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►**B** **COMMISSION REGULATION (EC) No 2204/2002**

of ►C1 5 December 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)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Regulation (EC) No 1976/2006 of 20 December 2006	L 368	85	23.12.2006

Corrected by:

►**C1** Corrigendum, OJ L 349, 24.12.2002, p. 126 (2204/2002)

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COMMISSION REGULATION (EC) No 2204/2002

of ►C1 5 December 2002 ◄

on the application of Articles 87 and 88 of the EC Treaty to State aid for employment

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) and point (b) 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 aid for employment is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.

(2) Regulation (EC) No 994/98 also empowers the Commission to declare, in accordance with Article 87 of the Treaty, that aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is compatible with the common market and is not subject to the notification requirement of Article 88(3) of the Treaty.

(3) The Commission has applied Articles 87 and 88 of the Treaty to employment aid in and outside assisted areas in numerous decisions and has also stated its policy, in the guidelines on aid to employment [3], in the notice on monitoring of State aid and reduction of labour costs [4], in the guidelines on national regional aid [5] and in 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 [6]. In the light of the Commissions experience in applying those provisions, 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.

(4) This Regulation is without prejudice to the possibility for Member States to notify aid for employment. Such notifications will be assessed by the Commission in particular in the light of the criteria set out in this Regulation, in Regulation (EC) No 70/2001 or in accordance with any relevant Community guidelines or frameworks. This is currently the case for the sector of maritime transport. The guidelines on State aid for employment [7] cease to apply from the date of entry into force

[1] OJ L 142, 14.5.1998, p. 1.
[2] OJ C 88, 12.4.2002, p. 2.
[3] OJ C 334, 12.12.1995, p. 4.
[4] OJ C 1, 3.1.1997, p. 10.
[5] OJ C 74, 10.3.1998, p. 9.
[6] OJ L 10, 13.1.2001, p. 33.
[7] OJ C 371, 23.12.2000, p. 12.

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of this Regulation, as do the notice on monitoring of State aid and reduction of labour costs and the notice on an accelerated procedure for processing notifications of employment aid [1]. Notifications pending at the entry into force of this Regulation will be assessed in accordance with its provisions. It is appropriate to lay down transitional provisions concerning the application of this Regulation to employment aid granted before its entry into force and in breach of the obligation in Article 88(3) of the Treaty.

(5) The promotion of employment is a central aim for the economic and social policies of the Community and of its Member States. The Community has developed a European employment strategy in order to promote this objective. Unemployment remains a significant problem in some parts of the Community, and certain categories of worker still find particular difficulty in entering the labour market. For this reason there is a justification for public authorities to apply measures providing incentives to enterprises to increase their levels of employment, in particular of workers from these disadvantaged categories.

(6) This Regulation applies only to employment measures which fulfil all the conditions of Article 87(1) of the Treaty and thus constitute State aid. A number of employment policy measures do not constitute State aid within the meaning of Article 87(1) because they constitute aid to individuals that does not favour certain undertakings or the production of certain goods, or because they do not affect trade between Member States or because they are general measures to promote employment which do not distort or threaten to distort competition by favouring certain undertakings or the production of certain goods. Such general measures, which may include general reduction of the taxation of labour and social costs, boosting investment in general education and training, measures to provide guidance and counselling, general assistance and training for the unemployed and improvements in labour law are therefore unaffected by this Regulation. This is also the case of measures which are deemed not to meet all the criteria of Article 87(1) of the Treaty and therefore do not fall under the notification requirement of Article 88(3) of the Treaty by virtue of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid [2].

(7) Having regard to those considerations, the purpose and effect of the aid exempted by this Regulation should be to promote employment in accordance with the European employment strategy, in particular of workers from disadvantaged categories, without adversely affect trading conditions to an extent contrary to the common interest. Employment aid granted to a firm on an individual basis may have a major impact on competition in the relevant market because it favours that firm over others which have not received such aid. By being granted only to a single firm, such aid is likely to have only a limited effect on employment. For this reason individual awards of employment aid should continue to be notified to the Commission, and this Regulation should exempt aid only if given in the form of schemes.

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

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[1] OJ C 218, 27.7.1996, p. 4.
[2] OJ L 10, 13.1.2001, p. 30.

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(9) This Regulation should not exempt from notification State aid in the shipbuilding and coal-mining sectors, for which special rules are laid down in, respectively, Council Regulation (EC) No 1540/98 ([1]) and Council Regulation (EC) No 1407/2002 ([2]).

(10) This Regulation should apply in the transport sector. However, having regard to the particular characteristics of competition in that sector, it is not appropriate to exempt aid for the creation of employment.

(11) The Commission has a consistently less favourable view of aid targeted at particular sectors, including, but not limited to, sensitive sectors experiencing overcapacity or crisis. Aid schemes which are targeted at specific sectors should not therefore be covered by the exemption from notification provided by this Regulation.

(12) In accordance with the established practice of the Commission, and with a view to better ensuring that aid is proportionate and limited to the amount necessary, thresholds should be expressed in terms of aid intensities in relation to a set of eligible costs, rather than in terms of maximum aid amounts.

(13) 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. The calculation of the grant equivalent of aid payable in several instalments and aid in the form of a soft loan requires 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.

(14) Having regard to the differences between enterprises of different sizes, different ceilings of aid intensity for the creation of employment should be set for small and medium sized enterprises and large enterprises. In order to eliminate differences that might give rise to distortions of competition, in order to facilitate coordination between different Community and national initiatives, and for reasons of administrative clarity and legal certainty, the definition of 'small and medium-sized enterprises' (SMEs) 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 ([3]). That definition was also used in Regulation (EC) No 70/2001.

(15) The ceilings of aid intensity should be fixed, in the light of the Commissions experience, at a level that strikes the appropriate balance between minimising distortions of competition and the objective of promoting employment. In the interests of coherence, the ceilings should be harmonised with those fixed in the guidelines on national regional aid and in Regulation (EC) No 70/2001, which allowed aid to be calculated by reference to the creation of employment linked to investment projects.

(16) Employment costs form part of the normal operating costs of any enterprise. It is therefore particularly important that aid should have a positive effect on employment and should not merely

([1]) OJ L 202, 18.7.1998, p. 1.
([2]) OJ L 205, 2.8.2002, p. 1.
([3]) OJ L 107, 30.4.1996, p. 4.

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enable enterprises to reduce costs which they would otherwise bear.

(17) Without rigorous controls and strict limits, employment aid can have harmful effects which cancel out its immediate effects on job creation. If the aid is used to protect firms exposed to intra-Community competition, it could have the effect of delaying adjustments needed to ensure the competitiveness of Community industry. In the absence of rigorous controls, such aid may be concentrated in the most prosperous regions, contrary to the objective of economic and social cohesion. Within the single market, aid granted to reduce costs of employment can lead to distortions of intra-Community competition and deflections in the allocation of resources and mobile investment, to the shifting of unemployment from one country to another, and to relocation.

(18) Aid to create jobs should be subject to the condition that the created job should be maintained for a certain minimum period. The period set in this regulation should override the five-year rule set out in point 4.14 of the guidelines on national regional aid.

(19) Aid to maintain jobs, meaning financial support given to a firm to persuade it not to lay off its workers, is similar to operating aid. Subject to any sectoral rules, therefore, such as those which exist in the sector of maritime transport, it should be authorised only in specific circumstances and for a limited period. It should continue to be notified to the Commission and should not be covered by the exemption from such notification provided by this Regulation. The limited circumstances in which it can be authorised include those where, in accordance with Article 87(2)(b) of the Treaty, it is intended to make good the damage caused by natural disasters or exceptional occurrences; another instance is under the conditions applying to operating aid in the guidelines on national regional aid, in regions eligible for the derogation under Article 87(3)(a) of the Treaty concerning the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, including ultra-peripheral regions; a third instance is where such aid is granted in the context of the rescue and restructuring of a company in difficulty, in accordance with the provisions of the relevant Community guidelines ([1]).

(20) A particular type of aid is aid granted to employers for the conversion of temporary or fixed-term employment contracts into contracts of indeterminate duration. Such measures should not be covered by the exemption from such notification provided by this Regulation and should be notified so that the Commission can determine whether they have positive employment effects. It should in particular be ensured that such measures do not allow the employment to be aided both at the creation of the post and at the conversion of the contract, in such a way that the ceiling for aid for initial investment or for creation of employment is exceeded.

(21) Small and medium-sized enterprises play a decisive role in job creation. At the same time, their size may present a handicap to the creation of new employment because of the risks and administrative burden involved in the recruitment of new personnel. Similarly, job creation can contribute to the economic development of less favoured regions in the Community and thus improve economic and social cohesion. Enterprises in those regions suffer from the structural disadvantage of the location. It is therefore appropriate that small and medium-sized enterprises, and enterprises in assisted regions, should be able to benefit from aid to create employment.

([1]) OJ C 288, 9.10.1999, p. 2.

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(22) Large firms in non-assisted areas do not suffer from particular difficulties and employment costs are part of their normal operating expenses. For this reason, and in order to maximise the incentive effect of aid to create jobs in SMEs and in regions eligible for the derogations under Article 87(3)(a) and (c) of the Treaty, large firms in regions not eligible for these derogations should not be eligible for aid to create employment.

(23) Certain categories of worker experience particular difficulty in finding work, because employers consider them to be less productive. This perceived lower productivity may be due either to lack of recent experience of employment (for example, young workers, long-term unemployed) or to permanent handicap. Employment aid intended to encourage firms to recruit such individuals is justified by the fact that the lower productivity of these workers reduces the financial advantage accruing to the firm and by the fact that the workers also benefit from the measure and are likely to be excluded from the labour market unless employers are offered such incentives. It is therefore appropriate to allow schemes providing such aid, whatever the size or location of the beneficiary.

(24) The categories of worker considered to be disadvantaged should be defined, but it should be possible for Member States to notify aid to promote the recruitment of other categories they consider to be disadvantaged, with supporting arguments.

(25) Workers with a disability may need permanent help to enable them to remain in the labour market, going beyond aid for initial recruitment and possibly including participation in sheltered employment. Schemes providing aid for such purposes should be exempted from notification provided that the aid can be shown to be no more than necessary to compensate for the lower productivity of the workers concerned, the ancillary costs of employing them or the costs of establishing or maintaining sheltered employment. This condition is designed to prevent enterprises benefiting from such aid from selling below competitive prices in markets also served by other enterprises.

(26) This Regulation should not prevent the cumulation of aid for the recruitment of disadvantaged workers or for the recruitment or employment of disabled workers with other aid granted in respect of employment costs, since in such cases it is legitimate to provide an incentive for workers from these categories to be employed in preference to others.

(27) In order to ensure that the aid is necessary and acts as an incentive to employment, this Regulation should not exempt aid for the creation of employment or for recruitment which the beneficiary would already undertake under market conditions alone.

(28) This Regulation should not exempt aid for the creation of employment where this is cumulated with other State aid, including aid granted by national, regional or local authorities, or with Community assistance, in relation to the same eligible costs or to the costs of investments to which the employment concerned is linked, when such cumulation exceeds the thresholds fixed in this Regulation or in the Community rules on State aid for investment, in particular the Guidelines on national regional aid and Regulation (EC) No 70/2001. The only exceptions to this principle should be for aid for the recruitment of disadvantaged workers or for the recruitment or employment of disabled workers.

(29) It is appropriate that large amounts of aid should remain subject to an individual assessment by the Commission before they are put into effect. Accordingly, aid amounts exceeding a fixed amount over a certain period to a single enterprise or estab-

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lishment are excluded from the exemption provided for in this Regulation and remain subject to the requirements of Article 88 (3) of the Treaty.

(30) Aid measures to promote employment or other aid with objectives connected with employment and labour markets may be of a different nature from measures exempted by this Regulation. Such measures should be notified under Article 88(3).

(31) In the light of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures, this Regulation should not exempt export aid or aid favouring domestic over imported products. Such aid would be incompatible with the Community's international obligations under that Agreement and should not therefore be exempted from notification, nor authorised if so notified.

(32) 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, 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 scheme exempted by this Regulation. For the purposes of the annual report to be submitted to the Commission by Member States, it is appropriate for the Commission to establish its specific requirements. In order to facilitate administrative treatment and in view of the wide availability of the necessary technology, the summary information and the annual report should be provided in computerised form.

(33) Having regard to the Commissions experience in this area, 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 this Regulation. Pursuant to Article 4(2) of Regulation (EC) No 994/98, it is necessary to include transitional arrangements whereby aid schemes already exempted by this Regulation will, on its expiry, continue to be exempted for another six months,

HAS ADOPTED THIS REGULATION

Article 1

Scope

1. This Regulation shall apply to schemes which constitute State aid within the meaning of Article 87(1) of the Treaty and which provide aid for the creation of employment, provide aid for the recruitment of disadvantaged and disabled workers or provide aid to cover the additional costs of employing disabled workers.

2. This Regulation shall apply to aid in all sectors, including the activities relating to the production, processing and marketing of products listed in Annex I to the Treaty.

It shall not apply to any aid granted in the coal or shipbuilding sectors, nor to any aid for the creation of employment, within the meaning of Article 4, granted in the transport sector. Such aid shall remain subject to prior notification to the Commission in accordance with Article 88(3) of the Treaty.

3. This Regulation shall not apply:

(a) to aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distri-

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bution network or to other current expenditure linked to the export activity;

(b) to aid contingent upon the use of domestic in preference to imported goods.

Article 2

Definitions

For the purpose of this Regulation:

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

(b) 'small and medium-sized enterprises' means enterprises as defined in Annex I to Regulation (EC) No 70/2001;

(c) 'gross aid intensity' means the aid amount expressed as a percentage of the relevant 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 moment 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;

(d) 'net aid intensity' means the discounted aid amount net of tax expressed as a percentage of the relevant costs;

(e) 'number of employees' means the number of annual working units (AWU), namely the number of persons employed full time in one year, part-time and seasonal work being AWU fractions;

(f) 'disadvantaged worker' means any person who belongs to a category which has difficulty entering the labour market without assistance, namely a person meeting at least one of the following criteria:

(i) any person who is under 25 or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment;

(ii) any migrant worker who moves or has moved within the Community or becomes resident in the Community to take up work;

(iii) any person who is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;

(iv) any person who wishes to enter or to re-enter working life and who has been absent both from work and from education for at least two years, and particularly any person who gave up work on account of the difficulty of reconciling his or her working life and family life;

(v) any person living as a single adult looking after a child or children;

(vi) any person who has not attained an upper secondary educational qualification or its equivalent, who does not have a job or who is losing his or her job;

(vii) any person older than 50, who does not have a job or who is losing his or her job;

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(viii) any long-term unemployed person, i.e. any person who has been unemployed for 12 of the previous 16 months, or six of the previous eight months in the case of persons under 25;

(ix) any person recognised to be or to have been an addict in accordance with national law;

(x) any person who has not obtained his or her first regular paid employment since beginning a period of imprisonment or other penal measure;

(xi) any woman in a NUTS II geographical area where average unemployment has exceeded 100 % of the Community average for at least two calendar years and where female unemployment has exceeded 150 % of the male unemployment rate in the area concerned for at least two of the past three calendar years;

(g) 'disabled worker' means any person either:

(i) recognised as disabled under national law; or

(ii) having a recognised, serious, physical, mental or psychological impairment;

(h) 'sheltered employment' means employment in an establishment where at least 50 % of the employees are disabled workers who are unable to take up work in the open labour market;

(i) 'wage cost' comprises the following components actually payable by the beneficiary of the State aid in respect of the employment concerned:

(i) the gross wage, i.e. before tax; and

(ii) the compulsory social security contributions.

(j) a job is 'linked to the carrying-out of a project of investment' if it concerns the activity to which the investment relates and if it is created within three years of the investment's completion. During this period, the jobs created following an increase in the utilisation rate of the capacity created by the investment are also linked to the investment;

(k) 'investment in tangible assets' means an investment in fixed physical assets relating to the creation of a new establishment, the extension of an existing establishment, or the engagement in an activity involving a fundamental change in the product or production process of an existing establishment (in particular through rationalisation, diversification or modernisation). An investment in fixed assets undertaken in the form of the takeover of an establishment which has closed or which would have closed had it not been purchased shall also be regarded as tangible investment;

(l) 'investment in intangible assets' means investment in transfer of technology by the acquisition of patent rights, licences, know-how or unpatented technical knowledge.

Article 3

Conditions for exemption

1. Subject to Article 9, 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;

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(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*.

2. Aid granted under the schemes referred to in paragraph 1 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) provided that the aid granted fulfils all the conditions of this Regulation.

Article 4

Creation of employment

1. Aid schemes for the creation of employment and any aid that could be awarded under such scheme shall fulfil the conditions of paragraphs 2, 3 and 4.

2. Where the employment is created in areas or in sectors which do not qualify for regional aid pursuant to Article 87(3)(a) and (c) at the moment the aid is granted, the gross aid intensity shall not exceed:

(a) 15 % in the case of small enterprises;

(b) 7,5 % in the case of medium-sized enterprises.

3. Where the employment is created in areas and in sectors which qualify for regional aid pursuant to Article 87(3)(a) and (c) at the moment at which the aid is awarded, the net aid intensity shall not exceed the corresponding ceiling of regional investment aid determined in the map applying at the time the aid is granted, as approved by the Commission for each Member State: for this purpose, regard shall be had, *inter alia*, to the multisectoral framework for regional aid for large investment projects ([1]).

In the case of small and medium-sized enterprises, and unless the map provides otherwise for such enterprises, this ceiling shall be increased by:

(a) 10 percentage points gross in areas covered by Article 87(3)(c), provided that the total net aid intensity does not exceed 30 %; or

(b) 15 percentage points gross in areas covered by Article 87(3)(a), provided that the total net aid intensity does not exceed 75 %.

The higher regional aid ceilings shall only apply if the beneficiary's contribution to financing is at least 25 % and if the employment is maintained within the qualifying region.

When employment is created in the production, processing and marketing of products listed in Annex I to the Treaty, in areas which qualify as less favoured areas under Council Regulation (EC) No 1257/1999 ([2]), these higher aid ceilings or, if applicable, the higher aid ceilings of that Regulation, shall apply.

4. The ceilings fixed in paragraphs 2 and 3 shall apply to the intensity of the aid calculated as a percentage of the wage costs over a period of two years relating to the employment created under the following conditions:

(a) the employment created must represent a net increase in the number of employees, both in the establishment and in the enterprise concerned, compared with the average over the past 12 months;

(b) the employment created shall be maintained for a minimum period of three years, or two years in the case of SMEs; and

([1]) OJ C 70, 19.3.2002, p. 8.
([2]) OJ L 160, 26.6.1999, p. 80.

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(c) the new workers employed as a result of the creation of employment must have never had a job or have lost or be losing their previous job.

5. Where aid is granted for the creation of employment under a scheme exempted under this Article, additional aid may be granted in case of recruitment of a disadvantaged or disabled worker in accordance with the terms of Articles 5 or 6.

Article 5

Recruitment of disadvantaged and disabled workers

1. Aid schemes for the recruitment by any enterprise of disadvantaged and disabled workers and any aid that could be awarded under such scheme shall fulfil the conditions of paragraphs 2 and 3.

2. The gross intensity of all aid relating to the employment of the disadvantaged or disabled worker or workers concerned, calculated as a percentage of the wage costs over a period of one year following recruitment, shall not exceed 50 % for disadvantaged workers or 60 % for disabled workers.

3. The following conditions shall apply:

(a) where the recruitment does not represent a net increase in the number of employees in the establishment concerned, the post or posts must have fallen vacant following voluntary departure, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy, and

(b) except in the case of lawful dismissal for misconduct the worker or workers must be entitled to continuous employment for a minimum of 12 months.

Article 6

Additional costs of employment of disabled workers

1. Aid schemes for the employment of disabled workers and any aid that could be awarded under such a scheme shall fulfil the conditions of paragraphs 2 and 3.

2. The aid, together with any aid provided under Article 5, shall not exceed the level needed to compensate for any reduced productivity resulting from the disabilities of the worker or workers, and for any of the following costs:

(a) costs of adapting premises;

(b) costs of employing staff for time spent solely on the assistance of the disabled worker or workers;

(c) costs of adapting or acquiring equipment for their use,

which are additional to those which the beneficiary would have incurred if employing workers who are not disabled, over any period for which the disabled worker or workers are actually employed.

Where the beneficiary provides sheltered employment, aid may in addition cover, but shall not exceed, the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport which result from the employment of disabled workers.

3. Schemes exempted by this Article shall provide that aid be subject to the condition that the beneficiary maintain records allowing verification that the aid granted to it meets the provisions of this Article and Article 8(4).

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Article 7

Necessity for the aid

1. This Regulation shall only exempt aid under Article 4 if before the employment concerned is created:

(a) either an application for aid has been submitted to the Member State by the beneficiary; or

(b) the Member State has adopted legal provisions establishing a legal right to aid according to objective criteria and without further exercise of discretion by the Member State.

2. Aid shall enjoy exemption under Article 4 in cases where:

(a) the employment created is linked to the carrying-out of a project of investment in tangible or intangible assets; and

(b) the employment is created within three years of the investment's completion,

only if the application referred in paragraph 1(a), or the adoption referred to in paragraph 1(b), takes place before work on the project is started.

Article 8

Cumulation

1. The aid ceilings fixed in Articles 4, 5 and 6 shall apply regardless of whether the support for the aided employment or recruitment is financed entirely from State resources or is partly financed by the Community.

2. Aid under schemes exempted by Article 4 of 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 wage costs, if such cumulation would result in an aid intensity exceeding that fixed by this Regulation.

3. Aid under schemes exempted by Article 4 of this Regulation shall not be cumulated:

(a) with any other State aid within the meaning of Article 87(1) of the Treaty, or with other Community funding, in relation to costs of any investment to which the created employment is linked and which has not yet been completed at the time the employment is created, or which was completed in the three years before the employment is created; or

(b) with any such aid or funding in relation to the same wage costs or to other employment linked to the same investment,

if such cumulation would result in an aid intensity exceeding the relevant ceiling of regional investment aid determined in the guidelines on national regional aid and in the map approved by the Commission for each Member State or the ceiling in Regulation (EC) No 70/2001. Where the relevant ceiling has been adapted in a particular case, in particular by the application of State aid rules applying in a particular sector, or by an instrument applying to large investment projects, such as the applicable multisectoral framework for regional aid for large investment projects, the adapted ceiling shall apply for the purposes of this paragraph.

4. By way of derogation from paragraphs 2 and 3, aid under schemes exempted by Articles 5 and 6 of this Regulation may be cumulated with other State aid within the meaning of Article 87(1) of the Treaty, or with other Community funding, in relation to the same costs, including with aid under schemes exempted by Article 4 of this Regulation which

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complies with paragraphs 2 and 3, provided that such cumulation does not result in a gross aid intensity exceeding 100 % of the wage costs over any period for which the worker or workers are employed.

The first subparagraph shall be without prejudice to any lower limits on aid intensity that may have been set pursuant to the Community framework for State aid for research and development ([1]).

Article 9

Aid subject to prior notification to the Commission

1. Aid schemes which are targeted at particular sectors shall not be exempted from notification under this Regulation and shall remain subject to the notification requirement of Article 88(3) of the Treaty.

2. This Regulation shall not exempt from notification the grant of aid to a single enterprise or establishment exceeding a gross aid amount of EUR 15 million over any three-year period. The Commission shall assess such aid, if granted under a scheme which is otherwise exempted by this Regulation, by reference solely to the criteria of this Regulation.

3. This Regulation is without prejudice to any obligation on a Member State to notify individual grants of aid under obligations entered into in the context of other State aid Instruments, and in particular the obligation to notify, or to inform the Commission of, aid to an enterprise receiving restructuring aid within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty and the obligation to notify regional aid for large investment projects under the applicable multisectoral Framework.

4. Aid schemes to promote the recruitment of categories of worker who are not disadvantaged within the meaning of Article 2(f) shall remain subject to the notification requirement of Article 88(3) of the Treaty unless exempted under Article 4. On notification, Member States shall submit, for appraisal by the Commission, arguments showing that the workers concerned are disadvantaged. In this respect, Article 5 shall apply.

5. Aid to maintain jobs, namely financial support given to an undertaking to retain workers who would otherwise be laid off, shall remain subject to the notification requirement of Article 88(3) of the Treaty. Subject to any sectoral rules, such aid may be authorised by the Commission only where, in accordance with Article 87(2)(b) of the Treaty, it is intended to make good the damage caused by natural disasters or exceptional occurrences or, under the conditions applying to operating aid in the guidelines on national regional aid, in regions eligible for the derogation under Article 87(3)(a) concerning the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

6. Aid for the conversion of temporary or fixed-term employment contracts into contracts of indeterminate duration shall remain subject to the notification requirement of Article 88(3) of the Treaty.

7. Aid schemes for job-sharing, for provision of support for working parents and similar employment measures which promote employment but which do not result in a net increase in employment, in the recruitment of disadvantaged workers, or in the recruitment or employment of disabled workers shall remain subject to the notification requirement of Article 88(3) of the Treaty and shall be assessed by the Commission in accordance with Article 87.

8. Other aid measures with objectives connected with employment and labour markets, such as measures to encourage early retirement,

([1]) OJ C 45, 17.2.1996, p. 5.

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shall also remain subject to the notification requirement of Article 88(3) of the Treaty and shall be assessed by the Commission in accordance with Article 87.

9. Individual cases of employment aid granted independently of any scheme shall remain subject to the notification requirement of Article 88 (3) of the Treaty. Such aid will be assessed in the light of this Regulation and may be authorised by the Commission only if it is compatible with any specific applicable rules which may have been laid down in respect of the sector in which the beneficiary operates and only if it can be shown that the effects of the aid on employment outweigh the impact on competition in the relevant market.

Article 10

Transparency and monitoring

1. On implementation of an aid 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 in the form laid down in Annex I. This shall be provided in computerised form.

2. Member States shall maintain detailed records regarding the aid schemes exempted by this Regulation and the individual aid granted under those schemes. Such records shall contain all information necessary to establish that the conditions for exemption, as laid down in this Regulation, are fulfilled, including information on the status of any company whose entitlement to aid depends on its status as an SME. Member States shall keep a record 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.

3. Member States shall compile a report on the application of this Regulation in respect of each whole or part calendar year during which this Regulation applies, in the form laid down in Annex II, 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 11

Entry into force, period of validity, and transitional arrangements

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. Notifications pending at the time of entry into force of this Regulation shall be assessed in accordance with its provisions.

Aid schemes implemented before the date of entry into force of this Regulation, and aid granted under these schemes, in the absence of a Commission authorisation and in breach of the obligation in 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 exempted under this Regulation if they fulfil the conditions laid down in Article 3(1)(a) and Article 3(2). Any aid which does not fulfil these conditions shall be

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assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

3. 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 I

Information communicated by Member States regarding State aid granted under Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment

(to be provided in computerised form, by electronic mail, to stateaidgreffe@cec.eu.int)

Aid No:

Explanatory remark: This number will be filled in by DG COMP.

Member State:

Region:

Explanatory remark: Indicate the name of the region if the aid is granted by a sub-central authority.

Title of aid scheme:

Explanatory remark: Indicate the name of the aid scheme.

Legal basis:

Explanatory remark: Indicate the precise national legal reference for the aid and a publication reference.

Annual expenditure planned under the scheme:

Explanatory remarks: Amounts are to be given in euro or, if applicable, national currency. 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.

For guarantees, indicate the (maximum) amount of loans guaranteed.

Maximum aid intensity under:

— Article 4: creation of employment:

— Article 5: recruitment of disadvantaged and disabled workers:

— Article 6: additional costs of employment of disabled workers:

Explanatory remark: Indicate the maximum aid intensity distinguishing between aid under Articles 4, 5 and 6 of the Regulation.

Date of implementation:

Explanatory remark: Indicate the date from which aid may be granted under the scheme.

Duration of scheme:

Explanatory remark: Indicate the date (year and month) until which aid may be granted under the scheme.

Objective of aid:

— Article 4: creation of employment:

— Article 5: recruitment of disadvantaged and disabled workers:

— Article 6: employment of disabled workers:

Explanatory remark: The primary objective(s) of the measure should be identified from among the three options. This field also gives the opportunity to indicate further (secondary) objectives pursued.

Economic sector(s) concerned:

— all Community sectors [1]

[1] With the exception of the shipbuilding sector, and other sectors which are the subjects of special rules in regulations and directives governing all State aid within the sector.

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— all manufacturing ([1])

— all services ([1])

— other (please specify)

Explanatory remarks: Choose from the list, where relevant. Aid schemes which are targeted at specific sectors are not covered by the exemption from notification provided by this Regulation.

Name and address of the granting authority:

Explanatory remark: Please include the telephone No and where possible the address for electronic mail.

Other information:

Explanatory remarks: If the scheme is co-financed by Community funds, please add the following sentence:

'The aid scheme is co-financed under [reference].'

If the scheme's duration extends beyond the date of validity of this Regulation, please add the following sentence:

'The exemption regulation expires on 31 December 2006 followed by a transitional period of six months.'

([1]) With the exception of the shipbuilding sector, and other sectors which are the subjects of special rules in regulations and directives governing all State aid within the sector.

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ANNEX II

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 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 Regulation (EC) No 994/98.

The reports should be provided in computerised form to:

stateaidgreffe@cec.eu.int

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

1. Title and No of aid scheme

2. Commission exemption regulation applicable

3. Expenditure

   Separate figures have to be provided for each aid instrument within a scheme (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 decisions to grant aid. 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 grants of aid. 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 decisions to grant aid.

3.4. Estimated overall number of jobs created or disadvantaged or disabled workers recruited or employed under new decisions to grant aid (as appropriate). Aid for the recruitment of disadvantaged workers should be broken down by the categories in Article 2(f).

3.5.

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

3.7. Sectoral breakdown of amounts under point 3.1 by beneficiaries' sectors of activity (If more than one sector is covered, indicate the amount for each):

   — coalmining

   — manufacturing of which:

      — steel

      — shipbuilding

      — synthetic fibres

      — motor vehicles

      — other manufacturing

   — services of which:

([1]) NUTS is the nomenclature of territorial units for statistical purposes in the European Community.

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— transport services

— financial services

— other services

— other sectors (please specify)

4. Other information and remarks