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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

(OJ L 10, 13.1.2001, p. 20)

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COMMISSION REGULATION (EC) No 68/2001

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on the application of Articles 87 and 88 of the EC Treaty to training aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ([1]), and in particular point (a)(iv) of Article 1(1) thereof,

Having published a draft of this Regulation ([2]),

Having consulted the Advisory Committee on State Aid,

Whereas:

(1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty, that under certain conditions training aid is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.

(2) The Commission has applied Articles 87 and 88 of the Treaty to training aid in numerous decisions and has also stated its policy, most recently in the Community framework on training aid ([3]). In the light of the Commission's considerable experience in applying those Articles to training aid, it is appropriate, with a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, that the Commission should make use of the powers conferred by Regulation (EC) No 994/98.

(3) In order to establish a transparent and coherent policy for all sectors, it is appropriate that the scope of this Regulation be as broad as possible and include the agricultural sector, fisheries and aquaculture.

(4) This Regulation is without prejudice to the possibility for Member States to notify training aid. Such notifications will be assessed by the Commission in particular in the light of the criteria set out in this Regulation, or in accordance with the applicable Community guidelines and frameworks, if such guidelines and frameworks exist. This is currently the case for activities relating to the production, processing and marketing of products listed in Annex I to the Treaty and for the sector of maritime transport. The framework on training aid should be abolished from the date of entry into force of this Regulation, since its contents are replaced by this Regulation.

(5) For reasons of transparency, it should be recalled that in accordance with the second subparagraph of Article 51(1), of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ([4]), Articles 87 to 89 of the Treaty

([1]) OJ L 142, 14.5.1998, p. 1.
([2]) OJ C 89, 28.3.2000, p. 8.
([3]) OJ C 343, 11.11.1998, p. 10.
([4]) OJ L 160, 26.6.1999, p. 80.

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do not apply to financial contributions provided by the Member States for measures subject to Community support for training according to Article 9 of the said Regulation.

(6) For reasons of transparency it should be underlined that this Regulation should only apply to training measures which constitute State aid within the meaning of Article 87(1) of the Treaty. Many training measures are not caught by that Article, but constitute general measures because they are open to all enterprises in all sectors without discrimination and without discretionary power for the authorities applying the measure, e. g. general tax incentive schemes, such as automatic tax credits, open to all firms investing in employee training. Other training measures do not fall within the scope of Article 87(1) of the Treaty because they directly benefit people everywhere and do not grant an advantage to certain enterprises or sectors. Examples are: schooling and initial training (such as apprenticeships and day-release schemes); the training or re-training of unemployed people, including traineeships in enterprises; measures directly targeted at workers or even at certain categories of workers, affording them the opportunity of receiving training unconnected with the firm or industry in which they work (for example the 'learning account'). On the other hand, it should be recalled that contributions from sectoral funds, if they are made compulsory by the State, are not considered as private resources, but constitute State resources within the meaning of Article 87(1) of the Treaty.

(7) This Regulation should exempt any aid that meets all the relevant requirements of this Regulation, and any aid scheme, provided that any aid that could be granted under such scheme meets all the relevant requirements of this Regulation. With a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, aid schemes and individual grants, outside any aid scheme, should contain an express reference to this Regulation.

(8) In order to eliminate differences that might give rise to distortions of competition, in order to facilitate coordination between different Community and national initiatives concerning small and medium-sized enterprises, and for reasons of administrative clarity and legal certainty, the definition of 'small and medium-sized enterprises' used in this Regulation should be that laid down in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ([1]).

(9) In order to determine whether or not aid is compatible with the common market pursuant to this Regulation, it is necessary to take into consideration the aid intensity and thus the aid amount expressed as a grant equivalent. Calculation of the grant equivalent of aid payable in several instalments, and calculation of aid in the form of a soft loan, require the use of market interest rates prevailing at the time of grant. With a view to a uniform, transparent and simple application of the State aid rules, the market rates for the purposes of this Regulation should be deemed to be the reference rates, provided that, in the case of a soft loan, the loan is backed by normal security and does not involve abnormal risk. The reference rates should be those which are periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Communities* and on the Internet.

(10) Training usually has positive external effects for society as a whole since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of

([1]) OJ L 107, 30.4.1996, p. 4.

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Community industry and plays an important role in employment strategy. In view of the fact that enterprises in the Community generally underinvest in the training of their workers, State aid might help to correct this market imperfection and therefore can be considered under certain conditions to be compatible with the common market and therefore exempted from prior notification.

(11) In order to ensure that State aid is limited to the minimum necessary to obtain the Community objective which market forces alone would not make possible, the permissible intensities of exempted aid should be modulated according to the type of training provided, the size of the enterprise and its geographical location.

(12) General training provides transferable qualifications and substantially improves the employability of the trained worker. Aid for this purpose has less distortive effects on competition, so that higher intensities of aid can be considered compatible with the common market and exempted from prior notification. Specific training, on the other hand, which mainly benefits the enterprise, involves a greater risk of distortion of competition so that the intensity of aid which can be considered compatible and exempted from prior notification should be much lower.

(13) In view of the handicaps with which SMEs are confronted and the higher relative costs that they have to bear when they invest in the training of their workers, the intensities of aid exempted by this Regulation should be increased for SMEs.

(14) In assisted areas under Article 87(3)(a) and (c) of the Treaty, training has a relatively greater external impact, since there is a substantial underinvestment in training in those regions and a higher unemployment rate. Consequently, the intensities of aid exempted by this Regulation should be increased for those areas.

(15) The characteristics of training in the maritime transport sector justify a specific approach for that sector.

(16) It is appropriate that large amounts of aid remain subject to an individual assessment by the Commission before they are put into effect. Accordingly, aid amounts exceeding a fixed amount, which should be set at EUR 1 000 000, are excluded from the exemption provided for in this Regulation and remain subject to the requirements of Article 88(3) of the Treaty.

(17) This Regulation should not exempt aid cumulated with other State aid, including aid granted by national, regional and local authorities, or with Community assistance, in relation to the same eligible costs when such cumulation exceeds the thresholds fixed in this Regulation.

(18) In order to ensure transparency and effective monitoring in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard format in which Member States should provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme is implemented or an individual aid outside such schemes is granted, with a view to publication in the *Official Journal of the European Communities*. For the same reasons, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation. For the purposes of the annual reports to be submitted to the Commission by Member States, it is appropriate for the Commission to establish its specific requirements, including, in view of the wide availability of the necessary technology, information in computerised form.

(19) Having regard to the Commission's experience and in particular the frequency with which it is generally necessary to revise State aid policy, it is appropriate to limit the period of application of

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this Regulation. Should this Regulation expire without being extended, aid schemes already exempted by this Regulation should continue to be exempted for six months,

HAS ADOPTED THIS REGULATION:

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Article 1

Scope

This Regulation applies to training aid in all sectors, including the activities relating to the production, processing and marketing of products listed in Annex I of the Treaty, with the exception of aid falling within the scope of Council Regulation (EC) No 1407/2002 [1].

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Article 2

Definitions

For the purpose of this Regulation:

(a) 'aid' shall mean any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;

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(b) 'small and medium-sized enterprises' shall mean enterprises as defined in Annex I to Commission Regulation (EC) No 70/2001 [2];

(c) 'large enterprises' shall mean enterprises not coming under the definition of small and medium-sized enterprises;

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(d) 'specific training' shall mean 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;

(e) 'general training' shall mean 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 that are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee. Training shall be considered 'general' if, for example,

— it is jointly organised by different independent enterprises, or if employees of different enterprises may avail themselves of the training,

— it is recognised, certified or validated by public authorities or bodies or by other bodies or institutions on which a Member State or the Community has conferred the necessary powers.

(f) 'aid intensity' shall mean the gross aid amount expressed as a percentage of the project's eligible costs. All figures used shall be taken before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid. Aid payable in several instalments shall be discounted to its value at the time of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in a soft loan shall be the reference rate applicable at the time of grant;

(g) 'disadvantaged worker' shall mean:

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[1] OJ L 205, 2.8.2002, p. 1.
[2] OJ L 10, 13.1.2002, p. 33.

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— any young person under 25 who has not previously obtained his first regular paid employment,

— any person with serious disabilities which result from physical, mental or psychological impairments and yet capable of entering the labour market,

— any migrant worker who moves or has moved within the Community or becomes resident in the Community to take up work and who needs professional and/or language training,

— any person wishing to re-enter working life after a break of at least three years, and particularly any person who gave up work on account of the difficulty of reconciling his working life and family life, for the first six months after recruitment,

— any person older than 45 who has not attained an upper secondary educational qualification or its equivalent,

— any long-term unemployed person, i.e. any person who was without work for 12 consecutive months, for the first six months after recruitment.

Article 3

Conditions for exemption

1. Individual aid outside any scheme, fulfilling all the conditions of this Regulation, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that it contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Communities*.

2. Aid schemes fulfilling all the conditions of this Regulation shall be compatible with the common market within the meaning of Article 87 (3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

(a) any aid that could be awarded under such scheme fulfils all the conditions of this Regulation;

(b) the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Communities*.

3. Aid granted under the schemes referred to in paragraph 2 shall be compatible with the common market within the meaning of Article 87 (3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the aid granted directly fulfils all the conditions of this Regulation.

Article 4

Exempted training aid

1. Aid schemes and individual aid for training must fulfil the conditions laid down in paragraphs 2 to 7.

2. Where the aid is granted for specific training, its intensity shall not exceed 25 % for large enterprises and 35 % for small and medium-sized enterprises.

These intensities shall be increased by five percentage points for enterprises in areas which qualify for regional aid pursuant to Article 87(3) (c) of the Treaty and by 10 percentage points for enterprises in areas which qualify for regional aid pursuant to Article 87(3)(a) of the Treaty.

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3. Where the aid is granted for general training, its intensity shall not exceed 50 % for large enterprises and 70 % for small and medium-sized enterprises.

These intensities shall be increased by five percentage points for enterprises in areas which qualify for regional aid pursuant to Article 87(3)(c) of the Treaty and by 10 percentage points for enterprises in areas which qualify for regional aid pursuant to Article 87(3)(a) of the Treaty.

4. The maximum intensities referred to in paragraphs 2 and 3 shall be increased by 10 percentage points if the training is given to disadvantaged workers.

5. In cases where the aid project involves both specific and general training components which cannot be separated for the calculation of the aid intensity, and in cases where the specific or general character of the training aid project cannot be established, the intensities applicable to specific training pursuant to paragraph 2 shall apply.

6. Where the aid is granted in the maritime transport sector, it may reach an intensity of 100 %, whether the training project concerns specific or general training, provided that the following conditions are met:

(a) the trainee shall not be an active member of the crew but shall be supernumerary on board, and

(b) the training shall be carried out on board ships entered on Community registers.

7. The eligible costs of a training aid project shall be:

(a) trainers' personnel costs,

(b) trainers' and trainees' travel expenses,

(c) other current expenses such as materials and supplies,

(d) depreciation of tools and equipment, to the extent that they are used exclusively for the training project,

(e) cost of guidance and counselling services with regard to the training project,

(f) trainees' personnel costs up to the amount of the total of the other eligible costs referred to in (a) to (e). Only the hours during which the trainees actually participate in the training, after deduction of any productive hours or of their equivalent, may be taken into account.

The eligible costs shall be supported by documentary evidence, which shall be transparent and itemised.

Article 5

Large individual aid grants

The exemption shall not apply if the amount of aid granted to one enterprise for a single training project exceeds EUR 1 000 000.

Article 6

Cumulation

1. The aid ceilings fixed in Articles 4 and 5 shall apply regardless of whether the support for the project is financed entirely from State resources or is partly financed by the Community.

2. Aid exempted by this Regulation shall not be cumulated with any other State aid within the meaning of Article 87(1) of the Treaty, or with other Community funding, in relation to the same eligible costs, if

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such cumulation would result in an aid intensity exceeding that fixed by this Regulation.

Article 7

Transparency and monitoring

1. On implementation of an aid scheme, or grant of individual aid outside any scheme, exempted by this Regulation, Member States shall, within 20 working days, forward to the Commission, with a view to its publication in the *Official Journal of the European Communities*, a summary of the information regarding such aid scheme or individual aid according to the model laid down in Annex II.

2. Member States shall maintain detailed records regarding the aid schemes exempted by this Regulation, the individual aid granted under those schemes, and the individual aid exempted by this Regulation that is granted outside any existing aid scheme. Such records shall contain all information necessary to establish that the conditions for exemption, as laid down in this Regulation, are fulfilled. Member States shall keep a record regarding an individual aid for 10 years from the date on which it was granted, and regarding an aid scheme, for 10 years from the date on which the last individual aid was granted under such scheme. On written request, the Member State concerned shall provide the Commission, within a period of 20 working days or such longer period as may be fixed in the request, with all the information which the Commission considers necessary to assess whether the conditions of this Regulation have been complied with.

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3. Member States shall compile an annual report on the application of this Regulation in accordance with the implementing provisions concerning the form and content of annual reports which are laid down pursuant to Article 27 of Council Regulation (EC) No 659/1999 ([1]).

Until such provisions enter into force, Member States shall compile an annual report on the application of this Regulation in respect of the whole or part of each calendar year during which this Regulation applies, in the form laid down in Annex III, also in computerised form. Member States shall provide the Commission with such report no later than three months after the expiry of the period to which the report relates.

Article 7a

Transitional provisions

Aid schemes implemented before the date of entry into force of this Regulation, and aid granted under such schemes, in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if they fulfil the conditions laid down in Article 3(2)(a) and Article 3(3) of this Regulation.

Individual aid outside any scheme granted before the date of entry into force of this Regulation, in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if it fulfils all the conditions of this Regulation, except the requirement in Article 3(1) that express reference be made to this Regulation.

([1]) OJ L 83, 27.3.1999, p. 1.

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Any aid which does not fulfil these conditions shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

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Article 8

Entry into force and period of validity

1. This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

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It shall apply until 30 June 2008.

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2. At the end of the period of validity of this Regulation, aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months.

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

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ANNEX II

Form of summary information to be provided whenever an aid scheme exempted by this Regulation is implemented and whenever an individual aid exempted by this Regulation is granted outside any aid scheme

Summary information on State aid granted in conformity with Commission Regulation (EC) No 68/2001	
Summary information to be filled in	Explanatory remarks
Member State	
Region	Indicate the name of the region if the aid is granted by a subcentral authority
Title of aid scheme or name of company receiving an individual aid	Indicate the name of the aid scheme or in the case of individual aid, the name of the beneficiary. In the latter case, no subsequent annual report is necessary!
Legal basis	Indicate the precise national legal reference for the aid scheme or for the individual aid
Annual expenditure planned under the scheme or overall amount of individual aid granted to the company	Amounts are to be given in euro or, if applicable, national currency. In the case of an aid scheme: indicate the annual overall amount of the budget appropriation(s) or the estimated tax loss per year for all aid instruments contained in the scheme. In the case of an individual aid award: indicate the overall aid amount/tax loss. If appropriate, indicate also for how many years the aid will be paid in instalments or over how many years tax losses will be incurred. For guarantees in both cases, indicate the (maximum) amount of loans guaranteed
Maximum aid intensity	Indicate the maximum aid intensity or the maximum aid amount per eligible item
Date of implementation	Indicate the date from which aid may be granted under the scheme or when the individual aid is granted
Duration of scheme or individual aid award	Indicate the date (year and month) until which aid may be granted under the scheme or in the case of an individual aid and if appropriate the expected date (year and month) of the last instalment to be paid
Objective of aid	In the case of training aid, indicate whether the training is specific or general. In the case of general training, documentary evidence (e.g. description of the contents of the training) must be attached regarding the qualification of the training as general

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Summary information to be filled in	Explanatory remarks
Economic sector(s) concerned ☐ All sectors or ☐ Agriculture ☐ Fisheries and Aquaculture ☐ Coalmining ☐ All manufacturing or ☐ Steel ☐ Shipbuilding ☐ Synthetic fibres ☐ Motor vehicles ☐ Other manufacturing ☐ All services or ☐ Maritime transport services ☐ Other transport services ☐ Financial services ☐ Other services Remarks:	Choose from the list, where relevant
Name and address of the granting authority	
Other information	

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ANNEX III

Form of the periodic report to be provided to the Commission

Annual reporting format on aid schemes exempted under a group exemption regulation adopted pursuant to Article 1 of Council Regulation (EC) No 994/98

Member States are required to use the format below for their reporting obligations to the Commission under group exemption regulations adopted on the basis of Council Regulation (EC) No 994/98.

The reports should also be provided in computerised form.

Information required for all aid schemes exempted under group exemption regulations adopted pursuant to Article 1 of Council Regulation (EC) No 994/98

1. Title of aid scheme

2. Commission exemption regulation applicable

3. Expenditure

   Separate figures have to be provided for each aid instrument within a scheme or individual aid (e.g. grant, soft loans, etc). The figures have to be expressed in euro or, if applicable, national currency. In the case of tax expenditure, annual tax losses have to be reported. If precise figures are not available, such losses may be estimated.

   These expenditure figures should be provided on the following basis:

   for the year under review indicate separately for each aid instrument within the scheme (e.g. grant, soft loan, guarantee, etc.):

   3.1. amounts committed, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new assisted projects. In the case of guarantee schemes, the total amount of new guarantees handed out should be provided;

   3.2. actual payments, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new and current projects. In the case of guarantee schemes, the following should be provided: total amount of outstanding guarantees, premium income, recoveries, indemnities paid out, operating result of the scheme under the year under review;

   3.3. number of new assisted projects;

   3.4. estimated overall number of jobs created or maintained by new projects (if appropriate);

   3.5. estimated overall amount of investment aided by new projects;

   3.6. regional breakdown of amounts under point 3.1 either by regions defined at NUTS [1] level 2 or below or by Article 87(3)(a) regions, Article 87(3)(c) regions and non-assisted regions;

   3.7. sectorial breakdown of amounts under point 3.1. by beneficiaries' sectors of activity (if more than one sector is covered, indicate the share of each):

   — agriculture

   — fisheries and/or aquaculture

   — coalmining

[1] NUTS is the nomenclature of territorial units for statistical purposes in the EC.

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— manufacturing

of which:

steel

shipbuilding

synthetic fibres

motor vehicles

other manufacturing (please specify)

— services

of which:

maritime transport services

other transport services

financial services

other services (please specify)

— other sectors (please specify)

4. Other information and remarks