



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EC)

ON THE APPLICATION OF
ARTICLE 92 AND 93 OF THE EC TREATY TO CERTAIN CATEGORIES OF
HORIZONTAL STATE AID

(presented by the Commission)

COMMUNICATION BY THE COMMISSION

Proposal for a Council Regulation on the application of Article 92 and 93 of the EC Treaty to certain categories of horizontal state aid

1. STATE AID CONTROL IN A CHANGING ENVIRONMENT

The Commission is facing a number of new challenges in its state aid control policy that require changes in approach and method in order to create a more efficient state aid control. Globalisation and technological development already call for continued structural adjustment in the European Union. Additional pressures come from the completion of the Single Market, Economic and Monetary Union, enlargement and aid to employment.

The Single Market has led to an increase in trade between Member States. The exposure to wider competition has made enterprises increasingly aware of the distorting effect of state aid received by their competitors. The completion of the Single Market leaves the granting of state aid as one of the few remaining tools for governments which wish to protect their national industries from cross-border competition. An increasingly effective and strict state aid control is therefore required to complement the fundamental freedoms, in particular the free movement of goods, the freedom to provide services and the right of establishment, since state aid can be used to replace barriers to trade that have been dismantled in the Single Market integration process.

The Fifth Survey on state aid in the Member States covering the period 1992-1994, shows a tendency towards stability in the global volume of aid to industry with an annual average of 43 billion ECU. This is 4% of the value added in industry or more than 1.400 ECU per person employed in that sector. This stable, but high, level of state aid is a preoccupying trend which risks endangering the efficient functioning of the Single Market. Moreover, the Fifth Survey shows a growing disparity in the level of aid between the cohesion countries and the richer central regions. This clearly goes against the objective of economic and social cohesion.

In its state aid control the Commission is already now sensing the effects of the budget discipline of the Member States created by the convergence criteria of Economic and Monetary Union. The convergence criteria are encouraging Member States to reduce the volume of state aid. However, in some cases, it may tempt them to have recourse to mechanisms which might appear to be budgetary neutral such as direct transfers of funds between enterprises in the form of parafiscal taxes, purchase obligations at imposed prices and the provision of state guarantees for companies' borrowings. These mechanisms might contain State aid and create a problem of transparency rendering state aid control more difficult.

Economic and Monetary Union will lead to a strengthened integration of the countries inside the Economic and Monetary Union and to increased competition due to the elimination of exchange rate uncertainties, increased transparency and lower transaction costs. This levelling-out of the playing field is likely to render companies more vulnerable, if one or more competitors benefit from state aid. Increased competition and improved competitiveness inside EMU might tempt the non-participating Member States ('pre-ins') to devalue their currencies in order to restore or even improve the competitive situation of their enterprises. However, Art. 109m clearly states that the 'pre-ins' also shall treat their exchange-rate policy as a matter of common interest. Furthermore, the danger of such competitive devaluations can be reduced to a large extent by the establishment of a new Exchange Rate Mechanism, as envisaged by the European Council in Dublin on 13-14

December 1996, and by reinforced convergence programmes¹. If a substantial realignment is decided it must be justified by the fundamentals. Therefore, state aid that counters the effects of such realignments is in no way justified and could lead to a subsidies race. The reinforcement of state aid policy and control is thus essential.

The enlargement of the Union with new Member States will also increase the number of state aid cases to be dealt with by the Commission and further enhance the need for an efficient state aid control.

The recession which hit the European economy in the past years and the continuing increase in levels of unemployment prompt Member States to use state aid as an instrument to combat unemployment. However, such aid often merely shifts the problem to another factory, another sector, another area, another country. In this situation, the Commission must ensure a level competitive playing field throughout Europe. The absence of effective and fair competition not only results in a loss of competitiveness for all Community industry, but - in a medium- to long-term perspective - also in a loss of jobs throughout the European Union. Therefore, effective state aid control is increasingly important.

2. ACTION ENVISAGED BY THE COMMISSION

In reply to these new challenges, the Commission is determined to implement a more efficient policy of state aid control. Over the years the Commission has devoted much effort to develop an efficient, coherent and more transparent state aid control as regards both procedures and substance. For this purpose the Commission has developed and published comprehensive guidelines and communications spelling out Commission policies.

However, the results of the Fifth Survey suggest that the Commission should undertake a further determined effort in order to achieve a significant reduction of the overall level of aid disbursed in the Member States. To support this effort, the Commission will implement a new orientation in its state aid control focused around :

- concentration of the control on the "essentials" by simplifying and clarifying existing rules,
- stricter control of the most important aid cases,
- re-examination of the regional aid rules.

While the re-examination of the regional aid rules is already taking place in another context, the Commission considers that the use of Article 94 to adopt group exemptions would provide an efficient tool to further the first two of these aims.

3. GROUP EXEMPTIONS

A first initiative towards the introduction of group exemptions was taken in November 1996, when the Commission submitted its orientations² on the use of Article 94 of the EC

¹ See the Commission's communication of 16.10.1996 "Reinforced convergence procedures and a new exchange rate mechanism in stage three of EMU", COM(96)498.

² SEC(96)1752 of 2.10.1996

Treaty to the Industry Council. The Council encouraged the Commission to make proposals. Article 94 provides: "The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 92 and 93 and may in particular determine the conditions in which Article 93(3) shall apply and the categories of aid exempted from this procedure".

The Commission has identified certain horizontal aid, regional aid, export credit insurance and export credits, including those for tied aid as appropriate areas for the use of group exemptions. Horizontal aid which is subject to Community guidelines, such as aid to research and development, small and medium-sized enterprises, environmental protection and energy saving, is usually granted by Member States in full accordance with the criteria published by the Commission. Moreover, the Fifth Survey shows that this aid remains limited in volume. A simplification of surveillance procedures in these areas can thus be envisaged. It would allow the Commission to free resources for the assessment of the bigger and most distorting cases.

The Commission has also identified certain aid within particular sectors which are local in scope and of negligible importance as appropriate areas for the use of group exemptions. These sectors will be dealt with in a separate proposal from the Commission.

3.1. Efficiency benefits provided for by group exemptions

Group exemptions would allow the Commission to declare categories of aid compatible with the common market and exempt Member States from the obligation to notify. This would render the Commission's state aid control more efficient by alleviating the Commission from the task of examining notifications of both aid schemes and individual aid in a situation where the Commission is receiving a large number of notified plans to grant or alter aid that are compatible with the common market because they fulfill criteria for compatibility established by the Commission.

The adoption of group exemptions alleviating Member States from the notification obligation in Article 93(3) of the EC Treaty in relation to such aid seems therefore justified.

3.2. Increased transparency permitting decentralization of state aid control

The introduction of group exemptions will lead to the creation of clear legislative texts with direct effect. This will increase transparency and predictability of state aid control. It will thus improve the possibility for additional state aid screening at national level by national administrations, national courts and national auditors. Moreover, citizens are able to complain to national courts when they suspect that aid granted without notification does not fulfill the conditions for exemption laid-down in the group exemption regulations.

3.3. The Commission as an independent arbiter

The Commission has long experience in state aid control. It has developed a consistent practice in respect of assessing the compatibility of aid and it also has a long-standing experience of Member States respecting the criteria which it has published. The Commission has now reached a level of expertise which allows it to draft group exemptions declaring aid compatible without the aid having to be notified. The Commission will remain as an "independent arbiter" in the control of state aid, as it is the Commission which will continue to set the precise criteria for the compatibility of the aid

with the common market. Given the special competence granted to the Commission by the Treaty for deciding on the compatibility of state aid and the experience it acquired in exercising this competence, this seems the most appropriate solution.

3.4. Control safeguards

It is important to note that such a simplification would not weaken the control on state aid. Firstly, the Commission will set thresholds excluding aid exceeding certain amounts from the scope of application of the group exemptions. Member States would thus be required to notify large aid projects individually. Secondly, the Commission will institute a monitoring mechanism that will allow it to have full knowledge of the Member States' application of the group exemptions. As Member States will be required to record and store information and as the Commission can ask specific questions concerning the application of group exemption regulations, it will be able to continue to treat effectively complaints by competitors. The result of the introduction of group exemptions into the state aid control system would be a system that:

- for the group exempted aid: more efficient control without making the conditions of compatibility less rigorous than at present,
- for other aid: a stricter and more efficient control.

3.5. The maintenance of guidelines and frameworks

The Commission intends to maintain the existence of guidelines and frameworks both in respect of aid where group exemptions are not foreseen and, where appropriate, for aid which falls within areas covered by the enabling Regulation, but which will not be exempt from notification by a group exemption. This may for example be the case, if the aid exceeds the thresholds set in the group exemptions (Article 1(3)(a)) or is directly excluded from the Regulation (Article 1(3)(b)). In these cases the Commission has to undertake an individual examination of such aid following notification. Frameworks and guidelines therefore continue to have a role to play as indicator of the Commission's position towards such aid. The Commission will see to it that such guidelines and frameworks are drafted in a manner which will make them complementary to the Commission group exemption Regulations, in order to have a coherent set of rules.

4. THE SCOPE AND CONTENT OF THE ENABLING REGULATION

The Commission is proposing the adoption of a Regulation that will provide the legal basis and the framework for the adoption of individual Commission group exemption Regulations. The proposal will not affect the institutional balance established by the Treaty in the field of state aid and hence the competence of the Commission to establish compatibility of state aid with the Common Market. The proposal will add a new instrument allowing the Commission to establish ex ante the compatibility of state aid that fulfil the conditions that it will have defined in the exemption regulations. The Regulation defines the categories of aid for which the Commission is empowered to adopt group exemptions. The Commission is concentrating its proposal on those categories of aid for which there exist a long-standing experience and a consistent practice in respect of assessing the compatibility of the aid.

There will continue to exist an obligation to notify all aid falling outside the scope of application of the group exemptions.

The Regulation defines the parameters which the Commission must use in defining an exempted category as well as other conditions that the Commission may attach to the group exemption. It also defines the procedures for the adoption of group exemptions.

As it appears from the parameters listed below, the envisaged group exemptions will have an approach and content along the lines of the existing practice. The Commission will use its considerable experience expressed in the existing guidelines and communications when drafting the group exemptions and translate the existing rules and acquired experience into an appropriate legal form.

4.1. Categories of aid

4.1.1. Aid which is subject to guidelines and communications

The Regulation proposes to cover categories of aid for which the Commission has a long-standing experience in assessing the compatibility with the common market as expressed in Commission guidelines and frameworks. Thus the Commission should be empowered to adopt Commission Regulations in respect of aid to:

- Small- and Medium-sized Enterprises³,
- Research and Development⁴,
- environmental protection⁵,
- employment and training⁶,
- aid respecting the map approved by the Commission⁷ for each Member State to implement regional aid.

4.1.2. De minimis aid

The proposed Regulation provides that the Commission may also adopt a Regulation exempting aid below a certain threshold from the notification obligation⁸.

4.1.3. Export aid and export credit

The proposed Regulation also provides for Commission Regulations exempting the following categories from the notification obligation:

- export credit insurance covering non-marketable risk in so far as they have been harmonised by EC law⁹,

3 See as an example for the present rules: Community guidelines on state aid for small and medium sized enterprises, OJ No C 213 of 19 August 1992, p. 2, as amended in 1996, OJ No C 68 of 6 March 1996, p. 9.

4 See as an example for the present rules: Community framework for state aid for research and development, OJ C 45, 17.02.1996

5 See as an example for the present rules: Community guidelines on state aid for environmental protection, OJ No C 72, 10.3.1994, p. 3.

6 See as an example for the present rules: Guidelines on aid to employment, OJ C 334, 12.12.1995, p. 4.

7 The Commission is presently drafting new guidelines for regional aid which are expected to be adopted during 1997.

8 See as an example for the present rules: Commission notice on the de minimis rule for state aid, OJ C68, 6.3.1996, p. 9.

- export credit, including those for tied aid, in so far as they are subject to precise rules established in agreements of which the Community is a party¹⁰.

4.2. Exemption techniques

The proposed Regulation establishes conditions and thresholds that must be specified in every Commission group exemption Regulation. These relate to:

- the admissible purposes of the aid,
- categories of beneficiaries,
- thresholds expressed either in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts
- conditions of monitoring.

These conditions and thresholds will be defined on the basis of the experience with those used in the existing guidelines and frameworks.

The proposed regulation will also allow the Commission to attach other additional conditions and thresholds which the Commission can specify in an exempting Regulation, such as:

- attach further conditions for the compatibility of aid exempted under such Regulation,
- set thresholds for the notification of individual awards of aid,
- exclude certain sectors from the scope of application of such Regulation,
- attach conditions to the cumulation of aid.

4.3. Monitoring of aid exempted from notification

The use of group exemptions will not mean a weakening of the control of aid exempted from notification. The Commission remains an independent arbiter safeguarding the rights of complainants and other interested parties. In order for the Commission to accomplish its duty to satisfy itself that Member States are not giving aid which is incompatible with the common market, it will introduce detailed reporting requirements in the Commission Regulations regarding the application of the group exemptions.

Firstly, Member States are required to facilitate this task of monitoring the application of the group exemptions by establishing an efficient system to record and store on a running basis relevant information regarding the application of the group exemptions, i. e. when exempted aid schemes are established and when aid is given to a recipient. The Commission will, if required, assist Member States to establish such a system with a view to overcoming technical difficulties and to establishing a system which is compatible EU-wide.

9 Legislation already exist in this field: Council Directive 70/509/EEC (OJ L 254, of 23.11.1970, p. 1) on the adoption of a common credit insurance policy for medium- and long-term transactions with public buyers, as amended by the Council Decision of 1 January 1973 (OJ L 2, 1.1.1973, p.1) adjusting the documents concerning the accession of the new Member States to the EC; and Council Directive 70/150/EEC (OJ L 254, of 23.11.1970, p. 1) on the adoption of a common credit insurance policy for medium- and long-term transactions with private buyers, as amended by the aforementioned Council Decision of 1 January 1973. The Commission is working on a proposal for a Council directive on harmonisation of the main provisions concerning export credit insurance for transactions with medium- and long term cover which will replace the aforementioned directives and decision.

10 The Community is a party to the OECD Arrangement on guidelines for Officially supported export credits ("the Consensus").

Secondly, Member States shall supply the Commission with information regarding the application of the group exemptions in a computerised form in a format according to the Commission's specific requirements. The Commission will seek to make its requirements for information compatible with those that already exist (e.g. the joint notification and reporting). The level of information currently required seems adequate to enable the Commission to exercise its control. Moreover, the obvious advantage of harmonising the reporting requirements is that the Member States' workload will be kept to a minimal level.

Thirdly, Member States will in order to ensure an adequate level of transparency be required to publish relevant information regarding their application of the group exemptions in their national Official Journal. The Commission considers that the publication in a manner corresponding to the "cartouche", which is presently being published in the Official Journal of the European Union, C-series, would suffice. Moreover, any interested party should be able to obtain any additional information regarding the application of the group exemptions from the authority which is responsible for the recording of the information.

Fourthly, the Commission will store the information supplied by Member States in a database. This database shall be available to all Member States which shall have access to the information contained therein. In addition to facilitate the Commission's control of the application of the group exemptions, this information can be used as the basis for a yearly debate and evaluation to be held by the Advisory Committee set up under this Regulation.

Fifthly, Member States must provide, at the Commission's request, at any time, any information on aid exempted under the group exemptions in order to allow it to exercise an additional control and if required to allow verification that the group exemptions have been correctly applied.

4.4. Procedures for the adoption of Commission group exemption Regulations

The proposed Regulation lays down a procedure to be respected by the Commission when adopting specific Commission regulations exempting categories of aid. The proposed Regulation provides for the establishment of an Advisory Committee to be consulted before publishing a draft Commission Regulation and before the adoption of such a Regulation. A similar procedure exists for the competition rules applicable to enterprises¹¹ on the basis of Article 87 of the Treaty and Regulation No 17. The proposed Regulation also provides for the hearing of interested parties. The Commission will inform the Advisory Committee of the views of interested parties when the Commission consults it before adopting a Commission Regulation.

¹¹ Regulation No 19/65/EEC of the Council of 2 March 1965 on application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices, OJ No 36 of 6 March 1965, page 533.

The creation of the Advisory Committee will not mean the abandonment of the multilateral meetings on state aid. They will continue to play their usual role complementing the tasks of the Advisory Committee. The Commission will continue its practice, developed in multilateral meetings, to discuss in detail any proposal being made and to take account of Member States comments to the greatest extent possible and to continue to work on a consensual basis whenever possible. It is only in respect of the specific tasks assigned to the Advisory Committee under Article, 9 (i.e. consultations before publishing and adopting a Commission Regulation and the discussion and evaluation of the information submitted by Member States according to Article 4) that it will have a specific task to fulfil and where the multilateral meetings will not be directly involved.

The Commission will likewise continue to be prepared, upon request by a Member State, for bilateral discussions.

5. PROPOSAL

The Commission proposes that the Council adopts the attached Regulation which would empower the Commission to adopt such Regulations on the lines set out above. This enabling regulation follows the standard lines of such regulations and accordingly does not call for any further specific comments.

PROPOSAL FOR A COUNCIL REGULATION (EC) ON THE APPLICATION OF
ARTICLE 92 AND 93 OF THE EC TREATY TO CERTAIN CATEGORIES OF
HORIZONTAL STATE AID

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission,

Having consulted the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

- (1) Whereas, pursuant to Article 94 of the Treaty, the Council may make any appropriate Regulations for the application of Articles 92 and 93 and may, in particular, determine the conditions in which Article 93(3) shall apply and the categories of aid exempted from this procedure;
- (2) Whereas, under the EC Treaty, the appreciation of compatibility of aid with the common market essentially rests with the Commission;
- (3) Whereas the Commission has applied Article 92 and 93 in numerous decisions and has also stated its policy in a number of communications; whereas, in the light of the Commission's considerable experience in applying Articles 92 and 93 and the general texts issued by the Commission in furtherance of those provisions, it is appropriate, with a view to ensuring an effective and efficient supervision and simplifying administration, that the Commission should be enabled to declare by means of Regulations in areas where the Commission has sufficient experience to define general compatibility criteria, that certain categories of aid are compatible with the common market pursuant to one or more of the provisions of Article 92(2) and (3) of the Treaty and are exempted from the procedure provided for in Article 93(3);
- (4) Whereas group exemptions regulations will increase transparency and legal certainty and can be directly applied by national courts, without prejudice to Articles 5 and 177 of the Treaty;
- (5) Whereas it is appropriate that the Commission, when it adopts Regulations exempting categories of aid from the obligation to notify in Article 93(3), specifies the purpose of the aid, the categories of beneficiaries and thresholds limiting the exempted aid to certain maximum aid intensities in relation to a set of eligible costs or maximum amounts of aid, in order to ensure the compatibility with the common market of aid covered by this Regulation;
- (6) Whereas it is appropriate to enable the Commission, when it adopts Regulations exempting categories of aid from the obligation to notify in Article 93(3), to attach further detailed conditions in order to ensure the compatibility with the common market of aid covered by this Regulation;

- (7) Whereas it may be appropriate to set thresholds or other appropriate conditions requiring the notification of individual awards of aid in order to allow the Commission to examine individually the effect of certain aid on competition and trade between Member States and its compatibility with the common market;
- (8) Whereas the Commission, having regard to the development and the functioning of the common market, should be enabled to establish by means of a Regulation that certain aid does not fulfil all the criteria of Article 92(1) and is therefore exempted from the notification procedure in Article 93(3), provided that aid granted to the same undertaking over a given period of time does not exceed a certain fixed amount;
- (9) Whereas it is necessary to exclude most categories of aid contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, since such aid, insofar as it is not subject to harmonisation directives or international agreements, is likely to affect trade between Member States and to distort or threaten to distort competition within the common market to an extent contrary to the common interest;
- (10) Whereas in accordance with Article 93(1) the Commission is under an obligation, in co-operation with Member States, to keep under constant review all systems of existing aid; whereas for this purpose and in order to ensure the largest possible degree of transparency and adequate control it is appropriate that the Commission ensures the establishment of a reliable system of recording and storing information about the application of the Commission regulations to which all Member States have access and that it receives all necessary information from the Member States on the implementation of aid exempted from notification to fulfil this obligation, which may be debated and evaluated together with Member States in the Advisory Committee; whereas for this purpose it is also appropriate that the Commission may require such information to be supplied as is necessary to ensure the efficiency of such review;
- (11) Whereas the control of the granting of aid involves factual, legal and economic issues of a very complex nature and great variety in a constantly evolving environment; whereas the Commission should therefore regularly review the categories of aid which should be exempted from notification; whereas the Commission should be able to repeal or amend Commission Regulations adopted pursuant to this Regulation where circumstances have changed with respect to any of the facts which were basic to their adoption or where the progressive development or the functioning of the common market requires so;
- (12) Whereas the Commission, in close and constant liaison with the Member States, should be able to define precisely the scope of these regulations and the conditions attached to them; whereas, in order to provide for co-operation between the Commission and the competent authorities of the Member States, it is appropriate to create an Advisory Committee on State Aid to be consulted before the Commission adopts Regulations pursuant to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1.

Group exemptions

1. The Commission may, by means of Regulations adopted in accordance with the procedures laid down in Article 9 of this regulation and in accordance with Article 92 of the Treaty, declare that the following categories of aid are compatible with the common market and not subject to the notification requirements of Article 93(3):

- (a) categories of aid in favour of:
 - (i) small and medium-sized enterprises;
 - (ii) research and development;
 - (iii) environmental protection;
 - (iv) employment and training;
- (b) aid respecting the map approved by the Commission for each Member State to implement regional aid,
- (c) export credit insurance covering non-marketable risk in so far as it is harmonised by EC law,
- (d) export credits, including those for tied aid, in so far as they are subject to precise rules established in agreements to which the Community is a party.

2. The Commission Regulations referred to in paragraph 1 shall in particular specify for each category of aid:

- (a) the purpose of the aid,
- (b) the categories of beneficiaries,
- (c) thresholds expressed either in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts,
- (d) conditions of monitoring as specified in Article 4.

3. In addition, the Commission Regulations referred to in paragraph 1 may, in particular:

- (a) set thresholds or other conditions for the notification of individual awards of aid,
- (b) exclude certain sectors from the scope of application of such Regulation,
- (c) attach conditions to the cumulation of aid,
- (d) attach further conditions for the compatibility of aid exempted under such Regulation.

Article 2.

De minimis

1. The Commission may, by means of a Regulation adopted in accordance with the procedures laid down in Article 9 of this Regulation, decide that, having regard to the development and the functioning of the common market, certain aid does not fulfil all the criteria of Article 92(1) and is therefore exempted from the notification procedure in Article

93(3), provided that aid granted to the same undertaking over a given period of time does not exceed a certain fixed amount.

2. Member States shall upon the request of the Commission supply at any time any additional information relating to aid exempted under paragraph 1.

Article 3.

Export aid

Save for the export credit insurance and export credits referred to in Article 1(1) (c) and (d), the exemptions foreseen by this Regulation shall not apply to aid contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance.

Article 4.

Monitoring

1. When adopting regulations in application of Article 1, the Commission shall impose detailed rules upon Member States regarding the monitoring of the aid exempted from notification according to those regulations. The monitoring shall as a minimum consist of a requirement to Member States to:

- a) record and store on a running basis all relevant information regarding the application of the group exemptions,
- b) at least once every year supply the Commission with information regarding the application of the group exemption in a computerised form and in accordance with the Commission's specific requirements.

2. Member States shall on a running basis publish a summary of the information required under paragraph 1(a) in their national Official Journal and shall upon request give any interested party access to relevant information regarding the application of the group exemptions.

3. The Commission shall make access to the information mentioned under paragraph 1(b) available to all Member States.

4. Member States shall upon the request of the Commission supply at any time any additional information relating to aid exempted under Article 1.

5. Once a year, the Commission and the Member States shall debate and evaluate in the Advisory Committee the information mentioned under paragraph 1(b).

Article 5.

Period of validity and amendment of Regulations

1. Regulations adopted pursuant to Article 1 and 2 shall apply for a specific period.

2. They may be repealed or amended where circumstances have changed with respect to any of the facts which were basic to their adoption or where the progressive development or the functioning of the common market so requires.

Article 6.

Evaluation Report

Not later than five years after the entry into force of this Regulation, the Commission shall submit a report on its functioning to the European Parliament and the Council.

Article 7.

Hearing of Interested Parties

Where the Commission proposes to adopt a Regulation, it shall publish a draft thereof to enable all persons and organisations concerned to submit their comments within a reasonable time limit to be fixed by the Commission, but in no case less than one month.

Article 8.

Advisory Committee

A committee of an advisory nature shall be constituted, hereafter the Advisory Committee on State Aid. It shall be composed of the representatives of the Member States and chaired by the representative of the Commission.

Article 9.

Consultation of Advisory Committee

1. The Commission shall consult the Advisory Committee on State aid:
 - (a) before publishing a draft Regulation and
 - (b) before adopting a Regulation.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.
3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.
4. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee on the manner in which its opinion has been taken into account.

Article 10.

Final Provisions

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

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