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COMMUNICATION FROM THE COMMISSION

Code of Best Practices for the conduct of State aid control procedures

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1. SCOPE AND PURPOSE OF THE BEST PRACTICES CODE

1. Over the past decade, the Commission has implemented a State Aid Modernisation agenda ('SAM') to focus its State aid control on measures which genuinely affect competition in the Internal Market, while at the same time simplifying and streamlining rules and procedures. This has facilitated public investments, by empowering Member States to grant public support without prior scrutiny by the Commission and by speeding up decision-making in State aid procedures.

2. To make the most of the modernised State aid rules, this Communication ('Best Practices Code') provides guidance to Member States, aid beneficiaries and other stakeholders, on how State aid procedures work in practice. It aims to make State aid procedures as transparent, simple, clear, predictable and timely as possible.

3. To achieve the goals pursued by this Communication and to ensure the correct and efficient application of the State aid rules, Member States and the Commission should closely cooperate as partners. In this context, the Commission will continue to offer pre-notification contacts concerning potential State aid measures that the Member States are considering implementing. It will work with the Member States to define priorities with regard to the procedural handling of cases. Furthermore, it will have in place a network of country coordinators and offer support to Member States in the form of guidance and training on the application of the State aid rules. As part of stepping up its effort to strengthen its cooperation and partnership with Member States, the Commission will encourage them to share experiences with it and each other on best practices and challenges encountered in applying the State aid rules.

4. This Best Practices Code also seeks to improve the procedure for dealing with State aid complaints. It clarifies the conditions under which the Commission will consider a case to be a formal complaint and provides indicative deadlines for the handling of formal complaints.

5. To follow-up on the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2015/128[1], the Union is to set up an internal review mechanism. As laid down in Commission Regulation [OP please insert the next number][2], if a State aid measure is contrary to Union law, and provided the relevant requirements set out in the case-law[3] are met, the Commission cannot authorise the aid. The notifying Member State is to provide a confirmation that neither the activity subject to State aid, nor any aspects of the notified State aid measure that are indissolubly linked to

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1 The Aarhus Convention Compliance Committee found the Union to be in breach of the Convention for failing to provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the Commission under Article 108(2) of the Treaty that contravene Union law relating to the environment. See: https://unece.org/env/pp/cc/accc.c.2015.128_european-union.

2 Commission Implementing Regulation (EU) [OP please insert the next number] amending 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 (OJ L [OP please insert the reference], ELI: [OP please insert the link]).

3 Judgment of 15 June 1993, Matra v Commission, C-225/91, EU:C:1993:239, paragraph 41; judgment of 22 March 1977, Iannelli & Volpi SpA v Ditta Paolo Meroni, 74/76, EU:C:1977:51, paragraph 14; judgment of 31 January 2023, Commission v Braesch and Others, C-284/21 P, EU:C:2023:58, paragraphs 96 to 99.

the object of the aid, contravene Union environmental law[4]. This Best Practices Code lays down the internal review procedure, and sets out which entities are entitled to lodge a request for internal review (the 'request') with the Commission, the conditions for such request, the scope of the request and the applicable deadlines.

6. The specific features of an individual case may require an adaptation of, or deviation from, this code. The specificities of the fishery and aquaculture sectors and of the activities in the primary production, marketing or processing of agricultural products may also justify a deviation from this Best Practices Code.

2. RELATIONSHIP TO UNION LAW

7. This Best Practices Code describes and clarifies the procedures followed by the Commission when assessing State aid cases. It does not provide an exhaustive overview of Union State aid rules, but should rather be read together with all other documents containing those rules. The Best Practices Code does not create any new rights in addition to those laid down in the Treaty on the Functioning of the European Union ('the Treaty'), Council Regulation (EU) 2015/1589[5] ('the Procedural Regulation') and Commission Regulation (EC) No 794/2004[6] ('the Implementing Regulation') and their interpretation by the Court of Justice of the European Union. It also does not alter those rights in any way.

3. PRE-NOTIFICATION

3.1. Objectives

8. The Commission invites the Member States to contact it before formally notifying potential State aid measures to the Commission ('pre-notification contacts'). These 'pre-notification contacts' have several objectives.

9. First, during these pre-notification contacts, the Commission and the Member State can discuss what information is needed for the notification of the State aid measure in question to be considered as complete. Thus, pre-notification contacts generally lead to better and more complete notifications. This in turn speeds up the handling of such notifications, generally allowing the Commission to adopt decisions within 2 months of the date of notification[7].

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4 Ex multis Judgment of 22 March 1977, *Iannelli & Volpi SpA v Ditta Paolo Meroni*, Case, 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 the 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'.

5 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 (OJ L 248, 24.9.2015, p. 9, ELI: http://data.europa.eu/eli/reg/2015/1589/oj).

6 Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, (OJ L 140, 30.4.2004, p. 1, ELI: http://data.europa.eu/eli/reg/2004/794/oj).

7 See Article 4(5) referring to decisions under Article 4(2), (3) and (4) of the Procedural Regulation. That deadline cannot be respected where the Commission has to issue several requests for information due to incomplete notifications.

10. Second, during the pre-notification contacts, the Commission and the Member State can discuss the legal and economic aspects of a proposed measure in an informal and confidential[8] manner before it is formally notified. In particular, the pre-notification phase can provide an opportunity to address those aspects of a proposed measure that might not be fully in line with the State aid rules, including in cases where significant changes to the measure are necessary.

3.2. Scope

11. The Commission will engage in pre-notification contacts whenever a Member State requests them. The Commission strongly recommends that Member States engage in such contacts in cases which have novel aspects or features or complexity which justify prior informal discussions with the Commission. Pre-notification contacts can also be useful for projects of common interest with high Union relevance, such as the Trans-European Network for Transport (TEN-T) core network projects, to the extent that their funding is likely to constitute State aid.

3.3. Timing

12. To ensure that the pre-notification contacts are efficient, Member States should provide the Commission with all information necessary for assessing a proposed State aid measure, in the form of a draft notification. Informal pre-notification contacts will then take place typically by email, telephone or conference call to speed up the process. Where necessary, or at the request of the Member State, meetings between the Commission and the Member State may also take place.

13. For particularly complex cases (such as those on restructuring aid, or large or complex individual aid measures), the Commission recommends that Member States initiate pre-notification contacts as early as possible to allow for a fruitful discussion. Such contacts can also be useful in some seemingly less problematic cases, in order to validate Member States' own initial assessment and establish the information the Commission services would need to assess the case.

14. The timing and format of pre-notification contacts largely depend on the complexity of the case. Although such contacts may last several months, they should, as a general rule, not last more than 6 months.

15. After the conclusion of the pre-notification contacts, the Member State should be able to submit a complete notification. In cases where the Commission considers that pre-notification contacts do not bring satisfactory results, it may close the pre-notification phase. This does not prevent the Member State from pre-notifying or notifying a similar measure again.

3.4. Content

16. Based on its experience, especially in cases with major technical, financial and project-related implications, the Commission recommends involving the beneficiaries of individual measures in pre-notification contacts. Nevertheless, the decision on whether or not to involve the beneficiary rests with the Member State.

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8 Pursuant to Article 30 of the Procedural Regulation the Commission is bound by professional secrecy in all State aid proceedings. This is backed by the general obligation of professional secrecy laid down in Article 339 of the Treaty.

17. For measures involving several Member States (for instance, important projects of common European interest), the participating Member States are generally encouraged to discuss between themselves before initiating pre-notification contacts, to ensure a consistent approach to the measure and to establish a realistic timeline.

18. The Commission will try to provide the Member State with an informal preliminary assessment of the measure at the end of the pre-notification phase. That preliminary assessment comprises non-binding guidance from the Commission on the completeness of the draft notification and an informal and non-binding assessment[9] of whether the measure constitutes State aid and whether or not it is compatible with the internal market.

19. In particularly novel or complex cases, the Commission might not provide an informal preliminary assessment at the end of the pre-notification phase. In such cases, at the request of the Member State, the Commission may indicate in writing what information still needs to be provided to enable them to carry out an assessment of the measure.

20. Pre-notification contacts are voluntary and confidential. They do not affect the assessment of the case after its formal notification. In particular, the fact that pre-notification contacts have taken place does not mean that the Commission cannot request the Member State to provide further information after the formal notification.

4. CASE PORTFOLIO APPROACH AND MUTUALLY AGREED PLANNING

4.1. Case portfolio approach

21. Member States may ask the Commission to treat cases that they consider of priority with more predictable timelines. To that end, they can participate in the 'portfolio exercise' offered by the Commission. Twice per year[10], the Commission will ask the Member States to inform it of which notified cases in their portfolio they consider to be of high or low priority. If they wish to participate in the exercise, Member States should reply to the request within the given timeline. Once it has received that information, and with due regard to available resources and other pending cases involving the Member State making the request, the Commission may propose a Mutually Agreed Planning for those cases to ensure they are dealt with promptly and predictably.

4.2. Mutually Agreed Planning

4.2.1. Objective and content

22. Mutually Agreed Planning is a tool which can be used to increase the transparency and predictability of the likely duration of a State aid investigation. This tool allows the Commission and the Member State to agree on the expected timeline of an investigation in a specific case, and in some cases also on the likely course of the investigation. This can be particularly useful in cases which have novel aspects, which are related to TEN-T core network projects or which are technically complex, urgent or sensitive.

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9 Thus, it does not constitute or prejudge an official position of the Commission.

10 Currently at the end of January and the end of September of each year.

23. In particular, the Commission and the Member State could agree on the following aspects:

- Priority treatment of the case as part of the portfolio exercise. Where necessary for planning or resource purposes[11], priority treatment can be granted in return for the Member State's formal acceptance of the suspension or the extension of the time limit of the examination[12] of other cases from its portfolio.
- Which information[13] the Member State or the intended aid beneficiary should provide to the Commission, and which type of unilateral information-gathering the Commission intends to use in the case.
- The likely form and duration of the assessment of the case by the Commission after its notification.

24. If the Member State promptly provides all information agreed upon, the Commission will endeavour to comply with the mutually agreed time frame for its investigation of the case. Nevertheless, it may not be possible to work within that time frame in cases where the information provided by the Member State or third parties raises further issues.

4.2.2. Scope and timing

25. Mutually Agreed Planning will, in particular, be used in cases which involve very novel aspects, or are technically difficult or sensitive. In these cases, Mutually Agreed Planning will take place at the end of the pre-notification phase, and be followed by the formal notification.

26. Mutually Agreed Planning can also take place at the beginning of the formal investigation procedure. In such cases, the Member State should request Mutually Agreed Planning for further treatment of the case.

5. THE PRELIMINARY EXAMINATION OF NOTIFIED MEASURES

5.1. Requests for information

27. The Commission starts its preliminary examination of each notified measure when it receives the notification of such measure. If the Commission needs further information after an aid measure has been notified, it will send a request for information to the Member State. Because the Commission tries to group requests for information and because pre-notification contacts should ensure that Member States submit complete notifications[14], one comprehensive request for information will generally be enough. The request explains which information is needed and will normally be sent within 4 weeks following the formal notification.

28. After receiving the Member State's response, the Commission may raise additional questions depending on the content of the answers and on the nature of the case. This does not necessarily mean that the Commission has serious difficulties in assessing the case.

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11 For instance, in cases where the financial institutions of the Union act as holding fund.

12 See Article 4(5) of the Procedural Regulation.

13 For example studies or external expertise.

14 Unless otherwise agreed in Mutually Agreed Planning.

29. If the Member State does not provide the requested information within the deadline, the Commission will send a reminder. If, after one reminder, the Member State still does not send the information, the Commission will inform the Member State that the notification is considered as withdrawn[15], unless there are exceptional circumstances. If a notification is considered to have been withdrawn, the Member State may subsequently re-notify the measure with the missing information added.

30. When the conditions to open the formal investigation procedure are met, the Commission will generally open that procedure after, at the most, two rounds of questions. However, in some cases more requests for information may be issued before the formal investigation procedure is opened, depending on the nature of the case and the completeness and complexity of the information provided by the Member State.

5.2. Agreed suspension of the preliminary examination

31. The Commission may suspend the preliminary examination, for example when a Member State requests a suspension in order to change the aid measure to bring it in line with State aid rules, or by common agreement.

32. The period of suspension will be agreed in advance. If the Member State has not submitted a complete notification which complies with the State aid rules at the end of this period, the Commission will continue the procedure from the point at which it was suspended. The Commission will usually then inform the Member State that the notification is considered to have been withdrawn, or immediately open the formal investigation procedure due to serious doubts as to whether the aid measure complies with the State aid rules and hence its compatibility with the internal market.

5.3. 'State of play' contacts and contacts with the aid beneficiary

33. Upon request, the Commission will inform the Member State of the state of play of the preliminary examination of the notification.

34. The Member State may decide to involve the beneficiary of a potential (individual) State aid measure in the 'state of play' contacts with the Commission, especially in cases with major technical, financial and project-related implications. It is recommended that the beneficiary becomes involved in such contacts. Nevertheless, the decision on whether or not to involve the beneficiary rests with the Member State.

6. THE FORMAL INVESTIGATION PROCEDURE

35. The Commission aims to improve the transparency, predictability and efficiency of the treatment of the complex cases which are handled under the formal investigation procedure. To this end, it will efficiently use all procedural means it has on the basis of the Procedural Regulation.

[15] On the basis of Article 5(3) of the Procedural Regulation.

6.1. Publication of the decisions and meaningful summaries

36. The Commission endeavours to publish its decision to open the formal investigation procedure ('opening decision'), together with a meaningful summary[16] within 2 months of its adoption in cases where the Member State does not ask for confidential information to be removed from the decision.

37. Where there is disagreement between the Commission and the Member State about removal of confidential information from the opening decision, the Commission will apply the principles of the Communication C(2003) 4582[17] on professional secrecy and will publish the decision as soon as possible after its adoption[18]. The same practice applies to the publication of all final decisions[19].

6.2. Interested parties' comments

38. Interested parties, including the beneficiary of the aid, may comment on the opening decision within 1 month of its publication[20]. The Commission will, in principle, not extend that deadline or accept submissions after it has passed[21]. The Commission can grant an extension only in exceptional and duly justified cases, for example if the interested party intends to submit particularly voluminous factual information or if there has been contact with the interested party before the deadline expires.

39. In very complex cases, the Commission may send a copy of the opening decision to the interested parties, including trade or business associations, and ask them to comment on specific aspects of the case[22]. Interested parties' cooperation is voluntary. In its letter, the Commission will invite interested parties to reply within 1 month to ensure that the procedure is efficient. The Commission will send the same invitation to comment to the aid beneficiary.

40. In order to respect the rights of defence[23], the Commission will forward a non-confidential version of any comments received from interested parties to the Member State concerned and invite the Member State to reply within 1 month. If there are no comments from interested parties, the Commission will inform the Member State thereof.

41. The Commission invites the Member States to accept comments from interested parties in their original language, so that they can be forwarded as quickly as

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16 The 'meaningful summary' is intended to be a short summary of the grounds on which the Commission has decided to open the procedure. The meaningful summary is translated into all official languages of the Union and published together with the full text of the opening decision in the Official Journal.

17 Commission Communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions **(**OJ C 297, 9.12.2003, p. 6).

18 In line with paragraph 33 of the Communication on professional secrecy.

19 In line with paragraph 34 of the Communication on professional secrecy.

20 Article 6 of the Procedural Regulation.

21 Without prejudice to Article 12(1) of the Procedural Regulation.

22 According to settled case-law, the Commission is entitled to send the decision to open the formal investigation to identified interested parties; see for example judgment of 8 July 2004, Technische Glaswerke Ilmenau v Commission, T-198/01, ECLI:EU:T:2004:222, paragraph 196; Judgment of 24 September 2002, Falck Spa and others v Commission, C-74/00 P and C-75/00 P, ECLI:EU:C:2002:524, paragraphs 83 and 84.

23 And in accordance with Article 6(2) of the Procedural Regulation.

possible. Nevertheless, the Commission will provide a translation if a Member State asks for it. This may result in the procedure taking longer.

6.3. Member States' comments

42. The Commission strives to complete the formal investigation procedure as quickly as possible. Therefore, the Commission strictly applies the deadlines laid down in the Procedural Regulation. If a Member State does not submit comments on the opening decision or on third-party comments within 1 month[24], the Commission may extend the deadline by another month, if the request from the Member State is justified, stating that, except in exceptional circumstances, no further extension will be granted. If the Member State does not send a sufficient and meaningful reply, the Commission may take a decision on the basis of the information available to it[25].

43. If information which is essential for the Commission in order to come to a final decision is missing in the case of unlawful aid (that is to say if new aid put into effect is in breach of Article 108(3) of the Treaty), the Commission might issue an information injunction[26] requiring the Member State to provide such information. If the Member State does not respond to the injunction within the prescribed period, the Commission may take a decision based on the information available to it.

6.4. Requests for additional information from the Member State concerned

44. In very complex cases, the Commission may need to send a further request for information after the Member State's comments on the opening decision have been received. The deadline for the Member State to reply is normally 1 month.

45. If a Member State does not reply by the deadline, the Commission will send a reminder setting a final deadline, which is usually 20 working days. The Commission will also inform the Member State that, in the absence of a suitable response by the deadline, the Commission has several options of action according to the characteristics of the case: it may observe that the notification is withdrawn[27]; it may send a request for information to other sources[28]; in cases of unlawful aid, it may issue an information injunction; it may also take a decision based on the information available to it[29].

6.5. Requests for information made to other sources

46. After initiating the formal investigation procedure in cases where it has been formally concluded that the Member State has not provided sufficient information during the preliminary examination, the Commission may issue a request for information to sources other than the Member State[30].

47. If the Commission wants to request information from the aid beneficiary, it needs to obtain the Member State's express consent. The Member State will typically have a short deadline to reply to such a request for consent.

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24 Article 6(1) of the Procedural Regulation.

25 In line with Article 9(7) and Article 15(1) of the Procedural Regulation.

26 Article 12 of the Procedural Regulation.

27 Article 5(3) of the Procedural Regulation.

28 Article 7 of the Procedural Regulation.

29 Article 9(7) and Article 15(1) of the Procedural Regulation.

30 Article 7 of the Procedural Regulation.

48. The Commission will respect the principle of proportionality[31] and only request information from other sources if that information is at the disposal of those parties. Interested parties will have a reasonable period, usually no more than 1 month, to provide the information.

49. Besides requests for information from other sources, the Commission also has the power to investigate and collect information based on the case-law of the Court of Justice of the European Union[32]. This power is not affected by the specific rules governing requests for information to other sources.

6.6. Justified suspension of a formal investigation

50. The Commission will only suspend a formal investigation in exceptional circumstances and in agreement with the Member State. This could be the case if the Member State asks for a suspension to bring its project in line with the State aid rules, or where the judgment in a case pending before the Court of Justice of the European Union is likely to have an impact on the assessment of the case.

51. Formal suspension will normally only be granted once, and for a period agreed in advance between the Commission and the Member State.

6.7. Adoption of the final decision and justified extension of the formal investigation

52. The Commission always endeavours to adopt a final decision expeditiously and, as far as possible, within 18 months from the opening of the procedure[33]. That time limit may be extended by agreement between the Commission and the Member State. An extension may be appropriate if the case concerns a novel aid measure or raises novel legal issues.

53. To ensure that this 18-month deadline is complied with, the Commission will endeavour to adopt the final decision no later than 6 months after the Member State submits the last piece of information, or after the last deadline expires.

7. INVESTIGATIONS INTO SECTORS OF THE ECONOMY AND INTO AID INSTRUMENTS

54. The Commission has the power to conduct sector inquires, in which it will respect the principle of proportionality[34]. At the end of such an inquiry, the Commission will publish a report on the results of its investigation on DG Competition's website. The Commission will inform Member States and invite them and other concerned parties to comment on the report within a period of no more than 1 month.

55. The information obtained through the sector inquiry may be used in State aid procedures, and could lead to the Commission launching investigations into State aid measures on its own initiative.

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31 Article 7 of the Procedural Regulation.

32 For instance, in Case T-198/01, Technische Glaswerke Ilmenau v Commission, ECLI:EU:T:2004:222, the Court of First Instance recognised implicitly that the Commission was entitled to put questions to one of the firms that made comments following the decision to open the formal investigation procedure. Similarly, in Case T-296/97, Alitalia v Commission, ECLI:EU:T:2000:289, the Court of First Instance also implicitly accepted that the Commission could, via its appointed expert consultants, contact institutional investors in order to assess the conditions of investment of the Italian State in Alitalia.

33 Article 9(6) of the Procedural Regulation. Pursuant to Article 15(2) of that Regulation, the Commission is not bound by the deadline in the case of unlawful aid.

34 Article 25 of the Procedural Regulation.

8. FORMAL COMPLAINTS

56. The Commission endeavours to handle complaints from interested parties as efficiently and transparently as possible, using the best practices described below.

8.1. The complaint form and obligation to show affected interest

57. Article 1, point (h), of the Procedural Regulation defines interested parties as any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations. Interested parties wanting to submit a formal complaint to the Commission are to fill out the complaint form[35] and provide all the requested information, together with a non-confidential version of the complaint[36]. If the complaint form is complete and the submitting party shows that its interests might be affected by the granting of the aid as defined in Article 1, point (h), of the Procedural Regulation[37], the Commission will register the case as a formal complaint.

58. If the submitting party does not provide all information required by the complaint form or does not show that it has an interest to act, the Commission will treat the submission as market information[38]. The Commission will inform the submitting party to that effect. Market information may lead to further investigation by the Commission.

8.2. Indicative time frame and outcome of the investigation of a formal complaint

59. The Commission endeavours to investigate a formal complaint within a non-binding time limit of 12 months from when it is registered. The investigation could be longer based on the circumstances of the case, for example if the Commission needs to ask the complainant, the Member State or third parties for further information.

60. If a complaint is unsubstantiated, the Commission will try to inform the complainant within 2 months from its registration that there are insufficient grounds for taking a view on the case. The Commission will invite the complainant to submit further substantive comments within 1 month. If the complainant does not provide further comments within the deadline, the complaint will be considered to have been withdrawn.

61. With regard to complaints on approved aid or aid measures which do not need to be notified, the Commission will also try to reply to the complainant within 2 months from receipt of the complaint.

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35 Annex IV to the Implementing Regulation.

36 See Article 24(2) of the Procedural Regulation.

37 'Interested party' means any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations.

38 As explained in Recital 32 in the preamble to the Procedural Regulation, '[t]o ensure the quality of the complaints submitted to the Commission, and at the same time transparency and legal certainty, it is appropriate to lay down the conditions that a complaint should fulfil in order to put the Commission in possession of information regarding alleged unlawful aid and set in motion the preliminary examination. Submissions not meeting those conditions should be treated as general market information, and should not necessarily lead to ex officio investigations.'

62. Depending on its workload and in applying its right to set the priorities for investigations[39], the Commission will try to carry out one of the following actions within 12 months following the registration of the complaint:

– adopt a decision[40], and send a copy to the complainant;

– send a letter to the complainant setting out its preliminary views on the measure based on the available information ('preliminary assessment letter'); this letter is not an official position of the Commission.

63. If the preliminary assessment letter provisionally concludes that there is no incompatible aid, the complainant can comment on it within 1 month. If the complainant does not comment within the deadline, the complaint will be considered to have been withdrawn.

64. If a complaint concerns unlawful aid, the Commission will remind the complainant that it is possible to start proceedings before national courts which can order that such aid be suspended or recovered[41]. The Commission may treat formal complaints on aid measures which are being challenged before national courts as a low priority for the duration of those proceedings.

65. The Commission will usually, but not necessarily, forward the non-confidential version of the substantiated complaints to the Member State for comments. The Commission will invite the Member State to meet the deadlines for commenting and providing information on complaints. Complaints will normally be sent to the Member State in their original language. Nevertheless, the Commission will provide a translation if the Member State asks for it. This may result in the procedure taking longer.

66. The Commission will systematically keep Member States and complainants informed of the processing or closure of complaints.

9. EVALUATION PLANS

67. The positive effects of State aid should outweigh its potential negative effects on competition and trade. To ensure that this is the case, the Commission encourages an effective *ex post* evaluation of aid schemes which could lead to substantial distortions of competition. This includes aid schemes with large budgets or novel characteristics, and schemes in markets where significant market, technology or regulatory changes are expected. The Commission will decide during the pre-notification phase whether an evaluation is necessary. The Commission will inform the Member State as soon as possible, so that it has enough time to prepare an evaluation plan.

68. For schemes that must be evaluated on the basis of Commission Regulation (EU) No 651/2014 of 17 June 2014, Commission Regulation (EU) 2022/2472 of 14 December 2022 or Commission Regulation (EU) 2022/2473 of 14 December 2022 ('Block

39 Judgment of 4 July 2007, Bouygues SA v Commission, T-475/04, ECLI:EU:T:2007:196, paragraphs 158 and 159.

40 Article 4 of the Procedural Regulation.

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

Exemption Regulations'[42]), the Member State must notify its evaluation plan to the Commission within 20 working days from the scheme's entry into force. The Commission will assess the evaluation plan and, if it meets the conditions, approve it as soon as possible. The Commission will also then extend the period for which the scheme can be implemented under the Block Exemption Regulations.

69. For notified schemes that must be evaluated, the Member State must submit its evaluation plan to the Commission at the same time as the notification. The Commission will assess the evaluation plan alongside the scheme itself, and its decision will cover both the plan and the scheme. All procedural requirements from the Procedural Regulation apply in full.

10. MONITORING

70. The Commission keeps all systems of aid that exist in the Member States under constant review[43]. The review takes place in cooperation with the Member States, which must provide all the necessary information to the Commission[44].

71. Since SAM, Member States have had greater possibilities to grant aid without notifying it to the Commission, mainly because Block Exemption Regulations now apply to more measures. To ensure that those measures comply with the rules in a consistent way throughout the Union, it is increasingly important for the Commission to monitor how Member States apply existing or exempted aid schemes. Therefore, the Commission has set up an annual monitoring process during which it selects a sample of State aid cases for further scrutiny.

72. The Commission checks both the compliance of the selected schemes with their legal basis and their implementation[45].

73. The Commission obtains the necessary information for the monitoring process through requests for information to the Member States. Member States usually have 20 working days to reply to these requests. In justified cases, for example where an exceptionally large amount of information needs to be provided, that period may be longer.

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42 See Article 1(2), point (a) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/651/oj (General Block Exemption Regulation or 'GBER'), Article 1(3), point (a) of the Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (Agriculture Exemption Regulation or 'ABER'), OJ L 327, 21.12.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2472/oj and Article 1(7), point (a) of the Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (Fishery Block Exemption Regulation or FIBER), OJ L 327, 21.12.2022, p. 82, ELI: http://data.europa.eu/eli/reg/2022/2473/oj.

43 On the basis of Article 108(1) of the Treaty.

44 In accordance with Article 21(1) of the Procedural Regulation.

45 If the scheme was actually implemented.

74. If the information provided is not sufficient to conclude whether the measure is correctly designed and implemented, the Commission will send further requests for information to the Member State.

75. The Commission will try to complete the monitoring of a State aid measure within 12 months from the first request for information and inform the Member State concerned of the outcome.

11. INTERNAL REVIEW MECHANISM FOLLOWING THE AARHUS CONVENTION COMPLIANCE COMMITTEE FINDINGS IN CASE ACCC/C/2015/128

76. Following the Aarhus Convention Compliance Committee findings in case ACCC/C/2015/128, the Commission will handle requests for an internal review lodged by the eligible entities referred in paragraph 77 using the mechanism described below.

11.1. Entities eligible to request an internal review

77. Any non-governmental organisation that meets the criteria set out in paragraph 78 will be eligible to request an internal review with the Commission in respect of the State aid decisions listed in paragraph 82, on the grounds that the activity subject to State aid or any of the aspects of the State aid measure approved by that decision that are indissolubly linked to the object of the aid[46], may contravene Union environmental law, as in Article 2(1), point (f) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council[47].

78. A non-governmental organisation should be eligible to request an internal review as referred to in paragraph 77, provided that:

(a) it is an independent, non-profit legal person in accordance with a Member State's national law or practice;

(b) it has the primary stated objective of promoting environmental protection in the context of environmental law;

(c) it has existed for more than two years and is actively pursuing the objective referred to under (b);

(d) the subject matter in respect of which the request for internal review is made is covered by its objective and activities.

11.2. Evidence to be provided to determine whether non-governmental organisations are eligible to request an internal review

79. Any non-governmental organisation that submits a request for internal review of a State aid decision as referred to in paragraph 77 must provide evidence that it meets

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46 See above, ex multis, judgment of 22 March 1977, Iannelli & Volpi SpA v Ditta Paolo Meroni, 74/76, EU:C:1977:51, paragraph 14.

47 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).

the eligibility criteria set out in paragraph 78, in the form of the documents listed below:

(a) statutes or by-laws of the non-governmental organisation, or, in the case of Member States where national law does not require or provide for a non-governmental organisation to adopt statutes or by-laws, any other document fulfilling the same role under national practice;

(b) annual activity reports of the non-governmental organisation for the last two years;

(c) a copy of the legal registration with the national authorities in the case of non-governmental organisations established in countries where registering with the national authorities is a prerequisite for a non-governmental organisation to obtain legal personality;

(d) where relevant, and without prejudice to requirement to provide the documents mentioned in points (a) to (c) of this paragraph, information and documentation showing that the non-governmental organisation has previously been acknowledged by the Commission as being eligible to make a request for internal review as referred to in paragraph 77, along with a declaration by the non-governmental organisation that the conditions for eligibility continue to be met.

(e) where any of those documents cannot be provided for reasons not attributable to the non-governmental organisation, that organisation may provide evidence in the form of any other equivalent document.

(f) where it is not clear from the documents that the non-governmental organisation has the primary stated objective of promoting environmental protection in the context of environmental law, that it has existed for more than two years and that it is actively pursuing this objective, or that the subject matter in respect of which the request for internal review is made is covered by the objectives and activities of the non-governmental organisation, that organisation must submit any other document providing evidence that it meets this criterion.

11.3. Representation by a non-governmental organisation or a lawyer

80. Where non-governmental organisations are represented by a non-governmental organisation, the conditions of paragraph 79 apply also to the representing non-governmental organisation.

81. Where non-governmental organisations are represented by a lawyer, the request must include documents and data proving that the lawyer is authorised to practise before a court of a Member State. Those documents may include a certificate issued by a bar association in a Member State or any other document fulfilling the same purpose under national rules. The lawyer must also provide as evidence a power-of-attorney that they can represent their client.

11.4. State aid decisions in respect of which a request for internal review may be submitted

82. Eligible non-governmental organisations may make a request for internal review of the Commission's final State aid decisions closing the formal investigation procedure

initiated under Article 108(2) of the Treaty, in accordance with Article 9(3) and (4) of Regulation (EU) 2015/1589, where the legal basis for such decision is:

(i) Article 107(3), point (a), of the Treaty;

(ii) Article 107(3), point (b), first part, of the Treaty;

(iii) Article 107(3), point (c), of the Treaty;

(iv) Article 107(3), point (d), of the Treaty;

(v) Article 107(3), point (e), of the Treaty;

(vi) Article 106(2) of the Treaty;

(vii) Article 93 of the Treaty.

11.5. Content of a request for internal review

83. The request for an internal review of a Commission decision as referred to in paragraph 77 must be made in writing, using the form in Annex V to the Implementing Regulation and must:

(a) specify the Commission final State aid decision for which a review is sought;

(b) indicate the specific provisions of Union environmental law that are alleged to have been breached by the aided activity or by any aspects of the State aid measure that are indissolubly linked to the objective of the aid;

(c) state the grounds on which the request is made;

(d) provide relevant and structured information and documentation as well as facts or legal arguments supporting each of those grounds;

(e) specify the name and contact details of the person empowered to represent the requesting party vis-à-vis third parties for the internal review;

(f) provide evidence that the requesting party is eligible to make the request in accordance with the criteria and conditions set out in paragraphs 77, 78 and 79.

84. The request for internal review must not exceed 30 pages (not including documents to provide evidence that the eligibility criteria set out in paragraph 78 have been met and other annexes to support the request).

85. Annexes must be numbered, must have clearly marked headings, and should be referenced in the request for internal review, to provide evidence on specific factual or legal arguments raised by the non-governmental organisation.

86. For the purpose of paragraph 83, point (e), where a joint request is made by several non-governmental organisations, a single contact point must be designated.

87. To speed up the internal review procedure, the Commission strongly encourages the use of the following language waiver, which must be dated and signed by the non-governmental organisation and submitted with the request:

‘The undersigned, representing the requesting non-governmental organisation lodging the request concerning [specify the number and title of the State aid decision], agrees exceptionally to waive their rights under Article 342 of the Treaty on the Functioning of the European Union in conjunction with Article 3 of EEC

Council Regulation No. 1/1958 and for the Commission reply adopted and notified under Article 297 of the Treaty to be drafted in English.'

11.6. Assessment by the Commission

88. The Commission will consider a request if it is lodged by eligible entities as referred in paragraph 77, if it is submitted using the form mentioned in paragraph 83 and within time limits specified in paragraph 94, unless it is manifestly inadmissible or clearly unsubstantiated. The Commission State aid decision remains in force during the assessment.

89. Where several requests for internal review are submitted in connection with one State aid decision, the Commission may decide to combine the review requests and treat them as one.

90. The Commission will verify that the evidence put forward by the non-governmental organisation shows that one or several specific provisions of Union environmental law have been breached by the aided activity or by any aspects of the State aid measure that are indissolubly linked to the objective of the aid.

91. If, on the basis of the information provided in accordance with paragraphs 77, 78 and 79, it is not possible for the Commission to fully assess whether the criteria or conditions are met, it will invite the requesting party to provide additional documentation or information, as well as a non-confidential version of such documentation or information, if the case. The requesting party must reply within a reasonable period to be specified by the Commission, not exceeding 30 days. During that period, the time limits referred to in paragraphs 95 and 96 will be suspended.

92. The Commission will send the request for internal review to the Member State whose measure was approved by the State aid decision under review so that it may respond with comments, as well as a non-confidential version of those comments where relevant. During this consultation period, which must not exceed 30 days, the time limits referred to in paragraphs 95 and 96 will be suspended.

93. Where relevant, the Commission may consult other relevant national authorities in any Member State to verify and assess the information provided by the non-governmental organisation or lawyer concerned regarding the eligibility criteria set out in paragraph 78 or the grounds of the request. The national authorities consulted should provide a non-confidential version of their comments, where relevant. During this consultation period, which must not exceed 30 days, the time limits referred to in in paragraphs 95 and 96 will be suspended.

11.7. Time limits

94. The request for internal review must be made by the non-governmental organisation within a time limit not exceeding eight weeks after the Commission State aid decision has been published in *the Official Journal of the European Union*.

95. The Commission must state its reasons in a reply as soon as possible, but no later than 16 weeks after the expiry of the eight-week deadline referred to in paragraph 94.

96. Where, despite exercising due diligence, the Commission is unable to meet the deadline referred to in paragraph 95, it must as soon as possible and at the latest within the period indicated in the previous paragraph, inform the non-governmental organisation that made the request of when it intends to do so. In any event, the

Commission must issue a reply within 22 weeks of the expiry of the eight week deadline referred to in paragraph 94.

11.8. Proceedings before the Court of Justice of the European Union

97. The non-governmental organisation that made the request for internal review in line with paragraph 77, and in accordance with the conditions specified above, may institute proceedings before the Court of Justice of the European Union in accordance with the Treaty. Such proceedings do not have a suspensive effect on the Commission State aid decision.

11.9. Electronic submission of requests for internal review

98. Requests for an internal review of a State aid decision in accordance with paragraph 77 must be submitted via the designated online system publicly accessible on the Commission's website.

11.10. Publication and online systems for receipt of requests

99. The Commission will publish all requests for an internal review on a designated website as soon as possible after receiving them, as well as the Commission replies as soon as possible after their adoption.

12. BETTER COORDINATION AND PARTNERSHIP WITH MEMBER STATES

100. Since SAM, Member States have had greater responsibility in State aid control and more possibilities to grant aid without notifying it to the Commission. Therefore, cooperation between the Commission and the Member States on the application of the new State aid rules has become more important.

101. To foster closer working relationships with Member States, the Commission has set up several working groups bringing together representatives from both the Member States and the Commission. These working groups meet on a regular basis and are meant to exchange information on practical aspects and lessons learned in the application of State aid rules. The Commission provides the secretariat for the working groups.

102. In addition, the Commission is also ready to support Member States, for example by providing informal guidance on the interpretation of the new rules. The Commission also tries to provide training sessions for Member States on State aid topics when asked for by the Member States.

103. The Commission has also set up a network of country coordinators to facilitate day-to-day contacts with Member States. The country coordinator is a contact point for Member States that wish to reach out to the Commission on the handling of cases and other aspects of the application of State aid rules. The country coordinators should be kept in copy of electronic communication on cross-cutting issues, especially on the case portfolio approach.

13. APPLICABILITY AND FUTURE REVIEW

104. The Commission will apply this Best Practices Code to notified measures and measures which were otherwise brought to its attention after it is published in the *Official Journal of the European Union.*

105. The Commission will apply Section 11 ('Internal review mechanism following the Aarhus Convention Compliance Committee findings in case ACCC/C/2015/128') to final Commission decisions mentioned in paragraph 82. Those decisions are based on notifications in which Member States confirmed that neither the aided activity nor any aspects of the notified State aid measure that are indissolubly linked to the object of the aid are in breach of Union environmental law, according to the Implementing Regulation.

106. For non-notified aid, the Commission will apply Section 11 to final Commission decisions closing the formal investigation procedure mentioned in paragraph 82 in cases where the decision to initiate proceedings under Article 108(2) of the Treaty was adopted after the publication of the Commission Implementing Regulation (EU) [OP please insert the reference] amending Regulation (EC) No 794/2004 in the *Official Journal of the European Union*.

107. This Best Practices Code may be revised to reflect:

- changes to legislative, interpretative and administrative measures;
- the relevant case-law of the Court of Justice of the European Union;
- experience gained in its application.

108. The Commission will engage, on a regular basis, in dialogue with the Member States and other stakeholders on the application of the Procedural Regulation in general, and this Best Practices Code in particular.