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DRAFT REPORT

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
(COM(2012)0725 – C7-0004/2013 – 2012/0342(NLE))

Committee on Economic and Monetary Affairs

Rapporteur: Sirpa Pietikäinen

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT 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 (COM(2012)0725 – C7-0004/2013 – 2012/0342(NLE))

(Consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2012)0725),
 - having regard to its resolution of 17 January 2013 on state aid modernisation¹,
 - having regard to Article 109 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0004/2013),
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0000/2013),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a Council regulation

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) It is important that the Commission should focus its attention on State aid cases with a real impact on the internal market. That aim is consistent with the Commission's communication of 8 May

¹ Texts adopted, P7_TA(2013)0026.

2012 on EU State Aid Modernisation (SAM) and was endorsed by the European Parliament in its resolution of 17 January 2013. It follows that the Commission should abstain from involvement in measures which concern smaller undertakings and which produce purely local effects, in particular where the main aim of those measures is to fulfil social objectives. The Commission should therefore be able to decline to examine such cases, and, in particular, complaints brought to its attention, even where persistent complainants respond to every invitation to submit comments.*

**OJ C ...*

Or. en

Amendment 2
Proposal for a Council regulation
Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) 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 as they are deprived of aid provided by the state in anticipation of a possible complaint, in these cases unfoundedly. The Commission should, in the context of modernising State aid rules, invite the Member States to assess through a "market test" whether there is true market demand and/or supply for given services, and assist MS in doing so. This aspect should also be taken into

account when the Commission assesses the validity of a given complaint.

Or. en

Amendment 3

Recital 1 c (new)

Text proposed by the Commission

Amendment

(1c) The legal basis for this Regulation, Article 109 TFEU, provides only for consultation of Parliament, not for codecision in line with other areas of market integration and economic regulation further to the entry into force of the Lisbon Treaty. 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, in particular as regards services of general economic interest related to fundamental rights. This deficit should be corrected in any future Treaty change.

Or. en

Justification

The legal basis of this proposal, Article 109, provides for the consultation procedure. It cannot allow the amendment of a legislative act based on Articles 71 and 89 TCE, which provide for the codecision procedure.

Amendment 4

Recital 3

Text proposed by the Commission

Amendment

(3) For the purpose of assessing the

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compatibility of an aid measure after the opening of the formal investigation procedure, in particular as regards novel or technically complex measures subject to detailed assessment, the Commission should be able, by simple request or by decision, to require any undertaking, association of undertakings or Member State to provide all information necessary for completing its assessment, if the information at its disposal is not sufficient, taking due account of the principle of proportionality, in particular for small and medium-sized enterprises.

compatibility of an aid measure after the opening of the formal investigation procedure, in particular as regards novel or technically complex measures subject to detailed assessment, the Commission should be able, by simple request or by decision, to require any undertaking, association of undertakings or Member State to provide all information necessary for completing its assessment, if the information at its disposal is not sufficient, taking due account of the principle of proportionality, in particular for small and medium-sized enterprises. ***Such powers already exist for the enforcement of anti-trust law and it is anomalous that they do not exist for the enforcement of State aid law, given that State aid can be equally distortive to the internal market as infringements of Articles 101 or 102 of the Treaty.***

Or. en

Amendment 5
Proposal for a Council regulation
Recital 4

Text proposed by the Commission

(4) The Commission should be able to enforce compliance with requests for information addressed to any undertaking or association of undertakings, as appropriate, by means of proportionate fines and periodic penalty payments. The rights of the parties requested to provide information should be safeguarded by giving them the opportunity to make their views known before any decision imposing fines or periodic penalty payments. The Court of Justice of the European Union should have unlimited jurisdiction with regard to such fines and periodic penalties pursuant to Article 261 of the Treaty.

Amendment

(4) The Commission should be able to enforce compliance with requests for information addressed to any undertaking or association of undertakings, as appropriate, by means of proportionate fines and periodic penalty payments. ***When assessing the level of such penalties, the Commission should distinguish between actors depending on their role in, and link to, the case. Lower penalties should apply to third parties that the Commission itself brings into the case through its request for information as those third parties are not linked to the investigation the same way as the alleged beneficiary and the party lodging the complaint. In addition,***

the Commission should apply the principle of proportionality, taking into account the size of the undertaking. The rights of the parties requested to provide information should be safeguarded by giving them the opportunity to make their views known before any decision imposing fines or periodic penalty payments. The Court of Justice of the European Union should have unlimited jurisdiction with regard to such fines and periodic penalties pursuant to Article 261 of the Treaty.

Or. en

Amendment 6
Proposal for a Council regulation
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) It is important that Member States have an incentive to notify State aid measures and that they are not penalised unduly if the Commission takes excessive time to examine notified aid. If, therefore, a Member State notifies an aid measure and subsequently puts it into effect more than six months later in the absence of a Commission decision, any future recovery decision concerning that aid should demonstrate that the notification was incomplete and that the Member State did not respond adequately to information requests.

Or. en

Amendment 7
Proposal for a Council regulation
Recital 11

Text proposed by the Commission

(11) Complainants should be required to demonstrate that they are interested parties within the meaning of Article 108(2) TFEU and of Article 1(h) of Regulation 659/99. They should also be required to provide a certain amount of information in a form that the Commission should be empowered to define in an implementing provision.

Amendment

(11) Complainants should be required to demonstrate that they are interested parties within the meaning of Article 108(2) TFEU and of Article 1(h) of Regulation 659/99. They should also be required to provide a certain amount of information in a 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 a real impact on the internal market, the Commission should be able to deem the complaint withdrawn.***

Or. en

Amendment 8
Proposal for a Council regulation
Recital 13

Text proposed by the Commission

(13) In order to ensure that the Commission addresses similar issues in a consistent manner across the internal market, it is appropriate to complete the existing powers of the Commission by introducing a specific legal basis to launch investigations into sectors of the economy or into certain aid instruments across several Member States. For reasons of proportionality, sector inquiries should be based on a prior analysis of publicly available information pointing to the existence of State aid issues in a particular sector or concerning the use of a particular aid instrument in several Member States, for example, 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. Such inquiries would

Amendment

(13) In order to ensure that the Commission addresses similar issues in a consistent manner across the internal market, it is appropriate to complete the existing powers of the Commission by introducing a specific legal basis to launch investigations into sectors of the economy or into certain aid instruments across several Member States. For reasons of proportionality, sector inquiries should be based on a prior analysis of publicly available information pointing to the existence of State aid issues in a particular sector or concerning the use of a particular aid instrument in several Member States, for example, 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. ***Given that, through direct***

enable the Commission to deal in an efficient and transparent way with horizontal State aid issues.

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 to look into this sector. Such inquiries would enable the Commission to deal in an efficient and transparent way with horizontal State aid issues.

Or. en

Amendment 9
Proposal for a Council regulation
Recital 14

Text proposed by the Commission

(14) Consistency in the application of State aid rules requires that arrangements be established for cooperation between the courts of the Member States and the Commission. Such cooperation is relevant for all courts of the Member States that apply Article 107(1) and Article 108 of the Treaty, in whatever context. 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 law. 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 Treaty. Those observations should be submitted within the framework of national procedural rules and practices including those safeguarding the rights of the parties.

Amendment

(14) Consistency in the application of State aid rules requires that arrangements be established for cooperation between the courts of the Member States and the Commission. Such cooperation is relevant for all courts of the Member States that apply Article 107(1) and Article 108 of the Treaty, in whatever context. 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 law. 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 Treaty. Those **non-binding** observations should be submitted within the framework of national procedural rules and practices including those safeguarding the rights of the parties.

Or. en

Amendment 10
Proposal for a Council regulation
Article 1 – point 2
Regulation (EC) No 659/1999
Article 6 a - paragraph 5

Text proposed by the Commission

5. The Commission shall **inform** the Member State concerned **of the content** of requests for information sent pursuant to paragraphs 1 to 4.

Amendment

5. **When sending requests**, the Commission shall **simultaneously provide** the Member State concerned **with a copy** of requests for information sent pursuant to paragraphs 1 to 4.

The Commission 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. The Commission shall give the Member State concerned the opportunity to make observations on those documents within one month of receipt.

Or. en

Amendment 11
Proposal for a Council regulation
Article 1 – point 2
Regulation (EC) No 659/1999
Article 6 b - paragraph 3

Text proposed by the Commission

3. In fixing the amount of the fine or periodic penalty payment, **regard shall be had** to the nature, gravity and duration of the infringement.

Amendment

3. In fixing the amount of the fine or periodic penalty payment, 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;

Or. en

Amendment 12
Proposal for a Council regulation
Article 1 – point 4 a (new)
Regulation (EC) No 659/1999
Article 14 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(4a) In Article 14 the following paragraph is inserted:

"1a. Where unlawful aid was previously notified to the Commission and was put into effect more than [six months] following that notification without the Commission having taken any decision pursuant to Article 4 in that time, the Commission shall demonstrate in any decision under paragraph 1 of this Article that the notification was incomplete and that the Member State did not provide all necessary information requested by the Commission in due time."

Or. en

Amendment 13
Proposal for a Council regulation
Article 1 – point 9
Regulation (EC) No 659/1999
Article 20 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Where the Commission considers that the facts and points of law put forward by the

Notwithstanding Article 13, where the Commission considers that the facts and

interested party do not provide sufficient grounds to show, on the basis of a first examination, the existence of unlawful aid or misuse of aid, it shall inform the interested party thereof and call upon it to submit comments within a prescribed period which shall not normally exceed one month. If the interested party fails to make known its views within the prescribed period, the complaint shall be deemed to have been withdrawn.

points of law put forward by the interested party do not provide sufficient grounds to show, on the basis of a first examination, the existence of unlawful aid or misuse of aid ***with a real impact on the internal market***, it shall inform the interested party thereof and call upon it to submit comments within a prescribed period which shall not normally exceed one month. If the interested party fails to make known its views within the prescribed period, ***or to provide further information which would indicate the existence of unlawful aid or misuse of aid with a real impact on the internal market***, the complaint shall be deemed to have been withdrawn.

Or. en

Amendment 14

Proposal for a Council regulation

Article 1 – point 10

Regulation (EC) No 659/1999

Article 20a – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Where the information available suggests that State aid measures in a particular sector or based on a particular aid instrument may restrict or distort competition within the internal market in several Member States, or 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, the Commission may conduct its inquiry into the sector of the economy or the use of the aid instrument concerned across various Member States. In the course of that inquiry, the Commission may request the Member States, or the undertakings or associations of undertakings concerned to supply the necessary information for the

Amendment

1. Where the information available ***to the Commission*** suggests that State aid measures in a particular sector or based on a particular aid instrument may restrict or distort competition within the internal market in several Member States, or 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, ***or after a request by the European Parliament based on similar information***, the Commission may conduct its inquiry into the sector of the economy or the use of the aid instrument concerned across various Member States. In the course of that inquiry, the Commission may request the Member States, or the undertakings or

application of Articles 107 and 108 of the Treaty, taking due account of the principle of proportionality.

associations of undertakings concerned to supply the necessary information for the application of Articles 107 and 108 of the Treaty, taking due account of the principle of proportionality.

Or. en

Amendment 15
Proposal for a Council regulation
Article 1 – point 10
Regulation (EC) No 659/1999
Article 20 a – paragraph 1 – subparagraph 2

Text proposed by the Commission

The Commission *may* publish a report on the results of its inquiry into particular sectors of the economy or particular aid instruments across various Member States and invite the Member States and any undertakings or associations of undertakings concerned to submit comments.

Amendment

The Commission *shall* publish a report on the results of its inquiry into particular sectors of the economy or particular aid instruments across various Member States and invite the Member States and any undertakings or associations of undertakings concerned to submit comments. ***Where the European Parliament requests an inquiry,, the Commission shall send its report to the European Parliament.***

Or. en

Amendment 16
Proposal for a Council regulation
Article 1 – point 11
Regulation (EC) No 659/1999
Article 23 a – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Where the coherent application of Article 107(1) and Article 108 of the Treaty so requires, the Commission, acting on its own initiative, may submit written observations to courts of the Member States. With the permission of the court in

Amendment

2. Where the coherent application of Article 107(1) and Article 108 of the Treaty so requires, the Commission, acting on its own initiative, may submit written observations to courts of the Member States. With the permission of the court in

question, it may also make oral observations.

question, it may also make oral observations. ***The observations submitted by the Commission to the courts of Member States shall be non-binding.***

Or. en

EXPLANATORY STATEMENT

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 current proposal to amend Regulation 659/1999 forms a part of a more comprehensive state aid reform, in line with the Commission Communication on "EU State aid modernisation". The overall aim of the reform of the rules is to have State aid better contributing to the implementation of the EU2020 agenda, and to budget consolidation. This proposal will contribute mainly to improving the effectiveness of state aid control.

The improvements proposed by the Commission are two-fold: on the one hand they seek to improve handling of complaints and, on the other, ensure effective and reliable gathering of the information from the market. Both seek to address the perceived problems of the complaints procedure, and increase the speed, efficacy and transparency of the procedure as well as help the Commission truly concentrate on the "big fish" - cases most important in ensuring proper functioning of the single market.

Overall, your Rapporteur is most supportive of the Commission proposal and its aims, and will only propose limited changes to the draft Regulation. Ensuring the Commission has at its disposal effective tools to ensure the MS grant State aid in line with the agreed rules, is of great importance to the proper functioning of our single market and in ensuring unlawful State aid does not hamper competition within the EU.

As part of overall reform of State aid rules, your Rapporteur also highlights the issue of differing interpretations of state aid rules in some of the member states, and the special case whereby some of the services where there is no true economic interest suffer from this unclear situation. Services - often provided by the third sector with the help of aid provided by the state - where there is a perceived lack of market driven supply and/or demand, should not fall under state aid rules. The unclear situation has created problems especially for third sector, non-profit service providers as they are deprived of aid provided by the state in anticipation of a possible complaint, in these cases unfoundedly. The Commission should insist Member States clarify this situation by assessing through a "market test" whether there is true market demand and/or supply for given services, and assist MS in doing so.

Improving handling of complaints

Currently, the Commission has to investigate every alleged violation of the State aid rules, no matter what the source is; there are no specific formal requirements attached to the lodging of a complaint. This has led to a high amount of complaints lodged at the Commission, many of which are either not motivated by genuine competition concerns or not sufficiently substantiated, leading to a situation where resources are tied-up and often diverted from

pursuing genuine competition issues, and prolong procedures.

To address this, the Commission proposes that complainants are in the future required to submit a certain amount of compulsory information, while also demonstrating that they are interested parties in the alleged misuse of state aid. In cases where the information does not pass these admissibility criteria, it will not be classified as a complaint, meaning the Commission will no longer be under an obligation to adopt formal decisions. Your Rapporteur supports this, but proposes in addition to rid the Commission of the obligation to adopt a formal decision in a case where, despite correct provision of information, it is clear that State aid rules have not been breached.

To help ensure consistent enforcement of the rules at the national level, the Commission, in addition, proposes to introduce more practical tools for supporting national courts in delivering judgements. The proposal thus expressly provides the national courts the right to obtain from the Commission information for the purpose of applying State aid rules, but also introduces the right for the Commission to make submissions to national courts in written or oral form. Your Rapporteur finds these proposals deserving full support, and proposes only to clarify the wording as to the absolute independence of national courts.

Ensuring an effective and reliable gathering of information from the market

As a new element, the Commission proposes tools to ensure it can obtain the information it needs for assessing the compatibility of aid swiftly and effectively. Through the use of so-called Market Information Tools (MITs), the Commission would be authorised to require information from entities other than the Member State concerned. As is already the case in antitrust legislation, this provision is coupled with the possibility of imposing sanctions in case of misleading information, or failure to respond.

Your Rapporteur finds this new provision essential in reaching the aims of the State aid reform, as it will ensure the Commission is able to conduct the investigations in a more timely and accurate manner. The Rapporteur is also supportive of introducing sanctions; however, when assessing the level of sanctions, a distinction should be made between the interested parties on the one hand, and third parties on the other.

The Commission also proposes to enhance the use of horizontal approach in its future investigations, with the introduction of a specific legal basis to launch investigations into sectors of the economy and into types of aid measures. This is to be welcomed, as through clarifying the situation of state aid of a given sector, it will help in future application of State aid, as well as in future investigations. Given that, through direct links to their constituencies, MEPs can also be alerted to possible divergences of state aid practices within a given sector, it is proposed that the Parliament is also given the right to ask the Commission to look into a particular sector.