Council Regulation (EU) 2015/1588 of 13 July 2015 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 (codification) (Text with EEA relevance)

COUNCIL REGULATION (EU) 2015/1588

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(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 994/98[(2)] has been substantially amended[(3)]. In the interests of clarity and rationality that Regulation should be codified.

(2) Under the Treaty on the Functioning of the European Union (TFEU), the assessment of compatibility of aid with the internalmarket essentially rests with the Commission.

(3) The proper functioning of the internal market requires strict and efficient application of the rules of competition with regard to State aid.

(4) 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 specified categories of aid are compatible with the internal market pursuant to one or more of the provisions of Article 107(2) and (3) TFEU and are exempted from the procedure provided for in Article 108(3) thereof.

(5) Block exemption regulations ensure transparency and legal certainty. They can be directly applied by national courts, without prejudice to Article 4(3) of the Treaty on European Union and to Article 267 TFEU.

(6) State aid is an objective notion defined in Article 107(1) TFEU. The power of the Commission to adopt block exemptions as provided for in this Regulation only applies to measures that fulfil all the criteria of Article 107(1) TFEU and therefore constitute State aid. Inclusion of a certain category of aid in this Regulation or in an exemption regulation does not predetermine the qualification of a measure as State aid within the meaning of Article 107(1) TFEU.

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(7) The Commission should be enabled to declare that, under certain conditions, aid to small and medium-sized enterprises, aid in favour of research, development and innovation, aid in favour of environmental protection, aid in favour of employment and training, and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is compatible with the internal market and not subject to the notification requirement.

(8) Innovation has become a Union policy priority in the context of 'Innovation Union', one of the Europe 2020 flagship initiatives. Moreover, many aid measures for innovation are relatively small and create no significant distortions of competition.

(9) In the culture and heritage conservation sector, a number of measures taken by Member States might not constitute aid because they do not fulfil all the criteria of Article 107(1)TFEU, for example because the beneficiary does not carry out an economic activity or because there is no effect on trade between Member States. However, to the extent measures in the field of culture and heritage conservation do constitute State aid within the meaning of Article 107(1) TFEU, the Commission should be enabled to declare that, under certain conditions, that aid is compatible with the internal market and not subject to the notification requirement in Article 108(3) TFEU. Small culture, creation and heritage conservation projects do not typically give rise to any significant distortion, and recent cases have shown that such aid has limited effects on trade.

(10) Exemptions in the culture and heritage conservation sector could be designed on the basis of the Commission's experience as set out in guidelines, such as for cinematographic and audiovisual works, or developed case by case. When drafting such block exemptions, the Commission should take into account that they should only cover measures constituting State aid, that they should in principle focus on measures that contribute to the objectives of 'EU State aid modernisation', and that only aid in respect of which the Commission has already substantial experience is block-exempted. Furthermore, the primary competence of the Member States in the area of culture, the special protection enjoyed by cultural diversity under Article 167(1) TFEU and the special nature of culture should be taken into account.

(11) As regards State aid measures to make good the damage caused by natural disasters, as well as State aid measures to make good the damage caused by certain adverse weather conditions in fisheries, the amounts granted in those areas are usually limited, and clear compatibility conditions can be defined. This Regulation should enable the Commission to exempt such aid from the notification requirement. In the Commission's experience, such aid does not give rise to any significant distortion, and clear compatibility conditions can be defined on the basis of the experience acquired.

(12) In accordance with Article 42 TFEU, State aid rules do not apply under certain conditions to certain aid measures in favour of agriculture products listed in Annex I to the TFEU. Article 42 does not apply to forestry or to products not listed in that Annex. The Commission should be able to exempt certain types of aid in favour of forestry, including aid contained in the rural development programmes and also that in favour of promoting and advertising food sector products not listed in Annex I to the TFEU,

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where, according to the Commission's experience, the distortions of competition are limited and clear compatibility conditions can be defined.

(13) According to Article 7 of Council Regulation (EC) No 1198/2006[(4)], Articles 107, 108 and 109 TFEU apply to aid granted by the Member States to enterprises in the fisheries sector, except for payments made by Member States pursuant to, and in conformity with, Regulation (EC) No 1198/2006. Additional State aid for the conservation of marine and freshwater biological resources usually has limited effects on trade between Member States, contributes to the Union's objectives in the field of maritime and fisheries policy, and does not create serious distortions of competition. The amounts granted are usually limited and clear compatibility conditions can be defined.

(14) In the sports sector, in particular in the field of amateur sport, a number of measures taken by Member States might not constitute aid because they do not fulfil all the criteria of Article 107(1) TFEU, for example because the beneficiary does not carry out an economic activity, or because there is no effect on trade between Member States. However, to the extent that measures in the field of sports do constitute State aid within the meaning of Article 107(1) TFEU, the Commission should be enabled to declare that, under certain conditions, that aid is compatible with the internal market and not subject to the notification requirement. State aid measures for sport, in particular those in the field of amateur sport or those that are small-scale, often have limited effects on trade between Member States and do not create serious distortions of competition. The amounts granted are typically also limited. Clear compatibility conditions can be defined on the basis of the experience acquired so as to ensure that aid to sports does not give rise to any significant distortion.

(15) In relation to aid concerning air and maritime transport, in the Commission's experience, aid having a social character for the transport of residents of remote regions such as outermost regions and islands, including single region island Member States and sparsely populated areas, does not give rise to any significant distortion, provided that it is granted without discrimination related to the identity of the carrier. Moreover, clear compatibility conditions can be defined.

(16) In the field of aid to broadband infrastructure, the Commission has in recent years acquired vast experience and has devised guidelines[(5)]. In the Commission's experience, aid for certain types of broadband infrastructure does not give rise to any significant distortion and could benefit from a block exemption, provided that certain compatibility conditions are met and that the infrastructure is deployed in ‘white areas’, being areas where there is no infrastructure of the same category (either broadband or very high-speed next-generation access, ‘NGA’) and where none is likely to be developed in the near future, as outlined in the criteria developed in the guidelines. This is true of aid covering the provision of basic broadband, as well as of aid for small individual measures covering NGA networks, and of aid to broadband-related civil engineering works and passive broadband infrastructure.

(17) As regards infrastructure, a number of measures taken by Member States might not constitute aid because they do not fulfil all the criteria of Article 107(1) TFEU, for example because the beneficiary does not carry out an economic activity, because

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there is no effect on trade between Member States, or because the measure consists of compensation for a service of general economic interest which fulfils all the criteria of the *Altmark* case-law[6]. However, to the extent that the financing of infrastructure constitutes State aid within the meaning of Article 107(1) TFEU, the Commission should be enabled to declare that, under certain conditions, that aid is compatible with the internal market and not subject to the notification requirement. With regard to infrastructure, small amounts of aid for infrastructure projects can be an efficient way of supporting the Union's objectives, to the extent that the aid minimises costs and the potential distortion of competition is limited. The Commission should therefore be able to exempt State aid for infrastructure projects that are in support of the objectives mentioned in this Regulation and in support of other objectives of common interest, in particular the Europe 2020 objectives[7]. This could include support for projects involving multi-sectoral networks or facilities where relatively small amounts of aid are necessary. However, block exemptions can only be granted for infrastructure projects where the Commission has enough experience to define clear and strict compatibility criteria, ensuring that the risk of potential distortion of competition is limited and that large amounts of aid remain subject to notification pursuant to Article 108(3) TFEU.

(18) It is appropriate that the Commission, when it adopts regulations exempting categories of aid from the obligation to notify provided for in Article 108(3) TFEU, 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 internal market of aid covered by this Regulation.

(19) Thresholds for each category of aid in respect of which the Commission adopts a block exemption regulation can be expressed in terms of aid intensities in relation to a set of eligible costs, or in terms of maximum aid amounts. Moreover, the Commission should also be enabled to issue block exemptions for certain types of measures involving State aid which, because of the specific way in which they are designed, cannot be expressed precisely in terms of the aid intensities or maximum amounts of aid, such as financial engineering instruments or certain forms of measures aimed to promote risk capital investments. Such complex measures may involve aid at different levels: direct beneficiaries, intermediate beneficiaries and indirect beneficiaries. Given the increasing importance of such measures and their contribution to the Union's objectives, it should be possible to exempt them. It should therefore be possible, in the case of such measures, to define the thresholds for a particular award of aid in terms of the maximum level of state support in or related to that measure. The maximum level of state support may comprise an element of support, which may not be State aid, provided that the measure includes at least some elements that contain State aid within the meaning of Article 107(1) TFEU and which elements are not marginal.

(20) It may be useful to set thresholds or 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 internal market.

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(21) It is appropriate to enable the Commission, when it adopts regulations exempting certain categories of aid from the obligation to notify in Article 108(3) TFEU, to attach further detailed conditions in order to ensure the compatibility with the internal market of aid covered by this Regulation.

(22) The Commission, having regard to the development and the functioning of the internal market, should be enabled to establish by means of a regulation that certain aid does not fullfil all the criteria of Article 107(1) TFEU and is therefore exempted from the notification procedure laid down in Article 108(3) TFEU, provided that aid granted to the same undertaking over a given period of time does not exceed a certain fixed amount.

(23) 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. 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 on State aid. 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.

(24) Member States should provide summaries of information concerning aid implemented by them which is covered by an exemption regulation. The publication of those summaries is necessary to ensure the transparency of the measures adopted by the Member States. With the growth of electronic communication media, publication of the summaries on the website of the Commission is a fast and effective method ensuring transparency for the benefit of interested parties. Therefore, those summaries should be published on the website of the Commission.

(25) 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. The Commission should therefore regularly review the categories of aid which should be exempted from notification. 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 internal market so requires.

(26) The Commission, in close and constant liaison with the Member States, should be able to define precisely the scope of those regulations and the conditions attached to them. In order to provide for cooperation between the Commission and the competent authorities of the Member States, it is appropriate that the Advisory Committee on State aid be consulted before the Commission adopts regulations pursuant to this Regulation.