



EUROPEAN  
COMMISSION

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**COMMISSION IMPLEMENTING REGULATION (EU) .../...**

**of XXX**

**amending Commission Regulation (EC) No 794/2004 as regards an internal review  
mechanism to follow up on the findings of the Aarhus Convention Compliance  
Committee in case ACCC/C/2015/128 and other procedural updates  
DRAFT**

(Text with EEA relevance)

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.*

**COMMISSION IMPLEMENTING REGULATION (EU) .../...**

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**amending Commission Regulation (EC) No 794/2004 as regards an internal review mechanism to follow up on the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2015/128 and other procedural updates  
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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union<sup>1</sup>, and in particular Article 33 thereof,

After consulting the Advisory Committee on State Aid,

Whereas:

- (1) The Union is party to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Aarhus Convention'). The Aarhus Convention is implemented in the Union by Regulation (EC) No 1367/2006 of the European Parliament and of the Council<sup>2</sup>. Article 2(2), point (a) of Regulation (EC) No 1367/2006 excludes administrative acts, within the meaning of point (g) of Article 2(1), adopted by the Commission in the field of competition from the scope of Regulation (EC) No 1367/2006. Commission decisions on State aid concerned by the procedure laid down in Article 108(2) of the Treaty cannot be subject to a request for review by members of the public as provided by Article 10 of Regulation (EC) No 1367/2006.
- (2) The Union must address the findings of the Aarhus Convention Compliance Committee (the 'ACCC') in compliance case ACCC/C/2015/128. In case ACCC/C/2015/128, the ACCC found the Union to be in breach of the Aarhus Convention for failing to provide members of the public access to administrative or judicial procedures to challenge decisions on State aid measures taken by the Commission pursuant to Article 108(2) of the Treaty which may contravene Union law relating to the environment.

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<sup>1</sup> OJ L 248, 24.9.2015, p. 1, ELI: <http://data.europa.eu/eli/reg/2015/1588/OJ>.

<sup>2</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13, ELI: <http://data.europa.eu/eli/reg/2006/1367/OJ>).

- (3) The Union takes steps to address the findings of the ACCC by setting up an internal review mechanism. That mechanism applies to State aid decisions closing the formal investigation procedure under Article 108(2) of the Treaty, adopted by the Commission pursuant to Articles 9(3) and (4) of Council Regulation (EU) 2015/1589, having as legal basis Articles 107(3), points (a), first part of (b) (aid to promote the execution of an important project of common European interest), (c), (d) and (e) of the Treaty. In this context, the notifying Member State should confirm that neither the activity subject to State aid, nor any aspects of the notified State aid measure that are indissolubly linked to the object of the aid contravene Union environmental law<sup>3</sup>. This confirmation should be given in the form set out in Annex I, Part I, point 6.8 to Commission Regulation (EC) No 794/2004.
- (4) In order to allow Member States to adapt to the new requirements stemming from this new internal review mechanism, the obligation for Member States to confirm in their notification the absence of a breach of Union environmental law should apply as from 2 months following the publication of this Regulation in the *Official Journal of the European Union*.
- (5) The arrangements for the internal review procedure are detailed in a Commission Communication [xx] concerning the Code of Best Practice for the conduct of State aid control procedures<sup>4</sup>.
- (6) According to Article 4(1) of Commission Regulation (EC) No 794/2004, an increase up to 20 % of the original budget of an aid scheme should not be considered as alteration of existing aid. In the interest of legal certainty, it is appropriate to clarify that the above provision applies only to authorised aid schemes, since other types of existing aid, such as pre-accession aid, might not have an authorised original budget.
- (7) The Commission should streamline its notification forms, following the adoption of updated State aid communications concerning regional aid<sup>5</sup>, research, development and innovation<sup>6</sup>, broadband<sup>7</sup>, climate, environmental protection and energy<sup>8</sup>, risk finance<sup>9</sup>, aid for agriculture<sup>10</sup> and fisheries<sup>11</sup> as well as extending the State aid rules on aviation<sup>12</sup>. Given those changes, the State aid notification form and information sheets

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<sup>3</sup> *Ex multis* judgment of 22 March 1977, *Iannelli & Volpi*, 74/76, EU:C:1977:51, paragraph 14: ‘Those aspects of aid which contravene specific provisions of the Treaty (...) may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately so that their effect on compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in Article 93’.

<sup>4</sup> OJ C [xx], [xx].

<sup>5</sup> Communication from the Commission - Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1).

<sup>6</sup> Communication from the Commission - Framework for State aid for research and development and innovation (OJ C 414, 28.10.2022, p. 1).

<sup>7</sup> Communication from the Commission - Guidelines on State aid for broadband networks (OJ C 36, 31.1.2023, p. 1).

<sup>8</sup> Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

<sup>9</sup> Communication from the Commission – Guidelines on State aid to promote risk finance investments (OJ C 508, 16.12.2021, p. 1).

<sup>10</sup> Communication from the Commission - Guidelines for State aid in the agricultural and forestry sectors and in rural areas (OJ C 485, 21.12.2022, p. 1).

<sup>11</sup> Communication from the Commission - Guidelines for State aid in the fishery and aquaculture sector (OJ C 107, 23.3.2023, p. 1).

<sup>12</sup> Communication from the Commission extending the transitional period provided for in the Guidelines on State aid to airports and airlines concerning regional airports (OJ C 244, 11.7.2023, p. 1).

contained in Commission Regulation (EC) No 794/2004 should be amended to reflect the changes and to ensure that the Commission receives all the information it needs to carry out its assessment under the updated State aid rules.

- (8) The Commission's practice has evolved in terms of using electronic notification systems and annual reporting formats. Articles 3(3) and 5(1) of Commission Regulation (EC) No 794/2004 should therefore be amended to ensure the Commission receives all the information it needs to carry out its assessment under the State aid rules.
- (9) The Commission's practice as regards reporting in the agriculture and fisheries sectors needs to be streamlined, in line with the general reporting rules. Member States should therefore submit their reports also in the agriculture and fisheries sectors according to Annex III.A to Commission Regulation (EC) No 794/2004, pursuant to Article 5(1) of Commission Regulation (EC) No 794/2004.
- (10) The case law of the Union Courts has further clarified the notion of 'interested party' under Article 1, point (h) of Council Regulation (EU) 2015/1589 of 13 July 2015<sup>13</sup>. The complaints form set out in Annex IV to Regulation (EU) No 794/2004 should therefore be amended.
- (11) Regulation (EU) No 794/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

1. in Article 1, 'Regulation (EC) No 659/1999' is replaced by 'Regulation (EU) No 2015/1589';
2. in Article 2, 'Regulation (EC) No 659/1999' is replaced by 'Regulation (EU) No 2015/1589';
3. Article 3(3) is replaced by the following:  
'3. Notifications shall be sent electronically, via the electronic application designated by the Commission.  
All correspondence in connection with a notification shall be sent electronically via the secured electronic system designated by the Commission.';
4. Article 4(1) is amended as follows:
  - (a) in the first sentence, 'Regulation (EC) No 659/1999' is replaced by 'Regulation (EU) No 2015/1589';
  - (b) in the second sentence, 'existing aid scheme' is replaced by 'authorised aid scheme'.
5. in Article 5, paragraph 1 is replaced by the following:

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<sup>13</sup> Judgments of 2 September 2021, *Ja zum Nürburgring v Commission*, C-647/19 P, EU:C:2021:666, paragraphs 56 and 57; of 31 January 2023, *European Commission v Anthony Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 59 and 60; of 5 September 2024, *Penya Barça Lyon (PBL) and Issam Abdelmouine v European Commission*, C-224/23 P, EU:C:2024:682, paragraphs 59 to 72.

- ‘1. Without prejudice to any additional specific reporting requirements laid down in a conditional decision adopted pursuant to Article 9(4) of Regulation (EU) No 2015/1589, or to the observance of any undertakings provided by the Member State concerned in connection with a decision to approve aid, Member States shall compile annual reports on existing aid schemes and individual aid in respect of each whole or part calendar year during which the scheme applies, using the standardised reporting format set out in Annex III.A.’;
6. in Article 7, ‘Article 88(3) of the Treaty’ is replaced by ‘Article 108(3) of the Treaty’ and ‘Council Regulation (EC) No 659/1999’ is replaced by ‘Regulation (EU) No 2015/1589’.
  7. Article 8 is amended as follows:
    - (a) in paragraph 1, ‘Regulation (EC) No 659/1999’ is replaced by ‘Regulation (EU) No 2015/1589’;
    - (b) in paragraph 5, ‘Regulation (EC) No 659/1999’ is replaced by ‘Regulation (EU) No 2015/1589’;
    - (c) in paragraph 5a, ‘Article 6a(6) of Regulation (EC) No 659/1999’ is replaced by Article 5(6) of Regulation (EU) No 2015/1589’;
    - (d) in paragraph 5b, ‘Article 6a(7) of Regulation (EC) No 659/1999’ is replaced by ‘Article 7(7) of Regulation (EU) No 2015/1589’;
  8. in Article 9(1), ‘Article 88(3) of the Treaty’ is replaced by ‘Article 108(3) of the Treaty’;
  9. in Article 11a(1), ‘Articles 10(1) and 20(2) of Regulation (EC) No 659/1999’ is replaced by ‘Articles 12(1) and 24(2) of Regulation (EU) No 2015/1589’;
  10. in Article 11b, ‘Regulation (EC) No 659/1999’ is replaced by ‘Regulation (EU) No 2015/1589’;
  11. Annex I, Part I is replaced by the text in Annex I, Part I to this Regulation.
  12. Annex I, Parts III.1, III.2, III.5, III.6, III.7, III.8, III.12, III.13.B and III.14 are replaced by the text in Annex I, Parts III.1, III.2, III.5, III.6, III.7, III.8, III.12, III.13.B and III.14 to this Regulation;
  13. in Annex III.A, the title ‘Standardised reporting format for existing State aid (This format covers all sectors except agriculture)’ shall be replaced by ‘Standardised reporting format for existing State aid (This format covers all sectors)’.
  14. Annexes III.B and III.C are deleted;
  15. Annex IV is replaced by the text in Annex II to this Regulation;
  16. Annex III to this Regulation is added as Annex V.

## *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*.

The amendment to Point 6.8 of Annex I, Part I of Regulation (EC) No 794/2004 as set out in Article 1, point 11 in this Regulation shall apply from [Publication Office: please insert a date 2 months] following the publication of this Regulation 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 Commission*  
*The President*  
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