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

2014/0246(NLE) - 13/07/2015 - Final act

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.

LEGISLATIVE ACT: 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.

CONTENT: in the interests of clarity and rationality, this Regulation **codifies Regulation (EC) No 659 /1999** which has been substantially amended several times. **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 main elements of the Regulation are as follows:

Procedure regarding notified aid: the Regulation 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.

The Commission shall as far as possible endeavour to adopt a decision within a period of 18 months from the opening of the procedure. This time limit may be extended by common agreement between the Commission and the Member State concerned.

Confidentiality: in cases where information marked as confidential does not seem to be covered by obligations of professional secrecy, the Regulation 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 Regulation 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. The Commission should adopt interim measures addressed to the Member State concerned. These may take the form of information injunctions, suspension injunctions and recovery injunctions.

The powers of the Commission to recover aid shall be subject to a limitation period of 10 years. The powers conferred on the Commission shall be subject to a limitation period of 3 years for the imposition of fines and periodic penalty payments and a limitation period of 5 years for the enforcement of fines and periodic penalty payments.

Handling of complaints: complaints are an essential source of information for detecting infringements of the Union rules on State aid. The Regulation 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, the Regulation provides 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 Regulation provides for a cooperation mechanism to be established between the courts of the Member States and the Commission.

ENTRY INTO FORCE: 14.10.2015.