the estimated final value of the developed site) support to property developers or by entering into joint partnerships with property developers and investors.**

The scheme consists of 4 tools which can be used solely or in combination:

- (i) **Regeneration Grant** is a “gap-funding” grant which supports physical regeneration in speculative development projects;
- (ii) **Joint Regeneration Body/Private Sector Projects** where partnerships will be formed between the regeneration body and private firms. The regeneration body will either act purely as a market investor and accept the risk and rewards equally in proportion to the investment or it will accept a non-proportionate share of the risk and rewards for the levels of investment undertaken;
- (iii) **Regeneration Financing Aid** will support the cost of financing speculative development projects which otherwise would not be economically viable. Only the financing costs of the development undertaken will be considered;
- (iv) **Regeneration Services** where the UK authorities will undertake services to support or manage a physical regeneration project without cost or at less than cost price.

In its assessment of this scheme, the Commission found that state aid could be present to property developers, investment companies, financial undertakings and any other undertakings who participate in speculative property development projects. However, whilst state aid was present, the Commission in its decision concluded that the scheme was compatible with the guidelines on national regional aid and block exemption for SMEs.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-1999/n747-99.pdf](http://ec.europa.eu/community_law/state_aids/comp-1999/n747-99.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

SMEs Block Exemption (Annex 2 – Fiche 3):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_010/l\\_01020010113en00330042.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_010/l_01020010113en00330042.pdf)

## Partnership Support for Regeneration (2): (Bespoke Developments)

The objectives of this scheme are to promote regional development and SMEs by contributing to sustainable and balanced economic growth across England and also enhancing and improving the physical environment in areas where the standard of living is abnormally low or where there is serious unemployment. The scheme aims to tackle problems said to have been caused by historically low demand creating low market values for commercial property by providing public support to “bespoke” (where the eventual occupier has been identified) development projects.

**This scheme will support bespoke development projects by encouraging identified occupiers of business premises to develop sites through “gap funding” (the difference between the estimated development costs and the estimated final value of the developed site) as the development costs will be greater than the actual market cost of the completed development.**

The scheme consists of 3 tools which can be used solely or in combination:

- (i) **Area Regeneration – Provision of Land and Commercial Property** is a “gap-funding” grant which will cover either in whole or part of the gap between development costs and the market value within the project;
- (ii) **Area Regeneration - Business & Commercial Premises Improvement** complements the first tool. Again it is a “gap funding” grant, in this instance to support the improvement or adaptation of business premises;
- (iii) **Regeneration Services 2** where the UK authorities will undertake services to support or manage a physical regeneration project without cost or at less than cost price.

In its assessment of this scheme, the Commission found that state aid could be present to property developers, investment companies, financial undertakings and any other undertakings that participate in bespoke property development projects. However, whilst state aid was present, the Commission in its decision concluded that the scheme was compatible with the guidelines on national regional aid and block exemption for SMEs.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-1999/n747-99.pdf](http://ec.europa.eu/community_law/state_aids/comp-1999/n747-99.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

SMEs Block Exemption (Annex 2 – Fiche 3):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_010/l\\_01020010113en00330042.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_010/l_01020010113en00330042.pdf)

## **N546/B/2000 Partnership support for regeneration (5): community/voluntary (neighbourhood regeneration)**

The scheme stems from the fact that it is often difficult for the local communities to access capital and funding. Thus the scheme is designed to offer support to local communities by enabling them to participate more effectively in local regeneration.

In the majority of cases the types of activities eligible for support are:

- provision or conversion of buildings for community use by local non-profit making groups;
- training, for example, job interview techniques and Information Technology skills;
- teaching English to immigrant communities;
- provision of crèches.

Exclusively non-profit bodies working only in the voluntary or community sectors can apply for assistance. These organisations are small, local communities operating in areas such as education and youth work.

No profit distributing commercial company can be a beneficiary of the scheme. Any party being owned or associated with any undertakings operating economic activities, which are subject of intra-Community trade, cannot be eligible for support under the scheme.

The scheme includes the following forms of support:

- Support for the **acquisition of land/buildings** by the applicant, provided that the acquisition is at or below market value;
- Support for the **development/refurbishment of buildings** including professional fees;
- Project **management services**;
- Support for **start-up staffing** to ensure project viability for up to a maximum of three years;
- Support for **irrecoverable VAT** on any of the above expenditures incurred by the applicant;
- Support for **interest or similar financing costs**.

All works will be procured in accordance with the rules for public procurement. The full amount corresponding to the assistance granted or the market value of the asset will be repayable if the initial investment, which the scheme supported, is not maintained for its original purposes for a minimum period of five years.

The Commission has noted that although the immediate beneficiaries of the scheme might be undertakings within the meaning of Article 87(1) of the EC Treaty, they are rather small, voluntary and community bodies and they are not deploying activities of an international nature but activities of local interest only. As the scheme specifically excludes the possibility that the financial assistance benefiting this kind of undertakings may affect trade between Member States, it does not involve any aid in the meaning of Article 87(1) of the EC Treaty.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2000/n546b-00.pdf](http://ec.europa.eu/community_law/state_aids/comp-2000/n546b-00.pdf)

**N82/2001**

## **English Cities Fund**

This scheme creates a pilot public-private investment vehicle aimed at attracting institutional and other private sector investors into town and city locations in priority regeneration areas. This vehicle is intended to provide a model for regeneration by demonstrating the potential commercial viability and attractiveness of urban regeneration to private sector funds. Such investors, generally, will not participate in such regeneration projects due to the high level of risk involved. The result is that development projects in regeneration areas suffer from a lack of finance, therefore public support is needed.

### **The UK authorities' investment will take the form of an equity stake in the Fund.**

The Fund once private participation has been secured will then make **equity investments** in a series of urban regeneration property development projects, mainly of a “speculative” nature (where the eventual occupier of the development is unknown).

In its decision, the Commission stated that state aid was present within the English Cities Fund scheme. As the UK authorities invest in the Fund on terms less favourable than those of the private investors, state aid is present to these private investors. However, whilst state aid is present, it was approved as compatible with the guidelines on national regional aid.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2001/n082-01.pdf](http://ec.europa.eu/community_law/state_aids/comp-2001/n082-01.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

The Property Support Scheme supports the development of premises and buildings for commercial purposes by the private sector, construction of new buildings and/or renovation of existing buildings for both “bespoke” (where then end user of the development has already been identified) and “speculative” (where the end user is unknown at the time the application for support is submitted) developments. The scheme will be used in situations where the UK authorities feel that market failure exists. Examples of market failure are situations where the development costs of the project exceed its estimated end market value or where risk aversion and uncertainty in forecasting project outcomes prevents property development.

**This scheme supports both speculative and bespoke property development projects and the support is paid directly to the developer undertaking the work in a number of different forms.**

The scheme consists of 6 instruments which may be used singly or in combination:

- (i) **Development Grants** are “gap-funding” grants where the gap will be the difference between eligible costs and the estimated market value;
- (ii) **Subsidised Loans and Interest Rebates** to fund the development project;
- (iii) **Development Financing Aid** is in the form of a conditional grant or guarantee, provided in situation where financing for a project is not available;
- (iv) **Loan Guarantees** are available to the borrower who will be undertaking the development project;
- (v) **Joint Venture Finance** where the granting authorities will enter into partnership with the private sector and will accept a share of the return relative to its investment that is lower than a market investor would accept;
- (vi) **Development Services** where the UK authorities may procure services to support a

In its assessment of this scheme, the Commission found that state aid was involved and could benefit identified owners, investors, developers and occupiers of business property. However, whilst state aid was present, the Commission in its decision concluded that the scheme was compatible with the guidelines on national regional aid and block exemption regulation for SMEs.

The Commission concluded that in the case of *bespoke* development projects, the subsidised project is designed to fit the needs of an identified end-user, who therefore must be considered as a beneficiary of the aid. However, since, under this scheme, the aid is initially paid out to the developer undertaking for the works, it is possible that part of the aid will remain with the developer. The Commission added that it was not necessary to precisely identify which of the parties, end-user or property developer, was the aid beneficiary if, in either case, the rules on regional aid or aid to SMEs are respected.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2001/n680-01.pdf](http://ec.europa.eu/community_law/state_aids/comp-2001/n680-01.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

SMEs Block Exemption (Annex 2 – Fiche 3):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_010/l\\_01020010113en00330042.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_010/l_01020010113en00330042.pdf)

## NN78/2001      **Urban Development Grant Scheme – Northern Ireland**

The scheme's objective is to stimulate economic regeneration and attract significant private sector investment into specific urban areas of Belfast and Londonderry. The scheme focuses on derelict buildings and sites within objectively defined inner city areas of high economic and social deprivation.

**The Urban Development Grant Scheme - NI provides public financial assistance in order to encourage property development of projects that are not otherwise economically viable. Beneficiaries of the scheme are developers of property. Applications which are exclusively for construction or building work that in itself would not bring about urban regeneration and that would normally be part of an owner's general maintenance responsibility are not eligible.**

The scheme distinguishes between two situations in which a building and/or site may be given a grant:

- i) **Speculative developments** (where the developer does not know the end user) which foresee "gap-funding" support (the difference between the eligible development costs and the estimated market value upon completion, subject to a maximum percentage of the eligible development costs);
- ii) **Developer-occupier-developments** (where the developer is the end-user).

In its assessment of this scheme the Commission found that state aid was present regarding the property developers. However, whilst state aid was present, the Commission found it compatible with the guidelines on regional aid. As far as the end-users of speculative development projects are concerned, it is excluded that the end-users are aid beneficiaries provided that independent experts verify that the developer asks for market prices when putting the aided project on the market. Otherwise, if a speculative developer exploits the aided project by charging prices that lie below the normal market rate, the end-users are also to be considered as aid beneficiaries in the meaning of Article 87(1) of the EC Treaty, because it is to be assumed that part of the aid as given to the developer is passed on to the end-user as well.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2001/nn078-01.pdf](http://ec.europa.eu/community_law/state_aids/comp-2001/nn078-01.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)  
[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

## N317/2002      Scottish Property Support – Bespoke Development Scheme

This scheme is an amendment to the Property Support Scheme numbered N 680/2001 (the summary of this case is provided above). In its notification the UK authorities proposed to modify the application of the Property Support Scheme to *bespoke* development projects in non-assisted areas even when the developer is a large firm.

**The UK authorities limit the aid to the gap between the development cost and the final value of the building. This gap, it is argued, results from the specialised nature of the building, designed to fit the need of a specific end-user. Apart from this exception, the conditions of application of the present case N 317/2002 are identical to those of the case N 680/2001. In particular, in non-assisted areas, aid will be granted only to bespoke development projects in which the occupier of the building is an SME, and the aid intensity will be limited to 15 % when the occupier is a small firm and 7.5% when it is a medium-sized firm.**

Under this scheme state aid to property development projects can take the form of development grants, subsidised loans and interest rebates, loan guarantees, joint venture finance or development services.

In its assessment part concerning the identification of the beneficiaries of state aid, the Commission stated that, as this case concerns bespoke development projects in non assisted areas where the *developer* is a large firm, it is important to determine whether the property developer is an actual beneficiary of the aid (in case he is, the amended scheme is not then in conformity with either SMEs regulation or the guidelines on national regional aid). Further it noted that the subsidy is limited to the gap funding resulting from the specialised nature of the building, of which the occupier is the only beneficiary. The amount necessary to fund the gap is established by an independent Chartered Surveyor. The Commission accepted that the assessment made by the Chartered Surveyor of the development costs of the building and its final value is in line with market levels. Although the established amount is paid out directly to the developer, this system guarantees that the exact amount of this subsidy is passed on to the occupier. Where the proposed amount of aid exceeds the gap funding amount established by the Chartered Surveyor, the Commission found that both the developer and end-user must be considered as possible beneficiaries of the aid and therefore both of them have to be SMEs when the bespoke development project takes place in non-assisted areas. Furthermore, the developer cannot receive any other form of aid with respect to the same eligible costs.

Thus the Commission concluded that, in bespoke development projects, the beneficiary of the aid is the *occupier* of the building. Since the aid to the occupier fulfils all the criteria of application of block exemption regulation for SMEs, the Commission found it to be compatible with the EU state aid rules.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/n317-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/n317-02.pdf)

SMEs Block Exemption (Annex 2 – Fiche 3):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_010/1\\_01020010113en00330042.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_010/1_01020010113en00330042.pdf)

The objective of this project is to revitalise the neglected centre of the small town of Haaksbergen (the Netherlands) by making the centre more attractive and therefore avoiding further impoverishment and decrease in the occupancy rate of the existing retail shop locations.

The project concerns the construction of 58 apartments and 11 retail shops, which are destined to be sold or leased to private investors. However, the calculations showed that the project would not be profitable.

The **beneficiaries** are building companies involved in the project. The first direct beneficiary is responsible for 25% of the project. The second one has been created by five building companies in the framework of the realisation of this project and each of them is in charge of 15% of the project.

The local authorities agreed to support the project by the following measures:

- 1) A **grant** representing the expected loss of the project calculated on the basis of the anticipated costs and revenues. The “**partial reimbursement provision**” means that, at the end of the project, an independent expert will calculate the realised costs and revenues and the companies can keep 50% of the part of the grant which does not cover a realised loss. If the realised loss is larger than the expected one, the grant of the local Council is not increased.
- 2) The **transfer for free some plots of land** belonging to the local authority to the building companies. Conversely, at the end of the project, the local authority will receive for free some plots of land, which are planned to become public space.
- 3) A **partial guarantee**, as the local authority will take responsibility for 35% of the costs that could follow from claims for damages consecutive to the project.
- 4) The **sale of a building and another plot of land** belonging to the local authorities to the building companies.

In its assessment of the aid, the Commission stated that only the measures 1 and 3 represent an advantage for the building companies and constitute State aid within the meaning of Article 87(1) of the EC Treaty. The Commission found that the additional supply of the corresponding number of apartments and retail shop locations on the market is a direct distortion of competition. An additional distortion could exist with the application of the “partial reimbursement provision”. Furthermore, trade conditions are at least potentially affected as some German building companies are present on these markets and certain recipients are active at an international level.

When examining whether aid is compatible directly under Article 87(3)(c) of the EC Treaty, the Commission noted that the project is positive for the common interest and such a local and restricted project has a limited effect on competition and intra- Community trade.

The Commission concluded that the part of the aid that covers the effective loss of the project calculated ex-post by an independent expert is compatible with the common market on the basis of Article 87(3)(c) of the EC Treaty. However, the part of the aid that is exceeding the effective loss of the project calculated ex-post is incompatible with the common market, as it is not necessary for the realisation of the project and might adversely affect trading conditions to an extent contrary to the common interest.

**For Further Information:**

Decision:

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_307/l\\_30720061107en02070212.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_307/l_30720061107en02070212.pdf)

**N209/2001**

## **Guarantee for Borrowings of the Housing Finance Agency - Ireland**

This measure aims at the provision of housing for the most socially disadvantaged households, and in particular for those households which due to their economic circumstances are unable to fund their own housing requirement at socially acceptable conditions through recourse to commercial lenders.

**The Irish Minister for Finance provides the guarantee to support the Housing Finance Agency (HFA) in its borrowing and fundraising activity. The funding is then advanced to local municipalities to be used by them for public service purposes, namely the funding of the statutory social housing obligations of local authorities. The HFA a company limited by shares promoted by the Minister for the Environment and Local Government and regulated by public law with its Board being appointed by the Ministers.**

The local municipalities establish eligibility for **social housing loan finance** by reference to the following considerations:

- Need must be established.
- Households are eligible when they are subject to income and loan limit ceilings.
- Households are eligible which seek to avail of schemes unavailable in the private sector.
- Households are eligible when they are included in local authority housing lists.

In its assessment of the measure the Commission considered the HFA as an instrument of the state that fulfils practically “in-house” activities. Thus the guarantee granted by the state for its fundraising was regarded as a transfer within the state not coming under the competition rules of the EC Treaty. On the other hand, the Commission found the local municipalities to be in competition with other operators in the housing market as they are offering cheaper housing conditions, through rents and construction loans, to certain consumers. As this activity is supported by the state through the cheap guaranteed funding from the HFA, state resources are involved. Furthermore, as only certain municipalities are allowed to transfer this advantage of cheap funding to consumers, they are favoured in the sense of Article 87(1) of the EC Treaty and thus competition is distorted with respect to the other operators in the market. In the Commission’s view, the state aid measure could not have been exempted under Article 87(2) or Article 87(3) of the EC Treaty, because the conditions mentioned in these paragraphs were not fulfilled. However, the aid measure was found compatible with the common market pursuant to Article 86(2) of the EC Treaty as the conditions for applying this provision were fulfilled.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2001/n209-01.pdf](http://ec.europa.eu/community_law/state_aids/comp-2001/n209-01.pdf)

The purpose of this scheme is to provide more affordable owner occupation housing in single tenure housing estates and older urban neighbourhoods or in pressured market areas. The UK authorities believe that the presence of owner occupiers stimulates the demand for improvements as well as the local environment and such householders will act as role models thus playing an important part in developing their communities and tackling regeneration and social inclusion issues.

**The scheme provides housing for designated client groups, notably local residents who aspire to home ownership and wish to remain in the neighbourhood but are denied the opportunity because the level of house prices exceeds their capacity to purchase. After a certain time any houses not sold to these priority groups, will be offered on the open market.**

The Grants for Owner Occupation scheme provides “**gap funding**” in the form of **grants** to private developers to meet the difference (wholly or in part) between the costs of the production of social housing and the price which the completed house will be sold to the owner occupier.

The Commission in its decision stated that whilst the main beneficiaries of the aid will be the eventual owner occupiers of the housing, the applicants for aid are not the prospective owner occupiers but private suppliers of housing and housing trusts. The scheme does provide for the possibility that not all houses will be sold to owner occupiers, therefore will be sold on the open market. Due to this and other factors the Commission could not exclude aid to certain private housing suppliers. However, the Commission agreed with the UK authorities point V.6.c) of the Commission’s communication on state aid and risk capital that the scheme contains provisions to ensure that the housing suppliers who apply for the grant, only receive the minimum incentive necessary for them to realise the housing in question at their own risk.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2001/n497-01.pdf](http://ec.europa.eu/community_law/state_aids/comp-2001/n497-01.pdf)

Risk Capital Guidelines (Annex 2 – Fiche 9):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_194/c\\_19420060818en00020021.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_194/c_19420060818en00020021.pdf)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/c\\_235/c\\_23520010821en00030011.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/c_235/c_23520010821en00030011.pdf)

This scheme's purpose is to increase the stock of housing available for owner occupation in areas where this is useful from a social and regeneration perspective. It is hoped that the supply of owner occupation housing in these areas will lead to improvements in local public services and the local environment.

**Under this scheme the projects supported will widen the choice of housing available to those who wish to become owner-occupiers, either in areas dominated by public sector housing or in areas where individuals on low incomes are excluded from owner occupation.**

The Partnership Support for Regeneration scheme provides “**gap funding**” grants to the property developers undertaking the developments. The purpose of these grants is to bridge the gap, wholly or in part, between the cost of the development project and the sale value of the houses upon completion.

The Commission in its decision of the Partnership Support for Regeneration scheme stated that grants provided to individuals wishing to become owner-occupiers did not involve state aid. However, under this scheme the public support is not granted to the potential owner-occupier but to private housing suppliers carrying out the development projects. As these bodies are undertakings, state aid could be involved. However, the Commission's view is that the principle contained within point V.6 of the Commission communication on state aid and risk capital could be applied to this scheme as it contains provisions to ensure that any support granted will be the minimum incentive necessary for them to realise the housing in question, at their own risk.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/n239-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/n239-02.pdf)

Risk Capital Guidelines (Annex 2 – Fiche 9):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_194/c\\_19420060818en00020021.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_194/c_19420060818en00020021.pdf)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/c\\_235/c\\_23520010821en00030011.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/c_235/c_23520010821en00030011.pdf)

**N40/2003**

## **Measures to Promote Certain House Building - Sweden**

The scheme aims at stimulating the construction of smaller rented dwellings in Sweden's growth regions and of student accommodation by temporarily reducing the construction costs of the property owner.

In Sweden a certain amount of construction costs consists of the value added tax (VAT) property owners have to pay either to entrepreneurs or, if they erect dwellings on their own account, for the purchase of goods and services.

**The aid shall be granted in the form of a reimbursement of the paid VAT amounting to the difference between the VAT the property owner has paid per eligible dwelling and the VAT he would have paid if the VAT-rate had been 6 % instead of the current rate of 25%. The aid shall be paid by crediting the property owner's tax account.**

**Any property owner shall apply for and obtain the aid regardless of whether they are counted among State, public utilities or the private sector. The subsidy shall be granted only to residential properties but not to commercial ones. Thus building firms or other entrepreneurs operating with this sector are not entitled at all.**

In its assessment of the scheme the Commission found that State aid was present. Whilst the measure does involve State aid, the Commission found it compatible with Article 87(3)(c) of the EC Treaty as aid to facilitate the development of certain economic activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2003/n040-03.pdf](http://ec.europa.eu/community_law/state_aids/comp-2003/n040-03.pdf)

**N89/2004**

**Guarantee in favour of the Housing Finance Agency  
Social Housing Schemes funded by the HFA - Ireland**

The main aim of this measure is the same as in the case N 209/2001 (see its summary above): provision of a good dwelling in a good housing environment to the most socially disadvantaged households. Since the positive Commission's decision in July 2001, where the aid granted to the Housing Finance Agency (HFA) was held being compatible with the EC Treaty, the Housing Act 2002 has been enacted. That Act includes, among its provisions, Section 17, the subject of the notification at hand, which increases the range and scope of HFA's activities and responsibilities.

**Section 17 of the Act 2002 provides that the HFA will:**

- 1) be given *increased* borrowing powers;**
- 2) be able to lend *directly* to approved voluntary housing bodies engaged in the provision of social housing.** The provision of cheap funding by the HFA is strictly limited to the statutory functions of the voluntary housing bodies and requires the approval of the Department of Environment and Local Government.

The HFA uses state guarantees in order to raise funds on the capital market at preferential terms, which are then advanced to (a) municipalities as well as (b) voluntary housing bodies, to be used by both of them for the provision of social housing.

The Commission distinguished between two different levels of assessment: **1)** the effect of the state guarantee in favour of HFA; and **2)** the effect of provision of cheap financing by the HFA to (a) municipalities as well as (b) voluntary housing bodies for social housing activities.

Regarding the *effect of the guarantee vis à vis the HFA*, the Commission noted that the HFA is a legal entity closely connected to the public authorities, which is restricted by the applicable legislation and by its own internal statutes to the performance of the activity of fundraising for the social housing activities of the local authorities and voluntary housing bodies. Thus the advantage accruing to the HFA as a credit institution by virtue of the state guarantees cannot be exploited by the HFA to allow it to compete with commercial banks in lending money to third parties. The Commission therefore considered that the guarantees granted by the state remain within the sphere of financing of the state. As the HFA is therefore not an undertaking within the meaning of Article 87(1) of the EC Treaty but a special credit institution, the state guarantees granted to the HFA for the purpose of enhancing its ability to raise finance thus were not found to constitute state aid within the meaning of Article 87(1) of the EC Treaty.

Regarding the *effect of provision of cheap financing by the HFA to municipalities and voluntary housing bodies*, the Commission found that state aid within the meaning of Article 87(1) EC Treaty is present, as it cannot be excluded that municipalities and voluntary housing bodies enjoy a real financial advantage, which has the effect of putting them in a more favourable competitive position than the undertakings competing with them. However, the Commission found that the social housing activities constitute compatible state aid pursuant to Article 86(2) of the EC Treaty, as the conditions for applying this provision has been fulfilled, namely, that (a) the recipient undertaking must actually have a public service

obligation to discharge, and the obligation must be clearly defined; (b) the undertaking must have been entrusted with the public service task; (c) the compensation must not exceed what is necessary to cover the costs incurred in discharging the public service obligation; and (d) the development of trade must not be affected contrary to the interests of the Community.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2004/n089-04.pdf](http://ec.europa.eu/community_law/state_aids/comp-2004/n089-04.pdf)

## N179/2004      Finnish Municipal Guarantees

The main purpose of this measure, by which the Municipal Guarantee Board (MGB) gives state guarantees to a special credit institution Municipality Finance Plc's (MFL) funding, is to safeguard and develop the joint funding of the Finnish municipalities. The activities of the MFL aim at supporting structural, economic and social policies and certain public tasks of the Finnish municipalities, for instance, renting or production and maintenance of social housing.

**The MBG is an institution under public law designated to grant guarantees to the MFL, which is a special credit institution owned by Finnish municipalities and the Local Government Pension Institution. The MGB and MFL are responsible for the execution and administration of the joint funding system of the Finnish municipalities. The MFL can only and exclusively grant loans to entities stipulated in the Regulations of the MGB, which comprise municipalities, municipal federations and other municipality-controlled entities and non-profit entities. The MFL is controlled by the MGB. The operations of the MGB are monitored by a Guarantee Board Auditor appointed by the Finnish Ministry of Interior.**

In its assessment of the measure, the Commission stated that the application of the established principles on special credit institutions is without prejudice to the examination of their activities under the EU state aid rules vis-à-vis the beneficiaries. It is also without prejudice to the application of other provisions of the Treaty and to the international obligations of the EU concerning state aid and other subsidies. Special credit institutions may use state guarantees for public (service) tasks, for instance, firstly, to finance entities of the state sphere (e.g. municipalities) without restrictions (so-called "closed-cycle" approach) or, secondly, to generate and distribute subsidies at the request of the public authorities but only if this is in line with the state aid rules vis-à-vis the final beneficiaries. The Commission concluded that on that basis also the Finnish special credit institution MFL may benefit from state guarantees.

The Commission regarded favourably that the Finnish government has changed the Regulations of the MGB so that any financing provided to entities owned or controlled by municipalities or corporations, which are designated by state authorities and engaged in the provision of (municipal) public services or social housing, *must be given at preferential terms in accordance with the state aid rules*. This ensures that MFL can only generate/distribute state aid (*financing at preferential terms*) to publicly owned or public service undertakings which is in line with the state aid rules governing public services and social housing. It will not be allowed to provide "normal" financing at market terms, which can be provided by any other financial institution.

Only financing to municipalities, which are part of the public sphere and internal organisation of the Member State's authorities, can be granted either at market terms or at preferential terms without restrictions under the state aid rules ("closed-cycle" approach).

Because of its compliance with the established principles on special credit institutions, the Commission found that the measure constitutes no state aid under the EC Treaty.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2004/n179-04-fi.pdf](http://ec.europa.eu/community_law/state_aids/comp-2004/n179-04-fi.pdf)  
[http://ec.europa.eu/community\\_law/state\\_aids/comp-2004/n179-04-sv.pdf](http://ec.europa.eu/community_law/state_aids/comp-2004/n179-04-sv.pdf)

The scheme's purpose is to stimulate private investment in the revalorisation of defective prefabricated buildings (hereinafter "prefabs"). The scheme aims at the improvement of the population's health, safety and living conditions, the enhancement of the environmental friendliness of the buildings and preventing the creation of social ghettos.

This scheme will provide funding support covering part of the costs incurred by the owners for repair works required to mend substantial defects affecting residential flats in prefabs across the Czech Republic. To be eligible for assistance prefabs should feature a combination of defects consisting *inter alia* of statical problems, defective internal infrastructure and poor thermal insulation.

The **beneficiaries** are resident owners of the defective prefabs, and the estimated number of beneficiaries is in excess of 1 000.

The support will be granted by the State Housing Development Fund (SHDF), which is an instrument of the State for the promotion of housing. The support will be coordinated by the bank CMZRB, which was selected by the SHDF. CMZRB's role is to manage the administration of the scheme and process the flow of funds and documents between the applicants and the SHDF.

The scheme includes the following forms of support:

- **Interest subsidy on the interest payable by the beneficiaries** on the bank loans they contracted to cover the eligible repair costs of the prefabs;
- **Guarantee granted by CMZRB**, upon approval by the SHDF, to the lending bank chosen by the beneficiary, in case of lack of security entrustment of the latter;
- **Paid technical expert consultancy services.**

In its assessment of the scheme, the Commission considered that, to the extent that the support is granted to beneficiaries performing an economic activity, such an activity may have an effect on competition and intra-EU trade. Further, resources and decisions of the SHDF are directly imputable to the State. Thus, the measure in question constitutes state aid within the meaning of article 87(1) of the EC Treaty.

When examining whether state aid is compatible directly under Article 87(3)(c) of the EC Treaty, the Commission found that the measure is necessary and proportionate to the realisation of Community objectives, i.e. consumer protection and economic and social cohesion. Moreover, it will have a limited effect on competition and intra-EU trade, as it will not lead to a direct increase in production, it contains safeguards preventing resident owners from discrimination on the basis of nationality and the average support per beneficiary will be of limited importance. Finally, although the measure is not designed to be authorised under EC Regional aid and SME guidelines, it appears to be broadly in line with the requirements of these guidelines.

The Commission thus concluded that the aid is compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2005/n343-05.pdf](http://ec.europa.eu/community_law/state_aids/comp-2005/n343-05.pdf)

[http://ec.europa.eu/comm/competition/state\\_aid/decisions/n343\\_2005/en.pdf](http://ec.europa.eu/comm/competition/state_aid/decisions/n343_2005/en.pdf)

## N546/A/2000 Partnership support for regeneration (4): support for environmental regeneration

The objectives of the scheme are the sustainable and balanced economic growth across the English Regions and the improvement of the physical environment. It offers support for the reclamation of derelict or potentially derelict land for “*soft end use*” aimed at providing a public amenity. Soft end use is designed primarily to improve the environment, often by providing a cover of vegetation. Examples include public open space, nature conservation, and sport and recreation (for instance playing fields, but *not* sports centres). Any non-green development like small ancillary buildings and access roads will only be incidental to the main purpose of the scheme. In any event if reclamation is being taken forward with the aim of redeveloping the land for “hard end use” such as offices, industrial buildings, commercial leisure or housing this scheme may not be used.

The scheme may be used for both *publicly* and *privately* owned land. The circumstances where environmental regeneration works are carried out on privately owned land may include situations where the local authority or regeneration body wishes to apply funding for preliminary works such as site investigation or where it wishes to acquire the land. If a project carried out under the scheme results or might result in any but a minimal increase in the value of private land, the owner must agree to pay an equivalent amount to the local authority or regeneration body as appropriate. *All* valuations will be exclusively undertaken by Independent Chartered Surveyors.

*All* works to publicly owned land will be subject to competitive tender in compliance with the Commission’s rules on public procurement. The same principle will be applied to privately owned land, with the sole exception of the owner of the land being also a developer. Also in such cases, all valuations will be undertaken exclusively by Independent Chartered Surveyors.

Where the person responsible for pollution is clearly identified, that person must finance the remediation or the rehabilitation in accordance with the “polluter pays” principle. No gap funding will be provided under this scheme. It is assured under the scheme that in neither case will an undertaking receive any benefit, given the *soft end-use* of the land concerned.

The scheme will include the following forms of support (*all* valuations will be undertaken by Independent Chartered Surveyors):

- **acquisition of land/buildings** where it is necessary to acquire small parcels of land to provide a viable site for instance for public open space;
- **preparation of land**, including demolition, clearance, treatment of contamination, installation of services and drainage, landscaping, fencing, lighting, etc.;
- **provision of basic infrastructure** (it will only be provided in cases where its absence would preclude the site from being used for its intended purpose);
- **development/refurbishment of ancillary buildings** like site huts, visitor centres;
- **sale or lease of land/buildings**;
- **administration expenses** necessarily incurred by a local authority or private landowner in designing, supervising and managing a reclamation project.

The activities listed above can either be carried out by a local authority, regeneration body by itself, with other public bodies, or with private sector commercial organisations, the latter only after securing agreement to any uplift in value created by the works to be paid to the regeneration body. Applicants must notify the regeneration body of any changes in the use of reclaimed land within a ten year period following completion of the works. If such a change in use creates uplift in land value, this amount becomes repayable to the regeneration body.

The Commission has found that in those cases where only publicly owned land is concerned, it is not possible to identify as beneficiaries of the scheme undertakings within the meaning of Article 87(1) of the EC Treaty. Therefore, there cannot be any benefit for any undertakings nor thereby any intra-Community trade being affected.

In those limited cases where privately owned land is concerned, although in some instances the beneficiaries of the scheme might be undertakings within the meaning of Article 87(1), no undertakings are favoured, given that support is exclusively aimed at providing *public* spaces, by definition accessible to and used by anybody. The fact that, whenever such public use of the site is not maintained for at least ten years, the grant is fully repayable makes it difficult for any undertakings to make any gains in purely economic terms. So does the clause concerning the possible increase of the land value further to a change in its use.

Thus the Commission has decided that the scheme does not involve any aid in the meaning of Article 87(1) of the EC Treaty.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2000/n546-a-00.pdf](http://ec.europa.eu/community_law/state_aids/comp-2000/n546-a-00.pdf)

The objective of the scheme is to bring contaminated land, brownfield land and derelict land back into productive use by addressing the detrimental effects of previous usage. Once remediated, this scheme will allow the UK authorities to increase the supply of land available for subsequent developments whilst at the same time reducing the pressure for development on greenfield land.

The scheme has two different aid instruments:

(i) **Dereliction Aid Grant** is available for the remediation of contaminated land, brownfield land and derelict land. The grant will be directed towards an identified and approved remediation programme in order to make the land suitable for a new use. The grant will be the cost of the work less the increase in the value of the land.

(ii) **Relocation Aid Grant** is complementary to the Dereliction Aid Grant. It supports the relocation of businesses established in an urban area or in a Natura 2000 designated area which lawfully carry out an activity that creates major pollution and must move from their actual place of establishment to a more suitable area. This grant will free up the vacated land for new uses better suited to environmental, economic and social regeneration aims.

The Commission in its appraisal of this scheme assessed both instruments separately. In its decision, it stated that the Relocation Aid Grant whilst involving state aid is compatible with Article 87(3)(c) of the EC Treaty as this measure satisfies the condition outlined under point 39 of the Community guidelines on state aid for environmental protection. Concerning the Dereliction Aid Grant, the Commission also found that state aid was present, but given the different types of works that could be undertaken, the Commission found different types of compatibility. For works on polluted industrial sites, the Commission stated that this form of aid was compatible with point 38 of the Community guidelines on state aid for environmental protection. For the remaining works under the Dereliction Aid Grant i.e., to remediate land which is derelict or suffering from subsidence, the Commission found that both of these measures were not compatible with the Community guidelines on state aid for environmental protection or any of the other state aid guidelines, frameworks or regulations. However, given the clear environmental objective of this scheme and the benefits to the physical environment, the Commission concluded that the remaining two sub measures of the Dereliction Aid Grant were compatible with Article 87(3)(c) of the EC Treaty as aid to facilitate the development of certain economic activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/n385-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/n385-02.pdf)

Community Guidelines on State Aid for Environmental Protection (Annex 2 – Fiche 5):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:037:0003:0015:EN:PDF>

**N494/B/2002**

## **Rehabilitation of polluted sites**

The objective of the scheme is to promote the rehabilitation of polluted industrial sites in France by means of financing interventions made by private undertakings in order to repair environmental damage to the quality of the soil or of surface water or groundwater. The measure only concerns cases where the person responsible for the pollution is not identified. The French Water Agencies will grant the aid for the rehabilitation of the sites where the pollution would risk contaminating the sites, from which potable water is extracted, if they were left without intervention. The aid aims at the destruction of the pollution cause or its limitation *in* or *ex situ*.

The aid instruments are **grants** and **low interest loans**. The eligible costs will be equal to the cost of the rehabilitation work, deducting the increase in the value of the land following the rehabilitation. The maximal aid intensity will be attained only in exceptional cases, with the medium aid intensity being included between 30 % and 50 % of the eligible costs. The amounts covered by insurance companies will be excluded from the eligible costs.

The Commission has found that such measure constitutes state aid within the meaning of Article 87(1) EC Treaty. The Water Agencies are public agencies and the resources granted by them constitute state resources. The measure is selective and it confers its beneficiaries an economic advantage in terms of minor costs incurred compared to competitors and, as such, is apt at affecting trade between Member States. The Commission has however reached the conclusion that such aid satisfies the conditions outlined in the Community guidelines on state aid for environmental protection. In particular, the aid scheme complies with the provisions outlined under point 38 of the environmental aid guidelines. Thus, the Commission has authorised the aid as it is compatible pursuant to Article 87(3)(c) of the EC Treaty.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/n494-b-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/n494-b-02.pdf)

Community Guidelines on State Aid for Environmental Protection (Annex 2 – Fiche 5):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:037:0003:0015:EN:PDF>

**N24/2003**

## **Improvement of industrial estates**

The objective of the scheme is to provide incentives in the form of aid for initial investment for the upgrading, improvement and expansion of existing industrial estates. The scheme covers the whole territory of Greece and it is co-financed by the Structural Funds.

The aid takes the form of a **grant**. The beneficiaries of the aid are public and private undertakings, with the main beneficiaries being agencies responsible for the designation, development and management of Industrial and Business areas.

Eligible expenditure includes acquisition of land, construction of buildings and infrastructure projects to serve the Industry and Business areas.

The Commission in its assessment has stated that such measure fulfils the criteria to be considered as state aid within the meaning of Article 87(1) of the EC Treaty. The grant is awarded through state resources to certain undertakings and, for the part of the eligible expenditures constituted by investment costs which the undertakings in the sites in question should be expected to bear themselves, it confers the beneficiaries an economic advantage that may affect trade between Member States. Nevertheless, the Commission has noted that the scheme complies with all the conditions set forth in the Guidelines on national regional aid. Furthermore, the Greek authorities undertake to respect the provisions of the 2002 Multisectorial framework on regional aid for large investment projects. In consideration of the above, the Commission has concluded that the aid is compatible with the common market pursuant to Article 87(3)(a) of the EC Treaty.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2003/n024-03.pdf](http://ec.europa.eu/community_law/state_aids/comp-2003/n024-03.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)  
[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

## **N207/2003      Rehabilitation of polluted industrial sites - Tuscany Region**

The objective of the scheme is to promote the rehabilitation of polluted industrial sites by means of financing interventions made by private undertakings to repair environmental damage to the quality of the soil or of surface water or groundwater in Tuscany region.

The aid instrument is a non-refundable **grant**. The beneficiaries of the aid are less than ten between small and medium-sized enterprises (“SMEs”) and large enterprises. The responsible for the pollution, if clearly identified, will be excluded from the granting of such aid in accordance with the “polluter pays” principle. The length of the scheme is 10 years and runs from the day of the Commission’s approval decision.

The eligible costs will be equal to the costs of the rehabilitation work, detracting the increase in the value of the land. The cost for the investments in land and existing buildings, those related to the plan needed to determine the pollution of the site and those concerning urban facilities expenditures, restoration and refurbishment, are excluded. The maximum aid intensity amounts to 50% gross of the eligible costs effectively incurred by the firm.

Whilst assessing that such measure constitutes state aid within the meaning of Article 87(1) EC Treaty, the Commission has reached the conclusion that such aid is compatible with the common market, as it satisfies the conditions outlined in the Community guidelines on state aid for environmental protection. In particular, the aid scheme complies with the provisions outlined under point 38 of the environmental guidelines in terms of beneficiaries, eligible costs, aid intensity and total aid amount. In consideration of the above, the Commission has authorised the aid as it is compatible pursuant to Article 87(3)(c) of the EC Treaty.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2003/n207-03.pdf](http://ec.europa.eu/community_law/state_aids/comp-2003/n207-03.pdf)

Community Guidelines on State Aid for Environmental Protection (Annex 2 – Fiche 5):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:037:0003:0015:EN:PDF>

The notification concerns the prolongation and modification of the scheme approved under the state aid No. N 520/2001. The existing scheme partially subsidizes the costs of rehabilitation of polluted industrial sites in The Netherlands, for those cases where no private party can be held liable for the pollution.

The aid takes the form of a **grant**. The eligible costs are equal to the cost of work less the increase of the value of the land. The Dutch authorities compensate the undertakings by 15% to 70% of the eligible costs. It is estimated that the contribution to the rehabilitation projects on average is at 25%. Cumulation of state aid for the rehabilitation is explicitly prohibited in the scheme.

The Dutch authorities have classified the possible beneficiaries of the measure into three categories, in order to distinguish various aid intensities. The three categories are:

1. The current owner or long-lease tenant of the industrial site has caused the pollution of the site before 1 January 1975.
2. The current owner or long-lease tenant of the industrial site has had a direct or indirect involvement in the pollution or a long term legal contract with the polluter or polluters.
3. The current owner or long-lease tenant of the industrial site has not polluted the site themselves and have no involvement with the pollution. The Dutch authorities have classified the undertakings of this third category in various sub-categories, depending on the date of acquiring the site.

The Commission has carried out the same assessment of scheme N 520/2001 in order to reach the conclusion that such measure falls within the definition of state aid of Article 87(1) of the EC Treaty. The Commission has assessed the prolongation and modification of the scheme under the conditions laid down in the Community guidelines on State aid for environmental protection. As a result of the application of definition of liability for pollution under Dutch national law (according to which undertakings could not be held liable if the pollution took place before 1 January 1975, even if they had polluted the sites themselves), the Commission has found that the measure falls within the range of point 38 of the environmental aid guidelines. It has noted that, although the repartition between the categories of beneficiaries has changed and the relative different aid intensities have been simplified, the overall aid intensity of the measure stays between 15 % and 70 % of the eligible rehabilitation costs, which is below the environmental aid guidelines maxima. Thus the Commission has concluded that the notified modifications comply with the criteria set forth in the environmental aid guidelines and has therefore authorised the scheme under Article 87(3)(c) of the EC Treaty.

**For Further Information:**

Decision:

[http://ec.europa.eu/comm/competition/state\\_aid/decisions/n85\\_2005/en.pdf](http://ec.europa.eu/comm/competition/state_aid/decisions/n85_2005/en.pdf)

Community Guidelines on State Aid for Environmental Protection (Annex 2 – Fiche 5):

[http://ec.europa.eu/comm/competition/state\\_aid/decisions/n85\\_2005/en.pdf](http://ec.europa.eu/comm/competition/state_aid/decisions/n85_2005/en.pdf)

**NN114/2000**

## **Individual cases of application based on the English Heritage Scheme**

The scheme is usually known as the Historic Buildings, Monuments, Parks and Gardens Grant Scheme and as its title suggests, the scheme targets the repair of England's most important historic buildings, monuments, parks and gardens. Having received a grant, these heritage attractions must then be open to the general public during certain days of the year.

**Projects that can be targeted under this scheme are secular monuments, parks, gardens and buildings. These assets must either be listed or registered at a specific heritage grade for the repair works to proceed under this scheme.**

This scheme provides support in the form of a **grant** for the **costs of immediate repairs** that are necessary to prevent loss or damage to important architectural, archaeological or landscape features. In addition to the costs for immediate repairs, **incidental costs** arising from these repairs are also classed as eligible for support.

The Commission had difficulty in assessing this case as this scheme was not able to distinguish between the various situations that may require support. For many of the projects supported under this scheme, the Commission agreed with the UK authorities that not all of the conditions of Article 87(1) of the EC Treaty were fulfilled so state aid was not involved. However, there were some cases where the Commission could not exclude the fact that this support may advantage undertakings active in sectors in which there is trade between Member States. Further investigation into this scheme led the Commission to note that the eligible projects are selected by using standards based on heritage conservation. As the aid awarded under this scheme is limited to covering the additional heritage related costs, the Commission found that such aid promotes heritage conservation without affecting trade and competition to an extent contrary to the common interest in the meaning of Article 87(3)(d) of the EC Treaty. Therefore, the Commission found the English Heritage Scheme to be compatible with Article 87(3)(d) of the EC Treaty.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2000/nn114-00-corr.pdf](http://ec.europa.eu/community_law/state_aids/comp-2000/nn114-00-corr.pdf)

**N560/2001**  
**NN17/2002**

## **Brighton West Pier – United Kingdom**

The aim of this measure is to finance the restoration and ensure the maintenance of a pier with a cultural value in Brighton (Brighton West Pier). The Brighton West Pier is a historic pier, listed in Grade 1 for its cultural value as a heritage asset (cultural objective).

A public body, the *National Heritage Memorial Fund* intends to finance the restoration of a pier belonging to a registered charity (*Brighton West Pier Trust*). The balance of the funding will be provided by a private sector partner (*St Modwen*). According to the *grant contract between the National Heritage Memorial Fund, the Brighton West Pier Trust and St Modwen*, St Modwen will also finance the maintenance of the pier and it will receive in return a long lease for a nominal rent of the restored pier (about 125 years).

The Local Authority (*Brighton and Hove City Council*) will lease two parcels of land on either side of the pier to *Brighton West Pier Trust* on a symbolic rent. The *Brighton West Pier Trust* will sublease it to *St Modwen* on a symbolic rent.

The *National Heritage Memorial Fund* has already granted some funds to the *Brighton West Pier Trust*, mainly for emergency works.

Two series of measure are at stake:

- (i) the grants by the National Heritage Memorial Fund to the Brighton West Pier Trust and St Modwen with regard to the restoration of the pier; and**
- (ii) the lease of land on either side of the Pier by the Local Authority to the Brighton West Pier Trust (and by the Brighton West Pier Trust to St Modwen) on a symbolic rent.**

The Commission noted that measures in question involve selective advantages given by public bodies (*National Heritage Memorial Fund* and the *Local Authority*) to private undertakings (*Brighton West Pier Trust* and *St Modwen*). However, the Commission considered that the project at issue involves no state aid in the sense of Article 87(1) of the EC Treaty, because the distortion of competition and intra Community trade criteria are not met. Even if the measures at issue constituted state aid in the sense of the EC Treaty, they would be compatible with the common market under Article 87(3)(d) of the EC Treaty, because they pursue a genuine cultural objective and they do not affect trading conditions and competition to an extent that is contrary to the common interest.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2001/n560-01.pdf](http://ec.europa.eu/community_law/state_aids/comp-2001/n560-01.pdf)

NN11/2002

## Individual cases of application based on the National Heritage Memorial Fund

The National Heritage Memorial Fund scheme provides financial assistance to projects of importance to National Heritage within the UK. These could be things of any kind which are of scenic, historic, archaeological, aesthetic, architectural, engineering, artistic or scientific interest. The aim of the scheme is to safeguard and enhance the heritage of buildings, objects and the environment so that they can be enjoyed by the general public and handed on to future generations.

**Any type of project is eligible for support under this scheme as long as it is important for the national heritage and there is a benefit for the public. Examples include buildings, historic townscapes, historic parks, monuments, projects based on language heritage, archives and exhibitions.**

In the majority of cases support will be in the form of a **grant**, however, **loans** or **other methods** such as a **voucher system** are also available. Given the variety of projects funded under this scheme, the support may be granted for a number of reasons. The construction of buildings, conservation, repair and restoration, improving the housing and storing of collections, education, exhibiting and maintaining archives are some examples.

As this scheme involves a large variety of projects that can be supported, the Commission had difficulty analysing its compatibility with the state aid rules. The Commission agreed with the UK authorities that a number of the projects did not meet all of the conditions under Article 87(1) EC Treaty, hence state aid was not involved. However, the Commission stated that it could not exclude the fact that these funds may advantage undertakings active in sectors where there was trade and competition between Member States. Therefore, the Commission examined this scheme under Article 87(3)(d) of the EC Treaty.

Given the various types of projects supported, the Commission split the eligible projects into two categories, the renovation of buildings and other physically built heritage objects and the conservation of intangible heritage assets, intangible conservation for heritage assets and tangible objects other than physically built. For the renovation of buildings and other physically built heritage objects, the Commission found that as the costs were limited to the additional heritage related costs for retention or appropriate repair, this aid promoted heritage conservation without affecting trade and competition to an extent contrary to the common interest in the meaning of Article 87(3)(d) of the EC Treaty. Concerning the second category, the Commission decided that there was a strong beneficial aspect for various areas of life and these benefits for the public could not be measured in financial terms. Additionally, the Commission stated that the conservation of cultural heritage is a recognised mutual benefit for all European citizens. Therefore, the Commission decided it was appropriate to fund up to the entire project costs, if the project provides free access for the public. Where the project leads to a cost for the public, funding may be justified in order to cover those project costs that can not reasonably be expected to be covered by other incoming finances. To conclude, the Commission found this National Heritage Memorial Fund scheme to be compatible with Article 87(3)(d) of the EC Treaty given that it promotes culture and preserves heritage.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/nn011-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/nn011-02.pdf)

**NN95/2002**

## **Individual cases of application based on the Historic Environment Regeneration Scheme**

The purpose of the Historic Environment Regeneration Scheme is to provide regeneration support to objects of a heritage nature.

**The objects that are eligible for support are ancient scheduled monuments, registered historic parks and gardens, listed historic buildings and designated conservation areas (areas of special architectural or historic interest) in England.**

Support is provided in the form of a **direct grant** for the repair, restoration and rehabilitation of the eligible objects listed above.

When approving the Historic Environment Regeneration Scheme the Commission found that not all of the projects supported fulfilled all of the conditions of Article 87(1) EC Treaty, hence state aid was not always involved. However, the Commission could not exclude the fact that these public funds may provide an advantage to undertakings active in sectors in which there is trade and competition between the Member States. In its decision, the Commission did take into account the needs of historic conservation in the case of retention or appropriate repair of heritage assets does entail additional costs. As this scheme is limited to supporting these additional heritage related costs, the Commission found that such aid promotes heritage conservation without affecting trading conditions and competition in the Community to an extent contrary to the common interest in the meaning of Article 87(3)(d) EC Treaty. In addition, it stated that such support for heritage conservation is a recognised area of mutual benefit for all European citizens under the EC Treaty. Therefore, this scheme is compatible with Article 87(3)(d) of the EC Treaty.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/nn095-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/nn095-02.pdf)

## N430/2002      **Subsidies for the Improvement of the Image of the “Handelshäfen” area (Bremen)**

This scheme promotes investments by small and medium-sized undertakings (SMEs) for the renovation of the “Handelshäfen” area, a partly abandoned port area nearby the centre of Bremen with decreasing economic activity.

**The programme operates with state resources from the budget of the City of Bremen. It is limited to SMEs in order to help them to carry out investments in the improvement of the exterior appearance of their real estate situated in the target area. Those investments should clearly and sustainably improve the object’s appearance and blend easily into the surroundings. Eligible costs are the costs of tangible investments in the renovation and redecoration of the buildings and properties concerned.**

**The following types of investment are assisted under the measure:**

- (i) Rehabilitation of exterior real estate:** demolition of buildings and/or accessory buildings without any or without any considerable commercial function, strengthening of the interior land surface (yard), renewal of fencing, planting of green areas and installation of lighting;
- (ii) Rehabilitation of façades:** rehabilitation of the historical appearance of façades and improvement of a building’s appearance, including repainting and in some cases also the renewal of the windows.

In its assessment of the scheme, the Commission found that for most of the undertakings concerned, the measures in question could not be expected to have an impact on trade between Member States and, therefore, they were not state aid within the meaning of Article 87(1) of the EC Treaty. For the rest of the undertakings concerned by the scheme, the Commission found that the measures might have an impact on trade between Member States and, therefore, they involved state aid within the meaning of Article 87(1) of the EC Treaty. However, whilst state aid was present, the Commission in its decision concluded that the measures could benefit from the derogation of Article 87(3)(c) of the EC Treaty as trade conditions were not affected to an extent contrary to the common interest. Furthermore, the Commission found that some of the measures to be supported, such as the renovation of historic façades, were also likely to fulfil the conditions of Article 87(3)(d) of the EC Treaty, so that they could benefit from the exemption for aid to promote culture and heritage conservation.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/n430-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/n430-02.pdf)

## NN55/2005 Heritage conservation - Poland

The aim of the scheme is the protection of national cultural heritage. The measure foresees financial support for conservation, restoration and other construction works on monuments, requiring renovation, which are classified as objects of a significant historical, artistic, scientific or archaeological value and are listed in the Register of Historical Monuments.

The aid can be granted by the Minister of Culture or the monument conservator at the level of voivodship. The beneficiaries of the aid are individuals, businesses and institutions (e.g. churches, territorial self-government units) in all sectors that are owners or occupiers of monuments listed in the Register of Historical Monuments and which, in the case of aid granted *ex post*, do not receive state funds for their operation. Businesses will receive only a small percentage of the total financial support and most beneficiaries are natural persons, churches and religious organisations. An entity can be supported from public sources on the basis of this measure only once every 10 years. Foreign entities owning eligible objects of national heritage may also apply for the subsidy under the same conditions as Polish applicants.

The aid is granted in the form of direct grants. The subsidy can be granted *ex ante* for future costs necessary to carry out the conservation works calculated in advance and approved by the Monument Conservator, or *ex post* for costs of conservation works occurred in the previous three years on the basis of the receipts. The subsidy cannot exceed 100% of eligible costs.

The Commission has found that the majority of projects being supported under the scheme for renovation, conservation and construction works on the monuments classified as Polish national heritage are considered not to constitute state aid within the meaning of Article 87(1) of the EC Treaty. Most beneficiaries are private individuals, churches and religious organisations. Aid to private individuals does not qualify as state aid in the meaning of Article 87(1) of the EC Treaty, whereas the above mentioned institutions are not mainly involved in economic activity.

The Commission has concluded that in the cases when the measure could involve state aid, it preserves national cultural heritage. Considering the local nature and interest of the activities to be supported by the scheme and the fact that the renovation works are limited to the heritage related elements of the object and do not expand to the operational activity of the beneficiary, the measure does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest in the meaning of Article 87(3)(d) of the EC Treaty.

### **For Further Information:**

Decision:

[http://www.europa.eu.int/comm/competition/state\\_aid/decisions/nn55\\_2005/en.pdf](http://www.europa.eu.int/comm/competition/state_aid/decisions/nn55_2005/en.pdf)

**N106/2005**

## **Hala Ludowa in Wrocław**

The aim of the measure is the protection of national cultural heritage. Hala Ludowa building with its surroundings is a historical monument facility classified as a significant object of national cultural and historical heritage. Hala Ludowa is a modern sport and performance facility in Poland hosting sport events (frequently of international importance), congresses, conferences, scientific symposia, fairs, exhibitions, concerts, music and stage spectacles. The aid is granted for conservation, restoration and construction works of the building and its surrounding area (park and recreation area).

The Municipality of Wrocław and WP Hala Ludowa Sp. z o.o. will conclude a civil law contract determining the details of granting the aid (rules of transferring, etc.). WP Hala Ludowa Sp. z o.o. is the company managing the building Hala Ludowa. Both the beneficiary and the building are wholly owned by the State. The beneficiary is also active in the field of recreational, cultural and sporting activities.

The **subsidy**, amounting to around EUR 0.95 million (PLN 3.9 million), will be transferred to the beneficiary's accounts successively on the basis of submitted invoices defining the amount and the scope of works performed at a given stage. Only the most necessary renovation works which are essential for the proper functioning and maintenance of the building will be covered. The project does not benefit from any other forms of public support. The own contribution of the beneficiary constitutes 13 % of the entire budget of the construction works.

The Commission has found that the measure in the form of a direct grant for renovation, conservation and construction works of Hala Ludowa is considered to constitute state aid within the meaning of Article 87(1) of the EC Treaty. However, the Commission has concluded that the measure promotes culture and preserves national cultural heritage without adversely affecting trading conditions and competition in the Community to an extent contrary to the common interest in the meaning of Article 87 (3)(d) of the EC Treaty, as the aid is limited to the minimum necessary to achieve cultural heritage objectives and will not expand to the operational activity of the beneficiary.

### **For Further Information:**

Decision:

[http://www.europa.eu.int/comm/competition/state\\_aid/decisions/n106\\_2005/en.pdf](http://www.europa.eu.int/comm/competition/state_aid/decisions/n106_2005/en.pdf)

**N123/2005**

## **Cultural heritage scheme to promote tourism**

The scheme aims at promoting tourism by conserving and displaying Hungarian national heritage. The aid will be granted by the Hungarian Tourism Office for **a)** the conservation of buildings that are classified as monuments under the law concerning the preservation of national heritage and, at the same time, are tourist attractions (castles, palaces and historic thermal bath); **b)** the organisation of and participation at events of national and international significance that display and promote Hungarian national cultural heritage (Hungarian folklore, gastronomy and traditions).

The beneficiaries under the scheme are legal persons such as businesses, associations without a legal personality and individual entrepreneurs in possession of eligible objects of national heritage. The beneficiaries of support for the organisation of events under are expected to be mainly local authorities, while the main beneficiaries of the support given for participation at events will be organisations and associations that represent the tourism industry as whole.

The support will be given in the form of **direct non-repayable grants**, which can cover up to 100% of eligible costs. Eligible costs for the subsidies to be awarded for the conservation of buildings will cover restoration works, but not the normal maintenance of costs of these buildings.

The Commission has found that the funding in a significant part of projects being supported under the scheme is considered not to constitute state aid within the meaning of Article 87(1) of the EC Treaty since the beneficiaries are considered not to constitute undertakings performing an economic activity. However, in the case of some projects, the funding by the scheme constitutes state aid in the meaning of Article 87(1) of the EC Treaty (for example, hotel providers operating historic baths). However, the Commission has concluded that, in the limited number of cases when the measure at hand involves state aid, it preserves national cultural heritage without adversely affecting trading conditions and competition in the Community to an extent contrary to the common interest in the meaning of Article 87 (3) (d) of the EC Treaty, as the aid is limited to the minimum necessary to achieve cultural heritage objectives and will not expand to the operational activity of the beneficiary.

### **For Further Information:**

Decision:

[http://www.europa.eu.int/comm/competition/state\\_aid/decisions/n123\\_2005/en.pdf](http://www.europa.eu.int/comm/competition/state_aid/decisions/n123_2005/en.pdf)

## N200/2006 Aid scheme in favour of urban conservation agencies

The scheme is a modification of an existing aid scheme in favour of Urban Conservation Agencies (hereinafter “UCAs”). The alteration concerns a relaxation of the conditions for the exemption from corporation tax for UCAs. The objective is to allow the current beneficiaries of the scheme to extend their activities of cultural heritage conservation to the restoration of economically less attractive historical non-residential buildings, usually in poor condition, offering low profit expectations and earmarked on a list established by independent experts.

The original aid scheme exempted UCAs from a corporation tax on the condition that at least 90% of their portfolio consists of historical residential properties. With this new scheme it can be less than 90% as most of them have already been restored by UCAs. They intend to focus their activities more on non-residential properties, like churches, pumping stations, warehouses, mills, industrial estates.

The **current beneficiaries** are 14 UCAs, which acquire, restore and maintain threatened historic buildings and monuments. They are SMEs and operate at either national or regional level. While some of them operate as private or public limited companies, UCAs are generally non-profit organisations.

The aid instrument is an **exemption from a corporation tax**.

In its assessment of the scheme, the Commission found that the measure constitutes state aid within the meaning of Article 87(1) EC Treaty as it involves state resources, is selective and gives a fiscal advantage to the UCAs. Moreover, distortions of competition and an effect on trade between Member States cannot be ruled out when they rent out or occasionally sell restored buildings. The Commission considered that the relaxation to allow more than 10% non-residential buildings in the portfolio of the UCAs is a substantial alteration of the initial scheme and, therefore, constitutes new aid.

The Commission reached the conclusion that the measure is compatible with the common market on the basis of Article 87(3)(d) of the EC Treaty. Firstly, the tax exemption is a suitable instrument to preserve the cultural heritage of the Netherlands, considering that Article 151 of the EC Treaty recognizes culture as an objective of common interest. Secondly, the measure is justified as those buildings and monuments would undergo further deterioration and would eventually collapse or be destroyed. Thirdly, the effects of the measure on competition and on intra-EU trade would appear limited, since UCAs operate in a small specific segment of the Dutch real estate market. Finally, as the budget for the tax exemption will remain unchanged after the relaxation, the effects on competition and trade would therefore seem further reduced by the shift of the activities of the UCAs towards less economically attractive buildings.

The Commission thus decided to consider the altered aid scheme to be compatible with Article 87(3)(d) of the EC Treaty until 31 December 2014.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2006/n200-06.pdf](http://ec.europa.eu/community_law/state_aids/comp-2006/n200-06.pdf)

[http://ec.europa.eu/comm/competition/state\\_aid/decisions/n200\\_2006/en.pdf](http://ec.europa.eu/comm/competition/state_aid/decisions/n200_2006/en.pdf)

**N606/2001**

## **Community Development Venture Fund**

The purpose of the Community Development Venture Fund Scheme is to address the UK wide market failure in the supply of risk capital to SMEs but more particularly in this case, targeted at disadvantaged communities/areas. The scheme is aimed at developing what is said to be a latent demand to establish businesses within deprived communities.

**The CDVF is essentially a private sector initiative supported by the UK authorities which is set up to redress the market failure in the supply of risk capital in the most deprived areas.**

The UK Government will invest in the CDVF. A substantial amount of the UK Government's contribution will be subordinated whilst the remainder will be invested on *pari passu* terms with the private investors. The subordinated Government capital will be drawn down into the CDVF before private capital.

The CDVF will then only make **investments in SMEs** located in areas suffering from extreme deprivation.

The Commission's decision of the Community Development Venture Fund considered the scheme at 3 different levels (Investors, CDVF and the targeted SMEs) to determine if state aid was involved. The Commission found that state aid was present to both the investors and the SMEs invested in by the CDVF. However, the Commission did find these two levels of the CDVF to be compatible with the Commission communication on state aid and risk capital.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2001/n606-01.pdf](http://ec.europa.eu/community_law/state_aids/comp-2001/n606-01.pdf)

Communication on State Aid and Risk Capital (Annex 2 – Fiche 9):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_194/c\\_19420060818en00020021.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_194/c_19420060818en00020021.pdf)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/c\\_235/c\\_23520010821en00030011.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/c_235/c_23520010821en00030011.pdf)

The Community Investment Tax Credit is a scheme that aims to improve access to capital for small businesses, potential business start-ups and community projects in disadvantaged regions. These target companies are currently suffering from a shortage of finance opportunities due to market failure. This scheme will complement other schemes all aimed at regenerating deprived communities.

**The scheme awards tax relief to corporations and individuals willing to put their money into specialised intermediaries, Community Development Finance Institutions (CDFIs), that in turn invest in SMEs and charitable projects in disadvantaged communities who are suffering from a shortage of finance opportunities due to market failure.**

CDFIs are economically sustainable organisations specialised in providing business advice and finance to enterprises in disadvantaged communities. CDFIs will provide different forms of support to both investors and SMEs:

At investor level, CDFIs will grant a **tax relief to both private and corporate investors** who chose to invest in CDFIs.

At the target enterprise level, CDFIs will offer the following support to these enterprises in disadvantaged areas:

- (i) **Loans to SMEs**
- (ii) **Loans to community projects**
- (iii) **Equity investments in community projects**

The Commission's decision of the Community Investment Tax Credit Scheme considered the scheme at 3 different levels (investors, CDFIs and target enterprises) to determine if state aid was involved. The Commission found that state aid was only present at the level of CDFIs acting as intermediary vehicles. However, in line with point V.6 of the communication on state aid and risk capital, the Commission agreed with the UK authorities that the minimum incentive is provided at the level of investors as the system is open and non-discriminatory. Therefore, the Commission concluded that this scheme was compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2001/n711-01.pdf](http://ec.europa.eu/community_law/state_aids/comp-2001/n711-01.pdf)

Communication on State Aid and Risk Capital (Annex 2 – Fiche 9):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_194/c\\_19420060818en00020021.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_194/c_19420060818en00020021.pdf)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/c\\_235/c\\_23520010821en00030011.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/c_235/c_23520010821en00030011.pdf)

## N159/1996      **Urban Renewal Pact - France** **(Pacte De Relance Pour La Ville)**

The measure targets 3 types of zones, which represent different levels of deprivation. Each zone is chosen according to socio-economic criteria. The objective is to target particular handicaps by encouraging investments in the deprived areas.

**There are 700 Sensitive Urban Zones (SUZ), which include 350 Renewal Urban Zones (RUZ), 30 of them will be selected as Free Urban Zones (FUZ).**

Aid instruments under the scheme:

- (i) SUZ: contribute to **job creation** for the young people from 18 to 25 years old and to the restoration of commercial premises;
- (ii) RUZ: **exemption from professional tax** for companies which provide loans for the expansion/development of other companies;
- (iii) FUZ: **exemption from income tax** for companies;  
**exemption from professional tax and land tax;**  
**exemption from social security contributions.**

The Commission stated that the measures for SUZ and RUZ comply with the conditions of the *de minimis* rule. For the FUZ, the exemption from income tax is also in line with the *de minimis* rule. The exemptions from professional tax and land tax and the exemption from social security contributions were considered as state aid. However, the Commission found the aid compatible with Article 87(3)(c) of the EC Treaty.

### **For Further Information:**

Decision: OJ C 215, 25.07.1996.

Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (Annex 2 – Fiche 1):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:379:0005:0010:EN:PDF>  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:010:0030:0032:EN:PDF>

## **N270/2002      Urban renewal scheme**

The scheme aims at promoting regional development in the designated urban areas in Ireland.

The scheme provides for the incentive of **capital allowances** (accelerated depreciation) to the investors in industrial and commercial buildings in the designated urban areas. The beneficiaries must have committed expenditure in the construction or refurbishment of buildings and have thus made an initial investment as defined in the Guidelines on national regional aid. Beneficiary companies may occupy the buildings themselves or lease them to other companies. Beneficiaries will not include property developers. The financial service sector is also excluded under the scheme.

The beneficiaries will be entitled to 50% capital allowances in year 1 with the remaining 50% applying at 4% per annum for the next 13 years until a 100% write-off is achieved. The capital allowances relate to the value of the construction expenditure exclusive of site cost. If the building is sold before the end of the 14-year writing-down period for capital allowances purposes and if the sale price is greater than the written-down value, then the capital allowances granted up to the sale date will be clawed back.

In its assessment of this scheme, the Commission has found that state aid was present to undertakings investing in the designated urban zones due to the economic advantage in the form of tax saved through accelerated depreciation. Whilst this scheme does involve state aid, the Commission found it compatible with the guidelines on national regional aid and SMEs block exemption.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/n270-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/n270-02.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)  
[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

SMEs Block Exemption (Annex 2 – Fiche 3):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_010/l\\_01020010113en00330042.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_010/l_01020010113en00330042.pdf)

## **N271/2002      Rural renewal scheme**

The scheme aims at promoting regional development in the designated rural areas, which are among the poorest and most underdeveloped in Ireland.

The scheme provides for the incentive of **capital allowances** (accelerated depreciation) to the investors in industrial and commercial buildings in the designated rural areas. The beneficiaries must have committed expenditure in the construction or refurbishment of buildings and have thus made an initial investment as defined in the Guidelines on national regional aid. Beneficiary companies may occupy the buildings themselves or lease them to other companies. Beneficiaries will not include property developers. The financial service sector is also excluded under the scheme.

The beneficiaries will be entitled to 50% capital allowances in year 1 with the remaining 50% applying at 4% per annum for the next 13 years until a 100% write-off is achieved. The capital allowances relate to the value of the construction expenditure exclusive of site cost. If the building is sold before the end of the 14-year writing-down period for capital allowances purposes and if the sale price is greater than the written-down value, then the capital allowances granted up to the sale date will be clawed back.

In its assessment of this scheme, the Commission has found that state aid was present to undertakings investing in the designated rural zones due to the economic advantage in the form of tax saved through accelerated depreciation. Whilst this scheme does involve state aid, the Commission found it compatible with the guidelines on national regional aid and SMEs block exemption.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/n271-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/n271-02.pdf)

Regional Aid Guidelines (Annex 2 – Fiche 2):

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998Y0310(01):EN:HTML)  
[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_054/c\\_05420060304en00130044.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf)

SMEs Block Exemption (Annex 2 – Fiche 3):

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_010/l\\_01020010113en00330042.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_010/l_01020010113en00330042.pdf)

**N766/2002**

## **Free Urban Zones (Zones Franches Urbaines)**

The objective is to stimulate new establishments and investments in depressed urban areas via incentives in the form of specific tax exemptions and exemptions from social security contributions that will help to promote employment.

**Free urban zones comprise 44 areas, each of which has more than 10,000 inhabitants and are considered as particularly deprived according to the criteria set up by French Law No 96-987 of 14 November 1996.**

Incentives are in the form of a **tax relief and exemption from social security contributions**. The aid instruments are:

- (i) **Exemption from income tax** for companies;
- (ii) **Exemption from social charges**;
- (iii) **Exemption from health care social contributions** of craftsmen and salesmen;
- (iv) **Exemption from land tax and professional tax**.

In its assessment of the scheme the Commission noted that the measures under examination are financed from the state budget. They are selective as they are targeted at small businesses located in designated geographical areas - free urban zones. The aid thus falls under Article 87 of the EC Treaty.

Article 87(3)(c) of the EC Treaty allows to authorize state aid measures intended to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission found the above-mentioned aid measures compatible with Article 87(3)(c) of the EC Treaty.

### **For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2002/n766-02.pdf](http://ec.europa.eu/community_law/state_aids/comp-2002/n766-02.pdf)

**C13/2002**

## **Stamp Duty Exemption for Non-residential Property in Disadvantaged Areas**

The aim of this scheme is to contribute to the physical, economic and social regeneration of designated disadvantaged areas by way of reducing the cost of acquiring non-residential property in these areas. In turn, it is hoped that this measure will encourage business establishment and property development in these disadvantaged areas.

**This stamp duty exemption applies to sales and new leases of non-residential properties located in designated disadvantaged areas in the UK. The UK authorities selected these disadvantaged areas based on the most recent Indices of Multiple Deprivation. These are based on areas such as employment, health, education etc.**

The support will be given in the form of an **exemption** from **stamp duty obligations** (taxes levied on documents relating to sales and leases of buildings and transfers of shares). Stamp duty is a transaction tax imposed on the purchaser or leaser of land or property.

The Commission in its approval process found that there was no framework, guidelines or regulations that applied to this scheme. However, the Commission did examine the scheme directly on the basis of Article 87(3)(c) of the EC Treaty and it concluded that whilst state aid was granted to purchasers or leasers of non-residential property, the scheme did fall within the Community objectives of economic cohesion and sustainable development and would not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the scheme, with certain restrictions, is compatible with Article 87(3)(c) of the EC Treaty.

### **For Further Information:**

Decision:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:149:0018:0029:EN:PDF>

**N211/2003**

## **New Free Urban Zones (Nouvelles Zones Franches Urbaines) - France**

As in the above-mentioned case N 766/2002, the scheme is designed to underpin economic activity in depressed urban areas by strengthening the local economic fabric, comprising for the most part small businesses, via incentives in the form of specific tax exemptions and exemptions from social security contributions that will help promote employment. The notified scheme aims at the extension of the urban tax-free zones scheme to include 41 new depressed urban areas, thus adding to the 44 such areas already existing in France.

**The list of the 41 new FUZ was drawn up on the basis of socio-economic criteria which were considered objective in the Commission decision N 159/1996. A combination of these criteria leads to an aggregative index in function, according to which the districts are classified. The indicators used for the calculation were updated on the basis of the population census of 1999 for the socio-demographic data and for the tax resources of the municipalities concerned.**

Incentives are in the form of a **tax relief and exemption from social security contributions**. The aid instruments are:

- (i) **Exemption from land tax and the professional tax;**
- (ii) **Exemption from income tax;**
- (iii) **Exemption from social charges for employers** for employment;
- (iv) **Exemption from social security contributions** for craftsmen and salesmen.

In its assessment of the scheme the Commission noted that the measures under examination are financed from the state budget. They are selective as they are targeted at small businesses located in designated geographical areas - free urban zones. The aid thus falls under Article 87 of the EC Treaty.

Article 87(3)(c) of the EC Treaty allows to authorize state aid measures intended to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. As in its decision taken in the case N 766/02, the Commission thus has decided to consider the aid compatible with the EC Treaty on the basis of Article 87(3)(c).

The Commission has also considered that that there is no affect on trade between Member States in case of small companies which were already established in the FUZ on 1 January 2004 and which activities were limited to the following sectors: local services or local employment initiatives, social economy companies and reintegration companies.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2003/n211-03.pdf](http://ec.europa.eu/community_law/state_aids/comp-2003/n211-03.pdf)

## N70/A/2006 Prolongation and extension of Free Urban Zones (Zones Franches Urbaines)

As in the above-mentioned cases N 766/2002 and N 211/2003 on Free Urban Zones (hereinafter “FUZs”), the scheme aims at promoting and developing depressed urban areas designated on a geographical basis by strengthening the local economic fabric, comprising for the most part small businesses. The measures are incentives in the form of specific tax exemptions and exemptions from social charges for employers that will help to promote employment.

The scheme concerns:

- the **prolongation** of the 85 existing FUZs’ scheme (until end of 2011 for the 44 first generation FUZs),
- the **geographical extension** of 29 existing FUZs,
- the **creation** of 15 new FUZs (the third generation of FUZs),
- the **harmonization** of the tax relief and the exemption from social security contributions for the new creations or establishments of undertakings in the existing or future FUZs (thus the differences between the scheme of the first generation of FUZs and the scheme of the second generation of FUZs will be removed).

The **geographical scope** of this scheme is 100 areas. Each of the third generation FUZs notified in this scheme is limited to 8,500 inhabitants, instead of 10,000 inhabitants for each previous FUZ. The global population concerned represents more than 2.6% of the French total population.

The **beneficiaries** are micro and small enterprises pursuant to the Commission definition in Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

The aid instruments are:

- **Tax relief:**
  - > exemption from income tax for companies,
  - > exemption from land and professional tax,
- **Exemption from social charges for employers**

All the exemptions are limited to *de minimis* for the existing firms at January 1<sup>st</sup> 2006 in the 15 new FUZs or in the 29 extended FUZs.

In its assessment of the scheme, the Commission stated that the measures are financed from the state budget and are selective as they are targeted at small businesses located in designated geographical areas: Free Urban Zones. The measures constitute thus State aid pursuant to Article 87(1) of the EC Treaty, except the aids to existing enterprises subject to *de minimis* Regulation.

The Commission found that the measures aim at pursuing the Community objective of economic and social Cohesion. Furthermore, they are necessary and proportionate, as the aid is limited geographically, in time and to small businesses (half of the recipients are active in the educational, health and social sectors). They do not distort competition and trading conditions to an extent that is contrary to the common interest. Finally, the Commission noted that the previous FUZs’ schemes have had positive but still insufficient results on employment and on economic and social Cohesion, justifying that they could be prolonged and extended.

In consideration of the above, the Commission reached the conclusion that the scheme is compatible with the EC Treaty pursuant to Article 87(3)(c).

### For Further Information:

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2006/n070-a-06.pdf](http://ec.europa.eu/community_law/state_aids/comp-2006/n070-a-06.pdf)

The scheme aims at supporting research projects for the generation of new knowledge and developing and testing of new ways, concepts and models to meet the challenges of building and living in the 21<sup>st</sup> century, such as increasing urbanisation; the consequences for housing policy and territorial planning of global economic, technological and social changes; social decline of many city districts and village neighbourhoods; population loss, etc. The leading objectives of the programme are social integration, preservation of resources and sustainability, sustainable employment and qualification, provision of housing for everybody and local identity and identification.

The projects to be aided fall under the R&D stages of basic research, industrial research and pre-competitive development. Basic research will be carried out by public research institutions.

The beneficiaries are enterprises, the vast majority of which will be SMEs, as well as public research institutions and universities.

The aid is given in the form of outright **grants**. The eligible R&D costs are personnel costs, costs of instruments and equipment, costs of external services (incl. know-how and patents), additional overheads and other operating expenses. All costs must be necessary for and result from the research activities. Costs for purchase of land and buildings are excluded.

The Commission has found that aid given to public institutions is not state aid, as it is public financing of R&D activities by public non-profit-making higher education or research establishments not covered by Article 87(1) of the EC Treaty. Aid given to undertakings is state aid under Article 87(1), as it might strengthen their position compared to other undertakings competing in the common market. Whilst the scheme does involve state aid, the Commission has found it compatible with the conditions of the R&D framework.

**For Further Information:**

Decision:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-1999/n712-99.pdf](http://ec.europa.eu/community_law/state_aids/comp-1999/n712-99.pdf)

Community framework for state aid for research and development (Annex 2 – Fiche 4):

[http://www.europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31996Y0217\(01\)&model=guichett](http://www.europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31996Y0217(01)&model=guichett)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:323:0001:0026:EN:PDF>

## Annex 2

# STATE AID FICHES ON THE MAIN RULES RELEVANT IN THE FIELD OF REGENERATION

## FICHE 1 THE ‘DE MINIMIS’ RULE

### *Reference*

This fiche summarizes the “Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid” (Official Journal No L 379, 28.12.2006, p. 5) (hereinafter in this fiche the “Regulation”).

### *Scope*

The Regulation covers small amounts of State aid (“*de minimis* aid”) which do not constitute State aid in the sense of Article 87(1) of the Treaty and which are therefore not subject to the notification requirement.

The *de minimis* rule does not apply to the undertakings active in the fishery and aquaculture sectors, in the coal sector, and in the primary production of agricultural products listed in Annex I to the Treaty. It applies, with a certain number of additional conditions, to undertakings active in processing or marketing of agricultural products. In the transport sector, *de minimis* aid cannot be used for the acquisition of road freight transport vehicles. Finally, undertakings in difficulty are not covered by this Regulation.

### *Concept*

The *de minimis* rule sets a threshold figure for aid below which Article 87(1) of the Treaty can be said not to apply, so that the measure need no longer be notified in advance to the Commission. The rule is based on the assumption that, in the vast majority of cases, small amounts of aid do not have an effect on trade and competition between Member States.

### *Criteria*

To benefit from the *de minimis* rule, aid has to satisfy the following criteria:

- The ceiling for the aid covered by the *de minimis* rule is in general EUR 200 000 (cash grant equivalent) over any three fiscal year period. The relevant period of three years has a mobile character, so that for each new grant of *de minimis*, the total amount of *de minimis* aid granted during three consecutive fiscal years (including the then current fiscal year) needs to be determined.
- The ceiling will apply to the total of all public assistance considered to be *de minimis* aid. It will not affect the possibility of the recipient obtaining other State aid under schemes approved by the Commission, without prejudice to the cumulation rule described below.
- The ceiling applies to aid of all kinds, irrespective of the form it takes or the objective pursued. The only type of aid which is excluded from the benefit of the *de minimis* rule is export aid.
- The regulation only applies to “transparent“ forms of aid which means aid for which it is possible to determine in advance the gross grant equivalent without needing to undertake a risk assessment. This implies a certain number of restrictions on certain forms of aid like, for example, guarantees. Only guarantees lower than EUR 1.5 million can be covered by the Regulation<sup>13</sup>.

<sup>13</sup> Without prejudice to the possibility of Member States to notify methodologies, as provided by Article 2.4(d) of the Regulation.

## ***Cumulation***

The above ceiling (EUR 200 000 *of de minimis* aid over a three fiscal year period) applies to the total amount *of de minimis* aid granted to a single company. The amount is lowered to EUR 100 000 in the road transport sector.

When granting a *de minimis* aid to a particular undertaking, the Member State concerned must check whether the new aid will not raise the total amount *of de minimis* aid received by that undertaking during the relevant three year period above the EUR 200 000 (or EUR 100 000, as applicable) ceiling.

The Member State is responsible for establishing the instruments needed to ensure an effective control of the respect of the *de minimis* cumulation ceiling. This can be done in two ways:

- Either the Member State sets up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within the Member State.
- Alternatively, the Member State explicitly informs the enterprise about the *de minimis* character of the aid and obtains from the enterprise concerned full information about other *de minimis* aid received during the two previous fiscal years and the current fiscal year. Under all conditions, the Member State remains responsible for ensuring the respect of the cumulation ceiling.

## FICHE 2 REGIONAL AID

### *References*

This fiche summarizes:

- the Guidelines on National Regional Aid for 2007-2013 (Official Journal C 54, 4.3.2006, p.13) (hereinafter in this fiche the “Guidelines”).
- Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (Official Journal L 302, 1.11.2006, p.29) (hereinafter in this fiche the “Regulation”).

### *Aim*

To promote the development of the less-favoured regions:

- mainly by supporting initial investment (covered by both the Regulation and the Guidelines) or
- in exceptional cases, by providing operating aid (covered by the Guidelines only).

### *Scope*

The Guidelines cover investment and operating aid to establishments located in regions eligible for regional aid (see below).

The Guidelines do not apply to the primary production of agricultural products, to the production, processing and marketing of fisheries products listed in Annex I of the Treaty, nor to the coal industry. Special rules apply to:

- transport and shipbuilding;
- no regional aid is allowed to the steel or synthetic fibers industry;
- large investment projects (see “concepts”).

### *Concepts*

Two categories of eligible regions can be distinguished:

- *Article 87(3)(a) regions*: These are regions where the standard of living is abnormally low or where there is serious underemployment (NUTS II regions with a GDP/cap lower than 75% of the EU average).
- *Article 87(3)(c) areas*: These are problem areas defined on the basis of (national) indicators proposed by the Member States, subject to a maximum population coverage and some minimal conditions to prevent abuse.

**Initial investment:** investment in material and immaterial assets relating to the setting up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products, or a fundamental change in the overall production process of an existing establishment;

**Operating aid:** Aid aimed at reducing a firm’s current expenditure (e.g. salary costs, transport costs, rents).

**Large investment projects** are initial investment projects with eligible investment costs that are at least EUR 50 million (eligible investment costs are defined below).

**Gross grant equivalent (GGE):** the nominal value of the aid granted discounted to its value at the date of granting the aid.

**Aid intensity:** GGE expressed as a percentage of the total eligible project cost.

### **AID FOR INITIAL INVESTMENT:**

**Eligible costs:** Aid for initial investment can be calculated as a percentage of the investment's value or as a percentage of the wage-cost of the jobs linked to the initial investment

- *Investment:* material investment (land, buildings, plant/machinery) and a limited amount of immaterial investment (expenditure entailed by technology transfer). Expenditure on transport equipment in the transport sector is not eligible.
- *Wage-cost:* Gross wage-cost, calculated over a period of two years multiplied by the number of jobs created (net job creation in the establishment concerned).

#### **Maximum aid intensities**

<b>Regional GDP as % of EU-25 GDP</b>	<b>Maximum aid rates for large companies</b>	<b>Aid rates in the outermost regions</b>
> 75%	15% - 10%	40%
<75%	30%	50%
<60%	40%	60%
<45%	50%	n/a

So-called 'statistical effect regions' – which have less than 75% of EU-15 GDP but more than 75% of EU-25 GDP (3.6% of EU-25 population) - will benefit from transitional status and qualify for the lowest rates of aid under Article 87(3)(a) of the Treaty, with a 30% aid rate for large companies until 31.12.2010. The situation of these regions will be reviewed in 2010. If their situation has declined, they will continue to benefit from Article 87(3)(a) of the Treaty. Otherwise, they will be eligible under Article 87(3)(c) of the Treaty with an aid rate of 20%, as from 1.1.2011.

The eligible areas are identified in the regional aid maps for each Member State published on the website of DG COMP.

Transitional arrangements are foreseen until 2010 for regions suffering the biggest reductions in aid intensities and, until 2008, for regions losing eligibility under the new Guidelines. These areas are also identified in the maps.

For large investments the regional aid intensity ceiling is reduced as follows:

- For the part of the eligible cost between EUR 50 million – EUR 100 million, the intensity is reduced to 50% of the regional aid ceiling.
- For the part of the eligible cost exceeding EUR 100 million, the intensity is reduced to 34% of the regional aid ceiling.

With the exception of large investment projects, Aid intensities can be increased in all assisted areas by 20% where aid is given to small enterprises and 10% where it is given to medium-sized enterprises. No SME bonus is permitted for large investment projects with eligible expenses over EUR 50 million.

### ***Cumulation***

Aid intensity ceilings specified in the table above apply to total aid:

- Where assistance is granted under several regional aid schemes;
- Whether the aid comes from local, regional, national or Community sources.

Where expenditure eligible for regional aid is eligible for aid for other purposes (e.g. R&D&I), it will be subject to the most favourable ceiling under the schemes in question.

### ***Notification requirements***

The Regulation exempts transparent regional investment aid schemes which respect the rules on eligible expenses and the maximum aid intensities defined in the Regional aid Map for the Member State concerned from notification to the Commission. Transparent ad hoc aid granted to an individual company is also exempt from notification provided it is used to top-up aid granted under schemes and the ad hoc component does not exceed 50% of the total amount of aid.

The material rules for investment aid are the same in both the Regulation and the Guidelines, so that there is no advantage to be gained in notifying an aid measure which is exempt.

Transparent aids are aid measures in which it is possible to calculate precisely the gross grant equivalent as a percentage of eligible expenditure ex ante without a need to undertake a risk assessment (for example grants, interest rate subsidies and capped fiscal measures). Public loans are considered to be transparent provided that they are backed by normal security and do not involve abnormal risk. In principle, aid schemes involving state guarantees or public loans with a state guarantee element are not considered as transparent. However, such aid schemes can be considered as transparent if, before the implementation of the scheme, the methodology used to calculate the aid intensity of the state guarantee has been accepted by the Commission following notification to the Commission after adoption of the Regulation.

Individual notification of large investment projects is required where the aid exceeds the maximum amount of aid an investment with eligible costs of EUR 100 million can receive in the region concerned.

## **OPERATING AID**

### ***General provisions***

Operating aid may be granted in Article 87(3)(a) regions, but only if all of the following conditions are satisfied:

- It is justified in terms of its contribution to regional development;
- Its level is proportional to the handicaps it seeks to alleviate;
- It is limited in time and progressively reduced Member States must demonstrate the existence and importance of these handicaps.

**Transport aid:** Aid to offset additional transport costs can be provided only in the outermost regions and in low population density areas qualifying for regional aid.

**Aid to offset depopulation:** Aid to offset depopulation may be granted on a permanent basis in the least populated regions with a population density below 8 inhabitants/km<sup>2</sup>.

**Aid to compensate the handicaps of the outermost regions:** Aid may be granted on a permanent basis to offset the handicaps of the outermost regions (remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products).

**Aid for newly established small enterprises:**

- maximum EUR 3 million per enterprise in Article 87(3)(a) regions and EUR 2 million per enterprise in Article 87(3)(c) regions;
- 5% bonus for Article 87(3)(a) regions < 60% EU-GDP, low population density regions and small islands;
- intensities:

	Years 1-3	Years 4-5
Article 87(3)(a) regions	35%	25%
Article 87(3)(c) regions	25%	15%

## FICHE 3 AID FOR SMALL AND MEDIUM-SIZED ENTERPRISES

### *Reference*

This fiche summarizes the “Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to Small and Medium-sized Enterprises” as later amended<sup>14</sup> (Official Journal No L 10, 13.1.2001, p.33) (hereinafter in this fiche the “Regulation”).

### *Scope*

The Regulation covers State aid measures to support tangible and intangible investment and soft aid in SMEs.

Special rules apply to coal, shipbuilding, and fisheries products.

### *Concepts*

#### **Definition of SMEs**

- A *medium-sized enterprise* is an enterprise satisfying all of the following criteria:
  - has fewer than 250 employees and
  - has either an annual turnover not exceeding EUR 50 million, or a balance-sheet total not exceeding EUR 43 million.
  
- A *small enterprise* is an enterprise that satisfies all of the following criteria:
  - has fewer than 50 employees and
  - has either an annual turnover or a balance-sheet total not exceeding EUR 10 million.

The criteria must be applied to the company as a whole (including subsidiaries located in other Member States and outside the EU). The Regulation provides definitions of an autonomous enterprise, partner enterprise and linked enterprise in order to assess the real economic position of the SME in question.

### *Eligible cost*

Aid can be provided in relation to the following categories of expenditure:

- Investment in tangible assets (land, buildings, plant/machinery) and in intangible assets (expenditure entailed by technology transfer);
- The costs of services provided by outside consultants and the costs of the first participation of an enterprise in a particular fair or exhibition.

<sup>14</sup> The scope of the Regulation was further extended by Commission Regulation No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development, Official Journal L 63, 28.02.2004, pages 22-29 and Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001, Official Journal L 358, 16.12.2006, p. 3–21.

### ***Maximum aid intensities***

	<b>Non-assisted regions</b>	<b>Article 87(3)(a)</b>	<b>Article 87(3)(c)</b>
<b>Investment</b>	15.0%	Regional aid ceiling	Regional aid ceiling
■ Small firms	7.5%	+15%	+10%
■ Medium-sized firms			
<b>Services by outside consultants and participation in fairs</b>	50%	50%	50%

### ***Notification***

Aid measures satisfying the conditions laid down in the Regulation are exempted from the ex ante notification requirement. However, large projects satisfying the following thresholds are *not exempted* from individual notification:

- The total eligible costs of the whole project are at least EUR 25,000,000 and the gross aid intensity is at least ½ of the applicable aid intensity ceiling; or
- The total gross aid amount is at least EUR 15,000,000.

### ***Other conditions***

Within 20 working days following the implementation of the exempted aid scheme or the granting of the exempted individual aid, the Member State must submit to the Commission a summary description of the aid measure.

## FICHE 4 AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION

### *Reference*

This fiche summarizes the “Community Framework for State aid for Research and Development and Innovation” (Official Journal C 323 of 30.12.2006, p. 1) (hereinafter in this fiche “Framework”).

### *Scope*

The Framework covers all measures under which State aid is provided for company research and development and innovation.

#### *R&D&I support not considered to constitute State aid:*

- Public financing of non-economic R&D&I activities by research organizations;
- R&D commissioned from firms by public authorities according to market conditions (open tender procedure).

#### *Sectors for which special rules apply:*

- Transport by rail, road and inland waterway
- Agriculture and fisheries: maximum aid intensity of 100% in all cases (subject to conditions)

### *Concepts*

**Fundamental research:** Experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view;

**Industrial research:** Planned research or critical investigation aimed at the acquisition of new knowledge or skills for developing new products, processes or services or bringing about a significant improvement in existing products, processes or services;

**Experimental development:** The acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services (including the creation of a commercially usable prototype or pilot projects under certain conditions).

### *Aid measures*

The following measures are recognized under the Framework as eligible for compatibility under Article 87(3)(c) of the Treaty:

- Aid for R&D projects;
- Aid for technical feasibility studies;
- Aid for industrial property rights costs for SMEs;
- Aid for young innovative enterprises;
- Aid for process and organizational innovation in services;
- Aid for innovation advisory services and for innovation support services;

- Aid for the loan of highly qualified personnel; and
- Aid for innovation clusters.

### ***Eligible costs***

The eligible costs depend on the type of the proposed measure and are laid down in the relevant Sections of the Framework. By way of an example, the following types qualify as eligible costs for *Aid for R&D projects* (i.e. the first category of aid mentioned above):

- Personnel costs of staff to the extent employed on the research activity);
- Costs of instruments, equipment and land and premises to the extent and for the period used for the research project (subject to depreciation as applicable);
- Cost of contractual research, technical knowledge and patents brought or licensed from outside sources at a market price;
- Cost of external consulting and equivalent services used exclusively for the project;
- Additional overheads incurred directly as a result of the research;
- Other operating expenses incurred directly as a result of the research activity.

### ***Aid intensities***

Similarly as with the eligible costs, the aid intensities differ depending on the measure in question. By way of an example, the following table features aid intensities applying to the first type of the aid measure- *aid for R&D projects*:

**TABLE ILLUSTRATING THE AID INTENSITIES FOR R&D PROJECT AID**

	Small enterprise	Medium-sized enterprise	Large enterprise
<i>Fundamental research</i>	100%	100%	100%
<i>Industrial research</i>	70%	60%	50%
<i>Industrial research subject to:</i> - collaboration between undertakings; for large undertakings: cross-border or with at least one SME or - collaboration of an undertaking with a research organization or - dissemination of results	80%	75%	65%
<i>Experimental development</i>	45%	35%	25%
<i>Experimental development subject to:</i> - collaboration between undertakings; for large undertakings: cross-border or with at least one SME or - collaboration of an undertaking with a research organization	60%	50%	40%

***Special conditions***

The Framework provides for three types of assessment on the basis of a balancing test of the positive and negative effects of the aid:

(i) *standard assessment* – if project satisfies conditions set out in Chapter 5 of the Framework, it is assumed that the balancing test would be positive. The following measures fall within this category (provided aid is granted only upon application to national authorities):

- project aid and feasibility studies if aid beneficiary is SME and aid amount is below EUR 7,5 million per SME for a project;
- aid for industrial property rights costs for SMEs;
- aid for young innovative enterprises;
- aid for innovation advisory services;
- aid for innovation support services; and
- aid for the loan of highly qualified personnel.

(ii) *standard assessment plus demonstration of incentive effect and necessity*- in accordance with Chapters 5 and 6 of the Framework: for all notified aid falling **below** the thresholds for the detailed assessment (mentioned below) **and** not falling within one of the categories of the standard assessment just under Chapter 5 (mentioned above).

(iii) *detailed assessment* – due to a higher risk of distortion of competition, Commission will carry out a detailed assessment for measures where the amount exceeds:

- > for project aid and feasibility studies:
  - if project is predominantly fundamental research, EUR 20 million;
  - if the project is predominantly industrial research, EUR 10 million;
  - for all other projects: EUR 7,5 million;
- > for process or organisational innovation in services activities, EUR 5 million.
- > for innovation clusters, EUR 5 million.

For each aid scheme, an annual report on implementation is required.

## **FICHE 5 AID FOR ENVIRONMENTAL PROTECTION MEASURES**

### ***Reference***

This fiche summarizes the “Community Guidelines on State aid for Environmental Protection” (Official Journal No C 37, 3.2.2001, p.3) (hereinafter in this fiche the “Guidelines”). The Guidelines are currently under review.

### ***Scope***

The Guidelines cover aid for actions designed to remedy or prevent damage to our physical surroundings or natural resources or to encourage the efficient use of these resources.

The Guidelines do not apply to:

- Aid for R&D and training in the environmental field (R&D framework and training aid regulation apply).
- the production, processing and marketing of agricultural products listed in Annex I of the EC Treaty (Community guidelines for State aid in the agricultural sector apply).

## **INVESTMENT AID & AID FOR ADVISORY SERVICES**

### ***Eligible activities & costs***

**Aid for investment to adapt to new compulsory EU environmental standards or to improve on such standards**

- Eligible costs: Strictly limited to the extra costs of the investments in land, buildings, equipment and intangible assets necessary to achieve the compulsory standards and/or to meet the environmental objectives. In all cases, the eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period.
- Aid for investment to adapt to new compulsory EU standards can be granted to SMEs only and can be made available only during a period of three years from the adoption of these new standards.

**Aid for investment in energy saving, in renewable sources of energy and in combined heat and power installations (CHP)**

- Eligible costs: Strictly limited to the extra costs of the investments in land, buildings, equipment and intangible assets necessary to achieve the environmental objectives. In all cases, the eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period.
- In the case of renewables or CHP, the extra costs are defined as the extra cost compared to the cost of a comparable conventional power plant.

**Aid for the rehabilitation of polluted industrial sites**

- If the person responsible for the pollution is not identified or cannot be made to bear the cost, the person responsible for the rehabilitation of the land may receive aid.
- The eligible costs are equal to the cost of the work to repair the environmental damage

less the increase in the value of the land.

### **Aid for the relocation of firms**

- Aid for the relocation of companies can be granted only if the change of location is dictated on environmental protection grounds and if it is ordered by administrative or judicial decision. In addition, the company relocating must comply with the strictest environmental standards applicable in its new location.
- The eligible costs should be limited to the net costs of the relocation.

**Aid for advisory services:** Conditions of the SME Regulation apply.

### **Maximum aid**

Maximum aid intensities as a percentage of eligible costs	Outside assisted areas (GGE)	In assisted areas (GGE)
(a) Investment to adapt to compulsory EU standards (SMEs only)	15%	15%
(b) Investment to improve on compulsory EU standards and relocation of firms	30%	40% or Regional aid ceiling + 10%
(c) Investment in energy saving and in CHP	40%	40% or Regional aid ceiling + 10%
(d) Investment in renewable sources of energy	40%	40% or Regional aid ceiling + 10%
(e) Rehabilitation of polluted industrial sites	100% of eligible costs + 15% of the cost of the work	

(e) Where it is shown to be necessary, aid can be granted up to 100% of eligible costs. Where in the case of (b), (c) and (d), the investments are carried out by SMEs, the aid intensities may be increased by a further 10% GGE. The bonuses for assisted regions and SMEs may be combined, but the maximum rate of aid should never exceed 100% GGE of the eligible costs. All aid intensities are expressed in gross grant equivalents.

## **OPERATING AID**

### **Eligible activities**

Under the Community Guidelines on State aid for environmental protection, Member States can also provide operating aid in cases where such aid is shown to make a significant contribution to protecting the environment.

The following types of operating aid may be authorised under the Guidelines:

- Operating aid to promote environmentally-friendly forms of waste management and to promote energy saving
- Operating aid in the form of reductions of or exemptions from taxes levied on certain activities for reasons of environmental protection (e.g. CO<sup>2</sup> levy)
- Operating aid to promote renewable energy sources

- Operating aid for the combined production of electric power and heat

Specific conditions to be respected when granting operating aid in the environmental field are set out in detail in points 42 to 67 of the Community Guidelines on State aid for environmental protection.

The eligible costs are strictly limited to the extra production costs by comparison with the market prices of the relevant products or services.

***Maximum aid***

Operating aid is in principle limited to a duration of 5 years. Where the aid is “degressive”, its intensity may amount to 100% of the eligible costs. Where the aid is “non-degressive” the intensity must be limited to 50% of the eligible costs.

For operating aid in the form of tax reductions or exemptions, specific criteria apply for new taxes and existing taxes.

Finally, on operating aid for renewable energy sources and Combined Heat and Power, the environmental guidelines offer four options for Member States to grant aid.

**Important:** please note that the Guidelines are currently under review and new guidelines are expected to be adopted at the end of 2007.

## **FICHE 6 EMPLOYMENT AID**

### ***Reference***

This fiche summarizes the “Commission Regulation (EC) No 2204/2002 of 5 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment” (Official Journal No L 337, 13.12.2002, p.3) (hereinafter in this fiche the “Regulation”).

### ***Scope***

The Regulation covers only aid schemes that are selective (limited to certain regions or sectors) and under which aid is granted for the following purposes:

- the creation of jobs;
- the recruitment of disadvantaged or disabled people;
- to cover the additional cost of employing disabled people.

The Regulation covers all sectors, with the exception of coal mining, shipbuilding and transport.

### ***Concepts***

Disadvantaged people: Young persons below 25 years or within 2 years from completing full-time education; migrant workers moving within the EU; members of ethnic minorities and requiring development of linguistic, vocational training or working experience; persons absent from working life and education for 2 years due to family reasons; single adults looking after children; unemployed persons without secondary qualification; unemployed persons above 50 years; long-term unemployed persons; people convicted and imprisoned for criminal charges.

Disabled people: handicapped due to serious physical, mental, or psychological impediment.

### ***Conditions***

Conditions to be satisfied in the case of job creation aid:

- Employment must represent a net increase in the number of jobs;
- Employment must be maintained for at least 3 years (2 years for SMEs);
- New employees must never had a job or must have lost their previous job;
- Higher aid intensities in assisted regions can be applied only if the beneficiary’s contribution to financing new employment is at least 25% and if the employment is maintained in the qualifying region;
- Application for aid has to be submitted before the jobs are created.

### ***Eligible cost***

#### **Job creation aid: wage cost over a period of two years**

Aid for recruitment of disabled/disadvantaged people: wage cost over a period of one year  
Aid for additional costs of employing disabled people: additional costs directly linked to the employment of disabled people, including the costs of adapting premises, of employing staff to assist the disabled worker(s), and of adapting or acquiring equipment for disabled worker(s).

### ***Maximum aid***

	Outside areas	assisted areas	Article 87(3)(c) regions	Article 87(3)(a) regions
Aid for net job creation:	15.0%	GGE	Regional aid ceiling + 10% GGE (max. 30% NGE)	Regional aid ceiling + 15% GGE (max. 75% NGE)
■ Small enterprises	7.5%	GGE		
■ Medium-sized enterprises				
■ Large enterprises				
Aid for recruitment of disadvantaged people	50%			
Aid for recruitment of disabled people	60%			
Aid for additional costs of employing disabled people	100%			

### ***Notification***

Not exempted from the notification requirement:

- Aid to a single enterprise exceeding EUR 15 million over three years;
- Individual aid awards that are not granted under an aid scheme must still be notified;
- Aid schemes that are targeted at specific sectors;
- Aid for other types of employment related measures that do not fall under any of the exempted categories (e.g. aid for job sharing, aid for other types of disadvantaged workers).

## FICHE 7 TRAINING AID

### *Reference*

This fiche summarizes the “Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid” as later amended (Official Journal No L 10, 13.1.2001, p.20) (hereinafter in this fiche the “Regulation”).

### *Scope*

The regulation covers all public support for training which favours one or more firms or sectors of industry by reducing costs they should normally have to bear when they want their employees to acquire new skills. The regulation applies to training aid whether the training is provided by companies themselves or by public or private training centres. Examples of training measures which do not constitute State aid:

- schooling and initial training (incl. apprenticeships and day release schemes);
- training of unemployed people, including traineeships in enterprises. The regulation applies to all sectors.

### *Concepts*

**Specific training:** Training involving tuition directly and principally applicable to the employee’s present or future position in the assisted firm and providing qualifications which are not or only to a limited extent transferable to other firms or fields of work.

**General training:** Training involving tuition which is not applicable only or principally to the employee’s present or future position in the assisted firm, but which provides qualifications which are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee. Training is considered ‘general’ if, e.g. it is jointly organised by different independent enterprises, or if employees of different enterprises may avail themselves of the training. It is also considered ‘general’ if it is recognised, certified or validated by public authorities or bodies on which the Member State or the Community conferred the necessary powers.

### *Eligible cost*

- trainers’ personnel costs;
- trainers’ and trainees’ travel expenses;
- other current expenses (materials, supplies, etc.);
- depreciation of tools and equipment, to the extent that they are used exclusively for the training scheme in question;
- cost of guidance and counseling services with regard to the training project;
- trainees’ personnel costs up to the amount of the total of the above eligible costs.

### ***Maximum aid***

Gross percentages	Specific training	General training
<b>Standard rate</b> (large firms outside assisted areas)	25%	50%
<b>Increases of standard rate:</b>		
■ SME	+10%	+20%
■ Article 87(3)(a) region	+10%	+10%
■ Article 87(3) region	+5%	+5%
■ Beneficiaries: categories of disadvantaged workers	+10%	+10%

### ***Notification***

Aid measures satisfying the conditions laid down in the Regulation are exempted from the ex ante notification requirement. However, large training projects (aid granted to a single company exceeding EUR 1,000,000) are *not exempted* from individual notification.

### ***Other conditions***

Within 20 working days following the implementation of the exempted aid scheme or the granting of the exempted individual aid, the Member State must submit to the Commission a summary description of the aid measure.

## **FICHE 8 AID ELEMENTS IN THE SALE OF LAND AND BUILDINGS BY PUBLIC AUTHORITIES**

### ***References***

This fiche summarizes the “Commission Communication on State aid elements in sale of land and buildings by public authorities” (Official Journal No C 209, 10.7.1997, p.3) (hereinafter in this fiche the “Communication”).

### ***Aim***

The aim of the Communication is:

- to outline a simple procedure that allows Member States to handle the sale of land and buildings in a way that automatically precludes the existence of State aid
- to specify cases of sales of land and buildings that should be notified to the Commission.

### ***Principle***

The Commission presumes that the sale of land or buildings by a public authority does not contain aid if either one of the two procedures below has been followed:

- The sale was concluded on the basis of a sufficiently well-publicized, open and unconditional bidding procedure, accepting the best or only bid.
- The sale is conducted at the market value as established by independent valuers.

The price at which the land or buildings concerned are sold should conform **at least** to the price indicated by an independent “asset valuer” in his expert evaluation.

If after a reasonable effort to sell at the value indicated in the expertise it is clear that the land/building cannot be sold at that price, a divergence of up to 5% from the original value can be deemed to be in line with market conditions.

Member States should notify to the Commission, without prejudice to the *de minimis* rule (see Fiche 1) any sale which was not concluded in conformity with either one of the procedures described above.

## **FICHE 9 RISK CAPITAL MEASURES**

### ***References***

This fiche summarizes the “Community Guidelines on State Aid to Promote Risk Capital Investments in Small and Medium-sized Enterprises” (Official Journal C 194, 18.08.2006, p. 2) (hereinafter in this fiche the “Guidelines”).

### ***Aim***

The aim of the Guidelines is to set out the criteria the Commission will apply in the compatibility assessment of the risk capital measures in accordance with Article 87 (3)(c) of the Treaty.

### ***Scope***

Application to risk capital schemes targeting only SMEs. Measures designed to provide or promote risk equity and/or quasi-equity financing to enterprises in their start-up and expansion phases.

Risk capital measures must exclude the provision of aid to enterprises in difficulties and companies in the shipbuilding, coal and steel industry. The Guidelines do not apply to aid to export-related activities.

The Commission will pay particular attention to the need to prevent the use of these guidelines to circumvent the principles laid down in existing frameworks, guidelines and regulations.

### ***Presence of State aid***

When assessing risk capital measures, the Commission will examine whether State aid is present at each of the following levels:

- *Aid to the investors:* Where a measure allows investors to participate in a risk capital fund on terms more favourable than if they had undertaken this investment in absence of the measure, then those investors may receive State aid. The same applies where the private investors participate in a fund on terms more favourable than public investors.
- *Aid to an investment vehicle or fund and/or its manager:* Normally, the fund is merely an intermediary vehicle for the transfer of aid, rather than being an aid beneficiary itself. However, in certain cases (e.g. regarding fiscal measures or other measures involving direct transfers in favour of an investment vehicle or fund with the character of an independent enterprise) aid may be present unless the investment is made on terms which would be acceptable to a normal economic operator.
- *Aid to the enterprises invested in:* Enterprises will not be considered as aid recipients if the investment is made on terms which would be acceptable to a private investor in a market economy in the absence of any State intervention. For this purpose, the Commission will examine, inter alia, whether investment decisions are profit-driven, linked to a reasonable business plan, and subject to a realistic exit strategy.

### ***Criteria for assessing risk capital measures***

The Commission will assess the compatibility of risk capital measures taking into account the incentive effect, necessity of aid, existence of market failure and proportionality of aid.

The Guidelines set out a set of conditions under which the Commission will consider that aid in the form of risk capital is compatible with Article 87(3)(c) of the Treaty. For measures fulfilling these criteria it will be assumed that incentive effect, the necessity and proportionality of aid are met and that the overall balance of the aid measure is positive. These criteria include:

- Maximum level of investment tranches of EUR 1.5 million per target SME over each period of twelve months;
- Restriction to seed, start-up and expansion financing or to start-up phase for medium enterprises outside of assisted areas;
- Prevalence of equity and quasi-equity investment instruments (at least 70% of the budget of the measure);
- Obligatory participation by private investors (at least 50% of the funding, or 30% in assisted areas);
- Profit-driven character of the investment decisions;
- Commercial management.

Risk capital measures which do not satisfy all the conditions laid down above are subject to a *detailed compatibility assessment* based on a balancing test, in order to verify the targeting of the relevant market failure, the higher risks of potential crowding-out of private investors, and distortion of competition.

The Commission will regard the following characteristics as positive elements in its balancing test evaluation:

- Existence and evidence of market failure;
- Appropriateness of the instrument;
- Incentive effect and necessity of aid:
  - Commercial management;
  - Presence of an investment committee;
  - Size of the measure/ fund;
  - Presence of business angels;
- Proportionality (including open tender for managers, call for tender or public invitation to investors).

The Commission will balance these positive elements against the following potential negative effects of the aid:

- Crowding-out of private investment;
- Other distortions of competition, as it cannot be excluded that risk capital measures might have the effect of keeping inefficient firms or sectors afloat or of artificially increasing their valuation and thus, distorting the market for risk capital. Sector specific aid may also maintain production in non-competitive sectors, whereas region-specific aid may build up an inefficient allocation of production factors across regions.

## FICHE 10 SERVICES OF GENERAL ECONOMIC INTEREST

### *References*

This fiche summarizes the “Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest” (2005/842/EC) (Official Journal L 312, 29.11.2005, p. 67-73), the “Community Framework for State aid in the form of public service compensation” (2005/C 297/04) (Official Journal C 297, 29.11.2005, p. 4-7), and the Commission Directive 2006/111/EC of 16 November 2006 on transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version) (Official Journal L 318, 17.11.2006, pages 17 – 25) (hereinafter in this fiche the “Decision”, the “Framework”, and the “Transparency Directive” respectively).

### *Aim*

The aim of the Decision and Framework is to provide greater legal certainty for the financing of services of general economic interest. They follow the Court of Justice's *Altmark* ruling<sup>15</sup> and are designed to ensure that companies can receive public support to cover all costs incurred, including a reasonable profit, in carrying out public service tasks as defined and entrusted to them by public authorities, whilst making sure that there is no over-compensation of public service costs and no cross-subsidization in favour of commercial activities which are liable to distort competition.

### *Scope*

By definition, the Decision and Framework only apply to undertakings providing services in the general economic interest as defined in the Treaty, the secondary legislation and the applicable case law. They only apply to undertakings conducting *economic* activities, as financial support granted to entities not conducting economic activities does not constitute state aid.

### *Concepts*

**Services of general economic interest (or SGEI)** mean economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there was no public intervention. The activity must exhibit special characteristics as compared with the general economic interest of other economic activities.

**Altmark criteria** mean the conditions set by the landmark Court judgement under which compensation for a SGEI should not be considered as State aid. In brief:

- (i) the activity qualifies as SGEI and its tasks and obligations are clearly defined;
- (ii) the parameters for compensation of the public service's costs are objective, transparent, and are established in advance;
- (iii) compensation does not exceed the net costs of providing the service plus a

<sup>15</sup> C-280/00, 24.7.2003.

reasonable profit (i.e. no over-compensation); and

(iv) the compensation is determined either through *public procurement* or if no public tender has taken place, the company entrusted with the SGEI is compensated on the basis of the costs of a typical well-run company.

## **Measures**

### **1. Decision**

The Decision specifies the conditions under which compensation to companies for the provision of SGEI is compatible with state aid rules and *does not have to be notified* to the Commission in advance.

#### **Conditions:**

- a clearly defined public service mandate;
- no over-compensation;
- compensation of less than €30 million per year per undertaking; and
- annual turnover of less than €100 million per undertaking.
- no limits for amount of compensation:
  - hospitals;
  - social housing;
  - air and sea transport to islands;
  - airports and ports below specific thresholds defined in passenger volumes.

### **2. Framework**

The Framework specifies the conditions under which compensation not covered by the Decision is *compatible* with state aid rules. Such compensation will have to be notified to the Commission due to the higher risk of distortion of competition.

The rules are designed to ensure that there is ***no overcompensation*** (compensation that exceeds the net costs of the public service) and ***no cross-subsidizing*** (compensation that is used on other markets open to competition) as such circumstances could not be found compatible with the Treaty.

### **3. Transparency Directive**

The Transparency Directive clarifies that companies receiving compensation and operating on both public service and other markets must have separate accounts for their different activities, so that the absence of over-compensation can be established.