

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

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽¹⁾, and in particular Article 27 thereof,

After consulting the Advisory Committee on State Aid,

Whereas:

- (1) In order to facilitate the preparation of State aid notifications by Member States, and their assessment by the Commission, it is desirable to establish a compulsory notification form. That form should be as comprehensive as possible.
- (2) The standard notification form as well as the summary information sheet and the supplementary information sheets should cover all existing guidelines and frameworks in the state aid field. They should be subject to modification or replacement in accordance with the further development of those texts.
- (3) Provision should be made for a simplified system of notification for certain alterations to existing aid. Such simplified arrangements should only be accepted if the Commission has been regularly informed on the implementation of the existing aid concerned.
- (4) In the interests of legal certainty it is appropriate to make it clear that small increases of up to 20 % of the original budget of an aid scheme, in particular to take account of the effects of inflation, should not need to be notified to the Commission as they are unlikely to affect the Commission's original assessment of the compatibility of the scheme, provided that the other conditions of the aid scheme remain unchanged.
- (5) Article 21 of Regulation (EC) No 659/1999 requires Member States to submit annual reports to the Commission on all existing aid schemes or individual aid granted outside an approved aid scheme in respect of which no specific reporting obligations have been imposed in a conditional decision.
- (6) For the Commission to be able to discharge its responsibilities for the monitoring of aid, it needs to receive accurate information from Member States about the types and amounts of aid being granted by them under existing aid schemes. It is possible to simplify and improve the arrangements for the reporting of State aid to the Commission which are currently described in the joint procedure for reporting and notification under

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the EC Treaty and under the World Trade Organisation (WTO) Agreement set out in the Commission's letter to Member States of 2 August 1995. The part of that joint procedure relating to Member States reporting obligations for subsidy notifications under Article 25 of the WTO Agreement on Subsidies and Countervailing measures and under Article XVI of GATT 1994, adopted on 21 July 1995 is not covered by this Regulation.

- (7) The information required in the annual reports is intended to enable the Commission to monitor overall aid levels and to form a general view of the effects of different types of aid on competition. To this end, the Commission may also request Member States to provide, on an ad hoc basis, additional data for selected topics. The choice of subject matter should be discussed in advance with Member States.
- (8) The annual reporting exercise does not cover the information, which may be necessary in order to verify that particular aid measures respect Community law. The Commission should therefore retain the right to seek undertakings from Member States, or to attach to decisions conditions requiring the provision of additional information.
- (9) It should be specified that time-limits for the purposes of Regulation (EC) No 659/1999 should be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits⁽²⁾, as supplemented by the specific rules set out in this Regulation. In particular, it is necessary to identify the events, which determine the starting point for time-limits applicable in State aid procedures. The rules set out in this Regulation should apply to pre-existing time-limits which will continue to run after the entry into force of this Regulation.
- (10) The purpose of recovery is to re-establish the situation existing before aid was unlawfully granted. To ensure equal treatment, the advantage should be measured objectively from the moment when the aid is available to the beneficiary undertaking, independently of the outcome of any commercial decisions subsequently made by that undertaking.
- (11) In accordance with general financial practice it is appropriate to fix the recovery interest rate as an annual percentage rate.
- (12) The volume and frequency of transactions between banks results in an interest rate that is consistently measurable and statistically significant, and should therefore form the basis of the recovery interest rate. The inter-bank swap rate should, however, be adjusted in order to reflect general levels of increased commercial risk outside the banking sector. On the basis of the information on inter-bank swap rates the Commission should establish a single recovery interest rate for each Member State. In the interest of legal certainty and equal treatment, it is appropriate to fix the precise method by which the interest rate should be calculated, and to provide for the publication of the recovery interest rate applicable at any given moment, as well as relevant previously applicable rates.
- (13) A State aid grant may be deemed to reduce a beneficiary undertaking's medium-term financing requirements. For these purposes, and in line with general financial practice,

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the medium-term may be defined as five years. The recovery interest rate should therefore correspond to an annual percentage rate fixed for five years.

- (14) Given the objective of restoring the situation existing before the aid was unlawfully granted, and in accordance with general financial practice, the recovery interest rate to be fixed by the Commission should be annually compounded. For the same reasons, the recovery interest rate applicable in the first year of the recovery period should be applied for the first five years of the recovery period, and the recovery interest rate applicable in the sixth year of the recovery period for the following five years.
- (15) This Regulation should apply to recovery decisions notified after the date of entry into force of this Regulation,

HAS ADOPTED THIS REGULATION:

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- (1) [OJ L 83, 27.3.1999, p. 1](#). Regulation as amended by the 2003 Act of Accession.
- (2) [OJ L 124, 8.6.1971, p. 1](#).

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