Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

COMMISSION REGULATION (EC) No 271/2008

of 30 January 2008

amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty[(1)], and in particular Article 27 thereof,

After consulting the Advisory Committee on State Aid,

Whereas:

(1) In order to facilitate and accelerate the submission of State aid notifications by Member States, and their assessment by the Commission, it is desirable to generalise the use of the already established electronic systems.

(2) Since 1 January 2006 Member States have been required to transmit State aid notifications electronically. The web application State Aid Notification Interactive (SANI)[(2)] has become fully functional and has increased the efficiency of procedures. For these reasons, from 1 July 2008, its use should be rendered obligatory for Member States for the submission of State aid notifications to the Commission.

(3) Since 1 January 2006, Member States have also been required to transmit all correspondence in connection with notifications electronically. The secured e-mail system Public Key Infrastructure (PKI)[(3)] tested by the Commission has become fully functional. Its use should therefore be rendered obligatory, from 1 July 2008, for all correspondence from Member States to the Commission in connection with a notification.

(4) In exceptional cases, upon the agreement of the Commission and the Member State concerned, it should be possible to use a communication channel other than the established web application or secured e-mail system.

(5) Member States should be invited to submit a separate non-confidential version of the notification, on a voluntary basis, or any correspondence in connection with a notification where these documents contain confidential information. This should lead to shortening of procedures and should enable the Commission to decide more easily on requests for access to documents. The classification of the information as confidential should be justified by the Member State concerned. The submission of a

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separate non-confidential copy of the notification or any correspondence in connection with a notification is without prejudice to the assessment by the Commission of the confidential character of the information submitted.

(6) In order to improve transparency of State aid in the Community, Member States should be required to refer to the State aid identification number allocated to the aid scheme concerned by the Commission in each grant of aid to a final beneficiary, save for aid granted through fiscal measures. For the same reason, the notification form should be modified to include an undertaking to publish on the Internet the full text of final aid schemes as approved by the Commission.

(7) In the light of changes in transmission of notifications, the provisions concerning the calculation of time limits should be also updated.

(8) The methodology for setting the interest rates applicable in respect of the recovery of unlawful aid follows the methodology for setting the reference and discount rates. The methodology for setting the reference and discount rates has been reviewed. The provisions of Commission Regulation (EC) No 794/2004[(4)] concerning the interest rate applicable in respect of the recovery of unlawful aid should therefore be amended in order to reflect these changes.

(9) In order to enable the Commission to better assess the effects of the notified aid measures on competition in the internal market, questions concerning the potential of such measures to distort competition and to affect intra-Community trade should be included in the notification form.

(10) According to the case law of the Court of First Instance of the European Communities[(5)], when assessing the compatibility of aid with the common market, the Commission must take all the relevant factors into account, including, where relevant, the circumstances already considered in a prior decision and the obligations which that previous decision may have imposed on a Member State. The Commission therefore has power to take into consideration the cumulative effect of any old aid and the new aid, and the fact that the old aid declared unlawful has not been repaid. In order to enable the Commission to apply systematically this case law to individual aid measures as well as to aid schemes, the notification form should be modified.

(11) In addition to the changes introduced in Part I of Annex I, further amendments to the notification forms are necessary, in particular the deletion of Part II of Annex I to Regulation (EC) No 794/2004, in order to avoid duplication of the information to be submitted by Member States.

(12) Following the adoption by the Commission of new Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises[(6)] and the Community framework for State aid for research and development and innovation[(7)], it is necessary to replace the notification forms contained in Part III.11 and Part III.6(a) and (b) of Annex I, with new notification forms which are in line with the current frameworks. The other notification forms contained in Part III of Annex I remain unchanged.

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(13) In order to ensure legal certainty and to increase transparency in granting the aid in the Community, the simplified notification form provided for in Article 4(2) of Regulation (EC) No 794/2004 and contained in Annex II should also be amended. In particular, Member States should be required confirm that all commitments given for the purposes of a previously approved scheme will remain valid in their entirety in respect of a new notified aid measure.

(14) Regulation (EC) No 794/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 794/2004 is amended as follows:

1. Article 3 is replaced by the following:

Article 3

Transmission of notifications

1 The notification shall be transmitted to the Commission by means of the electronic validation carried out by the person designated by the Member State. Such validated notification shall be considered as sent by the Permanent Representative.

2 The Commission shall address its correspondence to the Permanent Representative of the Member State concerned, or to any other address designated by that Member State.

3 As from 1 July 2008, notifications shall be transmitted electronically via the web application State Aid Notification Interactive (SANI).

All correspondence in connection with a notification shall be transmitted electronically via the secured e-mail system Public Key Infrastructure (PKI).

4 In exceptional circumstances and upon the agreement of the Commission and the Member State concerned, an agreed communication channel other than those referred to in paragraph 3 may be used for submission of a notification or any correspondence in connection with a notification.

In the absence of such an agreement, any notification or correspondence in connection with a notification sent to the Commission by a Member State through a communication channel other than those referred to in paragraph 3 shall not be considered as submitted to the Commission.

5 Where the notification or correspondence in connection with a notification contains confidential information, the Member State concerned shall clearly identify such information and give reasons for its classification as confidential.

6 The Member States shall refer to the State aid identification number allocated to an aid scheme by the Commission in each grant of aid to a final beneficiary.

The first subparagraph shall not apply to aid granted through fiscal measures.

2. In Article 8, paragraphs 3 and 4 are replaced by the following:

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3. With regard to timelimits for action by the Commission, the receipt of the notification or subsequent correspondence in accordance with Article 3(1) and Article 3(3) of this Regulation shall be the relevant event for the purpose of Article 3(1) of Regulation (EEC, Euratom) No 1182/71.

4 With regard to timelimits for action by Member States, the receipt of the relevant notification or correspondence from the Commission in accordance with Article 3(2) of this Regulation shall be the relevant event for the purposes of Article 3(1) of Regulation (EEC, Euratom) No 1182/71.

3. Article 9 is replaced by the following:

Article 9

Method for fixing the interest rate

1 Unless otherwise provided for in a specific decision, the interest rate to be used for recovering State aid granted in breach of Article 88(3) of the Treaty shall be an annual percentage rate which is fixed by the Commission in advance of each calendar year.

2 The interest rate shall be calculated by adding 100 basis points to the one-year money market rate. Where those rates are not available, the three-month money market rate will be used, or in the absence thereof, the yield on State bonds will be used.

3 In the absence of reliable money market or yield on stock bonds or equivalent data or in exceptional circumstances the Commission may, in close co-operation with the Member State(s) concerned, fix a recovery rate on the basis of a different method and on the basis of the information available to it.

4 The recovery rate will be revised once a year. The base rate will be calculated on the basis of the one-year money market recorded in September, October and November of the year in question. The rate thus calculated will apply throughout the following year.

5 In addition, to take account of significant and sudden variations, an update will be made each time the average rate, calculated over the three previous months, deviates more than 15 % from the rate in force. This new rate will enter into force on the first day of the second month following the months used for the calculation.

4. In Article 11, paragraph 3 is replaced by the following:

3. The interest rate referred to in paragraph 1 shall be applied throughout the whole period until the date of recovery. However, if more than one year has elapsed between the date on which the unlawful aid was first put at the disposal of the beneficiary and the date of the recovery of the aid, the interest rate shall be recalculated at yearly intervals, taking as a basis the rate in force at the time of recalculation.

5. The Annexes are amended in accordance with the Annexes to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 30 January 2008.

For the Commission

Neelie KROES

Member of the Commission