

Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing  
Council Regulation (EU) 2015/1589 laying down detailed rules for the  
application of Article 108 of the Treaty on the Functioning of the European Union

[<sup>F1</sup>COMMISSION REGULATION (EC) No 794/2004  
of 21 April 2004

implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the  
application of Article 108 of the Treaty on the Functioning of the European Union]

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<sup>(1)</sup>, and in particular Article 27 thereof,

After consulting the Advisory Committee on State Aid,

Whereas:

- (1) In order to facilitate the preparation of State aid notifications by Member States, and their assessment by the Commission, it is desirable to establish a compulsory notification form. That form should be as comprehensive as possible.
- (2) The standard notification form as well as the summary information sheet and the supplementary information sheets should cover all existing guidelines and frameworks in the state aid field. They should be subject to modification or replacement in accordance with the further development of those texts.
- (3) Provision should be made for a simplified system of notification for certain alterations to existing aid. Such simplified arrangements should only be accepted if the Commission has been regularly informed on the implementation of the existing aid concerned.
- (4) In the interests of legal certainty it is appropriate to make it clear that small increases of up to 20 % of the original budget of an aid scheme, in particular to take account of the effects of inflation, should not need to be notified to the Commission as they are unlikely to affect the Commission's original assessment of the compatibility of the scheme, provided that the other conditions of the aid scheme remain unchanged.
- (5) Article 21 of Regulation (EC) No 659/1999 requires Member States to submit annual reports to the Commission on all existing aid schemes or individual aid granted outside an approved aid scheme in respect of which no specific reporting obligations have been imposed in a conditional decision.
- (6) For the Commission to be able to discharge its responsibilities for the monitoring of aid, it needs to receive accurate information from Member States about the types and amounts of aid being granted by them under existing aid schemes. It is possible to simplify and improve the arrangements for the reporting of State aid to the Commission which are currently described in the joint procedure for reporting and notification under

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**Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EC) No 794/2004. 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](#)

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the EC Treaty and under the World Trade Organisation (WTO) Agreement set out in the Commission's letter to Member States of 2 August 1995. The part of that joint procedure relating to Member States reporting obligations for subsidy notifications under Article 25 of the WTO Agreement on Subsidies and Countervailing measures and under Article XVI of GATT 1994, adopted on 21 July 1995 is not covered by this Regulation.

- (7) The information required in the annual reports is intended to enable the Commission to monitor overall aid levels and to form a general view of the effects of different types of aid on competition. To this end, the Commission may also request Member States to provide, on an ad hoc basis, additional data for selected topics. The choice of subject matter should be discussed in advance with Member States.
- (8) The annual reporting exercise does not cover the information, which may be necessary in order to verify that particular aid measures respect Community law. The Commission should therefore retain the right to seek undertakings from Member States, or to attach to decisions conditions requiring the provision of additional information.
- (9) It should be specified that time-limits for the purposes of Regulation (EC) No 659/1999 should be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>(2)</sup>, as supplemented by the specific rules set out in this Regulation. In particular, it is necessary to identify the events, which determine the starting point for time-limits applicable in State aid procedures. The rules set out in this Regulation should apply to pre-existing time-limits which will continue to run after the entry into force of this Regulation.
- (10) The purpose of recovery is to re-establish the situation existing before aid was unlawfully granted. To ensure equal treatment, the advantage should be measured objectively from the moment when the aid is available to the beneficiary undertaking, independently of the outcome of any commercial decisions subsequently made by that undertaking.
- (11) In accordance with general financial practice it is appropriate to fix the recovery interest rate as an annual percentage rate.
- (12) The volume and frequency of transactions between banks results in an interest rate that is consistently measurable and statistically significant, and should therefore form the basis of the recovery interest rate. The inter-bank swap rate should, however, be adjusted in order to reflect general levels of increased commercial risk outside the banking sector. On the basis of the information on inter-bank swap rates the Commission should establish a single recovery interest rate for each Member State. In the interest of legal certainty and equal treatment, it is appropriate to fix the precise method by which the interest rate should be calculated, and to provide for the publication of the recovery interest rate applicable at any given moment, as well as relevant previously applicable rates.
- (13) A State aid grant may be deemed to reduce a beneficiary undertaking's medium-term financing requirements. For these purposes, and in line with general financial practice,

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the medium-term may be defined as five years. The recovery interest rate should therefore correspond to an annual percentage rate fixed for five years.

- (14) Given the objective of restoring the situation existing before the aid was unlawfully granted, and in accordance with general financial practice, the recovery interest rate to be fixed by the Commission should be annually compounded. For the same reasons, the recovery interest rate applicable in the first year of the recovery period should be applied for the first five years of the recovery period, and the recovery interest rate applicable in the sixth year of the recovery period for the following five years.
- (15) This Regulation should apply to recovery decisions notified after the date of entry into force of this Regulation,

HAS ADOPTED THIS REGULATION:

**Textual Amendments**

- F1** Substituted by [Commission Regulation \(EU\) 2015/2282 of 27 November 2015 amending Regulation \(EC\) No 794/2004 as regards the notification forms and information sheets \(Text with EEA relevance\)](#).

## CHAPTER I

### SUBJECT MATTER AND SCOPE

#### *Article 1*

#### **Subject matter and scope**

1 This Regulation sets out detailed provisions concerning the form, content and other details of notifications and annual reports referred to in Regulation (EC) No 659/1999. It also sets out provisions for the calculation of time limits in all procedures concerning State aid and of the interest rate for the recovery of unlawful aid.

2 This Regulation shall apply to aid in all sectors.

## CHAPTER II

### NOTIFICATIONS

#### *Article 2*

#### **Notification forms**

Without prejudice to Member States' obligations to notify state aids in the coal sector under Commission Decision 2002/871/CE<sup>(5)</sup>, notifications of new aid pursuant to Article 2(1) of Regulation (EC) No 659/1999, other than those referred to in Article 4(2), shall be made on the notification form set out in Part I of Annex I to this Regulation.

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Supplementary information needed for the assessment of the measure in accordance with regulations, guidelines, frameworks and other texts applicable to State aid shall be provided on the supplementary information sheets set out in Part III of Annex I.

Whenever the relevant guidelines or frameworks are modified or replaced, the Commission shall adapt the corresponding forms and information sheets.

### *F2* 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.]

#### **Textual Amendments**

- F2** Substituted by [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.](#)

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## Article 4

### **Simplified notification procedure for certain alterations to existing aid**

1 For the purposes of Article 1(c) of Regulation (EC) No 659/1999, an alteration to existing aid shall mean any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market. However an increase in the original budget of an existing aid scheme by up to 20 % shall not be considered an alteration to existing aid.

2 The following alterations to existing aid shall be notified on the simplified notification form set out in Annex II:

- a increases in the budget of an authorised aid scheme exceeding 20 %;
- b prolongation of an existing authorised aid scheme by up to six years, with or without an increase in the budget;
- c tightening of the criteria for the application of an authorised aid scheme, a reduction of aid intensity or a reduction of eligible expenses;

The Commission shall use its best endeavours to take a decision on any aid notified on the simplified notification form within a period of one month.

3 The simplified notification procedure shall not be used to notify alterations to aid schemes in respect of which Member States have not submitted annual reports in accordance with Article 5, 6, and 7, unless the annual reports for the years in which the aid has been granted are submitted at the same time as the notification.

## CHAPTER III

### **ANNUAL REPORTS**

## Article 5

### **Form and content of annual reports**

1 Without prejudice to the second and third subparagraphs of this Article and to any additional specific reporting requirements laid down in a conditional decision adopted pursuant to Article 7(4) of Regulation (EC) No 659/1999, or to the observance of any undertakings provided by the Member State concerned in connection with a decision to approve aid, Member States shall compile the annual reports on existing aid schemes referred to in Article 21(1) of Regulation (EC) No 659/1999 in respect of each whole or part calendar year during which the scheme applies in accordance with the standardised reporting format set out in Annex IIIA.

Annex IIIB sets out the format for annual reports on existing aid schemes relating to the production, processing and marketing of agricultural products listed in Annex I of the Treaty.

Annex IIIC sets out the format for annual reports on existing aid schemes for state aid relating to the production, processing or marketing of fisheries products listed in Annex I of the Treaty.