Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance)

COMMISSION REGULATION (EU) No 651/2014

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid[(1)], and in particular Article 1(1)(a) and (b) thereof,

After consulting the Advisory Committee on State Aid,

Whereas:

(1) State funding meeting the criteria in Article 107(1) of the Treaty constitutes State aid and requires notification to the Commission by virtue of Article 108(3) of the Treaty. However, according to Article 109 of the Treaty, the Council may determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) of the Treaty the Commission may adopt regulations relating to those categories of State aid. Council Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 109 of the Treaty, that the following categories may, under certain conditions, be exempted from the notification requirement: aid to small and medium-sized enterprises (SMEs), aid in favour of research and development, aid in favour of environmental protection, employment and training aid and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid. On that basis, the Commission adopted Commission Regulation (EC) No 800/2008[(2)]. Regulation (EC) No 800/2008 originally applied until 31 December 2013 but was subsequently prolonged by Commission Regulation (EU) No 1224/2013 of 29 November 2013 amending Regulation (EC) No 800/2008 as regards its period of application[(3)] and now expires on 30 June 2014. On 22 July 2013 Regulation (EC) No 994/98 was amended by Council Regulation (EU) No 733/2013 of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid[(4)] to empower the Commission to extend the block exemption to new categories of aid, in respect of which clear compatibility conditions can be defined. Such new categories of block exempted aid include: aid to make good the damage caused by

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certain natural disasters, social aid for transport for residents of remote regions, aid for broadband infrastructures, aid for innovation, aid for culture and heritage conservation, aid for sport and multifunctional recreational infrastructures. Provided that sufficient case experience is further developed allowing the design of operational exemption criteria ensuring the *ex-ante* compatibility of other categories of aid, the Commission intends to review the scope of this Regulation with a view to including certain types of aid in those areas. In particular, the Commission envisages developing criteria for port and airport infrastructure by December 2015.

(2) With its Communication on EU State Aid Modernisation (SAM)[(5)], the Commission launched a wider review of the State aid rules. The main objectives of this modernisation are (i) to achieve sustainable, smart and inclusive growth in a competitive internal market, while contributing to Member State efforts towards a more efficient use of public finances, (ii) to focus Commission *ex ante* scrutiny of aid measures on cases with the biggest impact on the internal market, while strengthening Member State cooperation in State aid enforcement, and (iii) to streamline the rules and provide for faster, better informed and more robust decisions based on a clear economic rationale, a common approach and clear obligations. The review of Regulation (EC) No 800/2008 constitutes a central element of SAM.

(3) This Regulation should allow for better prioritisation of State aid enforcement activities, greater simplification and should enhance transparency, effective evaluation and the control of compliance with the State aid rules at national and Union levels, while preserving the institutional competences of the Commission and the Member States. In accordance with the principle of proportionality this Regulation does not go beyond what is necessary in order to achieve those objectives.

(4) The Commission's experience in applying Regulation (EC) No 800/2008 has allowed it to better define the conditions under which certain categories of aid can be considered compatible with the internal market and to extend the scope of block exemptions. It also revealed the necessity to strengthen transparency, monitoring and proper evaluation of very large schemes in light of their effect on competition in the internal market.

(5) The general conditions for the application of this Regulation should be defined on the basis of a set of common principles that ensure the aid serves a purpose of common interest, has a clear incentive effect, is appropriate and proportionate, is granted in full transparency and subject to a control mechanism and regular evaluation, and does not adversely affect trading conditions to an extent that is contrary to the common interest.

(6) Aid that fulfils all the conditions laid down in this Regulation both general and specific to the relevant categories of aid should be exempted from the notification obligation laid down in Article 108(3) of the Treaty.

(7) State aid within the meaning of Article 107(1) of the Treaty not covered by this Regulation remains subject to the notification requirement of Article 108(3) of the Treaty. This Regulation is without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation.

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(8) In view of the greater potential impact of large schemes on trade and competition, aid schemes with an average annual State aid budget exceeding a threshold based on an absolute value should in principle be subject to State aid evaluation. The evaluation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, as well as the effectiveness of the aid measure in the light of its general and specific objectives and should provide indications on the impact of the scheme on competition and trade. In order to ensure equal treatment, State aid evaluation should be carried out on the basis of an evaluation plan approved by the Commission. While such plan should normally be drawn up at the moment of the design of the scheme and approved in time for the scheme to enter into force, this may not be possible in all cases. Therefore, in order not to delay their entry into force, this Regulation will apply to such schemes for a maximum period of six months. The Commission may decide to extend this period, upon approval of the evaluation plan. To this end, the evaluation plan should be notified to the Commission within 20 working days following the entry into force of the scheme. The Commission can also exceptionally decide that an evaluation is not necessary given the specificities of the case. The Commission should receive from the Member State the necessary information to be able to carry out the assessment of the evaluation plan and request additional information without undue delay allowing the Member State to complete the missing elements for the Commission to take a decision. In view of the novelty of this process, the Commission will provide, in a separate document, a detailed guidance on the procedure applicable during the 6 months period for the approval of the evaluation plan and the relevant templates through which the evaluation plans will have to be submitted. Alterations of schemes subject to evaluation, other than modifications which cannot affect the compatibility of the aid scheme under this Regulation or cannot significantly affect the content of the approved evaluation plan, should be assessed taking account of the outcome of such evaluation and should be excluded from the scope of this Regulation. The alterations such as purely formal modifications, administrative modifications or alterations carried out within the framework of the EU co-financed measures should not, in principle, be considered as significantly affecting the content of the approved evaluation plan.

(9) This Regulation should not apply to aid contingent upon the use of domestic over imported products or aid to export-related activities. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market in another Member State or third country does not normally constitute aid to export-related activities.

(10) This Regulation should apply in principle across most sectors of the economy. However, in some sectors, such as the fisheries and aquaculture sector and primary agricultural production, the scope should be limited in the light of the special rules applicable.

(11) This Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met. For the purposes of this Regulation neither on-

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farm activities necessary for preparing a product for the first sale, nor the first sale by a primary producer to resellers or processors or any activity preparing a product for a first sale should be considered processing or marketing.

(12) This Regulation should not apply to aid to facilitate the closure of uncompetitive coal mines, which is dealt with by the Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines[(6)]. This Regulation should apply to other types of aid in the coal sector, with the exception of regional aid.

(13) The Commission should ensure that authorised aid does not adversely affect trading conditions to an extent that is contrary to the common interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market should be excluded from the scope of this Regulation, with the exception of aid schemes to make good the damage caused by certain natural disasters.

(14) Aid granted to undertakings in difficulty should be excluded from the scope of this Regulation, since such aid should be assessed under the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004[(7)] as prolonged by Commission communication concerning the prolongation of the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004[(8)] or their successor Guidelines, in order to avoid their circumvention, with the exception of aid schemes to make good the damage caused by certain natural disasters. In order to provide legal certainty, it is appropriate to establish clear criteria that do not require an assessment of all the particularities of the situation of an undertaking to determine whether an undertaking is considered to be in difficulty for the purposes of this Regulation.

(15) State aid enforcement is highly dependent on the cooperation of Member States. Therefore, Member States should take all necessary measures to ensure compliance with this Regulation, including compliance of individual aid granted under block-exempted schemes.

(16) Due to the high risk of adversely affecting trading conditions, large amounts of aid granted either individually or cumulatively should be assessed by the Commission upon notification. Thresholds should therefore be set for each category of aid falling within the scope of this Regulation at a level which takes into account the category of aid concerned and its likely effect on trading conditions. Any aid granted above those thresholds should remain subject to the notification requirement of Article 108(3) of the Treaty. The thresholds set out in this Regulation should not be circumvented by artificially splitting up aid schemes or aid projects into several aid schemes or projects with similar characteristics, objectives or beneficiaries.

(17) For the purpose of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent *ex ante* without the need to undertake a risk assessment ('transparent aid'). For certain specific aid instruments, such as loans, guarantees, tax measures, risk finance measures and, in particular, repayable advances, this Regulation should define the conditions under which they can be considered

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transparent. Capital injections should not be considered transparent aid, without prejudice to specific conditions concerning risk finance and start-up aid. Aid comprised in guarantees should be considered as transparent if the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down for the respective type of undertaking. In the case of small and medium-sized enterprises (SMEs), the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees[9] indicates levels of annual premium above which a State guarantee would be deemed not to constitute aid.

(18) In order to ensure that the aid is necessary and acts as an incentive to further develop activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would in any case engage even in the absence of the aid. Aid should only be exempted from notification under this Regulation if the work on the aided project or activity starts after the beneficiary has submitted a written application for the aid.

(19) As regards any ad hoc aid covered by this Regulation granted to a beneficiary who is a large enterprise, the Member State should ensure that, in addition to complying with the conditions relating to incentive effect which apply to beneficiaries who are SMEs, the beneficiary has analysed, in an internal document, the viability of the aided project or activity with aid and without aid. The Member State should verify that this internal document confirms a material increase in the scope of the project/activity, a material increase in the total amount spent by the beneficiary on the subsidised project or activity or a material increase in the speed of completion of the project/activity concerned. Regional aid should be considered to have an incentive effect if the investment project would not have been carried out in the assisted region concerned in the absence of the aid.

(20) Automatic aid schemes in the form of tax advantages should continue to be subject to a specific condition concerning the incentive effect, due to the fact that this kind of aid is granted under different procedures than other categories of aid. Such schemes should already have been adopted before work on the aided project or activity started. However, this condition should not apply in the case of fiscal successor schemes provided the activity was already covered by the previous fiscal schemes in the form of tax advantages. For the assessment of the incentive effect of such schemes, the crucial moment is the moment when the tax measure was set out for the first time in the original scheme, which is then replaced by the successor scheme.

(21) As regards regional operating aid, regional urban development aid, aid for access to finance for SMEs, aid for the recruitment of disadvantaged workers, aid for employment of workers with disabilities and aid compensating for the additional costs of employing workers with disabilities, aid in the form of reductions in environmental taxes, aid to make good the damage caused by certain natural disasters, social aid for transport for residents of remote regions and aid for culture and heritage conservation, the requirement regarding the existence of an incentive effect does not apply or should be presumed as having been complied with, if the specific conditions set out for those categories of aid in this Regulation are fulfilled.