

COMMUNICATION FROM THE COMMISSION**amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines**

(2014/C 198/02)

I. INTRODUCTION

One of the main objectives of the State aid modernisation⁽¹⁾ is to enable the Commission to focus on the most distortive cases while leaving more flexibility to Member States to put in place less distortive aid. In this context, the new General Block-Exemption Regulation⁽²⁾, which has a broader scope, makes it possible for Member States to grant aid on the basis of pre-defined criteria with no need to notify to the Commission, thereby saving time, reducing the administrative burden and promoting models of aid which is well-designed, targeted at identified market failures and objectives of common interest, and least distortive ('good aid'). Transparency in relation to aid awards is a key component of the modernisation.

Transparency promotes accountability and enables citizens to be better informed about public policies. A better informed constituency helps create a better dialogue between citizens and government officials and results in better policy decisions. In recent decades, civil society and governments around the world have made great advances in increasing transparency at both the local and national levels. Yet there is still a need for greater and more meaningful participation and accountability, particularly when it comes to how public resources are allocated.

In the area of State aid, transparency is even more important. Transparency promotes compliance, reduces uncertainties and enables companies to check whether aid granted to competitors is legal. It promotes a level playing field across Member States and companies in the internal market, which is even more important in the present economic context. It facilitates enforcement for national and regional authorities by increasing awareness of aid granted at various levels, hence ensuring better control and follow-up at national and local levels. Finally, better transparency makes it possible to reduce reporting obligations and the administrative burden linked to reporting.

While the Commission already publishes the names of beneficiaries of notified individual aid and the amount of aid in its decisions⁽³⁾, there is no requirement for public information on beneficiaries of aid awarded under notified schemes or schemes covered by a block-exemption (which represent almost 90 % of the total State aid expenditures in the Union⁽⁴⁾), with the exception of large grants of regional regional and aid for research and development⁽⁵⁾.

⁽¹⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EU State aid Modernisation, COM/2012/209, 8.5.2012.

⁽²⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

⁽³⁾ Commission communication on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6).

⁽⁴⁾ See http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html

⁽⁵⁾ See http://ec.europa.eu/competition/state_aid/register/

Some Member States have recently put in place websites disclosing information on aid awards⁽¹⁾ or are required to provide information to the public, such as information on all types of public spending, or to give access to information on public spending upon citizens' requests. Member States also disclose full information on expenditures under European Structural and Investment Funds⁽²⁾ and their beneficiaries. For aid granted under European Structural and Investment Funds, and in order to avoid duplication in the collection of information, the State aid websites referred to in this Communication could extract the relevant information from the same systems used for Structural funds reporting.

Member States already collect information on all State aid expenditures in the context of the annual reporting exercise pursuant to Commission Regulation (EC) No 794/2004⁽³⁾. That information⁽⁴⁾ is then transmitted to the Commission for publication through the annual State aid Scoreboard⁽⁵⁾ and on the Eurostat website⁽⁶⁾.

To ensure transparency, Member States shall, as a condition for granting aid in line with the relevant guidelines, establish comprehensive State aid websites, at regional or national level, for the publication of information on aid measures and their beneficiaries. Following standard practice regarding publication of information⁽⁷⁾, a standard format shall be used which allows the information to be easily published on the internet, searched and downloaded. The transparency requirement applies in general to all State aid, except for smaller aid awards of less than EUR 500 000.

Moreover, with a view to ensuring tax confidentiality and the protection of business secrets, it is not requested to disclose information on the companies' tax base or the exact amount of their tax relief. However, since fiscal aid constitutes selective derogations, confers an advantage to undertakings and thus constitutes State aid, accountability on the use of public resources and State aid control also have to be preserved. Accordingly for aid granted under fiscal schemes or under risk finance schemes, information on aid amounts can be provided in ranges.

A transitional period of two years is set out in order to ensure that those Member States which do not have transparency mechanisms have sufficient time to put them in place. For that purpose, existing information systems already deployed at national, regional and local level for state aid reporting (SARI⁽⁸⁾) will be further developed so as to put Member States in a position to facilitate the collection and processing of information for subsequent publication on the Member States' websites. In addition, technical assistance under European Structural and Investment Funds can be used by Member States under the conditions referred to in Article 59 of Regulation (EU) No 1303/2013.

Greater transparency makes it possible to simplify reporting obligations. As a first step, the Commission proposes removing most of the current reporting obligations set out in the State aid Guidelines revised in the context of the State aid Modernisation initiative. Once the websites are put in place by Member States, the reporting obligations set out in Regulation (EC) No 794/2004 will be further simplified, while guaranteeing that an equivalent level of information is obtained from transparency: this means in practice that, if Member States opt for greater transparency (e.g. through a lower threshold of aid in respect of which information must be published), the remaining reporting obligations will become unnecessary; in addition, less systematic monitoring actions could be envisaged.

⁽¹⁾ See for instance in Estonia <http://www.fin.ee/riigiabi> or in the Czech Republic (for R&D) <http://www.isvav.cz/index.jsp>

⁽²⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

⁽³⁾ 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).

⁽⁴⁾ This information is transmitted in aggregated manner for schemes, and per individual beneficiaries for individual aid.

⁽⁵⁾ See http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html

⁽⁶⁾ See for instance http://epp.eurostat.ec.europa.eu/tgm_comp/table.do?tab=table&plugin=1&language=en&pcode=comp_bex_sa_01

⁽⁷⁾ See for instance Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90), and Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information (OJ L 175 27.6.2013, p. 1).

⁽⁸⁾ State Aid Reporting Interactive tool (SARI).

In the framework of the State aid modernisation, and in order to further ensure that distortions of competition and trade are limited, the Commission may require that certain schemes are subject to an evaluation. This condition may apply in particular to some aid schemes with a large budget as defined by Article 1(2)(a) of new General Block Exemption Regulation. Such schemes will be exempted under the Regulation for an initial period of six months, which the Commission may extend upon approval of the evaluation plan to be notified by the Member State. Upon notification of the evaluation plan, the Commission will assess the compatibility of such schemes solely on the basis of the evaluation plan.

II. AMENDMENTS TO THE COMMUNICATIONS

II.1. Justification of the amendments

The principle of transparency is already set out in the Commission Guidelines related to State aid rules for the rapid deployment of broadband networks⁽¹⁾, regional State aid for 2014-2020⁽²⁾, State aid for films and other audiovisual works⁽³⁾, State aid to promote risk finance investments⁽⁴⁾ and State aid to airports and airlines⁽⁵⁾.

Following public consultations on guidelines⁽⁶⁾⁽⁷⁾ and on the General Block-Exemption Regulation⁽⁸⁾, the transparency requirement should be adapted through this Communication in order to align the transparency provisions across the revised State aid guidelines, ensuring proportionality, preventing the disclosure of information not related to State aid and providing Member States with a transitional implementation phase.

In addition, and as a consequence of the introduction of transparency, the requirement in the Guidelines on regional State aid for 2014-2020 to transmit information to the Commission on each individual aid exceeding EUR 3 million can also be simplified through this Communication.

The principle of evaluation is already set out in the Commission Guidelines related to State aid rules for the rapid deployment of broadband networks, regional State aid for 2014-2020, State aid to promote risk finance investments and State aid to airports and airlines.

Following adoption of the new General Block-Exemption Regulation, the evaluation provision should be amended through this Communication in order to specify that in the case of an aid scheme excluded from the Regulation exclusively on the grounds of its large budget (as defined in Article 1(2)(a) of the Regulation) and fulfilling the other conditions for exemption laid down in the Regulation, the Commission will assess its compatibility solely on the basis of the evaluation plan notified by the Member State. This would not apply to alterations of such schemes, as referred to Article 1(2)(b) of the Regulation, since these alterations must take into account the results of the evaluation.

II.2 Amendments

- (a) *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, Guidelines on regional State aid for 2014-2020, Communication from the Commission on State aid for films and other audiovisual works, Guidelines on State aid to airports and airlines*

⁽¹⁾ Communication from the Commission, EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (OJ C 25, 26.1.2013, p. 1).

⁽²⁾ Communication from the Commission, Guidelines on regional State aid for 2014-2020 (OJ C 209, 23.7.2013, p. 1).

⁽³⁾ Communication from the Commission, State aid for films and other audiovisual works (OJ C 332, 15.11.2013, p. 1).

⁽⁴⁾ Communication from the Commission, Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014, p. 4).

⁽⁵⁾ Communication from the Commission, Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).

⁽⁶⁾ http://ec.europa.eu/competition/consultations/2013_state_aid_rdi/index_en.html

⁽⁷⁾ http://ec.europa.eu/competition/consultations/2013_state_aid_environment/index_en.html

⁽⁸⁾ http://ec.europa.eu/competition/consultations/2013_consolidated_gber/index_en.html

This Communication replaces the following paragraphs:

- on page 20 of the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, the first two sentences of paragraph 78(j),
- on page 24 of the Guidelines on regional State aid for 2014-2020, paragraph 141,
- on page 10 of the Communication from the Commission on State aid for films and other audiovisual works, paragraph 52(7),
- on page 28 of the Guidelines on State aid to airports and airlines, paragraphs 162 and 163,

by:

'Member States shall ensure the publication of the following information on a comprehensive State aid website, at national or regional level:

- the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it,
- the identity of the granting authority/(ies),
- the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level) (*).

Such a requirement can be waived with respect to individual aid awards below EUR 500 000. For schemes in the form of tax advantage, the information on individual aid amounts (*) can be provided in the following ranges (in EUR million): [0,5-1]; [1-2]; [2-5]; [5-10]; [10-30]; [30 and more].

Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions (**). Member States will not be required to publish the abovementioned information before 1 July 2016 (***).

(*) With the exception of business secrets and other confidential information in duly justified cases and subject to the Commission's agreement (Commission communication on professional secrecy in State aid decisions, C(2003) 4582 (OJ C 297, 9.12.2003, p. 6)).

(**) The amount to be published is the maximum allowed tax benefit and not the amount deducted each year (e.g. in the context of tax credit, the maximum allowed tax credit shall be published rather than the actual amount which might depend on the taxable revenues and vary each year).

(***) This information shall be published within 6 months from the date of granting (or, for aid in the form of tax advantage, within 1 year from the date the tax declaration is due). In case of unlawful aid, Member States will be required to ensure the publication of this information *ex post*, at least within 6 months from the date of the Commission decision. The information shall be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

(****) Publication of information on aid awards granted before 1 July 2016 and, for fiscal aid, publication for aid claimed or granted before 1 July 2016, will not be required.'

On page 33 of the Guidelines on regional State aid for 2014-2020, paragraph 193 is deleted. On page 45, Annex VI is deleted.

(b) *Guidelines on State aid to promote risk finance investment*

On page 32 of the Guidelines on State aid to promote risk finance investments⁽¹⁾,

(1) OJ C 19, 22.1.2014, p. 4.

in paragraph 166(v)

for: 'Such a requirement can be waived with respect to SMEs which have not carried out any commercial sale in any market and for investments below EUR 200 000 into a final beneficiary undertaking',

read: 'Such a requirement can be waived with respect to SMEs which have not carried out any commercial sale in any market and for investments below EUR 500 000 into a final beneficiary undertaking';

in paragraph 166(vi)

for: 'the amount of the fiscal advantage received, where the latter exceeds EUR 200 000. Such amount can be provided in ranges of EUR 2 million',

read: 'the amount of the fiscal advantage received, where the latter exceeds EUR 500 000. Such amount can be provided in the following ranges (in EUR million): [0,5-1]; [1-2]; [2-5]; [5-10]; [10-30]; [30 and more].';

and at the end of paragraph 166, the following is inserted:

'Member States will not be required to provide the abovementioned information before 1 July 2016 (*)'.

(*) Publication of information on aid awards granted before 1 July 2016 and, for fiscal aid, publication for aid claimed or granted before 1 July 2016, will not be required.'

(c) *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, Guidelines on regional State aid for 2014-2020, Guidelines on State aid to airports and airlines, Guidelines on State aid to promote risk finance investment*

— on page 12 of the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, at the end of paragraph 53,

— on page 25 of the Guidelines on regional State aid for 2014-2020, at the end of paragraph 144,

— on page of 29 of the Guidelines on State aid to airports and airlines, at the end of paragraph 167,

— on page 32 of the Guidelines on State aid to promote risk finance investments, at the end of paragraph 172,

the following is inserted:

'In the case of aid schemes excluded from the scope of a block exemption Regulation exclusively on the grounds of their large budget, the Commission will assess their compatibility solely on the basis of the evaluation plan.'
