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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of 12.5.2025

amending Regulation (EC) No 794/2004 as regards an internal review mechanism to follow up on the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2015/128 and other procedural updates

(Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union¹, and in particular Article 33 thereof,

After consulting the Advisory Committee on State Aid,

Whereas:

- (1) The Union is party to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Aarhus Convention'). The Aarhus Convention is implemented in the Union by Regulation (EC) No 1367/2006 of the European Parliament and of the Council².
- (2) Article 2(2), point (a) of Regulation (EC) No 1367/2006 excludes administrative acts, within the meaning of Article 2(1), point (g), adopted by the Commission in the field of competition from the scope of Regulation (EC) No 1367/2006. Commission decisions on State aid concerned by the procedure laid down in Article 108(2) of the Treaty cannot be subject to a request for review by members of the public as provided by Article 10 of Regulation (EC) No 1367/2006.
- (3) The Aarhus Convention Compliance Committee (the 'ACCC') in case ACCC/C/2015/128³, found the Union to be in breach of the Aarhus Convention for failing to provide members of the public access to administrative or judicial procedures to challenge decisions on State aid measures taken by the Commission pursuant to Article 108(2) of the Treaty which contravene Union law relating to the environment.

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¹ OJ L 248, 24.9.2015, p. 9, ELI: <http://data.europa.eu/eli/reg/2015/1589/oj>.

² Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13, ELI: <http://data.europa.eu/eli/reg/2006/1367/OJ>).

³ For the findings and related case information, see https://unece.org/env/pp/cc/accc.c.2015.128_european-union.

- (4) The Union should take steps to address the findings of the ACCC by setting up an internal review mechanism. That mechanism should apply to State aid decisions closing the formal investigation procedure under Article 108(2) of the Treaty, adopted by the Commission pursuant to Article 9(3) and (4) of Regulation (EU) 2015/1589, having as legal basis Article 107(3), point (a), first part of point (b) (aid to promote the execution of an important project of common European interest), points (c), (d) and (e) of the Treaty, Article 93 of the Treaty, and Article 106(2) of the Treaty. In this context, the notifying Member State should confirm that neither the activity subject to State aid, nor any aspects of the notified State aid measure indissolubly linked to the object of the aid contravene Union environmental law⁴. That confirmation should be given in the form set out in Part I, point 6.8 of Annex I to Commission Regulation (EC) No 794/2004⁵. If the State aid measure is contrary to Union law, and provided the relevant requirements set out in the case-law are met⁶, the Commission cannot authorise the aid.
- (5) In order to allow Member States to adapt to the new requirements stemming from this new internal review mechanism, the obligation for Member States to confirm in their notification the absence of a breach of Union environmental law should only apply as from two months following the publication of this Regulation in the *Official Journal of the European Union*.
- (6) The arrangements for the internal review procedure are detailed in the Communication from the Commission concerning the Code of Best Practices for the conduct of State aid control procedures⁷.
- (7) In accordance with Article 4(1) of Regulation (EC) No 794/2004, an increase up to 20 % of the original budget of an aid scheme should not be considered as alteration of existing aid. In the interest of legal certainty, it is appropriate to clarify that Article 4(1) of that Regulation applies only to authorised aid schemes or aid schemes deemed compatible under Regulation (EU) No 651/2014⁸, since other types of existing aid, such as pre-accession aid, might not have an authorised original budget.
- (8) The Commission should amend its notification forms, following the adoption of updated State aid regulations, guidelines and frameworks concerning regional aid⁹, research, development and innovation¹⁰, broadband¹¹, climate, environmental

⁴ *Ex multis* judgment of 22 March 1977, *Iannelli & Volpi*, 74/76, EU:C:1977:51, paragraph 14: ‘Those aspects of aid which contravene specific provisions of the Treaty (...) may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately so that their effect on compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in Article 93’.

⁵ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing 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 (OJ L 140, 30.4.2004, p. 1, ELI: <http://data.europa.eu/eli/reg/2004/794/oj>).

⁶ Judgment of 15 June 1993, *Matra v Commission* C-225/91, EU:C:1993:239, paragraph 41, Judgment of 22 March 1977, *Iannelli & Volpi*, 74/76, EU:C:1977:51, paragraph 14, Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 96 to 99.

⁷ OJ C [OP please insert the full reference to the OJ publication].

⁸ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1, ELI: <http://data.europa.eu/eli/reg/2014/651/oj>).

⁹ Communication from the Commission - Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1).

¹⁰ Communication from the Commission - Framework for State aid for research and development and innovation (OJ C 414, 28.10.2022, p. 1).

protection and energy¹², risk finance¹³, aid for agriculture¹⁴ and fisheries¹⁵ as well as extending the State aid guidelines on aviation¹⁶. Given those changes, the State aid notification form and information sheets set out in Regulation (EC) No 794/2004 should be amended to reflect the changes and to ensure that the Commission receives all the information it needs to carry out its assessment under the amended State aid rules.

- (9) The Commission's practice has evolved in terms of using electronic notification systems and annual reporting formats. Article 3(3) and Article 5(1) of Commission Regulation (EC) No 794/2004 should therefore be amended to ensure the Commission receives all the information it needs to carry out its assessment under the State aid rules.
- (10) The Commission's practice as regards reporting in the agriculture and fisheries sectors needs to be amended, in line with the general reporting rules. Member States should therefore submit their reports also in the agriculture and fisheries sectors in accordance with Annex III to Regulation (EC) No 794/2004, pursuant to Article 5(1) of that Regulation.
- (11) The case law of the Union Courts has further clarified the notion of 'interested party' under Article 1, point (h), of Regulation (EU) 2015/1589¹⁷. The complaint form set out in Annex IV to Regulation (EU) No 794/2004 should therefore be amended.
- (12) Regulation (EU) No 794/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 794/2004 is amended as follows:

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- ¹¹ Communication from the Commission - Guidelines on State aid for broadband networks (OJ C 36, 31.1.2023, p. 1).
 - ¹² Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).
 - ¹³ Communication from the Commission – Guidelines on State aid to promote risk finance investments (OJ C 508, 16.12.2021, p. 1).
 - ¹⁴ Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 1, ELI: <http://data.europa.eu/eli/reg/2022/2472/oj>) and Communication from the Commission - Guidelines for State aid in the agricultural and forestry sectors and in rural areas (OJ C 485, 21.12.2022, p. 1).
 - ¹⁵ Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 82, ELI: <http://data.europa.eu/eli/reg/2022/2473/oj>) and Communication from the Commission - Guidelines for State aid in the fishery and aquaculture sector (OJ C 107, 23.3.2023, p. 1).
 - ¹⁶ Communication from the Commission extending the transitional period provided for in the Guidelines on State aid to airports and airlines concerning regional airports (OJ C 244, 11.7.2023, p. 1).
 - ¹⁷ Judgments of 2 September 2021, *Ja zum Nürburgring v Commission*, C-647/19 P, EU:C:2021:666, paragraphs 56 and 57; of 31 January 2023, *European Commission v Anthony Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 59 and 60; of 5 September 2024, *Penya Barça Lyon (PBL) and Issam Abdelmouine v European Commission*, C-224/23 P, EU:C:2024:682, paragraphs 59 to 72.

- (1) in Article 1, the words ‘Regulation (EC) No 659/1999’ are replaced by the words ‘Regulation (EU) 2015/1589’;
- (2) in Article 2, the words ‘Regulation (EC) No 659/1999’ are replaced by the words ‘Regulation (EU) 2015/1589’;
- (3) in Article 3, paragraph 3 is replaced by the following:

‘3. Notifications shall be sent electronically, via the electronic application designated by the Commission.

All correspondence in connection with a notification shall be sent electronically via the secured electronic system designated by the Commission.’;
- (4) in Article 4, paragraph 1 is amended as follows:
 - (a) in the first sentence, the words ‘Regulation (EC) No 659/1999’ are replaced by the words ‘Regulation (EU) 2015/1589’;
 - (b) the second sentence is replaced by the following:

‘However an increase in the original budget of an existing aid that is authorised or deemed compatible under Regulation (EU) No 651/2014 by up to 20 % shall not be considered an alteration to existing aid.’;
- (5) in Article 5, paragraph 1 is replaced by the following:

‘1. Without prejudice to any additional specific reporting requirements laid down in a conditional decision adopted pursuant to Article 9(4) of Regulation (EU) 2015/1589, or to the observance of any undertakings provided by the Member State concerned in connection with a decision to approve aid, Member States shall compile annual reports on existing aid schemes and individual aid in respect of each whole or part calendar year during which the scheme applies, using the standardised reporting format set out in Annex III.’;
- (6) in Article 7, the words ‘Article 88(3) of the Treaty’ are replaced by the words ‘Article 108(3) of the Treaty’ and the words ‘Council Regulation (EC) No 659/1999’ are replaced by the words ‘Regulation (EU) 2015/1589’.
- (7) Article 8 is amended as follows:
 - (a) in paragraph 1, the words ‘Regulation (EC) No 659/1999’ are replaced by the words ‘Regulation (EU) 2015/1589’;
 - (b) in paragraph 5, the words ‘Regulation (EC) No 659/1999’ are replaced by ‘Regulation (EU) 2015/1589’;
 - (c) in paragraph 5a, the words ‘Article 6a(6) of Regulation (EC) No 659/1999’ are replaced by the words ‘Article 7(6) of Regulation (EU) 2015/1589’;
 - (d) in paragraph 5b, the words ‘Article 6a(7) of Regulation (EC) No 659/1999’ are replaced by the words ‘Article 7(7) of Regulation (EU) 2015/1589’;
- (8) in Article 9(1), the words ‘Article 88(3) of the Treaty’ are replaced by the words ‘Article 108(3) of the Treaty’;
- (9) in Article 11a(1), the words ‘Articles 10(1) and 20(2) of Regulation (EC) No 659/1999’ are replaced by the words ‘Articles 12(1) and 24(2) of Regulation (EU) 2015/1589’;

- (10) in Article 11b, the words ‘Regulation (EC) No 659/1999’ are replaced by the words ‘Regulation (EU) 2015/1589’;
- (11) Annex I is amended in accordance with Annex I to this Regulation;
- (12) Annexes III.A, III.B and III.C are deleted;
- (13) Annex III as set out in Annex II to this Regulation is inserted;
- (14) Annex IV is replaced by the text in Annex III to this Regulation;
- (15) Annex V as set out in Annex IV to this Regulation is added.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*.

Part I, point 6.8 of Annex I to Regulation (EC) No 794/2004 as amended in accordance with Article 1, point 11 of this Regulation shall apply from [*OP please insert the date = 2 months following the date of the publication of this Regulation in the Official Journal of the European Union*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12.5.2025

For the Commission
The President
Ursula VON DER LEYEN