

**DRAFT COMMISSION REGULATIONS
ON THE APPLICATION OF ARTICLES 87 AND 88 TO
DE MINIMIS AID, TRAINING AID AND AID TO SMES**

UNICE COMMENTS

1. INTRODUCTION

These comments are intended to outline UNICE's position regarding the Commission's draft Regulations (EC) on the application of Article 87 and 88 of the Treaty to *de minimis* aid, training aid and aid to small and medium-sized enterprises (SMEs).

UNICE appreciates being given the opportunity to exchange views with the Commission and hopes that close consultation and cooperation between Commission officials and UNICE on this important subject will continue to take place in the upcoming period.

UNICE has consistently held that strict control of state aid, on the basis of clearly defined criteria, is necessary to prevent distortions of competition in the internal market. UNICE has repeatedly called on the Commission to define these criteria through guidelines and block exemptions, while at the same time urging it to ensure that any new specific block exemptions do not undermine the efficiency of state aid controls.

As a general point, UNICE would like to stress that further decentralisation of state aid control by means of the proposed block exemption regulations, that rely heavily on self assessment by companies and monitoring by the Member States themselves, should not detract from the uniform application of Community law. Decentralisation amplifies the risks of inconsistencies within the system and UNICE therefore urges the Commission to provide for sufficient safeguards to preserve coherent application of European state aid rules.

Having said this, UNICE generally supports the Commission's initiative, although it has reservations regarding some elements of the draft regulations. These reservations and suggestions for further development of specific points of the suggested Commission regulations are set out below.

2. DRAFT BLOCK EXEMPTION REGULATION FOR *DE MINIMIS* AID

According to the Commission it is appropriate that the *de minimis* rule is laid down in a regulation in the light of its experience with regard to a *de minimis* ceiling under which Article 87 (1) can be considered not to apply and with a view to increasing transparency and legal certainty.

UNICE has always argued that, instead of individually controlling a large number of aid cases whose effect on competition is negligible, the Commission should concentrate on large cases likely to cause serious distortions of competition. It therefore welcomes the adoption of a block exemption on a *de minimis* rule.

However, UNICE is concerned that the control mechanisms that are provided for in the draft are insufficient to ensure that the state aid rules are complied with and that aid granted under the *de minimis* rule meets the relevant conditions.

UNICE believes that the Commission should introduce a more adequate control mechanism to verify that the Member States have indeed established the necessary machinery in order to ensure that the total amount of aid granted under the *de minimis* rule to the same beneficiary does not exceed the ceiling over a period of three years. Generally, UNICE believes that state aid control would greatly benefit from establishment of a national register in which state aid granted is clearly recorded. Such a system would equally facilitate control of *de minimis* aid.

Moreover, UNICE has strong doubts as to whether the enterprises concerned could be relied upon to confirm that the *de minimis* ceiling has not been exceeded. UNICE firmly believes that responsibility for ensuring that a new aid does not raise the total amount of *de minimis* aid received to a level above the ceiling should lie with the Member State concerned and not with the company that benefits from the aid. Self-assessment by companies can be burdensome and risky given the complexity of the state aid rules. UNICE notes that for the first three years, Member States will be required to notify *de minimis* aid recipients of any *de minimis* aid granted to them during the period (up to three years) prior to the Regulation coming into force. To comply with this, Member State authorities will need to put in place the same internal monitoring procedures as would be required if they themselves were to be given responsibility for ensuring adherence to the *de minimis* aid ceiling. In UNICE's view this underlines the inappropriateness and inefficiency of requiring aid recipients themselves to monitor their own compliance.

As regards the scope of the block exemption, UNICE would like to make the following suggestions.

The draft states that the total *de minimis* aid granted to one enterprise shall not exceed € 100,000 over any period of three years. UNICE considers that this should be clarified. It should be clearly stated that the three-year period commences from the date upon which the aid is granted and that the term "enterprise" includes all companies within a corporate group that are not independent enterprises within the meaning of Article 1 (3) of the definition of SMEs, in order to avoid numerous dependent companies of a corporate group benefiting from aid worth of € 100,000.

UNICE considers that it should be clarified how the existence of indirect aid is to be determined. It might therefore be useful to consider a definition of the notion "grant equivalent of the aid", as referred to in Article 2 (3) of the draft.

In addition, the block exemption regulation should include a provision which prohibits accumulation of *de minimis* aid, together with aid falling within other block exemption regulations. In the absence of such a clause, conditions of these other regulations could easily be evaded.

The draft states that the block exemption regulation shall not apply to export-related activities. UNICE notes that the draft no longer specifically excludes from the notion of export-related activities the costs of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market. UNICE believes that the block exemption regulation should apply to these activities.

Lastly, UNICE would like to suggest that the Commission provides safeguards to prevent *de minimis* aid being granted to a large number of enterprises in a similar sector causing distortion of competition between Member States because of the strengthening of an entire sector in a particular territory rather than of an individual company. Such aid should not be exempt even if it is of a *de minimis* nature from the individual company's point of view. The Commission should therefore consider withdrawing the benefit of the block exemption for the enterprises concerned if inter-state competition is affected by the cumulative effect of *de minimis* aid granted to several enterprises.

3. DRAFT BLOCK EXEMPTION REGULATION FOR TRAINING AID

As a preliminary remark, UNICE agrees with the Commission that training usually has positive effects for society as a whole and that state aid might help to correct market imperfections related to training of workers and therefore can be considered under certain conditions to be compatible with the common market. UNICE considers that national training schemes helping to correct such market imperfections, whether financed directly by the state or through a network of private sector contributions negotiated by social partners, are permissible when they are applicable to all firms in a uniform manner, on the basis of objective criteria, constituting thus a general measure.

Having said this, UNICE has some concerns as regards the effects of the proposed regulation for state aid that does not correct, or no longer corrects, market imperfections but distorts competition.

In UNICE's view it should be avoided that individual companies benefit from state aid for training where, in the absence of the aid, the company concerned would have invested in the training to the same extent anyway. In such circumstances there are no market imperfections to be corrected. UNICE regrets that the conditions laid down in Article 3 of the draft or the definitions in Article 2 do not provide sufficient protection against such distortions.

Furthermore UNICE is concerned that the imprecise and ambiguous nature of the definitions in Article 2 relating to 'general training' and 'aid intensity' would lead to differences in application across the Union. The use of 'for example' and the meaning of a 'project's eligible costs' are insufficiently precise to ensure that equivalent training schemes are treated similarly in different Member States. UNICE suggests therefore deletion of the last two points of Article 2 (e), which do not assist in clarifying the difference between "specific" and "general" (for example, specific training could be jointly organised). UNICE also suggests a clarification of the concept of a 'project's eligible costs' in Article 2 (f).

Given the difficulties in providing precise and clear definitions of "general" and "specific", which will risk resulting in distortions of competition as Member States adopt different interpretations,

UNICE proposes that the summary information to be provided when an individual aid or aid scheme is exempted (Annex II) should include a more detailed description of the objective of the aid than currently proposed. This would be consistent with the annual reporting requirements (Annex III), which already (and correctly in UNICE's view) require Member States to provide documentary evidence regarding the qualification of any aid as general.

Article 4 (5) of the draft states that, where the training aid is granted in the maritime transport sector, it may reach an intensity of 100% regardless of whether the training project concerns specific or general training provided that the trainee is supernumerary on board and the training is carried out on board ships on Community registers. UNICE notes that this provision is inconsistent with existing guidelines on state aid to maritime transport ("the Maritime Guidelines"), since the two conditions do not accurately reflect the relevant sections of the guidelines.

Paragraph 3 of section 7 of the Maritime Guidelines states that the trainee may not, *in principle*, be an active member of the crew but must be supernumerary and paragraph 2 lists Community registration as one of the general criteria, but permits exceptions to be made in respect of ships on certain other registers. In addition, section 7 extends the registration requirements beyond Community registers stating that, exceptionally, training on board other vessels may be supported where justified by objective criteria, such as the lack of available places on vessels on a Member States' register. Also, flag-neutral aid may be approved in certain cases where a benefit to the Community is clearly demonstrated (section 2, paragraph 2). UNICE considers it important that the block exemption regulation replicates exactly the terms of the guidelines.

Lastly, UNICE is surprised that the draft does not contain criteria that would ensure that the rules are not evaded by outsourcing of training. A company that benefits from 'specifically' trained workers which have been trained by an independent agency with no links to the company or project in question nevertheless is receiving training aid that could by far exceed the ceiling set in the regulation. UNICE urges the Commission to provide sufficient safeguards to avoid such distortion. In this context UNICE would like to refer to the Community Framework for State Aid for Research and Development (*e.g.* section 2) that specifically addresses the situation of R&D being carried out by public non-profit-making establishments on behalf of industry.

4. DRAFT BLOCK EXEMPTION REGULATION FOR AID TO SMES

As regards the draft block exemption for aid to SMEs, UNICE would like to urge the Commission to reduce the threshold set out in Article 5 of the draft, above which individual aid grants are no longer exempt. UNICE notes that total aid to a small or medium-sized enterprise is exempt up to € 50 million. The official definition of small and medium-sized enterprises (Annex I of the draft) states that SMEs are defined as enterprises which have an annual turnover not exceeding ECU 40 million. In UNICE's view, € 50 million is excessive and should not be exempt considering the significant impact such a large amount of aid can have on inter-state competition.

In several Member States, the economic development and the competitiveness of SMEs is supported through co-operative organisations, which provide SMEs with services and information on new technologies, potential markets, etc. These organisations are based on reciprocal co-operation among SMEs to pool resources which would otherwise not be available on an individual basis, and to achieve economies of scale in providing services to member firms. UNICE considers that the block exemption regulation for aid to SMEs should therefore also permit aid for such groupings, but subject to the same ceilings and criteria applicable to individual companies and

provided membership to the groupings is voluntary and that no additional aid for the same purpose is paid to individual members.

Lastly, like the draft block exemption regulation on *de minimis* aid, the draft on SMEs also states that the block exemption regulation shall not apply to export-related activities. UNICE would like to repeat what was said in the context of the draft regulation on *de minimis* aid. In addition to the costs of participating in trade fairs, the costs of studies or consultancy services needed for the launch of a new or existing product on a new market should also be covered by the block exemption regulation.
