

6.3/1/1

26 February 2004

**DRAFT COMMUNICATION ON A NEW FRAMEWORK FOR THE ASSESSMENT OF
LESSER AMOUNTS OF STATE AID****DRAFT COMMUNICATION ON A NEW FRAMEWORK FOR THE ASSESSMENT OF
STATE AID WHICH HAS LIMITED EFFECTS ON INTRA-COMMUNITY TRADE****UNICE COMMENTS****1. INTRODUCTION**

DG Competition proposes to facilitate approval of state aid measures that are unlikely to produce major distortions of competition and which would contribute directly to the achievement of Community objectives, such as promotion of research and development, protection of the environment, creation of new and better employment, promotion of training, risk capital, development of SMEs and regional development. This should allow Member States greater flexibility to design and implement aid measures which are adapted to local conditions and enable the Commission to transfer resources from the assessment of relatively minor cases towards more important cases which may produce major distortions of competition.

More concretely, DG Competition is proposing to accept aid schemes which contribute to the mentioned objectives provided the aid does not, over any three year period, exceed € 1 million per independent enterprise or, when granted for activities that are deemed to involve products or services that are non-tradable and unlikely to produce significant cross-border effects, € 3 million per year per enterprise. Other conditions are also proposed to ascertain that negative effects are kept to a minimum, such as requirements that schemes are open to all relevant companies and that a real effort is made by the beneficiaries to achieve the Community objectives.

UNICE endorses the principle that Member States should redirect aid towards horizontal objectives of common interest and target it to identified market failures, whilst reducing the overall level of state aid, as expressed by the European Council in Stockholm and Barcelona. UNICE also recognises the need for a new framework for assessing state aid measures that are unlikely to cause major distortions of competition, which would enable the Commission to focus on important cases, but it has concerns about whether some of the proposed rules will not harm transparent and effective state aid control in the common market.

UNICE welcomes taking part in discussions on how best to shape future policy and improve the present system; its views and recommendations are set out below.

2. LET MEASURES

The proposed new framework for the assessment of state aid measures which, because of their nature, can be expected to produce only limited effects on intra-Community trade (LET measures), is in UNICE's view problematic and very difficult to apply in practice. Clearly, UNICE agrees that aid capable of supporting a tradable activity is likely to have the effect of shifting economic activities towards the Member State providing the aid measure, and of unfair competition and barriers to entry. This risk is indeed reduced for activities that are not carried out in excessively concentrated sectors and that involve goods or services that by their nature have limited potential for trade and which are not able to attract a significant number of customers from another Member State, especially if the aid is awarded on non-discriminatory terms, linked to eligible expenses and of a small amount. However, UNICE considers it extremely difficult to identify *a priori* activities that are non-tradable and not carried out in excessively concentrated markets and thus unlikely to produce significant cross-border effects.

Anything that is manufactured or quarried is automatically tradable. In fact, it could be argued that numerous, if not all, activities identified in Annex I of the Communication, more or less, involve goods and activities that are, or could become, tradable. With modern technology, publishing activities (e.g. editorial) can take place in one country and sold in other countries; even activities traditionally thought of as public sector (e.g. health, education), are increasingly available privately and to citizens of all Member States leading to a college or hospital in London competing with one in Paris. Identification *a priori* of non-tradable activities is thus an extremely complicated and to some extent arbitrary task, which the Commission, in UNICE's view, should not undertake, in order to avoid opaque decision-making and possible unequal treatment.

Moreover, UNICE considers the proposed limit of € 3 million per year per enterprise for LET aid too high, especially in view of the fact that LET aid can be cumulated with other aid granted for a different project. The limit would also be unworkable for companies located in more than one Member State.

Given the fact that the proposed framework of LET measures is difficult to administer and apply in a transparent and sound manner and the fact that it largely overlaps with the proposed framework for LASA measures, UNICE suggests that the Commission refrains from introducing a framework for assessing state aid measures which, because of their nature, can be expected to produce only limited effects on intra-Community trade, and instead focuses on a more clear and transparent framework based on lesser amounts of state aid.

3. LASA MEASURES

The proposed new framework for the assessment of lesser amounts of state aid (LASA) should allow Member States greater flexibility to design and implement aid measures which are adapted to local conditions and enable the Commission to transfer resources from the assessment of relatively minor cases towards more important cases which may produce major distortions of competition.

UNICE favours the Commission focusing on more important cases that are likely to cause major distortions of competition and could support the proposed new framework for LASA measures provided it does indeed enable the Commission to transfer resources. Considering that UNICE suggests that the Commission refrains from

introducing a framework for assessing state aid measures which, because of their nature, can be expected to produce only limited effects on intra-Community trade (LET measures), and instead focuses on the more clear and transparent LASA framework, it could even endorse a slight increase in the € 1 million ceiling proposed in the LASA Communication (e.g. € 1.5 million) provided this would lead to a substantial extra reduction of cases.

Having said this, UNICE has always been wary about allowing the Member States more flexibility in the area of state aid, as voiced in its comments on the various block exemption regulations. It therefore urges the Commission to carefully monitor implementation of the framework. In this context, UNICE considers it of utmost importance that LASA measures are notified to the Commission, since they do indeed constitute state aid and should be notified. UNICE also welcomes the proposal to establish a single data-base in each Member State which is publicly accessible through the internet. UNICE has always advocated increased transparency in the area of state aid control and strengthened third party involvement to render state aid control more transparent and effective.

UNICE supports the Member States redirecting aid towards horizontal objectives of common interest. In this respect, the LASA proposals require a real effort on the part of the beneficiary to achieve Community objectives and detailed information from the Member States when notifying the scheme and reviewing the effects of schemes. Approval of aid schemes will lapse if the Member States fail to publish a review-report by the end of the third year of the scheme. In this context, UNICE suggests that the Commission takes into account the legitimate interest of beneficiaries who may be harmed by lapsing approval due to Member States' failure, for example, by providing for a reasonable period of notice.

As regards the scope of the framework, UNICE suggests that in addition to the sectors listed in para 15 of the Communication, sensitive sectors identified in the context of the Multisectoral Framework are also excluded from the new approach.

Lastly, as regards cumulation, it is proposed to allow accumulation of LASA aid with *de minimis* support and with other aid granted for a different project. UNICE notes that this proposal would effectively raise levels of acceptable aid to levels that could seriously distort competition and therefore urges the Commission to reconsider the proposed rules on cumulation.
