



Brussels, 25 November 2016

Consultation Paper

REVIEW OF THE CODE OF BEST PRACTICE ON THE CONDUCT OF STATE AID CONTROL PROCEEDINGS

The purpose of this consultation is to seek the views of **Member States** and **stakeholders** on the application of the **Notice from the Commission** on a Code of Best Practice on the conduct of State aid control proceedings¹ ('the Code').

The responses will feed the review referred to in Paragraph 57 of the Code.

All citizens and organisations are welcome to contribute to this consultation. Contributions are particularly sought from: Member States and interested parties in State aid procedures, including national, regional and local authorities, courts, courts of auditors, aid beneficiaries, complainants, trade and business associations, legal and business community, etc.

The Commission invites Member States and stakeholders to submit, preferably by email, their responses to the Directorate General for Competition ('DG COMP') by **25 February 2017**.

1. INTRODUCTION

On 16 June 2009, the Commission adopted the Code which provides guidance on the day-to-day conducts of State aid procedures. In that respect, it encourages the use of pre-notification contacts and provides a framework for streamlining the exchange of information between the Commission and the Member States.

The Code entered into force on 1 September 2009.

Following the revision of the Procedural Regulation² in the context of the State Aid Modernisation process, a revision of the Code is necessary to reflect the new provisions. This

¹ OJ C 136, 16.06.2009, p. 13-20.

² 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.

consultation therefore aims to gather the views of the Member States and stakeholders on the implementation of the Code over the past seven years.

2. HOW TO RESPOND TO THE CONSULTATION

Member States and stakeholders are invited to respond to the questionnaire below.

Replies can be submitted in all official languages of the EU. However, you are invited to submit your response to the questionnaire in one of the Commission's working languages (English, French or German). This is to avoid possible delays due to translation and to speed up the processing of the responses.

The questions are organised by topic. If you do not feel concerned by a particular question, please reply 'not applicable'.

The deadline for submitting your response is **25 February 2017**. Please note that we cannot guarantee to take account of responses received after the deadline.

Your response should be sent, with the reference '**HT 4816**', preferably by e-mail to: COMP-03-PUBLIC-CONSULTATION@ec.europa.eu

Alternatively, your response may also be sent to the following postal address:

European Commission
Directorate-General for Competition
For the attention of the State Aid Registry
1049 Bruxelles
BELGIQUE

ABOUT YOU

SPECIFIC PRIVACY STATEMENT

You should note that the Commission intends to publish online the responses to this questionnaire at: <http://ec.europa.eu/competition/consultations/open.html>.

Therefore, if you do not wish your identity and/or all or parts of your responses to be published, you should clearly indicate this below.

For more information on the EU's data protection policy:
http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata

Please provide your contact details below.

Name

Organisation represented

Main business activities

Location (country)

E-mail address:

In the interests of transparency, the Commission asks organisations who wish to submit comments in the context of public consultations to provide the Commission and the public at large with information about whom and what they represent by registering in the Transparency Register and subscribing to its Code of Conduct. If an organisation decides not to provide this information, it is the Commission's stated policy to list the contribution as part of the individual contributions. (Consultation Standards, see COM (2002) 704; Better Regulation guidelines, see SWD(2015)111 final and Communication on ETI Follow-up, see COM (2007) 127).

If you are a registered organisation, please indicate below your Register ID number when replying to the online questionnaire. Your contribution will then be considered as representative of the views of your organisation.

If your organisation is not registered, you have the opportunity to Register now. Then you can return to this page, continue replying the questionnaire and submit your contribution as a registered organisation.

It is important to read the specific privacy statement attached to the announcement of this public consultation for information on how your personal data and contribution will be used.

For registered organisations: indicate here your Register ID number

Please choose one of the following options on the use of your contribution:

My/our contribution,

☐ Can be directly published with my personal/organisation information (I consent to publication of all information in my contribution in whole or in part including my name/the name of my organisation, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication).

☐ Can be directly published provided that I/my organisation remain(s) anonymous (I consent to publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that this is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication.

☐ Cannot be directly published but may be included within statistical data (I understand that my contribution will not be directly published, but that my anonymised responses may be included in published statistical data, for example, to show general trends in the response to this consultation) Note that your answers may be subject to a request for public access to documents under Regulation (EC) No 1049/2001.

NOTE: You should follow the order of the questions, even though you are not required to reply to all questions. Please mark questions that are not relevant for you 'not applicable'. You may also submit additional information that you consider relevant.

SECTION A: GENERAL

1. Have you used the Code?
2. In your experience, what are the main positive effects of the Code and what were the underlying success factors?
Please give specific examples.
3. In your experience, what are the main negative effects of the Code?
Please give specific examples.
4. Have you encountered difficulties with any procedures laid down in the Code?
If yes, please explain what difficulties you have encountered.

SECTION B: THE USE OF THE CODE OF BEST PRACTICE

1. GENERAL

5. Which parts of the Code do you find useful?
6. Which parts of the Code do you find not useful?
7. Since the Code entered into force in 2009, has it had a positive impact on the conduct of State aid procedures by the Commission?
Please provide examples.
8. From your experience, does the Code improve the predictability of State aid procedures?
Please give specific examples.
9. What was your smoothest procedure, and what can be learned from it?

2. PRE-NOTIFICATION CONTACTS

10. Please indicate how many pre-notification contacts you had with the Commission since 2009?
11. Have you experienced any difficulty in arranging pre-notification contacts?
If so, please explain the nature of such difficulties.
12. In general, were the pre-notification contacts useful?
If so, please explain why.
13. In how many cases has the Commission made a first contact within the two week indicative timing following receipt of the draft notification form?
14. How long have the pre-notification contacts lasted? Did they have a positive impact on the overall duration of the State aid procedure?

15. Has there been any difference in duration for certain categories of cases (e.g. novel aid instruments, particular sectors, large amounts of aid, etc.).
16. Was the aid beneficiary involved in the context of the pre-notification contacts? Was this useful?

3. PRELIMINARY EXAMINATION

17. In how many cases since 2009 has the Commission sent you a comprehensive information request within 4 to 6 weeks after the notification?
Please also indicate the total number of cases notified.
18. In how many cases has the Commission raised further questions after you replied to the initial information request?
19. Were the questions raised by the Commission difficult to answer?
If yes, please give examples of a case where this has been particularly difficult?
20. Was sufficient information on the state of play of ongoing preliminary examinations provided by the Commission?

4. FORMAL INVESTIGATION PROCEDURE

21. Have you encountered any difficulties with the handling of confidentiality issues for the publication of the decision?
If so, please give specific examples.
22. According to the Code, the Commission aims to adopt a final decision within 4 months after the submission of the most recent information. Do you find this deadline appropriate?

5. MUTUALLY AGREED PLANNING (MAP)

23. Since 2009, have you made any requests for a MAP? In how many cases was the MAP agreed with the Commission?
24. If you have never used this procedure, please indicate the reasons for not requesting its application.
25. If a MAP was agreed, has the procedure been useful?
If not, please indicate what could have made the procedure more useful.
26. Did the Commission and the Member States respect the time frame laid down in the MAP? Were there any difficulties in respecting the MAP?
Please provide specific examples.
27. Should the MAP be reserved for specific types of cases, e.g. novel, technically complex or sensitive cases? Or should it be made available to other cases?
28. Do you have any suggestions on how to improve the MAP?

6. COMPLAINTS

29. Have you lodged or been concerned by a complaint lodged with DG COMP? How many complaints have you been concerned with since 2009?
30. In your experience, do you consider that the Commission generally deals with complaints within the 12 months indicative deadline?
31. Have you been informed by the Commission on the state of play of your complaint?
If yes, how did this communication take place?
32. Have you received a request for information from the Commission in the context of an investigation?
If yes, did you encounter any difficulties in replying to the Commission's request?
If yes, please give specific examples.
33. Do you have any recommendations on how to improve the communication between the Commission and the parties to the complaint during the handling of the case?
Please make specific suggestions or give examples of cases where, in your opinion, this has been handled in an appropriate manner.

7. LANGUAGE WAIVER

34. Since 2009, in how many cases did you use one of the Commission's working languages (English, French or German) for exchanges with the Commission?
35. Would you agree to applying for a language waiver in order to improve the speed of the procedure?

SECTION C: NEW TOPICS TO BE CONSIDERED IN THE CODE OF BEST PRACTICE

8. GENERAL

36. In 2013, the State Aid Procedural Regulation³ was amended. As a result, a series of new elements were introduced as the new complaint form and possibility of the Commission to impose fines for failure to reply to market information requests. This amendment was part of the wider State Aid Modernisation which gave more responsibility to the Member States in designing and implementing support measures while streamlining and updating the framework of State aid rules.

Following the revision of the Procedural Regulation and the State Aid Modernisation process, what changes could be introduced to make the Code more useful?

Please explain why.

³ 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, replacing Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 83, 27.03.1999, p. 1.

9. SECTOR INVESTIGATIONS AND REQUESTS FOR INFORMATION

37. The Procedural Regulation provides the possibility for the Commission to conduct an inquiry across Member States into a sector of the economy or the use of an aid instrument. Do you find it useful to propose guidance on such an inquiry within the Code?
38. The Procedural Regulation provides the possibility to Commission to ask questions to undertakings following the opening of the formal investigation procedure. Do you find it useful to propose guidance on such market investigation tools within the Code?

10. ENHANCED COORDINATION

39. To accompany the State aid modernisation and enable contacts with Member States, DG Competition has set up a network of country contact points. Should the Code refer to this network and explain their role?
40. Do you have any suggestions on how to improve the cooperation between DG COMP and the network of country contact points?
41. Should the Code refer to and explain the portfolio approach for the treatment of cases. For example, the process whereby Member States and Commission agree on a process for timely delivery on a group of cases, possibly by deprioritising other cases?

11. PARTNERSHIP WITH THE MEMBER STATES FOR THE STATE AID MODERNISATION

42. To accompany the State aid modernisation and enable its uptake at the national level, the Commission has promoted a strengthened partnership with the Member States. How do you think the Code could reflect the practices of the partnership?

12. MONITORING

43. Following the revision of the State aid rules in the context of the State Aid Modernisation process, a significant number of measures have been implemented by Member States under the General Block Exemption Regulation and monitored by the Commission ex post. Would it be useful to make a reference in the Code to the monitoring and its objectives?
Please explain why.

SECTION D: MISCELLANEOUS

44. Do you have any other comments or documents on the application of the Code?
Please provide us with a copy of such documents.
45. Please indicate whether the Commission may contact you for further details on the information you have submitted
- Yes ☐ No ☐

THANK YOU FOR RESPONDING TO THIS QUESTIONNAIRE.

