

Commission Regulation (EC) No 794/2004 of 21 April 2004
implementing Council Regulation (EC) No 659/1999 laying down
detailed rules for the application of Article 93 of the EC Treaty

CHAPTER I

SUBJECT MATTER AND SCOPE

Article 1

Subject matter and scope

1 This Regulation sets out detailed provisions concerning the form, content and other details of notifications and annual reports referred to in Regulation (EC) No 659/1999. It also sets out provisions for the calculation of time limits in all procedures concerning State aid and of the interest rate for the recovery of unlawful aid.

2 This Regulation shall apply to aid in all sectors.

CHAPTER II

NOTIFICATIONS

Article 2

Notification forms

Without prejudice to Member States' obligations to notify state aids in the coal sector under Commission Decision 2002/871/CE⁽¹⁾, notifications of new aid pursuant to Article 2(1) of Regulation (EC) No 659/1999, other than those referred to in Article 4(2), shall be made on the notification form set out in Part I of Annex I to this Regulation.

Supplementary information needed for the assessment of the measure in accordance with regulations, guidelines, frameworks and other texts applicable to State aid shall be provided on the supplementary information sheets set out in Part III of Annex I.

Whenever the relevant guidelines or frameworks are modified or replaced, the Commission shall adapt the corresponding forms and information sheets.

Article 3

Transmission of notifications

1 The notification shall be transmitted to the Commission by the Permanent Representative of the Member State concerned. It shall be addressed to the Secretary — General of the Commission.

If the Member State intends to avail itself of a specific procedure laid down in any regulations, guidelines, frameworks and other texts applicable to State aid, a copy of the

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notification shall be addressed to the Director-General responsible. The Secretary — General and the Directors — General may designate contact points for the receipt of notifications.

2 All subsequent correspondence shall be addressed to the Director — General responsible or to the contact point designated by the Director — General.

3 The Commission shall address its correspondence to the Permanent Representative of the Member State concerned, or to any other address designated by that Member State.

4 Until 31 December 2005 notifications shall be transmitted by the Member State on paper. Whenever possible an electronic copy of the notification shall also be transmitted.

With effect from 1 January 2006 notifications shall be transmitted electronically, unless otherwise agreed by the Commission and the notifying Member State.

All correspondence in connection with a notification which has been submitted after 1 January 2006 shall be transmitted electronically.

5 The date of transmission by fax to the number designated by the receiving party shall be considered to be the date of transmission on paper, if the signed original is received no later than ten days thereafter.

6 By 30 September 2005 at the latest, after consulting Member States, the Commission shall publish in the *Official Journal of the European Union* details of the arrangements for the electronic transmission of notifications, including addresses together with any necessary arrangements for the protection of confidential information.

Article 4

Simplified notification procedure for certain alterations to existing aid

1 For the purposes of Article 1(c) of Regulation (EC) No 659/1999, an alteration to existing aid shall mean any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market. However an increase in the original budget of an existing aid scheme by up to 20 % shall not be considered an alteration to existing aid.

2 The following alterations to existing aid shall be notified on the simplified notification form set out in Annex II:

- a increases in the budget of an authorised aid scheme exceeding 20 %;
- b prolongation of an existing authorised aid scheme by up to six years, with or without an increase in the budget;
- c tightening of the criteria for the application of an authorised aid scheme, a reduction of aid intensity or a reduction of eligible expenses;

The Commission shall use its best endeavours to take a decision on any aid notified on the simplified notification form within a period of one month.

3 The simplified notification procedure shall not be used to notify alterations to aid schemes in respect of which Member States have not submitted annual reports in accordance with Article 5, 6, and 7, unless the annual reports for the years in which the aid has been granted are submitted at the same time as the notification.

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CHAPTER III

ANNUAL REPORTS

Article 5

Form and content of annual reports

1 Without prejudice to the second and third subparagraphs of this Article and to any additional specific reporting requirements laid down in a conditional decision adopted pursuant to Article 7(4) of Regulation (EC) No 659/1999, 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 the annual reports on existing aid schemes referred to in Article 21(1) of Regulation (EC) No 659/1999 in respect of each whole or part calendar year during which the scheme applies in accordance with the standardised reporting format set out in Annex IIIA.

Annex IIIB sets out the format for annual reports on existing aid schemes relating to the production, processing and marketing of agricultural products listed in Annex I of the Treaty.

Annex IIIC sets out the format for annual reports on existing aid schemes for state aid relating to the production, processing or marketing of fisheries products listed in Annex I of the Treaty.

2 The Commission may ask Member States to provide additional data for selected topics, to be discussed in advance with Member States.

Article 6

Transmission and publication of annual reports

1 Each Member State shall transmit its annual reports to the Commission in electronic form no later than 30 June of the year following the year to which the report relates.

In justified cases Member States may submit estimates, provided that the actual figures are transmitted at the very latest with the following year's data.

2 Each year the Commission shall publish a State aid synopsis containing a synthesis of the information contained in the annual reports submitted during the previous year.

Article 7

Status of annual reports

The transmission of annual reports shall not be considered to constitute compliance with the obligation to notify aid measures before they are put into effect pursuant to Article 88(3) of the Treaty, nor shall such transmission in any way prejudice the outcome of an investigation into allegedly unlawful aid in accordance with the procedure laid down in Chapter III of Regulation (EC) No 659/1999.

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CHAPTER IV

TIME-LIMITS

Article 8

Calculation of time-limits

1 Time-limits provided for in Regulation (EC) No 659/1999 and in this Regulation or fixed by the Commission pursuant to Article 88 of the Treaty shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71, and the specific rules set out in paragraphs 2 to 5 of this Article. In case of conflict, the provisions of this regulation shall prevail.

2 Time limits shall be specified in months or in working days.

3 With regard to time-limits for action by the Commission, the receipt of the notification or subsequent correspondence in accordance with Article 3(1) and Article 3(2) of this Regulation shall be the relevant event for the purpose of Article 3(1) of Regulation (EEC, Euratom) No 1182/71.

As far as notifications transmitted after 31 December 2005, and correspondence relating to them are concerned, the receipt of the electronic notification or communication at the relevant address published in the *Official Journal of the European Union* shall be the relevant event.

4 With regard to time-limits for action by Member States, the receipt of the relevant notification or correspondence from the Commission in accordance with Art. 3(3) of this Regulation shall be the relevant event for the purposes of Article 3(1) of Regulation (EEC, Euratom) No 1182/71.

5 With regard to the time-limit for the submission of comments following initiation of the formal investigation procedure referred to in Art. 6(1) of Regulation (EC) No 659/1999 by third parties and those Member States which are not directly concerned by the procedure, the publication of the notice of initiation in the *Official Journal of the European Union* shall be the relevant event for the purposes of Article 3(1) of Regulation (EEC, Euratom) No 1182/71.

6 Any request for the extension of a time-limit shall be duly substantiated, and shall be submitted in writing to the address designated by the party fixing the time-limit at least two working days before expiry.

CHAPTER V

INTEREST RATE FOR THE RECOVERY OF UNLAWFUL AID

Article 9

Method for fixing the interest rate

1 Unless otherwise provided for in a specific decision the interest rate to be used for recovering State aid granted in breach of Article 88(3) of the Treaty shall be an annual percentage rate fixed for each calendar year.

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It shall be calculated on the basis of the average of the five-year inter-bank swap rates for September, October and November of the previous year, plus 75 basis points. In duly justified cases, the Commission may increase the rate by more than 75 basis points in respect of one or more Member States.

2 If the latest three-month average of the five-year inter-bank swap rates available, plus 75 basis points, differs by more than 15 % from the State aid recovery interest rate in force, the Commission shall recalculate the latter.

The new rate shall apply from the first day of the month following the recalculation by the Commission. The Commission shall inform Member States by letter of the recalculation and the date from which it applies.

3 The interest rate shall be fixed for each Member State individually, or for two or more Member States together.

4 In the absence of reliable or equivalent data or in exceptional circumstances the Commission may, in close co-operation with the Member State(s) concerned, fix a State aid recovery interest rate, for one or more Member States, on the basis of a different method and on the basis of the information available to it.

Article 10

Publication

The Commission shall publish current and relevant historical State aid recovery interest rates in the *Official Journal of the European Union* and for information on the Internet.

Article 11

Method for applying interest

1 The interest rate to be applied shall be the rate applicable on the date on which unlawful aid was first put at the disposal of the beneficiary.

2 The interest rate shall be applied on a compound basis until the date of the recovery of the aid. The interest accruing in the previous year shall be subject to interest in each subsequent year.

3 The interest rate referred to in paragraph 1 shall be applied throughout the whole period until the date of recovery. However, if more than five years have elapsed between the date on which the unlawful aid was first put at the disposal of the beneficiary and the date of the recovery of the aid, the interest rate shall be recalculated at five yearly intervals, taking as a basis the rate in force at the time of recalculation.

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CHAPTER VI

FINAL PROVISIONS

Article 12

Review

The Commission shall in consultation with the Member States, review the application of this Regulation within four years after its entry into force.

Article 13

Entry into force

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

Chapter II shall apply only to those notifications transmitted to the Commission more than five months after the entry into force of this Regulation.

Chapter III shall apply to annual reports covering aid granted from 1 January 2003 onwards.

Chapter IV shall apply to any time limit, which has been fixed but which has not yet expired on the date of entry into force of this Regulation.

Articles 9 and 11 shall apply in relation to any recovery decision notified after the date of entry into force of this Regulation.

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

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(1) [OJ L 300, 5.11.2002, p. 42.](#)

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