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► **M1** COUNCIL REGULATION (EC) No 994/98

of 7 May 1998

on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union  
to certain categories of horizontal State aid ◀

(OJ L 142, 14.5.1998, p. 1)

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**COUNCIL REGULATION (EC) No 994/98**

**of 7 May 1998**

**on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid**

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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 <sup>(1)</sup>,

After consulting the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

- (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 Treaty, the assessment of compatibility of aid with the common market essentially rests with the Commission;
- (3) Whereas the proper functioning of the internal market requires strict and efficient application of the rules of competition with regard to State aids;
- (4) Whereas the Commission has applied Articles 92 and 93 of the Treaty 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 of the Treaty and the general texts issued by the Commission on the basis of those provisions, it is appropriate, with a view to ensuring efficient supervision and simplifying administration, without weakening Commission monitoring, 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) thereof;
- (5) Whereas group exemption regulations will increase transparency and legal certainty, whereas they can be directly applied by national courts, without prejudice to Articles 5 and 177 of the Treaty;

<sup>(1)</sup> OJ C 262, 28. 8. 1997, p. 6.

<sup>(2)</sup> OJ C 138, 4. 5. 1998.

<sup>(3)</sup> OJ C 129, 27. 4. 1998, p. 70.

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- (6) Whereas it is appropriate that the Commission, when it adopts regulations exempting categories of aid from the obligation to notify provided for in Article 93(3) of the Treaty, specifies the purpose of the aid, the categories of beneficiaries and thresholds limiting the exempted aid, the conditions governing the cumulation of aid and the conditions of monitoring, in order to ensure the compatibility with the common market of aid covered by this Regulation;
- (7) Whereas it is appropriate to enable the Commission, when it adopts regulations exempting certain categories of aid from the obligation to notify in Article 93(3) of the Treaty, to attach further detailed conditions in order to ensure the compatibility with the common market of aid covered by this Regulation;
- (8) Whereas it may be useful to set thresholds of other appropriate conditions requiring the notification of 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;
- (9) 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) of the Treaty and is therefore exempted from the notification procedure laid down 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;
- (10) Whereas in accordance with Article 93(1) of the Treaty the Commission is under an obligation, in cooperation 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 desirable that the Commission ensures the establishment of a reliable system of recording and storing information about the application of the regulations it adopts, 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 examined and evaluated with the Member States within the Advisory Committee; whereas for this purpose it is also desirable 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 regulations it has adopted pursuant to this Regulation where circumstances have changed with respect to any important element which constituted grounds for their adoption or where the progressive development or the functioning of the common market so requires;

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- (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 cooperation between the Commission and the competent authorities of the Member States, it is appropriate to set up 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 8 of this Regulation and in accordance with Article 92 of the Treaty, declare that the following categories of aid should be compatible with the common market and shall not be subject to the notification requirements of Article 93(3) of the Treaty:

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- (a) aid in favour of:
- (i) small and medium-sized enterprises;
  - (ii) research, development and innovation;
  - (iii) environmental protection;
  - (iv) employment and training;
  - (v) culture and heritage conservation;
  - (vi) making good the damage caused by natural disasters;
  - (vii) making good the damage caused by certain adverse weather conditions in fisheries;
  - (viii) forestry;
  - (ix) promotion of food sector products not listed in Annex I of the TFEU;
  - (x) conservation of marine and freshwater biological resources;
  - (xi) sports;
  - (xii) residents of remote regions, for transport, when this aid has a social character and is granted without discrimination related to the identity of the carrier;

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- (xiii) basic broadband infrastructure, small individual infrastructure measures covering next-generation access networks, broadband-related civil engineering works and passive broadband infrastructure, in areas where there is either no such infrastructure or where no such infrastructure is likely to be developed in the near future;
- (xiv) infrastructure in support of the objectives listed in (i) to (xiii) and in point (b) of this paragraph and in support of other objectives of common interest, in particular the Europe 2020 objectives;

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- (b) aid that complies with the map approved by the Commission for each Member State for the grant of regional aid.

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

- (a) the purpose of the aid;
- (b) the categories of beneficiaries;

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- (c) thresholds expressed in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts or, for certain types of aid where it may be difficult to identify the aid intensity or amount of aid precisely, in particular financial engineering instruments or risk capital investments or those of a similar nature, in terms of the maximum level of State support in or related to that measure, without prejudice to the qualification of the measures concerned in the light of Article 107(1) of the TFEU;

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- (d) the conditions governing the cumulation of aid;
- (e) the conditions of monitoring as specified in Article 3.

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

- (a) set thresholds or other conditions for the notification of awards of individual aid;
- (b) exclude certain sectors from their scope;
- (c) attach further conditions for the compatibility of aid exempted under such regulations.

*Article 2***De minimis**

1. The Commission may, by means of a Regulation adopted in accordance with the procedure laid down in Article 8 of this Regulation, decide that, having regard to the development and functioning of the common market, certain aids do not meet all the criteria of Article 92(1) and that they are therefore exempted from the notification procedure provided for 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.

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2. At the Commission's request, Member States shall, at any time, communicate to it any additional information relating to aid exempted under paragraph 1.

*Article 3***Transparency and monitoring**

1. When adopting regulations pursuant to Article 1, the Commission shall impose detailed rules upon Member States to ensure transparency and monitoring of the aid exempted from notification in accordance with those regulations. Such rules shall consist, in particular, of the requirements laid down in paragraphs 2, 3 and 4.

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2. Upon implementing aid systems or individual aids granted outside any system, which have been exempted pursuant to regulations referred to in Article 1(1), Member States shall forward to the Commission, with a view to publication on the website of the Commission, summaries of the information regarding such systems of aid or such individual aids as are not covered by exempted aid systems.

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3. Member States shall record and compile all the information regarding the application of the group exemptions. If the Commission has information which leads it to doubt that an exemption regulation is being applied properly, the Member States shall forward to it any information it considers necessary to assess whether an aid complies with that regulation.

4. At least once a year, Member States shall supply the Commission with a report on the application of group exemptions, in accordance with the Commission's specific requirements, preferably in computerised form. The Commission shall make access to those reports available to all the Member States. The Advisory Committee referred to in Article 7 shall examine and evaluate those reports once a year.

*Article 4***Period of validity and amendment of regulations**

1. Regulations adopted pursuant to Articles 1 and 2 shall apply for a specific period. Aid exempted by a regulation adopted pursuant to Articles 1 and 2 shall be exempted for the period of validity of that regulation and for the adjustment period provided for in paragraphs 2 and 3.

2. Regulations adopted pursuant to Articles 1 and 2 may be repeated or amended where circumstances have changed with respect to any important element that constituted grounds for their adoption or where the progressive development or the functioning of the common market so requires. In that case the new regulation shall set a period of adjustment of six months for the adjustment of aid covered by the previous regulation.

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3. Regulations adopted pursuant to Articles 1 and 2 shall provide for a period as referred to in paragraph 2, should their application not be extended when they expire.

*Article 5***Evaluation report**

Every five years the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation. It shall submit a draft report for consideration by the Advisory Committee referred to in Article 7.

*Article 6***Hearing of interested parties**

Where the Commission intends to adopt a regulation, it shall publish a draft thereof to enable all interested persons and organisations to submit their comments to it within a reasonable time limit to be fixed by the Commission and which may not under any circumstances be less than one month.

*Article 7***Advisory committee**

An advisory committee, hereinafter referred to as the Advisory Committee on State Aid, shall be set up. It shall be composed of representatives of the Member States and chaired by the representative of the Commission.

*Article 8***Consultation of the Advisory Committee**

1. The Commission shall consult the Advisory Committee on State Aid:

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(a) at the same time as publishing any draft regulation in accordance with Article 6;

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(b) before adopting any regulation.

2. Consultation of the Committee shall take place at a meeting called by the Commission. ►**M1** The drafts and documents to be examined shall be annexed to the notification and may be published on the Commission website. ◀ The meeting shall take place no earlier than two months after notification has been sent.

This period may be reduced in the case of the consultations referred to in paragraph 1(b), when urgent or for simple extension of a regulation.

3. 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.

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4. 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. The Advisory Committee may recommend publication of the opinion in the *Official Journal of the European Communities*.

5. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

*Article 9***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.