Basic information

2012/0342(NLE) NLE - Non-legislative enactments Regulation	Procedure completed
State aid rules: handling of complaints and gathering of information Amending Regulation (EC) No 659/1999 1998/0060(CNS) **Subject** 2.60.03 State aids and interventions	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	PIETIKÄINEN Sirpa (PPE)	14/01/2013
	Shadow rapporteur CUTAȘ George Sabin (S&D) BOWLES Sharon (ALDE) BESSET Jean-Paul (Verts /ALE) EPPINK Derk Jan (ECR)	

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	3242	2013-05-29

European Commission

Commission DG	Commissioner
Competition	ALMUNIA Joaquín

Key events

Date	Event	Reference	Summary
05/12/2012	Legislative proposal published	COM(2012)0725	Summary
15/01/2013	Committee referral announced in Parliament		
20/05/2013	Vote in committee		
27/05/2013	Committee report tabled for plenary, 1st reading/single reading	A7-0180/2013	Summary
02/07/2013	Decision by Parliament	T7-0289/2013	Summary
02/07/2013	Results of vote in Parliament		
22/07/2013	Act adopted by Council after consultation of Parliament		
22/07/2013	End of procedure in Parliament		
31/07/2013	Final act published in Official Journal		

Technical information

Procedure reference	2012/0342(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consultation of Parliament
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 659/1999 1998/0060(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 109
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/11480

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE506.349	19/03/2013	
Amendments tabled in committee		PE510.487	22/04/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0180/2013	27/05/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0289/2013	02/07/2013	Summary

European Commission

Document type	Reference	Date	Summary

Legislative proposal	COM(2012)0725	05/12/2012	Summary
Commission response to text adopted in plenary	SP(2013)625	26/09/2013	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2012)0725	24/04/2013	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2013/0734
OJ L 204 31.07.2013, p. 0015 Summary

State aid rules: handling of complaints and gathering of information

2012/0342(NLE) - 05/12/2012 - Legislative proposal

PURPOSE: to amend the provisions of Council Regulation (EC) No 659/99 laying down the rules of procedure in State aid investigations as regards the handling of complaints and the gathering of information from the market.

PROPOSED ACT: Council Regulation.

BACKGROUND: the European State aid rules were first introduced in the Treaties establishing the European Coal and Steel Community in 1952 and the European Economic Community in 1957. They are currently enshrined in the Treaty on the Functioning of the European Union (TFEU):

- Article 107 TFEU contains the definition of State aid and the grounds on which aid may be considered to be compatible with the internal market;
- Article 108 TFEU sets out the main procedural principles governing the Commission's action to ensure Member States' compliance with the substantive State aid rules.

In 1999, the Council adopted Regulation (EC) No 659/1999 (the "**Procedural Regulation**"), setting out in more details the rules of procedure governing the enforcement of Articles 107 and 108 TFEU, which have been applied until today without any significant modifications. However, in the light of the experience gained in its application and of recent developments, such as enlargement and the economic and financial crisis, **certain aspects of that Regulation should be amended in order to enable the Commission to be more effective**.

On 8 May 2012, the Commission therefore adopted the Communication on "EU State aid modernisation (SAM)" which launches a comprehensive reform of the State aid framework. It will ensure that State aid policy contributes both to the implementation of the Europe 2020 agenda, which is Europe's growth strategy for the current decade, and to budget consolidation. The need to reform State aid procedures has also been emphasised by the Court of Auditors in its Special Report n°15/2011.

IMPACT ASSESSMENT: no impact assessment was carried out by the Commission. The reform of State aid procedures was presented to and discussed with the Member States at high-level meetings organised on 6 March and 11 July 2012. A public consultation on the handling of State aid complaints and on information gathering in State aid investigations was carried out from 13 July 2012 to 5 October 2012.

LEGAL BASIS: Article 109 of the TFEU which allows the Council, acting upon a proposal from the Commission and after consulting the European Parliament, to make any appropriate regulations for the application of Articles 107 and 108 TFEU.

CONTENT: the proposal to **reform the Procedural Regulation** concerns in particular two main areas:

(1) Improving the handling of complaints: the Commission receives on average more than 300 complaints every year, whether lodged by interested parties or not, among which many are either not motivated by genuine competition concerns or not sufficiently substantiated. In 2009, the **Best Practices Code** for the conduct of State aid procedures set out a staged and transparent procedure to handle complaints. Two years into its application, however, experience shows that the benefits it sought to offer – of shorter duration, increased efficiency and greater predictability – have not fully materialised.

Staged and transparent procedure: the proposed amendments to the Procedural Regulation aim at improving the quality of the information received by clarifying the requirements to lodge a complaint and formalising a staged, predictable and transparent procedure.

In the interests of transparency and legal certainty, the conditions to lodge a complaint which put the Commission in possession of information regarding alleged unlawful aid and thereby set in motion the preliminary examination should therefore be clarified. Indeed, it is appropriate to require that:

- **complainants submit a certain amount of compulsory information**. To that end, it is appropriate to empower the Commission to adopt implementing provisions to define the form and the content of a complaint;
- **complainants demonstrate that they are interested parties** within the meaning of the TFEU and the Procedural Regulation and that they therefore have a legitimate interest to lodge a complaint.

In cases where the information received will not be classified as a complaint since it will not have passed the admissibility criteria, the Commission will no longer be under an obligation to adopt formal decisions. Those submissions will be registered as market information and could be used at a later stage to conduct *ex officio* investigations. The Procedural Regulation should formalise the possibility for the Commission to deem complaints withdrawn if the complainant does not return to it with meaningful information or otherwise fails to cooperate during the procedure.

Cooperation with national courts: in 2009, the Commission adopted a Notice on the enforcement of State aid law by national courts in order to inform national courts and interested parties about the remedies available and has sought to develop its cooperation with national courts by introducing more practical tools for supporting national judges in their daily work.

The Commission proposes:

- to expressly provide that **national courts have the right to obtain from the Commission information** for the purpose of applying the rules of the TFEU and to ask for an opinion of the Commission on questions related to the application of State aid rules;
- to introduce the **right for the Commission to make submissions to national courts in written or oral form**. The proposed provision aims in particular at permitting the Commission to draw the attention of Member States' courts to issues of considerable importance for the consistent application of EU State aid law across the internal market. The national courts are not bound to follow an opinion of the Commission.

(2) Ensuring an effective and reliable gathering of information from the market: the compatibility assessment of an aid measure depends on the design of the measure and its impact on the market. A proper facts-based assessment has therefore become more important, in particular for complex cases.

To meet the Commission's needs in terms of information gathering, it is therefore proposed to: (i) introduce market information tools (MIT); (ii) provide a legal basis for conducting investigations into particular sectors of the economy and into particular aid instruments to enable the Commission to obtain timely, reliable, factually correct and complete information directly from the market.

Market information tools (MIT): it is proposed that the Commission may require information via **simple request** for information or by decision **from entities other than the Member State concerned** in notified and unlawful aid procedures after the opening of the formal investigation.

As in antitrust and mergers, those market information tools would consist in the possibility to request information from any undertaking, association of undertakings or Member State, coupled with the **possibility to sanction the companies concerned** through fines or penalty payments if they fail to respond or to provide complete information.

The values chosen offer sufficient incentives for parties concerned to comply, being proportionate as to the potential gravity of the offence:

- **fines not exceeding 1% of the total turnover** for supplying incorrect or misleading information in response to simple requests or requests made by decisions or for not replying to requests made by decisions;
- **periodic penalty payments not exceeding 5% of the average daily turnover for each working day of delay**, calculated from the date set in the decision in order to compel them to supply complete and correct information which has been requested by decision.

Requests sent to Member States and public authorities **would not entail the possible imposition of fines or periodic penalty payments under the Procedural Regulation**. For reasons of legal certainty, it is appropriate to establish **limitation periods** for the imposition and enforcement of fines or periodic penalty payments.

Confidentiality of the sensitive information provided by the Member States will be fully guaranteed when using MIT. The Commission will also ensure that no sensitive information is disclosed when drafting requests to third parties. If certain data are considered confidential, the Commission will ensure that they are adequately protected. In cases where the information marked as confidential does not seem to be covered by obligations of professional secrecy, it is appropriate to establish a **mechanism** by which the Commission can decide the extent to which such information can be disclosed.

Investigations into sectors of the economy and into aid instruments: the Commission is committed to focusing its efforts on the most distortive cases for the functioning of the internal market. The need for **reinforced horizontal information** is particularly manifest in cases where the data in the possession of the Commission would raise issues linked to a specific sector in several Member States and there are indications that similar problems may exist in other Member States.

To complete the existing powers of the Commission and to obtain an ex ante holistic view of the market, it is proposed to introduce a specific legal basis to **launch investigations into sectors of the economy and into types of aid measures**.

Before formally launching a sector inquiry, the Commission would have to analyse all information which is already at its disposal or available in the public domain.

For proportionality reasons, launching a sector inquiry will therefore require indications from publicly available sources that State aid issues in a particular sector or concerning the use of a particular aid instrument exist in several Member States: e.g. that existing aid measures in a particular sector or based on a particular aid instrument in several Member States are not, or no longer, compatible with the internal market.

BUDGETARY IMPLICATION: this proposal for an amendment has no impact on the EU budget.

State aid rules: handling of complaints and gathering of information

2012/0342(NLE) - 27/05/2013 - Committee report tabled for plenary, 1st reading/single reading

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**.

State aid rules: handling of complaints and gathering of information

2012/0342(NLE) - 02/07/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 651 votes to 26, with 33 abstentions, a legislative resolution 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.

Parliament 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.

That aim is consistent with the Commission's communication of 8 May 2012 on EU State Aid Modernisation (SAM) and was endorsed by the European Parliament in its resolution of 17 January 2013 on state aid modernisation.

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**. Parliament considers 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.

This should also be taken into account when the Commission assesses the validity of a particular complaint.

Filing complaints: Parliament highlights 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 resolution 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: Parliament is 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.

The Commission shall consider investigating when presented with sufficient evidence by a third party of allegedly unlawful aid or of alleged 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 resolution 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.

Parliament considers 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. It suggests that the **deficit should be corrected in any future Treaty change**.

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.