

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 90/20/COL

of 15 July 2020

amending, for the one hundred and seventh time, the procedural and substantive rules in the field of State aid, by amending and prolonging certain State aid guidelines [2020/1576]

THE EFTA SURVEILLANCE AUTHORITY ('ESA'),

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Articles 61 to 63 and Protocol 26,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), and in particular Article 24 and Article 5(2)(b), and

Having regard to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), and in particular Article 1(1) of Part I.

Whereas:

Under Article 24 of the Surveillance and Court Agreement, ESA shall give effect to the provisions of the EEA Agreement concerning State aid.

Under Article 5(2)(b) of the Surveillance and Court Agreement, ESA shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if ESA considers it necessary.

The following State aid guidelines adopted by ESA, as part of the State aid Modernisation initiative, are due to expire at the end of 2020:

- (a) Guidelines on regional State aid for 2014-2020 ⁽¹⁾;
- (b) Guidelines on State aid to promote risk finance investments ⁽²⁾;
- (c) Guidelines on State aid for environmental protection and energy 2014-2020 ⁽³⁾;
- (d) Guidelines for the analysis of the compatibility with the functioning of the EEA Agreement of State aid to promote the execution of important projects of common European interest ⁽⁴⁾;

⁽¹⁾ OJ L 166, 5.6.2014, p. 44, and EEA Supplement No 33, 5.6.2014, p. 1, amended by ESA Decision No 302/14/COL, OJ L 15, 22.1.2015, p. 103, and EEA Supplement No 4, 22.1.2015, p. 1.

⁽²⁾ OJ L 354, 11.12.2014, p. 62, and EEA Supplement No 74, 11.12.2014, p. 1, amended by ESA Decision No 302/14/COL, OJ L 15, 22.1.2015, p. 103, and EEA Supplement No 4, 22.1.2015, p. 1.

⁽³⁾ OJ L 131, 28.5.2015, p. 1, and EEA Supplement No 30, 28.5.2015, p. 1.

⁽⁴⁾ OJ L 39, 16.2.2017, p. 49, and EEA Supplement No 11, 16.2.2017, p. 1.

- (e) Guidelines on short-term export-credit insurance ⁽⁵⁾; and
- (f) Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽⁶⁾.

In the context of the Green Deal and Digital Agenda, the European Commission ('the Commission') has already announced its intention to revise a series of guidelines by the end of 2021.

On 2 July 2020, the Commission adopted a Communication concerning the prolongation and the amendments of the Guidelines on Regional State aid for 2014-2020, Guidelines on State aid to Promote Risk Finance Investments, Guidelines on State aid for Environmental Protection and Energy 2014-2020, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, Communication on the Criteria for the Analysis of the Compatibility with the Internal Market of State aid to Promote the Execution of Important Projects of Common European Interest, Communication from the Commission – Framework for State aid for research and development and innovation and Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance ⁽⁷⁾.

To provide predictability and legal certainty, while preparing for a future update of the State aid rules, the Commission considered it appropriate to extend the period of application of its guidelines, corresponding to the ESA guidelines listed in points (a)-(e) above, until the end of 2021. The Commission extended the period of application of the guidelines corresponding to those listed in point (f), the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, until the end of 2023.

The prolongation of those rules will allow the Commission to finalise the evaluation of those rules together with other State aid rules adopted as part of the State aid Modernisation initiative. On 7 January 2019, the Commission launched the evaluation of those rules in the form of a 'fitness check'. On the basis of the result of that evaluation, the Commission will then be in a position to decide whether to further prolong or update those rules.

Having regard to the economic and financial consequences that the COVID-19 outbreak may have on undertakings, the Commission considered that temporary adaptations of some State aid Guidelines are also necessary. In particular, in the framework of the Guidelines on regional State aid for 2014-2020, the Guidelines on State aid for environmental protection and energy 2014-2020, the Communication – Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (IPCEI) and the Framework for State aid for research and development and innovation ⁽⁸⁾, undertakings which were not in difficulty on 31 December 2019, but became undertakings in difficulty after 31 December 2019 should be eligible under those guidelines until 30 June 2021.

With regard to the Guidelines on State aid for environmental protection and energy 2014-2020, the sharp decline of electricity prices due to the COVID-19 outbreak could lead to situations where the electro-intensity of undertakings may decrease. In that case, the undertaking may lose eligibility under Section 3.7.2 (targeted reductions in the funding of support for energy from renewable sources for competitiveness reasons) when applying Annex 4 for calculating the GVA (Gross Value Added) and the electro-intensity at the level of the undertaking. The Commission therefore considered that calculation methods to be used should therefore be adapted, in order to address this in an appropriate manner.

These amendments and prolongations to the Commission's Communications are also of relevance to the European Economic Area.

Uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement.

According to point II under the heading 'GENERAL' on page 11 of Annex XV to the EEA Agreement, ESA, after consultation with the Commission, is to adopt acts corresponding to those adopted by the Commission,

Having consulted the Commission,

Having consulted the EEA EFTA States,

⁽⁵⁾ OJ L 343, 19.12.2013, p. 54, and EEA Supplement No 71, 19.12.2013, p. 1, re-adopted by ESA Decision No 4/19/COL, OJ L 163, 20.6.2019, p. 110, and EEA Supplement No 48, 20.6.2019, p. 1, amended by ESA Decision No 030/20/COL, OJ L 220, 9.7.2020, p. 8, and EEA Supplement No 46, 9.7.2020, p. 1.

⁽⁶⁾ OJ L 271, 16.10.2015, p. 35, and EEA Supplement No 62, 15.10.2015, p. 1.

⁽⁷⁾ OJ C 224, 8.7.2020, p. 2.

⁽⁸⁾ Which correspond to ESA's Guidelines for research and development and innovation, OJ L 209, 6.8.2015, p. 17, and EEA Supplement No 44, 6.8.2015, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The substantive rules in the field of State aid shall be amended as follows:

(1) the Guidelines on regional State aid for 2014-2020 are amended as follows:

(a) in paragraph 18, the following sentence is added:

‘These Guidelines shall, however, apply to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021.’;

(b) the following points are inserted after paragraph 156:

‘(a) In view of the expiry of the validity of the national regional aid maps on 31 December 2020, the Authority invites the EEA EFTA States to notify by 15 September 2020 to the Authority their intention to prolong the validity of their national regional aid maps.

(b) Following the approval of the prolongation of the national regional aid maps until 31 December 2021, the EEA EFTA States may decide to prolong the existing schemes approved on the basis of the present Guidelines. Any prolongation of such schemes must be notified to the Authority in due time before their expiry date.’;

(2) in the Guidelines on State aid to promote risk finance investments, paragraph 174 is replaced by the following:

‘174. The Authority will apply the principles set out in these Guidelines for the compatibility assessment of all risk finance aid to be awarded from 1 July 2014 to 31 December 2021.’;

(3) the Guidelines on State aid for environmental protection and energy 2014-2020 are amended as follows:

(a) in paragraph 11, the following sentence is added:

‘These Guidelines shall, however, apply to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021.’;

(b) paragraph 103 is replaced by the following:

‘103. These Guidelines apply to the period until 31 December 2021. However, they should prepare the ground for achieving the objectives set in the 2030 Framework. Notably, it is expected that in the period between 2020 and 2030 established renewable energy sources will become grid-competitive, implying that subsidies and exemptions from balancing responsibilities should be phased out in a degressive way. These Guidelines are consistent with that objective and will ensure the transition to a cost-effective delivery through market-based mechanisms.’;

(c) paragraph 237 is replaced by the following:

‘(237) These Guidelines will be applied from 1 July 2014 and replace the Guidelines on State aid for environmental protection published on 10 June 2010 (*). They will be applicable until 31 December 2021.

(*) OJ L 144, 10.6.2010, p. 1 and EEA Supplement No 29, 10.6.2010, p. 1.’;

(d) Annex 4 is amended as follows:

(i) paragraph 2 is replaced by the following:

‘(2) For the purposes of applying Section 3.7.2 the EEA EFTA States can use:

(a) the arithmetic mean over the most recent 3 years for which GVA data is available;

(b) the arithmetic mean of 2 years chosen from the most recent 3 years for which GVA data is available, provided this method is applied in the same way to all beneficiaries.

The Authority considers that moving from a calculation pursuant to method (a) to method (b) does not constitute a notifiable change.’;

(ii) paragraph 5 is replaced by the following:

‘(5) For the calculation of the electricity consumption of the undertaking, use is to be made of electricity consumption efficiency benchmarks for the industry where available. If not available, the EEA EFTA States can use:

- (a) the arithmetic mean over the most recent 3 years for which data is available.
- (b) the arithmetic mean of 2 years chosen from the most recent 3 years for which data is available, provided this method is applied in the same way to all beneficiaries.

The Authority considers that moving from a calculation pursuant to method (a) to method (b) does not constitute a notifiable change.’;

(4) in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty paragraph 135 is replaced by the following:

‘135. The Authority will apply these guidelines with effect from 10 September 2014 until 31 December 2023.’;

(5) the Guidelines for the analysis of the compatibility with the functioning of the EEA Agreement of State aid to promote the execution of important projects of common European interest are amended as follows:

(a) in paragraph 10(a) the following sentence is added:

‘These Guidelines shall, however, apply to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021.’;

(b) paragraph 50 is replaced by the following:

‘50. These Guidelines will be applied from 27 April 2016 until 31 December 2021.’;

(6) in the Guidelines on short-term export-credit insurance, paragraph 40 is replaced by the following:

‘(40) Having regard to the need for continuity and legal certainty in the treatment of State aid in the field of short-term export-credit insurance, it is considered appropriate to apply the current Guidelines until 31 December 2021. This will align its expiration date with those of the majority of State aid guidelines adopted pursuant to the State aid modernisation programme.’;

(7) in the Framework for State aid for research and development and innovation, in paragraph 10 the following sentence is added:

‘These guidelines shall, however, apply to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021.’.

Article 2

Only the English language version of this Decision is authentic.

Done at Brussels, 15 July 2020.

For the EFTA Surveillance Authority

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