

## PARA HILO

Communication from the Commission Commission Notice on the enforcement of State aid rules by national courts (2021/C 305/01) OJ C 305, 30.7.2021, p. 1–28 (JIRP)

## PARA ENTRADA

Communication from the Commission Commission Notice on the enforcement of State aid rules by national courts (2021/C 305/01) OJ C 305, 30.7.2021, p. 1–28 (JIRP)

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Yesterday 30th July, the OJ publish the new Commission Commission Notice on the enforcement of State aid rules by national courts (2021/C 305/01) that replaces the homonymous of 2009 and takes into consideration the radical changes generated in this field by General Block Exemption Regulation Council Regulation No 994/98 of 7 May 1998, when it was amended by Council Regulation No 733/2013 of 22 July 2013.

See multilingual version at

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC0730%2801%29>

The new Communication aims to improve the existing channels of cooperation between the European Commission and national courts, in order to facilitate uniform ex post control of State aids by national courts of all State members.

This notice has been published in a context of increasing relevance of State aids matters, as a consequence of the pandemic, and of continued extension of block exemptions from 2014 to the present. Last the recent extension of GBER to aids granted by national authorities for projects funded via certain EU centrally managed programs under the new Multiannual Financial Framework; and certain State aid measures that to support the green and digital transition and are, at the same time, relevant for the recovery from the economic effects of the coronavirus pandemic.

The concerned national funds are those relating to:

Financing and investment operations supported by the InvestEU Fund;

Research, Development and Innovation (RD&I) projects having received a “Seal of Excellence” under Horizon 2020 or Horizon Europe, as well as co-funded research and development projects or Teaming actions under Horizon 2020 or Horizon Europe; and

European Territorial Cooperation (ETC) projects, also known as Interreg.

The new regulation includes also new aid categories that will be exempted from the notification obligation. The relevant categories of aid are:

Aid for energy efficiency projects in buildings;

Aid for recharging and refuelling infrastructure for low emission road vehicles;

Aid for fixed broadband networks, 4G and 5G mobile networks, certain trans-European digital connectivity infrastructure projects and certain vouchers.

This regulation was approved by the Commission past 23<sup>rd</sup> July, and shall be publish this week in the OJ.

Since 2015 more than 96 % of new state aid measures for which expenditures were registered for the first time did not require notification to the Commission.

The Communication shows also that Commission is coming more and more aware of the growing relevance of private enforcement, and focuses on it.

The Communication contains various instruments for the transmission of information, that allow both parties to have access to the information held by the other, subject to a duty of confidentiality. It also includes other instruments - Commission opinions or the online consultation, which is intended to replace informal consultations in the future - that allow national courts to ascertain the Commission's opinion on a matter.

Although this does not represent a genuine interpretation of European law, unlike the preliminary ruling question, it is nevertheless a quick way of obtaining an informed opinion that can be of great use to national courts, but has not the consideration of a judicial expert declaration.

The communication also incorporates procedural cooperation instruments such as *amicus curiae*.

The Communication also contains the Commission's view of the relationship between its decisions and the proceedings before the national courts, expressing its interpretation of European law. Despite its normative language, which is sometimes excessively imperative for an instrument of soft law, it should be recalled that, as is well known, it does not bind the national courts or, obviously, the Court of Justice, the sole interpreter of European Union law.

The improvement of the cooperation relations between the Commission and the national courts will depend mainly on the degree of dissemination of the communication and the measures it contains among the national courts and the professionals of the forum, to which we intend to contribute with this entry, but also on the implementation of a proactive policy by the Commission and the willingness of the national courts to maintain a uniform European doctrine in this field, a duty that concerns them and of which they are beginning to be aware.

Some observations from UVEG State Aid group on the Communication proposal may be seen at the entry of 12 July 2021 of Contributions Tab, in this Webpage.