



European Economic and Social Committee

INT/197
State aid for R&D

Brussels, 10 December 2003

OPINION

of the European Economic and Social Committee

on the

Draft Commission Regulation amending Regulation (EC) No. 70/2001 as regards the extension of its scope to include aid for research and development

(OJ C 190, 12.8.2003)

On 3 June 2003, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the:

Draft Commission Regulation amending Regulation (EC) No. 70/2001 as regards the extension of its scope to include aid for research and development
(OJ C 190, 12.8.2003).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 12 November 2003. The rapporteur was **Mr Wolf**.

At its 404th plenary session on 10 and 11 December 2003 (meeting of 10 December), the Committee adopted the following opinion by 103 votes in favour, and one against:

1. **Introduction**

- 1.1 Articles 87 and 88 of the EC Treaty broadly speaking ban aid. They also define the exceptions to the general rule that State aid is incompatible with the principles of the common market, and lay down corresponding procedures. Under Article 88(3), the Commission must be notified of such aid so that it can submit its comments and take a decision on the matter (prior notification/information requirement).
- 1.2 Under Regulation (EC) No. 70/2001, certain State aid for small and medium-sized enterprises (SMEs) has, up to now, been exempt from the notification requirement. Above all, this regulation also lays down thresholds below which the Commission waives the notification requirement that would otherwise apply (exemption regulation). The draft regulation that the Commission is now submitting amends and considerably amplifies Regulation (EC) No. 70/2001 which has been applicable up to now, principally by adopting the Commission's new definition of SMEs and including aid for R&D.
- 1.3 Up to now, the procedures for State R&D aid for all companies, including SMEs, have been governed by the Community framework for State aid for research and development¹ (R&D Community framework) and all such aid has been subject to prior notification/information. This Community framework remains in force and continues to apply to all State R&D aid not exempted under this draft regulation.

2. **Gist of the draft Commission document**

- 2.1 The main purpose of the proposed amendments to Regulation (EC) No. 70/2001 is to exempt R&D State aid for SMEs below certain thresholds or ceilings from the prior

¹ OJ C 45/5, 17.2.1996

notification/information requirement. Other SME-related aspects covered by the amendments include:

- R&D carried out in collaboration between enterprises and public research establishments;
- the definition of "fundamental research", "industrial research", and "precompetitive development";
- eligible costs;
- aid intensity (maximum percentage of aid calculated on the basis of the sum of the eligible costs);
- aid for patenting costs and feasibility studies;
- large individual aid grants (exemption ceilings);
- aid remaining subject to prior notification to the Commission.

2.2 In addition, the definition of small and medium-sized enterprises (SMEs) in Annex I of the regulation has been amended in line with Commission Recommendation 2003/361/EC of 6 May 2003². The new definition takes effect from 1 January 2005.

2.3 There is also to be a final settlement of any aid granted before the entry into force of this regulation without Commission authorisation.

2.4 Also, the specific reporting provisions as laid down in Annex III of the regulation are in future to be replaced by the unified and simplified annual reporting system pursuant to Article 27 of Regulation (EC) No. 659/1999.

3. **General comments**

3.1 In many of its earlier opinions, the Committee has expounded the key conditions for prosperity and economic and social progress. Among these, competition, equal opportunities and knowledge enhancement play a fundamental role.

3.1.1 Generally speaking, therefore, aid is to be rejected as it distorts equal opportunities and competition raises the tax burden across the economy as a whole and generates a considerable need for regulation. Processing aid also involves an extensive degree of administrative work for all concerned.

3.1.2 Aid may be granted only in exceptional cases, for instance as part of research policy, SME policy and regional policy. Its aim is to give EU enterprises the competitive impetus they need to take on their rivals (including those from outside Europe) but which they cannot, for the moment, generate by themselves.

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OJ L 124, 20.5.2003

- 3.2 Where aid is permitted, however, standard definitions and uniform provisions should be sought as far as possible in order to minimise the administrative work for all the players concerned, and, at the same time, make it easy to keep track of the relevant rules. This is a particularly important consideration for SMEs with their more limited administrative machinery.
- 3.3 Unfortunately, in the light of competition-driven cost-cutting constraints, the trend for companies – and SMEs in particular – is in any case to underinvest in R&D because of the high costs involved, the need for highly specialised experts and equipment and the uncertainty of research findings. This is particularly true of fundamental research where it is basically impossible to predict whether economically viable results can be produced within a foreseeable timeframe.
- 3.4 Under the Commission's proposed regulation, the competent authorities in the Member States can, within a given framework, target aid to SMEs' R&D activities without the need to notify the European Commission in advance. This is particularly important since SMEs frequently come off second best in competition with large companies or non-European rivals and thus often need support quickly and with as little red tape as possible.
- 3.4.1 The draft Commission regulation is thus designed to cater for SMEs' specific needs. The Committee basically welcomes this approach.
- 3.4.2 The Committee has already highlighted SMEs' key role in R&D-driven innovation on many occasions, most notably in its opinion on the European research area (see point 7.5 ff of that opinion)³.
- 3.5 The Committee feels therefore that the proposed Commission regulation is an important tool in furthering the objectives laid down at the 2000 Lisbon summit, in order to give new impetus to research as a whole, to boost the share of GDP spent on research, and to strengthen the key role of SMEs.
- 3.6 That said, the Committee does have certain reservations about whether some of the provisions are sufficiently practical and technically feasible. Also, more effort should be put into standardising the various legal texts concerned.
- 3.7 The Committee is aware of the difficulties involved both in harmonising the definitions and criteria used in the various exemption regulations, and in making the present proposal to incorporate R&D aid into the SME exemption regulation compatible with the R&D Community framework.

³ OJ C 204, 18.7.2000

- 3.7.1 For that reason, the Committee would recommend that in future the criteria for individual notification requirements should be standardised and simplified in the various exemption regulations. If progressive rates are used, they must in future be readily understandable and sound reasons must be given for their introduction.
- 3.7.2 One way of achieving that might be, in general⁴, to base single notification requirements (exclusively) on total (gross) aid levels, giving explicit reasons for any exceptions that may be necessary.
- 3.7.3 The upcoming revision of the R&D Community framework, which the Committee considers urgent should thus also take (gross) aid levels as the sole yardstick for the individual notification requirement. If, however, the resultant thresholds for mandatory notification are too low, they must be raised as appropriate.
- 3.8 The 1996 version of the R&D Community framework remains virtually unchanged. With only minor alterations⁵, it has been prolonged⁶ despite the changes in the R&D environment in the intervening years (as a result, for instance, of the expiry of the WTO support rules). The framework should therefore be urgently revised and brought into line with the new realities. Amendments will thus also be required to the exemption regulation.
- 3.8.1 Another reason why this is important is that many research projects are carried out jointly between SMEs and larger enterprises. In such cases, SMEs also remain subject to the R&D Community framework rules (see recital 11 of the regulation). Thus, SMEs need to be familiar with – and know how to handle – both the R&D Community framework that, in general terms, applies to larger companies, and the proposed R&D exemption regulation under discussion here, which applies exclusively to SMEs. This clearly generates an additional administrative difficulty for SMEs if the exemption regulation and the Community framework are not sufficiently compatible.

3.9 **Definition of SMEs**

The Committee is particularly pleased that the Commission's new definition of SMEs, which is to take effect from 1 January 2005, is being incorporated into the proposed draft extending the scope of the SME exemption regulation to include aid for research and development.

- 3.9.1 This new definition for the first time also includes micro-enterprises as a separate category. (an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2 million). Given the key economic importance of micro-

⁴ Hence also in the case of regional aid

⁵ OJ C 48/2, 13.2.1998

⁶ OJ C 111/3, 8.5.2002

enterprises, the Committee recommends that, in future, the Community and the Member States pursue policies that encourage their start-up (among other things by simplifying and reducing the administrative requirements involved) and take better account overall of their specific operating requirements.

- 3.9.1.1 As R&D aid to these micro enterprises is hardly likely to distort competition, and the idea is to make it much easier for such enterprises to start R&D in the first place, consideration could be given to working out a "de minimis" rule under which R&D aid for this category of company would be subject to simplified criteria. As a point of reference for this kind of initiative, the Committee would point to the European Charter for Small Enterprises, which provides for the promotion and support of enterprises such as these.
- 3.9.2 On the other hand, more effective steps should also be taken to boost the innovative potential of medium-sized high-tech firms which no longer come under the Commission's definition of SMEs, but which do not yet have large-company resources either. The Committee therefore recommends extending the exemption for R&D aid to SMEs to enterprises with a workforce of between 251 and 500.

4. **Specific comments**

- 4.1 Legal certainty in applying the rules: the proposed regulation amplifies Article 10 (see also point 2.3), which, establishes the criteria for (i) notifications pending at the time of entry into force of the regulation and (ii) aid granted in breach of the notification requirement before the entry into force of this regulation. The Committee welcomes the proposed application of the more favourable criteria of this draft regulation. However, where the necessary requirements for that to happen are not met, it must be made clear that the criteria that are to be used are consistent with those that were current or applicable at the time the measures to be assessed were adopted.
- 4.1.1 In the interests of legal certainty, therefore, the Committee recommends clarifying the last subparagraph of the proposed text as follows⁷: "*Any aid which does not fulfil these conditions shall be assessed by the Commission in accordance with the regulations, frameworks, guidelines, communications and notices applicable at the time the notification was received, or, where there has been no notification, at the time the measure was carried out or the aid granted*".
- 4.2 Options and compatibility with the R&D Community framework: Like all exemption regulations, Regulation 70/2001 also explicitly states that, rather than taking advantage of the exemption, Member States have the option of notifying aid schemes and individual aid. Such

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See also the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid, 7.5.2002, C(2002) 458 fin

provisions are to be welcomed in principle, but it should be made absolutely clear on what basis such notifications are assessed.

- 4.2.1 Although recital 11 of the regulation states that "the Community framework for State aid for research and development will continue to be used for the assessment of other aid for research and development, including aid measures which apply both to large companies and to small and medium-sized enterprises", it remains a moot point as to whether that also applies to notified aid.
- 4.2.2 The Committee would thus recommend amending recital 11 of the proposed regulation as follows and including it in an appropriate place in the draft: *"Regulation (EC) No. 70/2001, as amended by this regulation, applies only to State aid for research and development granted to small and medium-sized enterprises. However, if the option to notify this aid is taken up, the aid will, like other research and development aid, including aid measures which apply both to large companies and to small and medium-sized enterprises, be assessed under the Community framework for State aid for research and development."*
- 4.2.3 The Committee expressly welcomes the clarification in recital 11 of how to deal with "mixed" aid, as Member States' research programmes (and the Community's sixth R&D framework programme) are aimed exclusively at SMEs in special cases only. As a rule, grants are allocated not only to public research establishments, universities and SMEs, but also to large enterprises as well. The Committee feels it would be extremely detrimental and problematic if the same research schemes were assessed using two different legal frameworks. Reiterating a point already made in 3.8 and 3.8.1, the Committee therefore strongly advocates that the rules in the new draft R&D exemption regulation should be worded exactly the same as the rules laid down in the R&D Community framework, or that the R&D Community framework rules should be revised and brought into line with the exemption regulation. No differentiation should be made unless absolutely necessary and explicit reasons must be given for any changes that are made.
- 4.2.4 Moreover, to ensure that the material provisions of the R&D Community framework and the proposed SME exemption regulation also remain as consistent as possible in the longer term, the Committee recommends that both instruments should have the same period of validity (and the same deadlines for revision) – and should if possible be dealt with together.
- 4.3 Feasibility studies:
- 4.3.1 Since, at the start of a feasibility study, it is impossible to predict whether the findings will result in an R&D project eligible for exemption under the proposed regulation, the Committee recommends deleting the second part of Article 5b(2).
- 4.3.2 Although the issue of subcontracting is addressed at the end of the new Article 5a (in a different context), it is not clear whether eligible costs within the meaning of the modified

Article 2(k) also include the costs of subcontracting R&D activities to third parties. Article 2(k)(iv) does mention research "*bought ... from outside sources at market prices.*" That said, these costs are, at the same time, to be limited to only 50% of the total eligible project costs. However, since lack of specific capacity or skills means that SMEs in particular are not always in a position to carry out a considerable part of the requisite R&D activities themselves, subcontracting should be explicitly permitted in line with the objective of the proposed regulation and should, as far as possible with no limitations, be recognised as eligible for aid. The Commission's proposal that only 50% of these costs should be eligible for aid is particularly prejudicial to research into fundamental issues, which is a typical part of R&D subcontracting to higher education establishments and (publicly run) research institutes - and which, in point of fact, is a desired feature of research policy.

4.4 Patenting costs: The Committee welcomes Article 5c which also exempts aid to be granted for patenting costs from the notification requirement.

4.5 Definition of research categories:

4.5.1 The Committee basically endorses the progressive rates of gross aid intensity laid down in Article 5a(3) in line with the R&D objective set out in Article 1(2)(b). The Committee is also aware that having different levels of gross aid intensity for different research categories raises intractable difficulties in delimiting one from the other. To facilitate processing, consideration might be given to granting Member States a fair degree of flexibility in establishing the "weighted average" (Article 5a(3)).

4.5.2 Although it is aware that it may thereby be adding to the difficulties of delimiting one from the other, the Committee – mindful of the potential links and feedback that exist – and that are, in the final analysis, desired – between fundamental research and target applications – would first of all draw attention to its earlier statements on this issue in its opinion on the European research area⁸. Accordingly, it would propose new definitions.

4.5.3 "Fundamental research' shall mean a research activity designed to broaden and deepen fundamental scientific and technical knowledge in which potential industrial or commercial applications are ancillary to and far removed from the activity concerned".

4.5.4 The Committee would also point out that the term "industrial research" is not common in the linguistic usage of most Member States. "Applied research" is the usual term. The latest version of the OECD's Frascati Manual (*Proposed standard practice for surveys on research and experimental development*) also uses the term "applied research".

⁸ OJ C 204, 18.7.2000: see point 7.1 of the above-mentioned opinion on the European research area: "Research and development basically form a system embracing different research categories and thus also stages of scientific development of potential new technologies: basic research, application-oriented research, "encyclopaedic" research (e.g. to complete our knowledge about substance properties, new substances, active substances, etc.), technological development and product and process development. The distinction between these research categories is sometimes an artificial one, and innovation results from interaction and cross-fertilisation between them."

4.5.5 The Committee therefore recommends that, following coordination with the experts responsible for research programmes and with the scientific community, the categories should be redefined and renamed as part of the revision of the Community framework.

5. **Recommendations**

The Committee recommends that the Commission document be approved after revision to take account of the comments set out above.

Brussels, 10 December 2003.

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of the
European Economic and Social Committee

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