

RECOVERY NOTICE – EL COMMENTS

Topic	Par. Draft	Comments
Impossibility to recover aid	58	We note that the stipulation of the current Notice in par.20 that <i>«the absence of any recoverable assets is the only way for a Member State to show the absolute impossibility of recovering the aid»</i> (according to Case C-499/99, Commission v Spain par. 37) has been eliminated from the Draft (n par.58). We would like to ask the rationale behind this change.
Provisional implementation of recovery (escrow accounts)	117	Provisional implementation is possible «by means of payment of the full amount of unlawful and incompatible aid into an <i>escrow</i> account». We would like to ask if there is relevant jurisprudence of the ECJ confirming this practice.
Offsetting of claims	124	We propose to include reference to Case C-369/07, Commission vs Greece – Olympic Airways, in par. 68 of which the Court reasons that "in principle, so long as it is provided for under the national legal system as a mechanism for extinguishing debts, a set-off operation can constitute an appropriate means by which State aid may be recovered".
Insolvency proceedings	128	<p>Please take notice that in the relevant case (C-610//10) the ECJ ruled that: <i>«72. It is also settled case-law that the restoration of the previous situation and the elimination of the distortion of competition resulting from the unlawfully paid aid may in principle be achieved through registration of the liability relating to the repayment of the aid in question in the schedule of liabilities»</i> and that <i>«104. registration of the liability relating to the repayment of the aid in question in the schedule of liabilities can meet the recovery obligation only if, where the State authorities are unable to recover the full amount of aid, the insolvency proceedings result in the winding up of the undertaking which received the unlawful aid, that is to say, in the definitive cessation of its activities»</i></p> <p>We propose that the word <i>immediately</i> that has been added to the text of the draft recovery note, in par. 128, is eliminated. As stipulated in par. 27 of the draft, Member States are by default obliged to implement recovery “effectively and immediately”. However, the completion of a winding-up process for the definitive cessation of a beneficiary’s activities can by no means be <i>immediate</i>.</p> <p>Furthermore, in footnote 121 of par. 128, we propose the addition of the case of United Textile (C-363/16, Commission vs Greece, par. 39) as case-law, for reasons of completeness and accuracy.</p> <p>In this case, the ECJ ruled that <i>“the definitive cessation of the activities of the undertaking receiving aid is necessary only where the recovery of the entire amount of the aid remains impossible throughout the insolvency proceedings”</i>.</p>
Plan providing for the continuation of the	131	<p>i) It is not clear which deadline par. 131 refers to.</p> <p>Bankruptcy procedures and the convocation of the creditors’ committee</p>

<p>activity of the aid beneficiary proposed to the creditors' committee</p>		<p>require usually several months. It clearly follows that the usual deadline of four months is not sufficient. We consider that the phrase "within the recovery deadline" should be omitted.</p> <p>ii) We consider that the requirement for immediate recovery of the full amount of an illegal aid, in cases of aid beneficiaries under bankruptcy procedure or any similar process (winding-up, restructuring etc) is contrary to the principle of proportionality. For these cases, we would like to ask the Commission to consider adding a provision for the possibility of returning the whole amount of the illegal aid in instalments with parallel substantial reduction of all creditors' claims.</p>
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