Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification) (Text with EEA relevance)

COUNCIL REGULATION (EU) 2015/1589

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laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 109 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament[(1)],

Whereas:

(1) Council Regulation (EC) No 659/1999[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) Without prejudice to special procedural rules laid down in regulations for certain sectors, this Regulation should apply to aid in all sectors. For the purpose of applying Articles 93 and 107 of the Treaty on the Functioning of the European Union (TFEU), the Commission has specific competence under Article 108 thereof to decide on the compatibility of State aid with the internal market when reviewing existing aid, when taking decisions on new or altered aid and when taking action regarding non-compliance with its decisions or with the requirement as to notification.

(3) In the context of a modernised system of State aid rules, to contribute both to the implementation of the Europe 2020 strategy for growth and to budgetary consolidation, Article 107of the TFEU should be applied effectively and uniformly throughout the Union. Regulation (EC) No 659/1999 consolidated and reinforced the Commission's previous practice of increasing legal certainty and supporting the development of State aid policy in a transparent environment.

(4) In order to ensure legal certainty, it is appropriate that the circumstances under which aid is to be considered as existing aid be defined. The completion and enhancement of the internal market is a gradual process, reflected in the permanent development of State aid policy. Following those developments, certain measures, which at the moment they were put into effect did not constitute State aid, may since have become aid.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) 2015/1589. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) In accordance with Article 108(3) TFEU, any plans to grant new aid are to be notified to the Commission and should not be put into effect before the Commission has authorised it.

(6) In accordance with Article 4(3) of the Treaty on European Union (TEU), Member States are under an obligation to cooperate with the Commission and to provide it with all information required to allow the Commission to carry out its duties under this Regulation.

(7) The period within which the Commission is to conclude the preliminary examination of notified aid should be set at 2 months from the receipt of a complete notification or from the receipt of a duly reasoned statement of the Member State concerned that it considers the notification to be complete because the additional information requested by the Commission is not available or has already been provided. For reasons of legal certainty, that examination should be brought to an end by a decision.

(8) In all cases where, as a result of the preliminary examination, the Commission cannot find that the aid is compatible with the internal market, the formal investigation procedure should be opened in order to enable the Commission to gather all the information it needs to assess the compatibility of the aid and to allow the interested parties to submit their comments. The rights of the interested parties can best be safeguarded within the framework of the formal investigation procedure provided for in Article 108(2) TFEU.

(9) In order to assess the compatibility with the internal market of any notified or unlawful State aid for which the Commission has exclusive competence under Article 108 TFEU, it is appropriate to ensure that the Commission has the power, for the purposes of enforcing the State aid rules, to request all necessary market information from any Member State, undertaking or association of undertakings whenever it has doubts as to the compatibility of the measure concerned with the Union rules, and has therefore initiated the formal investigation procedure. In particular, the Commission should use this power in cases in which a complex substantive assessment appears necessary. In deciding whether to use this power, the Commission should take due account of the duration of the preliminary examination.

(10) For the purpose of assessing the compatibility of an aid measure after the initiation of the formal investigation procedure, in particular as regards technically complex cases subject to substantive assessment, the Commission should be able, by simple request or by decision, to require any Member State, undertaking or association of undertakings to provide all market information necessary for completing its assessment, if the information provided by the Member State concerned during the course of the preliminary examination is not sufficient, taking due account of the principle of proportionality, in particular for small and medium-sized enterprises.

(11) In the light of the special relationship between aid beneficiaries and the Member State concerned, the Commission should be able to request information from an aid beneficiary only in agreement with the Member State concerned. The provision of

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information by the beneficiary of the aid measure in question does not constitute a legal basis for bilateral negotiations between the Commission and the beneficiary in question.

(12) The Commission should select the addressees of information requests on the basis of objective criteria appropriate to each case, while ensuring that, when the request is addressed to a sample of undertakings or associations thereof, the sample of respondents is representative within each category. The information sought should consist, in particular, of factual company and market data and facts-based analysis of the functioning of the market.

(13) The Commission, as the initiator of the procedure, should be responsible for verifying both the information transmission by the Member States, undertakings or associations of undertakings, and the purported confidentiality of the information to be disclosed.

(14) The Commission should be able to enforce compliance with the requests for information it addresses to any undertaking or association of undertakings, as appropriate, by means of proportionate fines and periodic penalty payments. In setting the amounts of fines and periodic penalty payments, the Commission should take due account of the principles of proportionality and appropriateness, in particular as regards small and medium-sized enterprises. The rights of the parties requested to provide information should be safeguarded by giving them the opportunity to make known their views before any decision imposing fines or periodic penalty payments is taken. The Court of Justice of the European Union should have unlimited jurisdiction with regard to such fines and periodic penalties pursuant to Article 261 TFEU.

(15) Taking due account of the principles of proportionality and appropriateness, the Commission should be able to reduce the periodic penalty payments or waive them entirely, when addressees of requests provide the information requested, albeit after the expiry of the deadline.

(16) Fines and periodic penalty payments are not applicable to Member States, since they are under a duty to cooperate sincerely with the Commission in accordance with Article 4(3) TEU, and to provide the Commission with all information required to allow it to carry out its duties under this Regulation.

(17) After having considered the comments submitted by the interested parties, the Commission should conclude its examination by means of a final decision as soon as the doubts have been removed. It is appropriate, should this examination not be concluded after a period of 18 months from the opening of the procedure, that the Member State concerned has the opportunity to request a decision, which the Commission should take within 2 months.

(18) In order to safeguard the rights of defence of the Member State concerned, it should be provided with copies of the requests for information sent to other Member States, undertakings or associations of undertakings, and be able to submit its observations on the comments received. It should also be informed of the names of the undertakings and the associations of undertakings requested, to the extent that these entities have not demonstrated a legitimate interest in the protection of their identity.

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(19) The Commission should take due account of the legitimate interests of undertakings in the protection of their business secrets. It should not be able to use confidential information provided by respondents, which cannot be aggregated or otherwise be anonymised, in any decision unless it has previously obtained their agreement to disclose that information to the Member State concerned.

(20) In cases where information marked as confidential does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the Commission can decide the extent to which such information can be disclosed. Any such decision to reject a claim that information is confidential should indicate a period at the end of which the information will be disclosed, so that the respondent can make use of any judicial protection available to it, including any interim measure.

(21) In order to ensure that the State aid rules are applied correctly and effectively, the Commission should have the opportunity of revoking a decision which was based on incorrect information.

(22) In order to ensure compliance with Article 108 TFEU, and in particular with the notification obligation and the standstill clause in Article 108(3), the Commission should examine all cases of unlawful aid. In the interests of transparency and legal certainty, the procedures to be followed in such cases should be laid down. When a Member State has not respected the notification obligation or the standstill clause, the Commission should not be bound by time limits.

(23) The Commission should be able, on its own initiative, to examine information on unlawful aid, from whatever source, in order to ensure compliance with Article 108 TFEU, and in particular with the notification obligation and standstill clause laid down in Article 108(3) TFEU, and to assess the compatibility of an aid with the internal market.

(24) In cases of unlawful aid, the Commission should have the right to obtain all necessary information enabling it to take a decision and to restore immediately, where appropriate, undistorted competition. It is therefore appropriate to enable the Commission to adopt interim measures addressed to the Member State concerned. The interim measures may take the form of information injunctions, suspension injunctions and recovery injunctions. The Commission should be enabled, in the event of non-compliance with an information injunction, to decide on the basis of the information available and, in the event of non-compliance with suspension and recovery injunctions, to refer the matter to the Court of Justice directly, in accordance with the second subparagraph of Article 108(2) TFEU.

(25) In cases of unlawful aid which is not compatible with the internal market, effective competition should be restored. For this purpose it is necessary that the aid, including interest, be recovered without delay. It is appropriate that recovery be effected in accordance with the procedures of national law. The application of those procedures should not, by preventing the immediate and effective execution of the Commission decision, impede the restoration of effective competition. To achieve this result,

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Member States should take all necessary measures ensuring the effectiveness of the Commission decision.

(26) For reasons of legal certainty it is appropriate to provide for a period of limitation of 10 years with regard to unlawful aid, after the expiry of which no recovery can be ordered.

(27) For reasons of legal certainty, it is appropriate to provide for limitation periods for the imposition and enforcement of fines and periodic penalty payments.

(28) Misuse of aid may have effects on the functioning of the internal market which are similar to those of unlawful aid and should thus be treated according to similar procedures. Unlike unlawful aid, aid which has possibly been misused is aid which has been previously approved by the Commission. Therefore the Commission should not be allowed to use a recovery injunction with regard to misuse of aid.

(29) In accordance with Article 108(1) TFEU, the Commission is under an obligation, in cooperation with Member States, to keep under constant review all systems of existing aid. In the interests of transparency and legal certainty, it is appropriate to specify the scope of cooperation under that Article.

(30) In order to ensure compatibility of existing aid schemes with the internal market and in accordance with Article 108(1) TFEU, the Commission should propose appropriate measures where an existing aid scheme is not, or is no longer, compatible with the internal market and should initiate the procedure provided for in Article 108(2) TFEU if the Member State concerned declines to implement the proposed measures.

(31) It is appropriate to set out all the possibilities which third parties have to defend their interests in State aid procedures.

(32) Complaints are an essential source of information for detecting infringements of the Union rules on State aid. To ensure the quality of the complaints submitted to the Commission, and at the same time transparency and legal certainty, it is appropriate to lay down the conditions that a complaint should fulfill in order to put the Commission in possession of information regarding alleged unlawful aid and set in motion the preliminary examination. Submissions not meeting those conditions should be treated as general market information, and should not necessarily lead to *ex officio* investigations.

(33) Complainants should be required to demonstrate that they are interested parties within the meaning of Article 108(2) TFEU and of Article 1(h) of this Regulation. They should also be required to provide a certain amount of information in a form that the Commission should be empowered to set out in an implementing provision. In order not to discourage prospective complainants, that implementing provision should take into account that the demands on interested parties for lodging a complaint should not be burdensome.

(34) In order to ensure that the Commission addresses similar issues in a consistent manner across the internal market, it is appropriate to provide for a specific legal basis to launch investigations into sectors of the economy or into certain aid instruments across several Member States. For reasons of proportionality and in the light of the high administrative