

Draft 21 september 2007**2nd draft regulation on the application of Articles 87 and 88 of the EC Treaty declaring certain categories of aid compatible with the common market. (Draft General Block exemption Regulation)****Comments of Cooperatives Europe asbl**

Co-operative enterprises are established with the dual aims of realising economic success and that of answering social objectives. They follow co-operative principles that are guidelines by which co-operatives put their values into practice. These principles are Voluntary and Open Membership, Democratic Member Control, Member Economic Participation, Autonomy and Independence, Autonomy and Independence, Co-operation among Co-operatives, Concern for Community.

“Cooperatives Europe” represents 267 000 co-operative enterprises operating with 5,4 millions employees and 163 million members through Europe.

“Cooperatives Europe” objectives are to support and develop co-operative enterprises across Europe by:

- enhancing co-operative identity, visibility and recognition of their difference and added value,*
- recognition of co-operatives as main economic and social partners at EU institutional level,*
- developing a strong co-operative system in the enlarged EU and Europe region.*

On September 8th the DG competition presented a revised draft “general block exemption regulation” in the state aid area. The new text follows the consultation on the first draft regulation presented on May 2007 and takes into consideration the different positions expressed during the consultation¹.

“Cooperatives Europe” would like to make some remarks.

¹ See Cooperatives Europe comments 2nd June 2007 www.coopseurope.coop

“Cooperatives Europe” welcomes the fact that some of the remarks made on the 1st version of the draft regulation, have been taken into consideration.

In particular:

- Definition of “disabled worker” (art.2-18-b): the new text doesn’t require any more that a competent authority of a Member States indicates the precise level of disability “as compared to a particular job position”.
- Definition of “sheltered employment” (art.2-19): the new text modifies the required percentage of disabled workers (from 75% to 50%) and the reference to the degree of disability (at least 50 %) is removed.
- Concerning the definition of “disadvantage worker” Cooperatives Europe considers that the definitions at art.2-17-a (any person who has not been in regular paid employment for the previous 6 months) and art.2-17-c (any person over the age of 50 years), simplify the existing definition under art.2 f of regulation 2204/2002 on State aid.

However, “Cooperatives Europe” regrets that this category still not includes clearly:

- All other persons in a situation of social exclusion (eg houseless, beggars, beaten women, persons abandoned by their families etc);
- Workers of enterprises in crisis or of enterprises without heirs, who face unemployment and who purchase or are granted the management of their own enterprise collectively in order to avoid unemployment through a business transfer, until the first positive balance sheet has been attained after the transfer.

“Cooperatives Europe” welcomes that the new version of art.11-2 (regional investment and employment aid) adds the possibility to replace plant or equipment which has become out-dated due to rapid technological change (provided that the economic activity is retained in the region concerned for the minimum period).

“Cooperatives Europe” regrets that other remarks made on the 1st draft regulation, have not been taken into account. In particular:

- Definition of transparency (Art. 5): art. 5 of the Draft Regulation only applies to transparent aid which is defined as being able to calculate the exact gross grant ex ante. In case of guarantee schemes, aid is considered transparent where the methodology to calculate the gross grant equivalent has been accepted following its notification. In case there is no such notification, the guarantees concerned would fall outside the scope of the Draft Regulation. The notification of the calculation method set out in the Draft Regulation could represent a financial burden in case of smaller SMEs. In order to avoid this cost, we suggest that like the *De Minimis* Regulation, the Commission includes a passage establishing a certain percentage of net default rate as grant equivalent (e.g. 10%) calculated on the basis of the public guarantee element as a sufficient proxy to fulfill the transparency requirement.

- Capital injections (Art. 5) : Aid comprised of capital injections is not considered as transparent. It is unclear what the term “capital injections” is meant to cover. For this reason, we consider it necessary that the Commission should provide clarification in this respect.
- Incentive effect (Art. 8): as regards aid to SMEs covered by the Draft Regulation, it is considered to have an incentive effect, if, before work on the project or activity has started, the beneficiary has submitted an application for the aid to the Member State concerned. We consider necessary that the Commission clarifies the term “start of work on the project or activity”.
- Investment and employment Aid (Art. 11.2 and 6): article 11.2 of the Draft Regulation establishes that regional aid must be maintained in the recipient region for at least five years, or three years in the case of SMEs, after the whole investment has been completed. In the case of guarantees and preferential loans, this provision does not take into consideration the possible failure of a project. This case would mean imply the necessity to accelerate the loan or repay it from the loan guarantee and consequently the investment cannot be maintained during the required period of time. In this respect, we would like to suggest that this provision should not be applicable to aids in form of guarantees or preferential loans when the business project has failed.
- Article 11.6 of the Draft Regulation establishes that where the aid is calculated on the basis of tangible or intangible costs or of acquisition costs in case of takeovers, the beneficiary must provide a contribution of at least 25% of the eligible costs. Guarantees or preferential loans are mainly granted to start-up a business or to companies with a short business story. Therefore, we would also like to suggest that this provision should not be applicable to these types of grants.
- Definition of “energy-saving measures” (art.13-b): “Cooperatives Europe” regrets that this definition is focused on the industrial companies; a larger definition which can consider also the activities of SME’s would be more appropriate.

In addition, “Cooperatives Europe” wants to draw the attention on the art.1-6-c, which establishes that the regulation does not apply to “aid to undertakings in difficulty”. This article is in contradiction with a previous position of the Commission (Mrs Neelie Kroes)² concerning credit tax for companies created in the case of an employee buyout (the buyback of the capital of a company by its employees). Commission decided that this credit tax is a state aid but it is compatible with common market.

“Cooperatives Europe” considers that art.1-6- c should be review taking into consideration the position of the Commission: aids for employee buyout have to be allowed.

Definition of “supported employment” (art.2-20): the difference between “sheltered employment” (more than 50% of disabled workers) and “supported employment” (employment of disabled workers...that is not a ‘sheltered employment’) is ambiguous. It does mean that 1 disabled worker may determine the amount of the aid.

Art.32-5 (aid for the employment of disabled workers in the form of wage subsidies): the new version introduces the possibility for Member States to limit the minimum period of employment (12 months), according to their national legislation governing employment contracts. The formulation of the text can imply some misunderstandings on its interpretation. For this reason “Cooperatives Europe” looks for a clarification.

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² European Commission, C(2006)3217 final, Brussels, 19 July 2006