

State aid rules: aid categories or measures exempted from notification requirements

2012/0344(NLE) - 05/12/2012 - Legislative proposal

PURPOSE: to amend the provisions of Council Regulation (EC) No 994/98 (Enabling Regulation) in order to modernise State aid control.

PROPOSED ACT: Council Regulation.

BACKGROUND: [Council Regulation \(EC\) No 994/98](#) on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (the ‘**Enabling Regulation**’) allows the Commission to declare, by means of regulations, that certain categories of State aid are compatible with the common market and **are exempted from the notification requirement** provided for in Article 108(3) of the TFEU.

The categories concerned include *de minimis* aid, aid to small and medium-sized enterprises, aid for research and development, environmental protection or employment and training, and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid.

The Commission indicated in its [Communication on State aid Modernisation of 8 May 2012](#) that State aid enforcement should focus on cases with the biggest impact on the internal market. This implies:

- on the one hand, **stronger scrutiny of large and potentially distortive aid**,
- and, on the other, **simplified analysis of cases with only limited effect** on trade and limited potential to seriously distort competition. The latter can be achieved by reviewing the regime of exemptions, in particular the scope of Council Regulation (EC) No 994/98, which would enable the Commission to block-exempt further categories of aid from the notification requirement, in addition to the categories already included in the current Enabling Regulation.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: **Article 109 TFEU**, which allows the Council to make any appropriate regulations, in particular to determine the conditions in which Article 108(3) TFEU shall apply, and the categories of aid exempted from that procedure. The Council must decide by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

CONTENT: this proposal is a key element in **State Aid Modernisation (SAM)**, an initiative launched by Commission. It should contribute to the overall objectives of the Union, in particular the objective of focusing State aid enforcement on cases having the biggest impact on the internal market and to the EU 2020 strategy to foster growth in a strengthened, dynamic and competitive internal market.

New categories proposed for inclusion in the Enabling Regulation: the proposal to include certain new categories in the Enabling Regulation entails neither the immediate block exemption of all these categories, nor does it mean that all measures within a category would be block-exempted in their entirety. Rather, it enables the Commission to **adopt block exemptions gradually**, when experience acquired is sufficient to allow the Commission to define clear compatibility criteria for certain types of aid measures, ensuring that the effect on competition and trade between Member States is limited.

The Commission proposes to include new categories in the Enabling Regulation:

- State aid in the culture and heritage conservation sectors
- State aid in relation to natural disasters
- State aid in relation to certain adverse weather conditions in fisheries
- State aid for innovation
- State aid for forestry and promotion of non-Annex-I products in the food sector
- State aid for the conservation of marine biological resources
- State aid for amateur sports
- Social aid to residents of remote regions for transport
- State aid for the transport sector pursuant to Article 93 TFEU
- State aid for certain broadband infrastructure.

Specifying block-exempted aid categories: current rules specify that, for each category of block-exempted aid, the thresholds should be expressed either in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts.

The Commission proposes to define the thresholds **not only in terms of aid intensities or maximum aid amounts, but also in terms of maximum level of State support**, whether it qualifies as State aid in the meaning of Article 107(1) TFEU or not.

Provisions concerning transparency: the current Regulation provides that on implementation of aid systems or individual aids granted outside any system, which have been exempted pursuant to such regulations, Member States shall forward to the Commission, with a view to publication in the Official Journal of the European Communities, summaries of the information regarding such systems of aid or such individual aids as are not covered by exempted aid systems.

The obligation to publish the above summaries in the Official Journal should therefore be replaced by the **obligation to publish on the Commission's website**.

The Commission states that **more frequent revisions of the Enabling Regulation may in the future be needed**, in particular to have due regard to the investments required by and compatible with the development of the internal market, in the light of the experience gained. Following a decision on the next Multiannual Financial Framework, the Commission will also assess without delay **the possibilities to simplify the State aid procedures for projects co-financed under the EU structural policies**.

BUDGETARY IMPLICATION: the proposal has no negative implications for the Union budget.