State aid rules: handling of complaints and gathering of information

2012/0342(NLE) - 22/07/2013 - Final act

PURPOSE: to reform State Aid rules.

NON-LEGISLATIVE ACT: Council Regulation (EU) No 734/2013 amending Regulation (EC) No 659 /1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

CONTENT: the Council adopted two Regulations aiming to **update two main regulations governing the EU's state aid rules**: (i) the "procedural regulation" which sets out the rules concerning state aid investigations and; (ii) the "enabling regulation" enabling the Commission to adopt "block exemption regulations for state aid".

These Regulations are part of the broader reform initiated after the presentation of the Commission communication on EU state aid modernisation.

This Regulation amends Regulation (EC) No 659/1999 (procedural regulation) and seeks to update it with regards to complaint-handling and market information tools seeks to better focus Commission actions on cases with a significant impact on competition and trade in the internal market.

The main elements of the Regulation are as follows:

Requests for information: in order to assess the compatibility with the internal market of any notified or unlawful State aid, the Commission has the power, for the purposes of enforcing the State aid rules, to **request all necessary market information from any Member State**, undertaking or association of undertakings whenever it has doubts as to the compatibility of the measure concerned with the Union rules, and has therefore initiated the formal investigation procedure. In particular, the Commission should use this power in cases in which a complex substantive assessment appears necessary.

The Commission should be able, by **simple request or by decision**, to require any Member State, undertaking or association of undertakings to provide all market information necessary for completing its assessment, if the information provided by the Member State concerned during the course of the preliminary investigation is not sufficient. The Commission should be able to request information from an aid beneficiary only in agreement with the **Member State concerned**.

The Commission should select the addressees of information requests on the basis of **objective criteria appropriate to each case**, while ensuring that, when the request is addressed to a sample of undertakings or associations thereof, the sample of respondents is representative within each category. The information sought should consist, in particular, of **factual company and market data** and facts-based analysis of the functioning of the market.

Fines and periodic penalty payments: the Commission should be able to enforce compliance with the requests for information it addresses to any undertaking or association of undertakings, as appropriate, by means of proportionate fines and periodic penalty payments.

the Commission may, if deemed necessary and proportionate, impose by decision on undertakings or associations of undertakings fines **not exceeding 1 % of their total turnover** in the preceding business year where they, intentionally or through gross negligence

the periodic penalty payments shall **not exceed 5 % of the average daily turnover** of the undertaking or association concerned in the preceding business year for each working day of delay, calculated from the date established in the decision, until it supplies complete and correct information as requested or required by the Commission.

In fixing the amount of the fine or periodic penalty payment, regard shall be had to the **nature, gravity and duration of the infringement**, taking due account of the principles of proportionality and appropriateness, in particular for **small and medium-sized enterprises**.

Moreover, before adopting any decision, the Commission shall set a final deadline of two weeks to receive the missing market information from the undertakings or associations of undertakings concerned and also give them the opportunity of making known their views. **Fines and periodic penalty payments are not applicable to Member States**.

For reasons of legal certainty, it is appropriate to establish **limitation periods** for the imposition and enforcement of fines and periodic penalty payments.

Confidentiality: the confidentiality of sensitive information supplied by the Member States must be fully guaranteed. In cases where information marked as confidential does not seem to be covered by obligations of professional secrecy, a **mechanism** has been established by which the Commission can decide the extent to which such information can be disclosed.

Improve the processing of complaints: in order to improve the quality of the complaints submitted to the Commission, and at the same time increase transparency and legal certainty, the Regulation **defines the conditions that a complaint should fulfil** in order to put the Commission in possession of information regarding alleged unlawful aid and set in motion the preliminary examination.

Investigations into sectors of the economy and into aid instruments: in order to ensure that the Commission addresses similar issues in a consistent manner across the internal market, the Regulation introduces a specific legal basis to launch investigations into sectors of the economy or into certain aid instruments across several Member States.

In the course of that inquiry, the Commission may request the Member States and/or the undertakings or associations of undertakings concerned to supply the necessary information for the application of Articles 107 and 108 of the TFEU, taking due account of the principle of proportionality. The Commission shall state the reasons for the inquiry and for the choice of addressees in all requests for information sent.

Cooperation with national courts: consistency in the application of the State aid rules requires that arrangements be established for cooperation between the courts of the Member States and the Commission. In particular, national courts should be able to ask the Commission for information or for its opinion on points concerning the application of State aid rules. The Commission should also be able to submit written or oral observations to courts which are called upon to apply Article 107(1) or Article 108 of the TFEU.

ENTRY INTO FORCE: 20.08.2013.