



## EXEMPTIONS FOR SMEs IN THE STATE AID AREA

### UNICE DISCUSSION PAPER

In the overall context of the European Commission's review of the legislative framework for state aid control in the EU, UNICE has been following closely the adoption process of the proposals based on Article 94 of the Treaty, and in particular the so-called 'procedural regulation' and the 'enabling regulation'. Based on the new enabling regulation, the Commission is expected to adopt block exemption regulations applicable to certain categories of aid, such as aid for SMEs, environmental protection, R&D, energy saving or employment.

The purpose of this paper is to present some suggestions UNICE would like to see implemented in the Commission's forthcoming work on exemptions for SMEs.

UNICE understands that procedures for controlling aid to SMEs will be simplified and it believes that this may be an excellent opportunity for amending or clarifying some elements of the current framework.

In particular, UNICE suggests that the following principles be taken into consideration.

#### **1. *Definition of SMEs: Need for flexibility***

UNICE believes that the definition of SMEs should not be universal and binding in all cases and for all situations. Some flexibility in the definition ought to be allowed in order to permit adaptation to specific situations.

Flexibility would be particularly welcome in relationships of a cooperative nature among enterprises. These generally create associative bodies, such as consortia, whose purpose is to provide small member companies with common services (such as technical assistance, provision of information, etc.).

Member companies, it must be stressed, will never receive any sort of public aid. State aid may be given only to the consortium to support its current activity as a service provider.

This activity can sometimes be better developed by extending participation to a limited number of larger companies. These act exclusively as supporting partners because they are in a position to provide specific specialised support (technical, logistical, promotional etc.) to the consortium with a view to improving its operating efficiency for the benefit of SME members. These larger

companies do *not*, in return, benefit from the services provided by the consortium and it cannot, therefore, be argued that they enjoy any form of state aid, even indirectly.

The most significant examples of these consortia are those operating in the fields of research and innovation, export promotion and internationalisation, mutual guarantees for bank loans etc.

UNICE therefore suggests that cooperative consortia among SMEs should be allowed to include larger enterprises too, within well defined limits, according to the size of consortia, and on condition that the presence of larger companies will help the bodies in question to achieve their objectives more efficiently.

In the field of research and development, SMEs are enterprises employing up to 500 employees. This has been UNICE's position in the context of the 5<sup>th</sup> RTD Framework Programme for 1998 to 2002. Consequently, the 500-employee threshold should be maintained in the current revision of the 5<sup>th</sup> Framework Programme. In the wake of this revision process, it would also seem appropriate to adapt the respective turnover criteria in the 5<sup>th</sup> RTD Framework Programme to the different levels of productivity in the Member States.

## **2. *Financial participation: Need for clarification***

When it comes to enforcement, difficulties occur regarding interpretation of the concepts of "public investment corporation", "venture capital companies" and "institutional investors".

These are the bodies entitled to participate (without limitation) in the capital of the SME without the latter's required "independence" being affected (cfr. recommendation on the definition of SMEs - Annex - Art. 1, par. 3).

In view of the difficulty in identifying these bodies among the many financial intermediaries operating on the market, clarification from the Commission on this point would be extremely useful.

## **3. *Aid for new initiatives: Need to extend to other forms of investment***

The Commission's approach of extending the range of possible aid for new investments or new initiatives deserves strong support and could usefully be broadened to cover other forms of intangible investments such as, for example, certification of quality systems, "benchmarking" tests for the acquisition of "best practices", development of local industrial systems made up essentially of SMEs (industrial districts), etc. with the objective of promoting enhanced innovation for SMEs.

This type of aid seems to be indispensable and complementary to traditional fixed investment, which today needs to be coupled with more complex policies, focusing on the whole lifecycle of the product (from planning through production, to satisfaction of customer needs).

However, strict control will be necessary to ensure that this type of aid does not amount to operating aid.

## **4. *Cooperative enterprises: Need to restore order***

In the context of modern economies, profit-making businesses coexist with the so-called "socio-economic enterprises", i.e. non-profit organisations which pursue social or mutualistic interests.

This category of enterprises includes cooperative companies, whose institutional function, inspired by the principle of mutuality, is to carry out an economic activity aimed mainly at satisfying the needs of the partners.

Because of this basic institutional function, cooperatives are protected and encouraged by the various legal systems through the granting of different types of aid. The aid is provided outside a framework of general rules fixed at European level as for other categories of enterprises (such as for example SMEs). A wide range of incentives have thus been provided – at least in Italy – which have favoured the strong expansion of economic activities managed by cooperatives.

In itself, this trend should not be perceived as negative. However, in addition to this development, cooperative companies have been allowed to lose their own peculiar characters and, in the economic and entrepreneurial system, they have come to play a role that is not rightly theirs.

Over time, these companies have gradually forsaken the requirements of mutuality (activity focused mainly on the partners, not the market; absence or marginal presence of company income distribution) which were the original justification for granting specific incentives. Consequently, many cooperatives on the market today are in effect profit-making companies, although they still benefit from the incentives provided for cooperatives, as well as from the aid destined to SMEs in general (on condition that their parameters are respected).

This development clearly has distorting effects on competition to the disadvantage of other categories of enterprises, especially small and medium-sized, and is detrimental to the proper functioning of market processes.

As the European Commission reviews the system, UNICE suggests that order be restored in this area. In order to do this, it would be necessary to check:

- the legitimacy of aid regimes currently enjoyed by cooperatives in member states' legal framework;
- possibilities of cumulating and co-ordinating these incentives with other aid schemes;
- the possible need for corrective intervention;
- possible creation of a European Code to regulate aid to cooperatives, based on the premise that aid should be given only to those cooperatives which respect the principle of mutuality.

In this context, UNICE proposes that the statute for a European cooperative company, currently under discussion, should establish the mutuality requirements which cooperatives must meet, together with the criteria for their correct interpretation and enforcement.

\* \* \*

UNICE hopes that these comments will be useful in shaping the Community's policy in this area and it looks forward to contributing actively to the forthcoming debate on the proposed block exemption regulation for SMEs.

