State aid rules: handling of complaints and gathering of information

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The Committee on Economic and Monetary Affairs adopted the report by Sirpa PIETIKÄINEN (EPP, FI) on the proposal for a Council regulation amending Regulation (EC) No

659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

Articles 107 and 108 TFEU define EU State Aid rules, with the former containing the definition of State aid and the grounds on which aid may be considered to be compatible with the internal market, and the latter setting out the main procedural principles that govern how the Commission can ensure Member States' compliance with the agreed rules.

More detailed rules of procedure on how to enforce these Articles are set out in Regulation (EC) No 659 /1999. This so-called Procedural Regulation has not been significantly modified since its adoption in 1999. The Commission is proposing to amend the Procedural Regulation.

The committee approves the Commission proposal as amended:

Simplification: Members insist on the need to amend certain elements of the Procedural Regulation in order to provide the Commission with simplified and more efficient instruments as regards state aid control and the implementation of the rules that apply to them.

Focus on state aid cases: the Commission should focus its attention on State aid cases with the potential to distort competition within the internal market and should **abstain from involvement in measures which concern smaller undertakings and produce purely local effects**, in particular where the main aim of those measures is to fulfil social objectives which do not distort the single market. The Commission should therefore be able to decline to examine such cases.

Definition of services where there is no true economic interest: Members recall that currently there are differing interpretations in Member States as to how to define services where there is no true economic interest and where there is a perceived lack of market driven supply and/or demand. **Such services should not fall under State aid rules**. The unclear situation has created problems especially for third sector, non-profit service providers. Members consider that the Commission should invite the Member States to assess through a "**market test**" whether there is true market demand and/or supply for given services, and assist them in doing so.

Filing complaints: Members highlight that it is important **not to impose too many or too formal restrictions on the filing of complaints**. In particular, individual citizens should retain the right to file complaints through an easily accessible and user-friendly procedure.

Treatment of complaints: the report stipulates that **too narrow an interpretation of the term "interested party" should be avoided**. All complainants should be required to provide a certain minimum amount of information in an easily accessible and user-friendly form that the Commission should be empowered to define in an implementing provision. **Where complainants fail to submit comments or provide information** indicating the existence of unlawful aid or the misuse of aid with the potential to distort competition within the internal market, the Commission should be able to deem the complaint withdrawn.

Requests for information made to other sources (e.g. undertaking, an association of undertakings or another Member State): when sending requests, the Commission shall simultaneously provide the Member State concerned with a copy of requests for information sent. It shall also, within one month of receipt, provide the Member State concerned with copies of all the documents it receives pursuant to the request for information, to the extent the information does not include confidential information which cannot be aggregated or otherwise adapted to protect the identity of the informant.

Fines and penalties: in fixing the amount of the fine or periodic penalty payment, Members state that regard shall be had: (a) to the nature, gravity and duration of the infringement; (b) to whether the undertaking or an association of undertakings can be considered to be an interested party or a third party in the investigation; (c) to the principle of proportionality, in particular as regards small and medium-sized enterprises

Unlawful aid procedure: Members are of the opinion that a **distinction should be made between the interested parties on the one hand, and third parties on the other.** The Commission shall consider examination of a complaint submitted by a third-party if there is sufficient evidence given to show a distortion to competition within the internal market by alleged unlawful aid of misuse of aid.

Economic sector investigations and by aid instrument: given that, through direct links to their constituencies, Members of the European Parliament can also be alerted to possible divergences of State aid practices within a given sector, the **European Parliament should also be given the power to request the Commission look into this sector**. The Commission shall **publish a report on its website** on the results of its inquiry into particular sectors of the economy or particular aid instruments across various Member States. It shall send interim reports to the Parliament detailing the progress of those investigations.

Legal basis: the report notes that the legal basis for this Regulation, Article 109 TFEU, **provides only for consultation of Parliament, not for ordinary legislative procedure,** in line with other areas of market integration and economic regulation further to the entry into force of the Lisbon Treaty.

Members consider that this democratic deficit cannot be tolerated in respect of proposals that concern the means of oversight by the Commission of decisions and acts by national and local elected authorities. They suggest that the **deficit should be corrected in any future Treaty change**.