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**COMMUNICATION FROM THE COMMISSION**

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

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

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## 1. SCOPE AND PURPOSE OF THE CODE

1. Over recent years, 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.
1. The Commission has, in particular, adopted:
  - A Notice on the Notion of State Aid ('NoA')<sup>1</sup> clarifying the types of public support that do not involve State aid. This is the case, for example, for funding of economic activities on market terms, investments in infrastructure such as railways, motorways, inland waterways and water distribution systems which do not compete with similar infrastructures, investments in small-scale infrastructures and funding of essentially local services.
  - A General Block Exemption Regulation ('GBER')<sup>2</sup> allowing Member States to implement a wide range of State aid measures without prior Commission approval which are unlikely to distort competition. More than 97% of newly implemented State aid measures fall under the GBER and, therefore, are implemented without prior Commission approval<sup>3</sup>.
  - A revised Procedural State Aid Regulation, including rules on complaint-handling and on market information tools to target State aid control on cases which are most liable to distort competition in the Internal Market<sup>4</sup>.
  - A series of decisions in specific cases confirming that Member States can support many small-scale projects without State aid control, due to their local nature and very limited impact on the Internal Market<sup>5</sup>.
2. The effort to focus and streamline EU State aid rules is continuing. In the context of the Multiannual Financial Framework 2021-2027, the Commission has proposed a revision of the EU State aid Enabling Regulation to make it easier (i) to combine EU Funding which is paid in the form of financial instruments with Member States

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<sup>1</sup> Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1-50.

<sup>2</sup> Commission Regulation (EU) No. 651/2014 of 17 June 2014, OJ L 187, 26.06.2014, p. 1-78, as further amended by Commission Regulation (EU) 2017/1084 of 14 June 2017, OJ L 156, 20.6.2017, p. 1-18.

<sup>3</sup> Commission State Aid Scoreboard 2017, Results, trends and observations regarding EU28 State Aid expenditure reports for 2016, 29.11.17, p. 14.

<sup>4</sup> 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. 9-29.

<sup>5</sup> See Commission Press Release, State aid: Commission gives guidance on local public support measures that do not constitute State aid, IP/16/3141, 21 September 2016; Commission Press Release, State Aid: Commission gives guidance on local public support measures that can be granted without prior Commission approval, IP/15/4889, 29 April 2015.

funding and (ii) streamline the conditions for Member States to support certain projects under EU structural and investment funds<sup>6</sup>.

4. To make the most of those 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<sup>7</sup>. It aims to make State aid procedures as transparent, simple, clear, predictable and timely as possible. It replaces the Notice on a Code of Best Practices adopted in 2009<sup>8</sup> and integrates the Simplified Procedure Notice of 2009<sup>9</sup>.
5. 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 services will continue to offer pre-notification contacts concerning potential State aid measures that the Member States are considering implementing. They will work with the Member States to define priorities with regard to the procedural handling of cases. Furthermore, they 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 services will encourage them to share experiences with it and each other on best practices and challenges encountered in applying the State aid rules.
6. This Best Practices Code also seeks to improve the procedure for dealing with State aid complaints. It clarifies the conditions under which the Commission services will consider a case to be a formal complaint and provides indicative deadlines for the handling of formal complaints.
7. The specific features of an individual case may however 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 code.

## **2. RELATIONSHIP TO EU LAW**

8. This code describes and clarifies the procedures followed by the Commission services when assessing State aid cases. It does not provide an exhaustive overview of EU State aid rules, but should rather be read together with all other documents containing those rules. The code does not create any new rights in addition to those

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<sup>6</sup> Commission Proposal for a Council Regulation amending Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid, COM/2018/398 final - 2018/0222, 06/06/2018.

<sup>7</sup> Since a significant part of the measures covered by Simplified Procedure Notice are now exempted from State aid notification and the use of that procedure is thus very limited, the Simplified Procedure Notice has been integrated into the present Best Practices Code.

<sup>8</sup> Commission Notice on a Code of Best Practice for the conduct of State aid control procedures, OJ C 136, 16.6.2009, p. 13-20.

<sup>9</sup> Commission Notice on a Simplified procedure for the treatment of certain types of State aid, OJ C 136, 16.6.2009, p. 3-12.

laid down in the Treaty on the Functioning of the European Union ('the Treaty'), the Procedural Regulation<sup>10</sup> and the Implementing Regulation<sup>11</sup> and their interpretation by the EU Courts. It also does not alter those rights in any way.

### **3. PRE-NOTIFICATION**

#### **3.1. Objectives**

9. The Commission services invite the Member States to contact them before formally notifying potential State aid measures to the Commission ('pre-notification contacts'). These 'pre-notification contacts' have several objectives.
10. First, during these pre-notification contacts, the Commission services 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<sup>12</sup>.
11. Second, during the pre-notification contacts, the Commission services and the Member State can discuss the legal and economic aspects of a proposed measure in an informal and confidential<sup>13</sup> 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.
12. Third, during the pre-notification phase the Commission services will make a first assessment of whether or not a case qualifies for application of the streamlined procedure (see Section 6).

#### **3.2. Scope**

13. The Commission services will engage in pre-notification contacts whenever a Member State requests them. The Commission services 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 services. Pre-notification contacts can also be useful for projects of common interest with high EU 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.

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<sup>10</sup> 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.

<sup>11</sup> 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, as last amended by Commission Regulation (EU) 2015/2282 of 27 November 2015, OJ L 325, 10.12.2015, p 1.

<sup>12</sup> See Article 4(5) referring to decisions under Articles 4(2), 4(3) and 4(4) of the Procedural Regulation. That deadline cannot be respected where the Commission's services has to issue several requests for information due to incomplete notifications.

<sup>13</sup> Based on 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.

### **3.3. Timing**

14. To ensure that the pre-notification contacts are efficient, Member States should provide the Commission services 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 services and the Member State may also take place.
15. For particularly complex cases (such as those on restructuring aid, or large or complex individual aid measures), the Commission services recommend 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.
16. 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.
17. After the conclusion of the pre-notification contacts, the Member State should be able to submit a complete notification. In cases where the Commission services consider that pre-notification contacts do not bring satisfactory results, they 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**

18. 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.
19. 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.
20. The Commission services 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 services on the completeness of the draft notification and an informal and non-binding assessment<sup>14</sup> of whether the measure constitutes State aid and whether or not it is compatible with the internal market.
21. In particularly novel or complex cases, the Commission services 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, they may indicate in writing what

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<sup>14</sup> Thus, it does not constitute or prejudge an official position of the Commission.

information still needs to be provided to enable them to carry out an assessment of the measure.

22. 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 services 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**

23. Member States may ask the Commission services 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 services. Twice per year<sup>15</sup>, the Commission services will ask the Member States to inform them 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 services 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*

24. 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 services 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.
25. In particular the Commission services and the Member State could agree on the following:
- Priority treatment of the case as part of the portfolio exercise. Where necessary for planning or resource purposes<sup>16</sup>, 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<sup>17</sup> of other cases from its portfolio.

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<sup>15</sup> Currently at the end of January and the end of September of each year.

<sup>16</sup> For instance, in cases where the financial institutions of the European Union act as holding fund.

<sup>17</sup> See Article 4(5) of the Procedural Regulation.



- Which information<sup>18</sup> the Member State and/or the intended aid beneficiary should provide to the Commission services, and which type of unilateral information-gathering the Commission services intend to use in the case.
  - The likely form and duration of the assessment of the case by the Commission services after its notification.
26. If the Member State promptly provides all information agreed upon, the Commission services will endeavour to comply with the mutually agreed time frame for their 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*
27. 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.
28. 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**

29. The Commission services start their preliminary examination of each notified measure when they receive its notification. If they need further information after an aid measure has been notified, they will send a request for information to the Member State. Because the Commission services try to group requests for information and because pre-notification contacts should ensure that Member States submit complete notifications<sup>19</sup>, 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.
30. After receiving the Member State's response, the Commission services 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.
31. If the Member State does not provide the requested information within the deadline, the Commission services will send a reminder. If, after one reminder, the Member State still does not send the information, the Commission services will inform the Member State that the notification is considered as withdrawn<sup>20</sup>, unless there are exceptional circumstances. If a notification is considered to have been withdrawn,

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<sup>18</sup> For example studies or external expertise.

<sup>19</sup> Unless otherwise agreed in Mutually Agreed Planning.

<sup>20</sup> On the basis of Article 5(3) of the Procedural Regulation.

the Member State may subsequently re-notify the measure with the missing information added.

32. 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**

33. The Commission services 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.
34. 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 services will continue the procedure from the point at which it was suspended. The Commission services 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**

35. Upon request, the Commission services will inform the Member State of the state of play of the preliminary examination of the notification.
36. 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. The Commission services recommend the beneficiary becomes involved in such contacts. Nevertheless, the decision on whether or not to involve the beneficiary rests with the Member State.

## **6. STREAMLINED PROCEDURE IN STRAIGHTFORWARD CASES**

### **6.1. Cases that may be subject to the streamlined procedure**

37. If a case is straightforward and certain conditions are fulfilled, the Commission may agree to handle it under a streamlined procedure. In such cases, the Commission will, within 25 days from the date of notification, endeavour to adopt a short-form decision finding that the notified measure does not constitute aid or a decision not to raise objections<sup>21</sup>.
38. If a Member State asks for the streamlined procedure to be applied, the Commission services will decide whether the case is suitable for this procedural treatment. This may, in particular, be the case when a measure is sufficiently similar to other

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<sup>21</sup> Pursuant to Article 4(2) or 4(3) of the Procedural Regulation.

measures which were approved in at least three Commission decisions adopted in the 10 years preceding the date of pre-notification ('precedent decisions'). To decide whether the measure is sufficiently similar to those assessed in the precedent decisions, the Commission services will look at all applicable substantive and procedural conditions, and in particular at the objectives and overall set-up of the measure, the types of beneficiaries, eligible costs, individual notification ceilings, aid intensities and applicable bonuses (if any), cumulation provisions, incentive effect and transparency requirements.

39. Generally, where at least three precedent decisions are available, it is clear that the measure does not constitute aid or that the aid measure is compatible with the internal market. Nevertheless, this may not be the case in certain circumstances, for example if the Commission is reassessing the precedent decisions in the light of recent case-law. As such cases need to be closely examined, the Commission services will usually refuse to apply the streamlined procedure.
40. The Commission services may also refuse to apply the streamlined procedure in cases where the aid measure could benefit a company which is under an obligation to repay State aid that the Commission held to be illegal and incompatible with the internal market<sup>22</sup>.

## **6.2. Pre-notification contacts in determining the use of streamlined procedure**

41. The Commission services will only agree to apply the streamlined procedure if pre-notification contacts have taken place on the aid measure in question. In this context, the Member State should submit a draft notification form containing all relevant information, including references to precedent decisions, and a draft summary of the notification<sup>23</sup>, which is intended for publication on the website of DG Competition.
42. The Commission services will only apply the streamlined procedure if they consider the notification form to be, in principle, complete. This means that the Commission services in principle would have enough information to approve the measure, if the Member State bases its notification on the draft notification form including the results of the pre-notification contacts.

## **6.3. Notification and publication of the short summary**

43. The time limit of 25 days for the adoption of a short-form decision (see Point 38) starts when the Member State submits the notification. The standard notification forms<sup>24</sup> are used in the streamlined procedure.
44. After having received the notification, the Commission services will publish a summary of the notification<sup>25</sup> on DG Competition's website and will state that the aid measure may qualify for the application of the streamlined procedure. Interested parties will then have 10 working days to comment, particularly on circumstances which might require more thorough examination. If an interested party raises

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<sup>22</sup> On the basis of an outstanding recovery order of the Member States, see Judgment of the ECJ of 9 March 1994, Case C-188/92, TWD Textilwerke Deggendorf, ECLI:EU:C:1994:90.

<sup>23</sup> Annex to this Best Practices Code.

<sup>24</sup> Annex I of the Implementing Regulation.

<sup>25</sup> This summary is based on the standard form provided in the Annex of this Best Practices Code.

concerns which are at first sight well founded, the Commission services will apply the normal procedure. They will inform the Member State and the interested parties thereof.

#### **6.4. Short-form decision**

45. In cases where the streamlined procedure is applied, the Commission will normally issue a short-form decision. The Commission will endeavour to adopt a decision finding that the notified measure does not constitute aid or a decision not to raise objections<sup>26</sup> within 25 working days from notification.
46. The short-form decision contains the summary published at the time of notification and a short assessment of the measure under Article 107(1) of the Treaty and, where applicable, mentions that it is in line with the Commission's previous decision-making practice. The public version of the decision will be published on DG Competition's website.

### **7. THE FORMAL INVESTIGATION PROCEDURE**

47. 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.

#### **7.1. Publication of the decisions and meaningful summaries**

48. The Commission endeavours to publish its decision to open the formal investigation procedure ('opening decision'), together with a meaningful summary<sup>27</sup> within 2 months of its adoption in cases where the Member State does not ask for confidential information to be removed from the decision.
49. Where there is disagreement between the Commission services and the Member State about removal of confidential information from the opening decision, the Commission will apply the principles of the Communication on professional secrecy<sup>28</sup> and will publish the decision as soon as possible after its adoption<sup>29</sup>. The same practice applies to the publication of all final decisions<sup>30</sup>.

#### **7.2. Interested parties' comments**

50. Interested parties, including the beneficiary of the aid, may comment on the opening decision within 1 month of its publication<sup>31</sup>. The Commission services will, in principle, not extend that deadline or accept submissions after it has passed<sup>32</sup>. The Commission services can grant an extension only in exceptional and duly justified

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<sup>26</sup> Based on Article 4(2) or 4(3) of the Procedural Regulation.

<sup>27</sup> 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 EU and published together with the full text of the opening decision in the Official Journal.

<sup>28</sup> Commission communication on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6).

<sup>29</sup> In line with paragraph 33 of the Communication on professional secrecy.

<sup>30</sup> In line with paragraph 34 of the Communication on professional secrecy.

<sup>31</sup> Article 6 of the Procedural Regulation.

<sup>32</sup> Without prejudice to Article 12(1) of the Procedural Regulation.

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.

51. In very complex cases, the Commission services may send a copy of the opening decision to interested parties, including trade or business associations, and ask them to comment on specific aspects of the case<sup>33</sup>. Interested parties' cooperation is voluntary. In their letter, the Commission services 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.
52. In order to respect the rights of defence<sup>34</sup>, the Commission services 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 services will inform the Member State to that effect.
53. The Commission services invite the Member States to accept comments from interested parties in their original language, so that they can be forwarded as quickly as possible. Nevertheless, the Commission services will provide a translation if a Member State asks for it. This may result in the procedure taking longer.

### **7.3. Member States' comments**

54. The Commission services strive to complete the formal investigation procedure as quickly as possible. Therefore, they strictly apply 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<sup>35</sup>, the Commission services 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<sup>36</sup>.
55. 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<sup>37</sup> requiring the Member State to provide the 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.

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<sup>33</sup> 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 Case T-198/01, Technische Glaswerke Ilmenau v. Commission, ECLI:EU:T:2004:222, paragraph 195; Joined Cases C-74/00 P and C-75/00 P, Falck Spa and others v. Commission, ECLI:EU:C:2002:524, paragraph 83.

<sup>34</sup> And in accordance with Article 6(2) of the Procedural Regulation.

<sup>35</sup> Article 6(1) of the Procedural Regulation.

<sup>36</sup> In line with Article 9(7) and 15(1) of the Procedural Regulation.

<sup>37</sup> Article 12 of the Procedural Regulation.

#### **7.4. Requests for additional information from the Member State concerned**

56. In very complex cases, the Commission services 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.
57. If a Member State does not reply by the deadline, the Commission services will send a reminder, setting a final deadline, which is usually 20 working days. They will also inform the Member State that, in the absence of a suitable response by the deadline, the Commission has several options according to the characteristics of the case. It may observe that the notification is withdrawn<sup>38</sup>. It may send a request for information to other sources<sup>39</sup>. For cases of unlawful aid, the Commission may issue an information injunction. It may also take a decision based on the information available to it<sup>40</sup>.

#### **7.5. Requests for information made to other sources**

58. 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<sup>41</sup>.
59. If the Commission services want to request information from the aid beneficiary, they need 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.
60. The Commission services will respect the principle of proportionality<sup>42</sup> 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.
61. Besides requests for information from other sources, the Commission also has the power to investigate and collect information based on the case-law of EU courts<sup>43</sup>. This power is not affected by the specific rules governing requests for information to other sources.

#### **7.6. Justified suspension of a formal investigation**

62. The Commission services 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

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<sup>38</sup> Article 5(3) of the Procedural Regulation.

<sup>39</sup> Article 7 of the Procedural Regulation.

<sup>40</sup> Articles 9(7) and 15(1) of the Procedural Regulation.

<sup>41</sup> Article 7 of the Procedural Regulation.

<sup>42</sup> Article 7 of the Procedural Regulation.

<sup>43</sup> 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.

rules, or where the judgment in a case pending before EU courts is likely to have an impact on the assessment of the case.

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

#### **7.7. Adoption of the final decision and justified extension of the formal investigation**

64. The Commission always endeavours to adopt a final decision expeditiously and, as far as possible, within 18 months from the opening of the procedure<sup>44</sup>. That time limit may be extended by agreement between the Commission services and the Member State. An extension may be appropriate if the case concerns a novel aid measure or raises novel legal issues.

65. 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.

### **8. INVESTIGATIONS INTO SECTORS OF THE ECONOMY AND INTO AID INSTRUMENTS**

66. The Commission has the power to conduct sector inquiries, in which it will respect the principle of proportionality<sup>45</sup>. 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.

67. 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.

### **9. FORMAL COMPLAINTS**

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

#### **9.1. The complaint form and obligation to show affected interest**

69. Article 1(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 should fill out the complaint form<sup>46</sup> and provide all the requested information, together with a non-confidential version of the complaint<sup>47</sup>. If the complaint form is complete and the submitting party shows that its interests might be affected by the granting of the aid pursuant to Article 1(h) of

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<sup>44</sup> 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.

<sup>45</sup> Article 25 of the Procedural Regulation.

<sup>46</sup> Annex IV to the Implementing Regulation.

<sup>47</sup> See Article 24(2) of the Procedural Regulation.

the Procedural Regulation<sup>48</sup>, the Commission services will register the case as a formal complaint.

70. 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 services will treat the submission as market information<sup>49</sup>. The Commission services will inform the submitting party to that effect. Market information may lead to further investigation by the Commission.

## **9.2. Indicative time frame and outcome of the investigation of a formal complaint**

71. The Commission services endeavour to investigate a formal complaint within a non-binding time limit of 12 months from when they are registered. The investigation could be longer based on the circumstances of the case, for example if the Commission services need to ask the complainant, Member State or third parties for further information.
3. If a complaint is unsubstantiated, the Commission services will try to inform the complainant within 2 months from its registration that there are insufficient grounds for taking a view on the case. They 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.
73. With regard to complaints on approved aid and/or aid measures which do not need to be notified, the Commission services will also try to reply to the complainant within 2 months from receipt of the complaint.
74. Depending on its workload and in applying its right to set the priorities for investigations<sup>50</sup>, the Commission services will try to carry out one of the following within 12 months following the registration of the complaint:
- adopt a decision<sup>51</sup>, 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.
75. If the preliminary assessment letter provisionally concludes that there is no incompatible aid, the complainant can comment on it within 1 month. If the

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<sup>48</sup> '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.

<sup>49</sup> 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.

<sup>50</sup> Case T-475/04, *Bouygues SA v Commission*, ECLI:EU:T:2007:196, paragraphs 158 and 159.

<sup>51</sup> Article 4 of the Procedural Regulation.



complainant does not comment within the deadline, the complaint will be considered to have been withdrawn.

76. If a complaint concerns unlawful aid, the Commission services will remind the complainant that it is possible to start proceedings before national courts which can order that such aid be suspended or recovered<sup>52</sup>. The Commission services may treat formal complaints on aid measures which are being challenged before national courts as a low priority for the duration of those proceedings.
77. The Commission services will usually, but not necessarily, forward the non-confidential version of the substantiated complaints to the Member State for comments. The Commission services will invite the Member State concerned 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 services will provide a translation if the Member State asks for it. This may result in the procedure taking longer.
78. The Commission services will systematically keep Member States and complainants informed of the processing or closure of complaints.

## **10. EVALUATION PLANS**

79. 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 services will decide during the pre-notification phase whether an evaluation is necessary. They will inform the Member State as soon as possible, so that it has enough time to prepare an evaluation plan.
80. For schemes that must be evaluated on the basis of the GBER<sup>53</sup>, 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. It will also then extend the period for which the scheme can be implemented under the GBER.
81. 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.

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<sup>52</sup> See Commission Notice on the Enforcement of State Aid Law by National Courts (OJ C 85, 9.4.2009, p. 1-22).

<sup>53</sup> Article 1(2)(a) of the GBER excludes from the scope of the block-exemption aid schemes with annual budgets exceeding EUR 150 million, from 6 months of their entry into force, unless the Commission has prolonged that period following the approval of an evaluation plan.

## **11. MONITORING**

82. The Commission keeps all systems of aid that exist in the Member States under constant review<sup>54</sup>. The review takes place in cooperation with the Member States, which must provide all the necessary information to the Commission<sup>55</sup>.
83. Since SAM, Member States have had greater possibilities to grant aid without notifying it to the Commission, mainly because GBER now applies to more measures. To ensure that those measures comply with the rules in a consistent way throughout the EU, it is increasingly important for the Commission to monitor how Member States apply existing or exempted aid schemes. Therefore, the Commission services have set up an annual monitoring process during which they select a sample of State aid cases for further scrutiny.
84. The Commission services check both the compliance of the selected schemes with their legal basis and their implementation<sup>56</sup>.
85. The Commission services obtain 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.
86. If the information provided is not sufficient to conclude whether the measure is correctly designed and implemented, the Commission services will send further requests for information to the Member State.
87. The Commission services 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.

## **12. BETTER COORDINATION AND PARTNERSHIP WITH MEMBER STATES**

88. 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.
89. To foster closer working relationships with Member States, the Commission services have 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 services provide the secretariat for the working groups.
90. In addition, the Commission services are also ready to support Member States, for example by providing informal guidance on the interpretation of the new rules. The

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<sup>54</sup> On the basis of Article 108(1) of the Treaty.

<sup>55</sup> In accordance with Article 21(1) of the Procedural Regulation.

<sup>56</sup> If the scheme was actually implemented.

Commission services also try to provide training sessions for Member States on State aid topics when asked for by the Member States.

91. The Commission services have also set up a network of country coordinators to facilitate day-to-day contacts with the Member States. The country coordinator is a contact point for Member States that wish to reach out to the Commission services 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. FUTURE REVIEW**

92. The Commission will apply this Best Practices Code to notified measures and measures which were otherwise brought to its attention 30 days after it is published in the *Official Journal of the European Union*.
93. This Best Practices Code may be revised to reflect:
- changes to legislative, interpretative and administrative measures;
  - the relevant case-law of the EU Courts; or
  - experience gained in its application.
94. 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.

ANNEX

**Summary of Notification: Invitation to third parties to submit comments  
Notification of a State Aid measure**

On ... the Commission received a notification of an aid measure pursuant to Article 108 of the Treaty on the Functioning of the European Union. On preliminary examination, the Commission finds that the notified measure could fall within the scope of the Streamlined Procedure pursuant to Section 6 of Communication from the Commission on a Code of Best Practices for the conduct of State aid control procedures (OJ C ... xx.xx.2018, p. ...).

The Commission invites interested third parties to submit their possible observations on the proposed measure to the Commission.

The main features of the aid measure are the following:

Reference number of the aid: SA ...

Member State:

Member State reference number:

Region:

Granting authority:

Title of the aid measure:

National legal basis:

Proposed Union basis for assessment: ... guidelines or established Commission practice as highlighted in Commission Decision (1, 2 and 3).

Type of measure: Aid scheme/Ad hoc aid

Amendment of an existing aid measure:

Duration (scheme):

Date of granting:

Economic sector(s) concerned:

Type of beneficiary (SMEs/large enterprises):

Budget:

Aid instrument (grant, interest rate subsidy, ...):

Observations raising competition issues relating to the notified measure must reach the Commission no later than 10 working days following the date of this publication and include a non-confidential version of these observations to be provided to the Member State concerned and/or other interested parties. Observations can be sent to the Commission by fax, by post or email under reference number SA ... to the following address:

European Commission  
Directorate-General for Competition  
State Aid Registry  
1049 Bruxelles/Brussels  
BELGIQUE/BELGIË  
Fax +32 22961242  
Email: stateaidgreffe@ec.europa.eu