Rules for the application of Article 108 of the Treaty on the Functioning of the European Union (TFEU). Codification

2014/0246(NLE) - 26/08/2014 - Legislative proposal

PURPOSE: codification of Council Regulation (EC) n° 659/1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: Council Regulation (EC) No 659/1999 has been substantially amended several times. It is recalled that on 1 April 1987 the Commission decided to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement.

The Conclusions of the Presidency of the Edinburgh European Council in December 1992 confirmed this, stressing the importance of codification.

The European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

CONTENT: in the interests of clarity and rationality, the Commission presents this proposal, the objective of which is to **codify Regulation (EC) No 659/1999 of 22 March 1999** laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

The new Regulation will supersede the various acts incorporated in it. It will fully preserve the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

The proposal seeks to **establish procedural rules concerning the application of state aid rules**. In accordance with Article 108(3) TFEU, any plans to grant new aid are to be notified to the Commission and should not be put into effect before the Commission has authorised it.

Procedure regarding notified aid: the proposal stipulates that any plans to grant new aid shall be notified to the Commission in sufficient time by the Member State concerned. The Commission shall inform the Member State concerned without delay of the receipt of a notification. In a notification, the Member State concerned shall **provide all necessary information** in order to enable the Commission to take a decision.

After examination of the notified measure, the Commission should, **within two months**: i) decide that this measure is compatible with the internal market; ii) or find that the notified measure raises doubts as to its compatibility with the internal market and decide to open up the formal investigation procedure in order to enable the Commission to gather all the information it needs to assess the compatibility of the aid and to allow the interested parties to submit their comments.

The Commission should be empowered 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;
- 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**.

Confidentiality: in cases where information marked as confidential does not seem to be covered by obligations of professional secrecy, the proposal establishes a mechanism enabling the Commission to decide the extent to which such information can be disclosed.

Unlawful aid: the Commission should be able, on its own initiative, to examine information on unlawful aid. The proposal lays down the procedures to be followed in this regard. The Commission should have the right to obtain all necessary information enabling it to take a decision and to restore immediately, where appropriate, undistorted competition. It is therefore appropriate to enable the Commission to adopt **interim measures** addressed to the Member State concerned. These may take the form of information injunctions, suspension injunctions and recovery injunctions. For reasons of legal certainty it is appropriate to provide for a period of limitation of **10 years** with regard to unlawful aid, after the expiry of which no recovery can be ordered.

Handling of complaints: complaints are an essential source of information for detecting infringements of the Union rules on State aid. The proposal lays down the conditions that a complaint should fulfill in order to put the Commission in possession of information regarding alleged unlawful aid and set in motion the preliminary examination.

Complainants should be required to demonstrate that they are **interested parties** and provide a certain amount of information in a **form** that the Commission should be empowered to set out in an implementing provision.

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, it is appropriate to provide for a specific legal basis to launch investigations into sectors of the economy or into certain aid instruments across several Member States.

Cooperation with national courts: for a coherent application of state aid rules, the proposal provides for a cooperation mechanism to be established between the courts of the Member States and the Commission.