



**COUNCIL OF
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PROPOSAL

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dated: 6 December 2012
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Subject: Proposal for a COUNCIL REGULATION amending Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2012) 730 final



Brussels, 5.12.2012
COM(2012) 730 final

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Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. OBJECTIVE AND CONTEXT OF THE PROPOSAL

In the interest of enforcement and to simplify administration without weakening Commission monitoring, Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (hereinafter the ‘Enabling Regulation’)¹ allows the Commission to declare, by means of regulations, that certain categories of State aid are compatible with the common market and are exempted from the notification requirement provided for in Article 108(3) of the TFEU. The categories concerned include *de minimis* aid², aid to small and medium-sized enterprises, aid for research and development, environmental protection or employment and training, and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid.

The Commission indicated in its Communication on State aid Modernisation of 8 May 2012³ that State aid enforcement should focus on cases with the biggest impact on the internal market. This implies on the one hand stronger scrutiny of large and potentially distortive aid, and on the other simplified analysis of cases with only limited effect on trade and limited potential to seriously distort competition. The latter can be achieved by reviewing the regime of exemptions, in particular the scope of Council Regulation (EC) No 994/98, which would enable the Commission to block-exempt further categories of aid from the notification requirement, in addition to the categories already included in the current Enabling Regulation.

The proposal to include certain new categories in the Enabling Regulation entails neither the immediate block exemption of all these categories, nor does it mean that all measures within a category would be block-exempted in their entirety. Rather, it enables the Commission to adopt block exemptions gradually, when experience acquired is sufficient to allow the Commission to define clear compatibility criteria for certain types of aid measures, ensuring that the effect on competition and trade between Member States is limited. The same approach has been followed under the current Enabling Regulation: the first block exemptions were adopted in 2001 (training aid, aid to SMEs), while for other types of aid the first exemptions were adopted only at a later stage, once sufficient experience had been acquired (employment aid in 2002, regional aid in 2006, and R&D and environmental aid in 2008 with the adoption of GBER⁴). More frequent revisions of the Enabling Regulation may in the future be needed, in particular to have due regard to the investments required by and compatible with the development of the internal market, in the light of the experience gained. Following a decision on the next Multiannual Financial Framework, the Commission will also assess without delay the possibilities to simplify the State aid procedures for projects co-financed under the EU structural policies.

¹ OJ L 142, 14.5.1998, p. 1.

² Exemption is possible in this case under Article 2 of Regulation (EC) No 994/98.

³ COM(2012) 209 final.

⁴ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation), OJ L 214, 9.8.2008, p. 3.

New categories proposed for inclusion in the Enabling Regulation

- *State aid in the culture and heritage conservation sectors*

Council Regulation No 994/98 authorises the Commission to adopt an exemption regulation for all categories of State aid to SMEs. Therefore, on this basis the Commission could block-exempt State aid to SMEs in the culture and heritage conservation sectors as defined in Article 167 TFEU under the current Enabling Regulation. This would be of only limited use, though, as the recipients of State aid, in particular in the cinema and audio-visual sectors, are often large companies. These cases generate a substantial workload for the Commission and Member States, even though they are often routine cases involving limited aid amounts.

Once this category of aid is included in the Enabling Regulation, the Commission will be able to adopt block exemptions, for example for measures that meet the criteria of the revised Cinema Communication or for measures for heritage conservation or culture promotion, which usually have only limited effect on trade (e.g. numerous individual notifications of restoration of classified buildings or monuments).

Council Regulation No 994/98 should be amended accordingly to cover these categories of State aid.

- *State aid in relation to natural disasters*

Regarding State aid to compensate for the damage caused by natural disasters, Council Regulation No 994/98 would, as explained above, authorise the Commission to exempt aid granted to SMEs, but does not allow aid to large companies. Block-exempting such natural disaster aid would allow Member States to react rapidly when a natural disaster occurs in order to compensate for the damage caused.

The Commission has meanwhile acquired sufficient experience with this type of aid and is able to define clear ex ante conditions of compatibility. If the aid is clearly defined, limited to material damage directly caused by the disaster and in an amount verified by an independent body, exemption from the notification obligation would be justified. Council Regulation No 994/98 should be amended accordingly to cover these categories of State aid, even for large companies.

- *State aid in relation to certain adverse weather conditions in fisheries*

Member States are also required to notify to the Commission State aid measures to make good the damage caused by certain adverse weather conditions in fisheries. The amounts granted in this area are usually limited and clear compatibility conditions can be defined. Regulation (EC) No 994/98 authorises the Commission to exempt such aid from the notification requirement only if it is granted to SMEs. However, large companies may also be affected by adverse weather conditions in fisheries.

The Commission has meanwhile acquired sufficient experience with this type of aid and clear compatibility conditions can be defined on this basis. Council Regulation No 994/98 should be amended accordingly to cover this category of State aid.

- *State aid for innovation*

Council Regulation No 994/98 explicitly covers research and development, but not innovation. Innovation has since become an EU objective as part of the Innovation Union initiative. For example aid towards process and organisational innovation in services and aid for innovation clusters may not be distortive as long as targeted conditions are respected. Aid for product and technological innovation, including support for demonstration projects and prototypes, is instead already included in Article 30 of the GBER. Council Regulation No 994/98 should be amended accordingly so that aid for innovation could be exempted in the future.

- *State aid for forestry and promotion of non-Annex-I products in the food sector*

According to Article 42 TFEU the rules on competition apply to the production of and trade in agricultural products only to the extent laid down by the European Parliament and the Council. However, certain measures which are not covered by Article 42 TFEU and to which the general competition rules apply are contained in the rural development programmes or favour the promotion and advertising of non-Annex I products in the food sector and have been subject to specific compatibility conditions under the State aid rules. This is in particular true of forestry and aid for the promotion of non-Annex-I products in the food sector. So far, this type of aid could only be block-exempted if it was limited to SMEs. In view of the broad experience with this type of measures, allowing the formulation of clear compatibility conditions, Council Regulation No 994/98 should be amended accordingly so that these categories of State aid could be exempted in the future.

- *State aid for the conservation of marine biological resources*

According to Article 7 of Council Regulation of 27 July 2006 (EC) No 1198/2006 on the European Fisheries Fund⁵, Articles 107, 108 and 109 of the Treaty shall apply to aid granted by the Member States to enterprises in the fisheries sector, except for payments made by Member States pursuant to, and in conformity with, Regulation (EC) No 1198/2006. Additional State aid for the conservation of marine biological resources usually has limited effects on intra-Union trade, contributes to the EU objectives in the field of maritime and fisheries policy and does not create serious distortions of competition. Furthermore, the amounts granted are usually limited. Council Regulation No 994/98 should be amended accordingly so that these categories of State aid could be exempted in the future.

- *State aid for amateur sports*

While a considerable number of cases relating to amateur sports does not even constitute aid, others usually have limited effects on intra-Union trade and do not create serious distortions of competition; furthermore, the amounts granted are typically limited. Council Regulation No 994/98 should be amended accordingly so that these categories of State aid could be exempted in the future.

- *Social aid to residents of remote regions for transport*

In the area of transport, specific rules already exist, in particular Council Regulation No 1370/2007 on road and rail passenger transport services of general economic interest.

⁵ OJ L 223, 15.8.2006, p. 1.

However, there are no specific rules regarding aid for air and maritime transport. Within these sectors, the Commission has acquired sufficient experience to formulate general compatibility criteria for social aid to residents of remote regions for transport (mainly outermost regions and islands/peninsulas assimilated as islands in the continental EU). This aid tends to be relatively minor and does not create significant distortions of competition. Council Regulation No 994/98 should be amended accordingly so that this category of State aid could in future be exempted.

- *State aid for the transport sector pursuant to Article 93 TFEU*

Article 9 of Regulation No 1370/2007 currently exempts from the prior notification requirement laid down in Article 108(3) TFEU public service compensation for the operation of public passenger transport services or for complying with tariff obligations established through general rules paid in accordance with that Regulation.

Under the division of competences between the Council and Commission established by the Lisbon Treaty, set out in Articles 108(4) and 109 TFEU, it is for the Council to determine the categories of aid exempt from State aid notification, but for the Commission to establish the detailed rules relating to such exemption. In order to bring the public service compensation exemption into line with these provisions, this category should be brought under the scope of Council Regulation No 994/98. Article 9 of Regulation No 1370/2007 should cease to apply six months after the entry into force of a regulation adopted by the Commission concerning this category of State aid. The Commission currently expects such a block exemption would however reproduce the substance of the current exemption, except to the extent that Regulation 1370/2007 is amended by planned legislative proposals relating to the rail sector.

- *State aid for certain broadband infrastructure*

In recent years, the Commission has acquired vast experience with aid for the broadband sector and has devised guidelines. On that basis the Commission is able to formulate precise compatibility criteria allowing block exemption with regard to aid for certain types of broadband infrastructure under specific conditions. This applies to aid covering basic broadband in regions where there is no broadband infrastructure and where no such infrastructure is likely to be developed in the near future ('white' areas), and small individual aid measures covering very high-speed next-generation access ('NGA') networks in 'white NGA' areas.

Moreover, aid for broadband-related civil engineering works and passive broadband infrastructure could be block exempted. Support for civil engineering works in many cases constitutes aid if it concerns the installation of dedicated telecommunication infrastructure (ducts). Passive broadband infrastructure covers the installation of both ducts and dark fibres. It is pro-competitive since it can be used by different operators (fixed, wireless, mobile), has no predetermined access or technology, and is typically owned by public authorities who have no interest to discriminate between operators. A block exemption for civil engineering works and passive broadband infrastructure could speed up investments since (small) local authorities often prefer to support this, rather than adopting broadband schemes and having to comply with their more extensive State aid conditions. The Commission has acquired sufficient case experience in the area of aid to passive infrastructure. A block exemption may trigger increasing use in rural areas where existing passive infrastructure is not adequate.

Council Regulation No 994/98 should be amended accordingly so that these categories of State aid could in future be exempted.

Specifying block-exempted aid categories

Article 1(2)(c) specifies that for each category of block-exempted aid the thresholds should be ‘expressed either in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts’.

Given the development of new forms of State support, such as financial engineering instruments or different forms of risk capital, the Commission considers that the way these thresholds are set should be updated to include the possibility of block exemption for these new forms of State support too. It should therefore be possible to define the thresholds not only in terms of aid intensities or maximum aid amounts, but also in terms of maximum level of State support, whether it qualifies as State aid in the meaning of Article 107(1) TFEU or not. Council Regulation No 994/98 should be amended accordingly.

Provisions concerning transparency

Article 3(2) of Regulation No 994/98 provides that, ‘On implementation of aid systems or individual aids granted outside any system, which have been exempted pursuant to such regulations, Member States shall forward to the Commission, with a view to publication in the *Official Journal of the European Communities*, summaries of the information regarding such systems of aid or such individual aids as are not covered by exempted aid systems.’

In 1998, when Regulation No 994/98 was adopted, publishing these summaries in the Official Journal was the most appropriate means. However, as the number of official languages has increased and the communication media have evolved, publishing the summaries on the Commission’s website would increase transparency, shorten publication deadlines and reduce the administrative workload, since it has become equally easy for interested parties, particularly businesses, to consult the Commission’s website or the Official Journal.

The obligation to publish the above summaries in the Official Journal should therefore be replaced by the obligation to publish on the Commission’s website. Council Regulation No 994/98 should be amended accordingly.

Provisions relating to the procedure for Commission adoption of exemption regulations

Pursuant to Article 8 of Regulation No 994/98, the Commission must consult the Advisory Committee on State Aid before publishing any draft block exemption regulation. The Commission believes that to enable interested parties to submit their comments and thus ensure greater transparency, the draft regulations should be published at the same time as the Advisory Committee is consulted.

Given the way new electronic communications media have developed, the Commission believes that the fastest and most effective way of publishing draft regulations is on its website rather than in the Official Journal. This gives interested parties a better opportunity to comment and reduces administrative burden and delay.

The above-mentioned provisions in Article 8 of Council Regulation No 994/98 should be amended accordingly.

2. CONSISTENCY WITH THE UNION'S OTHER POLICIES AND OBJECTIVES

This proposal is a key element in State Aid Modernisation (SAM), an initiative launched by Commission Communication on 8 May 2012⁶, setting out an ambitious State aid reform programme. It should contribute to the overall objectives of the Union, in particular the objective of focusing State aid enforcement on cases having the biggest impact on the internal market and to the EU 2020 strategy to foster growth in a strengthened, dynamic and competitive internal market.

To achieve the objectives of this strategy, the Commission proposes to increase the number of aid categories that may be exempted from the notification requirement and thus cut red tape and reduce the number of aid measures that have to be notified. The categories concerned and the envisaged block exemptions would lay down compatibility conditions which target the types of aid that genuinely contribute to achieving the EU 2020 objectives.

3. LEGAL ASPECTS

• Legal basis

The legal basis of this proposal is Article 109 TFEU, which allows the Council to make any appropriate regulations, in particular to determine the conditions in which Article 108(3) TFEU shall apply, and the categories of aid exempted from that procedure. The Council must decide by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

• Subsidiarity and proportionality

The proposal falls under the exclusive competence of the Union. The subsidiarity principle does not therefore apply.

The initiative does not go beyond what is necessary to achieve its objective, and therefore complies with the proportionality principle.

• Choice of instruments

Proposed instrument: regulation.

A regulation is the only appropriate legal instrument for amending Regulation (EC) No 994/98.

4. BUDGETARY IMPLICATION

The proposal has no negative implications for the Union budget.

⁶ COM(2012) 209 final.

Proposal for a

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amending Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 109 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament,⁷

Having regard to the opinion of the European Economic and Social Committee,⁸

Having regard to the opinion of the Committee of the Regions,⁹

Whereas:

- (1) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid,¹⁰ empowers the Commission to declare by means of regulations that certain specified categories of aid are compatible with the internal market and are exempted from the notification requirement of Article 108(3) of the Treaty.
- (2) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 107 of the Treaty, that under certain conditions aid to small and medium-sized enterprises ('SMEs'), aid in favour of research and development, aid in favour of environmental protection, employment and training aid, and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is

⁷ OJ C [...], [...], p.

⁸ OJ C [...], [...], p.

⁹ OJ C [...], [...], p.

¹⁰ OJ L 142, 14.5.1998, p.1

compatible with the internal market and not subject to the notification requirement of Article 108(3) of the Treaty.

- (3) Regulation (EC) No 994/98 authorises the Commission to exempt aid for research and development, but not for innovation. Innovation has since become a Union policy priority in the context of ‘Innovation Union’, one of the Europe 2020 flagship initiatives. Moreover, many aid measures for innovation are relatively small and create no significant distortions of competition.
- (4) In the culture and heritage conservation sector, Member States are currently required to notify to the Commission all draft State aid measures. Regulation (EC) No 994/98 authorises the Commission to exempt aid granted to SMEs, but such an exemption would in the cultural sector be of limited use as recipients are often large companies. However, small culture and heritage conservation projects, even if carried out by larger companies, do not typically give rise to any significant distortion, and recent cases have shown that such aid has limited effects on trade.
- (5) Member States are also required to notify to the Commission State aid measures to make good the damage caused by natural disasters. The amounts granted in this area are usually limited and clear compatibility conditions can be defined. Regulation (EC) No 994/98 authorises the Commission to exempt such aid from the notification requirement only if it is granted to SMEs. However, large companies may also be affected by natural disasters. In the Commission’s experience, such aid does not give rise to any significant distortion and clear compatibility conditions can be defined on the basis of the experience acquired.
- (6) Member States are also required to notify to the Commission State aid measures to make good the damage caused by certain adverse weather conditions in fisheries. The amounts granted in this area are usually limited and clear compatibility conditions can be defined. Regulation (EC) No 994/98 authorises the Commission to exempt such aid from the notification requirement only if it is granted to SMEs. However, large companies may also be affected by adverse weather conditions in fisheries. In the Commission’s experience, such aid does not give rise to any significant distortion and clear compatibility conditions can be defined on the basis of the experience acquired.
- (7) In accordance with Article 42 of the Treaty, State aid rules do not apply under certain conditions to certain aid measures in favour of agriculture products listed in Annex I of the Treaty. However, Article 42 does not apply to forestry and non-Annex I products. Therefore, at present, by virtue of Regulation (EC) No 994/98, aid to forestry and to non-Annex I products in the food sector can only be exempted if it is limited to SMEs. The Commission should be able to exempt certain types of aid in favour of forestry contained in the rural development programmes and also those in favour of promotion and advertising of non-Annex I products in the food sector where, according to the Commission's experience, the distortions of competition are limited and clear compatibility conditions can be defined.
- (8) According to Article 7 of Council Regulation of 27 July 2006 (EC) No 1198/2006 on the European Fisheries Fund,¹¹ Articles 107, 108 and 109 of the Treaty shall apply to

¹¹ OJ L 223, 15.8.2006, p. 1.

aid granted by the Member States to enterprises in the fisheries sector, except for payments made by Member States pursuant to, and in conformity with, Regulation (EC) No 1198/2006. Additional State aid for the conservation of marine biological resources usually has limited effects on intra-Union trade, contributes to the EU objectives in the field of maritime and fisheries policy and does not create serious distortions of competition. The amounts granted are usually limited and clear compatibility conditions can be defined.

- (9) In the amateur sports sector, public support measures, to the extent that they constitute State aid, usually have limited effects on intra-Union trade and do not create serious distortions of competition. The amounts granted are typically also limited. Clear compatibility conditions can be defined on the basis of the experience acquired so as to ensure that aid to amateur sports does not give rise to any significant distortion.
- (10) In relation to aid concerning air and maritime transport, in the Commission's experience, aid having a social character to residents of remote regions for transport, provided that it is granted without discrimination related to the identity of the carrier, does not give rise to any significant distortion and clear compatibility conditions can be defined.
- (11) In relation to aid for transport by rail, road and inland waterways, Article 93 of the Treaty states that aid meeting the needs of coordination of transport or representing reimbursement for the discharge of certain obligations inherent in the concept of a public service shall be compatible with the Treaties. Article 9 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road¹² currently exempts from the prior notification requirement laid down in Article 108(3) of the Treaty public service compensations for the operation of public passenger transport services or for complying with tariff obligations that are established through general rules and paid in accordance with Regulation (EC) No 1370/2007. In order to harmonize the approach to block exemption regulations in the field of State aid, and in accordance with the procedures foreseen in Articles 108(4) and 109 of the Treaty, aid for the coordination of transport or reimbursement for the discharge of certain obligations inherent in the concept of a public service as referred to in Article 93 of the Treaty should be brought under the scope of Regulation (EC) No 994/98. Article 9 of Regulation (EC) No 1370/2007 should therefore be deleted with effect from six months after the entry into force of a regulation adopted by the Commission concerning this category of State aid.
- (12) In the field of aid to broadband, the Commission has in recent years acquired vast experience and has devised guidelines¹³ In the Commission's experience, aid for certain types of broadband infrastructure does not give rise to any significant distortion and could benefit from a group exemption, provided that certain compatibility conditions are met. This is true of aid covering the provision of basic broadband in regions where there is no broadband infrastructure and where none is likely to be developed in the near future ("white" areas) as well as aid for small individual aid measures covering very high-speed next-generation access ("NGA") networks in areas

¹² OJ L 315, 3.12.2007, p.1.

¹³ Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, OJ C 235, 30.9.2009, p. 7.

where there is no NGA infrastructure and where no such infrastructure is likely to be developed in the near future. It is also true of aid to broadband-related civil engineering works and passive broadband infrastructure, where the Commission has acquired substantial case experience and clear compatibility conditions can be defined.

- (13) Therefore, the scope of Regulation (EC) No 994/98 should be extended to include such categories of aid.
- (14) Regulation (EC) No 994/98 requires the thresholds for each category of aid in respect of which the Commission adopts a block exemption regulation to be expressed either in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts. This condition makes it difficult to block-exempt certain types of measures involving State support which, because of the specific way in which they are designed, cannot be expressed in terms of aid intensities or maximum amounts, e.g. financial engineering instruments or certain forms of measures aimed to promote risk capital investments. This is in particular due to the fact that such complex measures may involve aid at different levels (direct beneficiaries, intermediate beneficiaries, indirect beneficiaries). Given the increasing importance of such measures and their contribution to Union objectives, there should be more flexibility to make it possible to exempt such measures. It should therefore be possible to define the thresholds in terms of the maximum level of State support, whether it qualifies as State aid or not.
- (15) Regulation (EC) No 994/98 requires Member States to provide summaries of information concerning aid implemented by them which is covered by an exemption regulation. The publication of those summaries is necessary to ensure the transparency of the measures adopted by the Member States. Their publication in the *Official Journal of the European Union* was the most effective means for ensuring transparency at the time Regulation (EC) No 994/98 was adopted. However, with the growth of electronic communication media, publication of the summaries on the Commission website is an equally fast and more effective method, with added transparency for the benefit of interested parties. Therefore, instead of being published in the Official Journal, those summaries should be published on the Commissions website.
- (16) Similarly, draft regulations and other documents to be examined by the Advisory Committee on State Aid in accordance with Regulation (EC) No 994/98 should be published on the Commissions website, rather than in the *Official Journal*, to ensure greater transparency and to reduce the administrative burden and the delay in publication.
- (17) The consultation procedure established in Article 8 of Regulation (EC) No 994/98 provides that the Advisory Committee on State Aid be consulted before publication of a draft regulation. However, in the interest of greater transparency, the draft regulation should be published on the internet at the same time as the Commission consults the Advisory Committee for the first time.
- (18) Regulation (EC) No 994/98 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 994/98 is amended as follows:

(1) Article 1 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

"(a) aid in favour of:

- (i) small and medium-sized enterprises;
- (ii) research, development and innovation;
- (iii) environmental protection;
- (iv) employment and training;
- (v) culture and heritage conservation;
- (vi) making good the damage caused by natural disasters;
- (vii) making good the damage caused by certain adverse weather conditions in fisheries;
- (viii) forestry and promotion of non-Annex I products in the food sector;
- (ix) conservation of marine biological resources;
- (x) amateur sports;
- (xi) residents of remote regions for transport, when this aid has a social character and is granted without discrimination related to the identity of the carrier;
- (xii) coordination of transport or reimbursement for the discharge of certain obligations inherent in the concept of a public service pursuant to Article 93 of the Treaty;
- (xiii) basic broadband infrastructure or small individual infrastructure measures covering next-generation access networks in areas where there is either no such infrastructure or where no such infrastructure is likely to be developed in the near future; and broadband-related civil engineering works and passive broadband infrastructure."

(b) paragraph 2 point (c) is replaced by the following:

"(c) thresholds expressed in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts or maximum level of State support;"

(2) Article 3(2) is replaced by the following:

"On implementation of aid systems or individual aids granted outside any system, which have been exempted pursuant to such regulations, Member States shall forward to the Commission, with a view to publication on the Commission's website, summaries of the information regarding such systems of aid or such individual aids as are not covered by exempted aid systems."

(3) Article 8 is amended as follows:

(a) in paragraph 1, point(a) is replaced by the following:

"(a) at the same time as publishing any draft Regulation in accordance with Article 6;"

(b) in paragraph 2, the second sentence, is replaced by the following:

"The drafts and documents to be examined shall be annexed to the notification and may be published on the Commission website."

Article 2

Regulation (EC) No 1370/2007 is amended as follows:

Article 9 shall be deleted with effect from six months after the entry into force of a Commission regulation concerning the category of State aid referred to in Article 1 (a) xii of Council Regulation (EC) No 994/98.

Article 3

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,

*For the Council
The President*