

Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (repealed)

CHAPTER II

PROCEDURE REGARDING NOTIFIED AID

Article 2

Notification of new aid

1 Save as otherwise provided in regulations made pursuant to Article 94 of the Treaty or to other relevant provisions thereof, 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.

2 In a notification, the Member State concerned shall provide all necessary information in order to enable the Commission to take a decision pursuant to Articles 4 and 7 (hereinafter referred to as ‘complete notification’).

Article 3

Standstill clause

Aid notifiable pursuant to Article 2(1) shall not be put into effect before the Commission has taken, or is deemed to have taken, a decision authorising such aid.

Article 4

Preliminary examination of the notification and decisions of the Commission

1 The Commission shall examine the notification as soon as it is received. Without prejudice to Article 8, the Commission shall take a decision pursuant to paragraphs 2, 3 or 4.

2 Where the Commission, after a preliminary examination, finds that the notified measure does not constitute aid, it shall record that finding by way of a decision.

3 Where the Commission, after a preliminary examination, finds that no doubts are raised as to the compatibility with the common market of a notified measure, in so far as it falls within the scope of Article 92(1) of the Treaty, it shall decide that the measure is compatible with the common market (hereinafter referred to as a ‘decision not to raise objections’). The decision shall specify which exception under the Treaty has been applied.

4 Where the Commission, after a preliminary examination, finds that doubts are raised as to the compatibility with the common market of a notified measure, it shall decide to initiate proceedings pursuant to Article 93(2) of the Treaty (hereinafter referred to as a ‘decision to initiate the formal investigation procedure’).

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5 The decisions referred to in paragraphs 2, 3 and 4 shall be taken within two months. That period shall begin on the day following the receipt of a complete notification. The notification will be considered as complete if, within two months from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information. The period can be extended with the consent of both the Commission and the Member State concerned. Where appropriate, the Commission may fix shorter time limits.

6 Where the Commission has not taken a decision in accordance with paragraphs 2, 3 or 4 within the period laid down in paragraph 5, the aid shall be deemed to have been authorised by the Commission. The Member State concerned may thereupon implement the measures in question after giving the Commission prior notice thereof, unless the Commission takes a decision pursuant to this Article within a period of 15 working days following receipt of the notice.

Article 5

[^{F1}Request for information made to the notifying Member State]

1 Where the Commission considers that information provided by the Member State concerned with regard to a measure notified pursuant to Article 2 is incomplete, it shall request all necessary additional information. Where a Member State responds to such a request, the Commission shall inform the Member State of the receipt of the response.

2 Where the Member State concerned does not provide the information requested within the period prescribed by the Commission or provides incomplete information, the Commission shall send a reminder, allowing an appropriate additional period within which the information shall be provided.

3 The notification shall be deemed to be withdrawn if the requested information is not provided within the prescribed period, unless before the expiry of that period, either the period has been extended with the consent of both the Commission and the Member State concerned, or the Member State concerned, in a duly reasoned statement, informs the Commission that it considers the notification to be complete because the additional information requested is not available or has already been provided. In that case, the period referred to in Article 4(5) shall begin on the day following receipt of the statement. If the notification is deemed to be withdrawn, the Commission shall inform the Member State thereof.

Textual Amendments

- F1** Substituted by [Council Regulation \(EU\) No 734/2013 of 22 July 2013 amending Regulation \(EC\) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty \(Text with EEA relevance\)](#).

Article 6

Formal investigation procedure

1 The decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure and shall set out the doubts as to its compatibility with the common market. The decision shall call upon the Member State concerned and upon

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other interested parties to submit comments within a prescribed period which shall normally not exceed one month. In duly justified cases, the Commission may extend the prescribed period.

2 The comments received shall be submitted to the Member State concerned. If an interested party so requests, on grounds of potential damage, its identity shall be withheld from the Member State concerned. The Member State concerned may reply to the comments submitted within a prescribed period which shall normally not exceed one month. In duly justified cases, the Commission may extend the prescribed period.

[F²Article 6a

Request for information made to other sources

1 After the initiation of the formal investigation procedure provided for in Article 6, in particular as regards technically complex cases subject to substantive assessment, the Commission may, if the information provided by a Member State concerned during the course of the preliminary investigation is not sufficient, request any other Member State, an undertaking or an association of undertakings to provide all market information necessary to enable the Commission to complete its assessment of the measure at stake taking due account of the principle of proportionality, in particular for small and medium-sized enterprises.

2 The Commission may request information only:

- a if it is limited to formal investigation procedures that have been identified by the Commission as being ineffective to date; and
- b in so far as aid beneficiaries are concerned, if the Member State concerned agrees to the request.

3 The undertakings or associations of undertakings providing information following a Commission's request for market information based on paragraphs 6 and 7 shall submit their answer simultaneously to the Commission and to the Member State concerned, to the extent that the documents provided do not include information that is confidential vis-à-vis that Member State.

The Commission shall steer and monitor the information transmission between the Member States, undertakings or associations of undertakings concerned, and verify the purported confidentiality of the information transmitted.

4 The Commission shall request only information that is at the disposal of the Member State, undertaking or association of undertakings concerned by the request.

5 Member States shall provide the information on the basis of a simple request and within a time limit prescribed by the Commission which should normally not exceed one month. Where a Member State does not provide the information requested within that period or provides incomplete information, the Commission shall send a reminder.

6 The Commission may, by simple request, require an undertaking or an association of undertakings to provide information. Where the Commission sends a simple request for information to an undertaking or an association of undertakings, it shall state the legal basis and the purpose of the request, specify what information is required and prescribe a proportionate time limit within which the information is to be provided. It shall also refer to the fines provided for in Article 6b(1) for supplying incorrect or misleading information.

7 The Commission may, by decision, require an undertaking or an association of undertakings to provide information. Where the Commission, by decision, requires an undertaking or an association of undertakings to supply information, it shall state the legal basis,

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the purpose of the request, specify what information is required and prescribe a proportionate time limit within which the information is to be provided. It shall also indicate the fines provided for in Article 6b(1) and shall indicate or impose the periodic penalties payments provided for in Article 6b(2), as appropriate. In addition, it shall indicate the right of the undertaking or association of undertakings to have the decision reviewed by the Court of Justice of the European Union.

8 When issuing a request under paragraph 1 or 6, or adopting a decision under paragraph 7, the Commission shall also simultaneously provide the Member State concerned with a copy thereof. The Commission shall indicate the criteria by which it selected the recipients of the request or decision.

9 The owners of the undertakings or their representatives, or, in the case of legal persons, companies, firms or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply on their behalf the information requested or required. Persons duly authorised to act may supply the information on behalf of their clients. The latter shall nevertheless be held fully responsible if the information supplied is incorrect, incomplete or misleading.

Textual Amendments

- F2** Inserted by [Council Regulation \(EU\) No 734/2013 of 22 July 2013 amending Regulation \(EC\) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty \(Text with EEA relevance\)](#).

Article 6b

Fines and periodic penalty payments

1 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:

- a supply incorrect or misleading information in response to a request made pursuant to Article 6a(6);
- b supply incorrect, incomplete or misleading information in response to a decision adopted pursuant to Article 6a(7), or do not supply the information within the prescribed time limit.

2 The Commission may, by decision, impose on undertakings or associations of undertakings periodic penalty payments where an undertaking or association of undertakings fails to supply complete and correct information as requested by the Commission by decision adopted pursuant to Article 6a(7).

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.

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, taking due account of the principles of proportionality and appropriateness, in particular for small and medium-sized enterprises.

4 Where the undertakings or associations of undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may reduce the definitive amount of the periodic penalty payment compared to that under the original decision imposing periodic penalty payments. The Commission may also waive any periodic penalty payment.

5 Before adopting any decision in accordance with paragraph 1 or 2, 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.

6 The Court of Justice of the European Union shall have unlimited jurisdiction within the meaning of Article 261 of the TFEU to review fines or periodic penalty payments imposed by the Commission. It may cancel, reduce or increase the fine or periodic penalty payment imposed.]

Textual Amendments

- F2** Inserted by [Council Regulation \(EU\) No 734/2013 of 22 July 2013 amending Regulation \(EC\) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty \(Text with EEA relevance\)](#).

Article 7

Decisions of the Commission to close the formal investigation procedure

1 Without prejudice to Article 8, the formal investigation procedure shall be closed by means of a decision as provided for in paragraphs 2 to 5 of this Article.

2 Where the Commission finds that, where appropriate following modification by the Member State concerned, the notified measure does not constitute aid, it shall record that finding by way of a decision.

3 Where the Commission finds that, where appropriate following modification by the Member State concerned, the doubts as to the compatibility of the notified measure with the common market have been removed, it shall decide that the aid is compatible with the common market (hereinafter referred to as a 'positive decision'). That decision shall specify which exception under the Treaty has been applied.

4 The Commission may attach to a positive decision conditions subject to which an aid may be considered compatible with the common market and may lay down obligations to enable compliance with the decision to be monitored (hereinafter referred to as a 'conditional decision').

5 Where the Commission finds that the notified aid is not compatible with the common market, it shall decide that the aid shall not be put into effect (hereinafter referred to as a 'negative decision').

6 Decisions taken pursuant to paragraphs 2, 3, 4 and 5 shall be taken as soon as the doubts referred to in Article 4(4) have been removed. 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.

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7 Once the time limit referred to in paragraph 6 has expired, and should the Member State concerned so request, the Commission shall, within two months, take a decision on the basis of the information available to it. If appropriate, where the information provided is not sufficient to establish compatibility, the Commission shall take a negative decision.

[^{F28} Before adopting any decision in accordance with paragraphs 2 to 5, the Commission shall give the Member State concerned the opportunity of making known its views, within a time-limit that shall not normally exceed one month, on the information received by the Commission and provided to the Member State concerned pursuant to Article 6a(3).

9 The Commission shall not use confidential information provided by respondents, which cannot be aggregated or otherwise be anonymised, in any decision taken in accordance with paragraphs 2 to 5, unless it has obtained their agreement to disclose that information to the Member State concerned. The Commission may take a reasoned decision, which shall be notified to the undertaking or association of undertakings concerned, finding that information provided by a respondent and marked as confidential is not protected, and setting a date after which the information will be disclosed. That period shall not be less than one month.

10 The Commission shall take due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information. An undertaking or an association of undertakings providing information pursuant to Article 6a, and which is not a beneficiary of the State aid measure in question, may request, on grounds of potential damage, that its identity be withheld from the Member State concerned.]

Textual Amendments

- F2** Inserted by [Council Regulation \(EU\) No 734/2013 of 22 July 2013 amending Regulation \(EC\) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty \(Text with EEA relevance\)](#).

Article 8

Withdrawal of notification

1 The Member State concerned may withdraw the notification within the meaning of Article 2 in due time before the Commission has taken a decision pursuant to Article 4 or 7.

2 In cases where the Commission initiated the formal investigation procedure, the Commission shall close that procedure.

Article 9

Revocation of a decision

The Commission may revoke a decision taken pursuant to Article 4(2) or (3), or Article 7(2), (3), (4), after having given the Member State concerned the opportunity to submit its comments, where the decision was based on incorrect information provided during the procedure which was a determining factor for the decision. Before revoking a decision and taking a new decision, the Commission shall open the formal investigation procedure pursuant to Article 4(4). Articles 6, 7 and 10, Article 11(1), Articles 13, 14 and 15 shall apply *mutatis mutandis*.

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