

COMMISSION REGULATION (EU) No 372/2014**of 9 April 2014****amending Regulation (EC) No 794/2004 as regards the calculation of certain time limits, the handling of complaints, and the identification and protection of confidential information****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 27 thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) In the context of the modernisation of State aid rules to contribute both to the implementation of the Europe 2020 strategy for growth and to budgetary consolidation ⁽²⁾, Regulation (EC) No 659/1999 was amended by Regulation (EU) No 734/2013 ⁽³⁾ to improve the effectiveness of State aid control. That amendment sought in particular to render more effective the handling of complaints by the Commission and to introduce powers for the Commission to request information directly from market participants and to conduct investigations into sectors of the economy and into aid instruments.
- (2) In light of those amendments, it is necessary to identify the events determining the starting point for the calculation of time-limits in the context of requests for information addressed to third parties pursuant to Regulation (EC) No 659/1999.
- (3) The Commission may, on its own initiative, examine information on unlawful aid from any source, in order to assess compliance with Articles 107 and 108 of the Treaty. In that context, complaints are an essential source of information for detecting violations of State aid rules. It is therefore important to define clear and efficient procedures for handling complaints lodged with the Commission.
- (4) According to Article 20 of Regulation (EC) No 659/1999, only interested parties may submit complaints to inform the Commission of any alleged unlawful aid or misuse of aid. To that end, natural and legal persons submitting complaints should be required to demonstrate that they are interested parties within the meaning of Article 1(h) of Regulation (EC) No 659/1999.
- (5) To streamline the handling of complaints and at the same time increase transparency and legal certainty, it is appropriate to define the information that complainants should provide to the Commission. In order to ensure that the Commission receives all relevant information regarding alleged unlawful or misused aid, Regulation (EC) No 659/1999 requires interested parties to complete a form and submit all the mandatory information requested therein. The form to be used for that purpose should therefore be established.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ Communication from the Commission, 'Europe 2020 — A strategy for smart, sustainable and inclusive growth'; COM(2010) 2020 final.

⁽³⁾ 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 (OJ L 204, 31.7.2013, p. 15).

- (6) The requirements to be fulfilled by interested parties when lodging complaints should not be excessively burdensome, while ensuring that the Commission receives all the information necessary to start an investigation into the alleged unlawful or misused aid.
- (7) To ensure that business secrets and other confidential information provided to the Commission are treated in compliance with Article 339 of the Treaty, any person submitting information should clearly identify which information it considers to be confidential and why it is confidential. The person concerned should be required to provide the Commission with a separate non-confidential version of the information that could be submitted to the relevant Member State for comments.
- (8) Commission Regulation (EC) No 794/2004 ⁽¹⁾ should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 794/2004 is amended as follows:

(1) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Time-limits provided for in Regulation (EC) No 659/1999 and in this Regulation or fixed by the Commission pursuant to Article 108 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 5b of this Article. In case of conflict, the provisions of this Regulation shall prevail.’;

(b) the following paragraphs are inserted:

‘5a. With regard to the time-limit for the submission of the information requested from third parties pursuant to Article 6a(6) of Regulation (EC) No 659/1999, the receipt of the request for information shall be the relevant event for the purposes of Article 3(1) of Regulation (EEC, Euratom) No 1182/71.

5b. With regard to the time-limit for the submission of the information requested from third parties pursuant to Article 6a(7) of Regulation (EC) No 659/1999, the notification of the decision shall be the relevant event for the purposes of Article 3(1) of Regulation (EEC, Euratom) No 1182/71.’;

(2) the following Chapters Va and Vb are inserted after Article 11:

‘CHAPTER Va

HANDLING OF COMPLAINTS

Article 11a

Admissibility of complaints

1. Any person submitting a complaint pursuant to Articles 10(1) and 20(2) of Regulation (EC) No 659/1999 shall demonstrate that it is an interested party within the meaning of Article 1(h) of that Regulation.
2. Interested parties shall duly complete the form set out in Annex IV and provide all the mandatory information requested therein. On a reasoned request by an interested party, the Commission may dispense with the obligation to provide some of the information required by the form.
3. Complaints shall be submitted in one of the official languages of the Union.

⁽¹⁾ 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 (OJ L 140, 30.4.2004, p. 1).

CHAPTER Vb

IDENTIFICATION AND PROTECTION OF CONFIDENTIAL INFORMATION*Article 11b***Protection of business secrets and other confidential information**

Any person submitting information pursuant to Regulation (EC) No 659/1999 shall clearly indicate which information it considers to be confidential, stating the reasons for such confidentiality, and provide the Commission with a separate non-confidential version of the submission. When information must be provided by a certain deadline, the same deadline shall apply for providing the non-confidential version.;

(3) the text in the Annex to this Regulation is added as Annex IV.

Article 2

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

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

Done at Brussels, 9 April 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX

ANNEX IV

**FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED UNLAWFUL STATE AID
OR MISUSE OF AID**

The mandatory fields are marked with a star “*”.

1. Information regarding the complainant

First name:*

Surname:*

Address line 1:*

Address line 2:

Town/City:*

County/State/Province:

Postcode:*

Country:*

Telephone:

Mobile Telephone:

E-mail address:*

Fax

2. I am submitting the complaint on behalf of somebody (a person or a firm)

Yes* No*

If yes, please also provide the following information

Name of the person/firm you represent*:

Registration nr. of the entity:

Address line 1:*

Address line 2:

Town/City:*

County/State/Province:

Postcode:*

Country:*

Telephone 1:

Telephone 2:

E-mail address:*

Fax

Please attach proof that the representative is authorised to act on behalf of this person/firm.*

3. Please select one of the following options, describing your identity*

- (a) Competitor of the beneficiary or beneficiaries
- (b) Trade association representing the interests of competitors
- (c) Non-governmental organisation
- (d) Trade union
- (e) EU citizen
- (f) Other, please specify

Please explain why and to what extent the alleged State aid affects your competitive position/the competitive position of the person/firm you represent. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 20(2) of 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, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

4. Please select one of the following two options*

- Yes, you may reveal my identity
- No, you may not reveal my identity

If not, please specify the reasons:

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points **5** and **6** cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential.

- (a) Country:
- (b) If known, specify which institution or body granted the alleged unlawful State aid:
 - Central government:
 - Region (please specify):
 - Other (please specify):

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

- (a) Please provide a description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

- (b) For what purpose was the alleged aid given (if known)?

- (c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

- (d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

- (e) To your knowledge, when was the alleged aid granted?

- (f) Please select one of the following options:

- According to my knowledge, the State aid was not notified to the Commission.
- According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

- According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved.

- According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions.

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

- (a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

- (b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

- (c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

- (d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

- (e) Please explain why, in your view, the alleged aid affects trade between Member States.

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

9. Information on alleged infringement of other rules of European Union law and on other procedures

- (a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

- (b) Have you already approached the Commission's services or any other European institution concerning the same issue? *

Yes No

If yes, please attach copies of correspondence.

- (c) Have you already approached national authorities or national courts concerning the same issue? *

Yes No

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgement, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

- (d) Please provide any other information that may be relevant for the assessment of this case.

10. Supporting documents

Please list any *documents and evidence* which are submitted in support of the complaint and add annexes if necessary

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.
- Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.
- If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available.

I hereby declare that all the information in this form and annexes is provided in good faith.

Place, date and signature of complainant'