

NOTE

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Danish response to the Commission's invitation to comment on the new Commission Notice on the enforcement of State aid rules by national courts

The Danish government appreciates the opportunity to comment on the European Commission's Notice on the enforcement of State aid rules by national courts.

General comments

Overall, the Danish Government can support the new notice and finds that it is a useful and practical tool for national courts and other interested parties regarding the enforcement of State aid rules cooperation with the Commission. We find it positive that the Notice now reflects the developments in case law of the Union Courts since the 2009. We also appreciate that the new notice includes the findings in the 'Study on the enforcement of State aid rules and decisions by national courts (COMP/2018/001)'.

The Danish Government supports a close cooperation between the Commission and the national courts. The Notice will support a coherent application of the EU State aid rules in the Member states, which is important to ensure a level playing field for undertakings in the European Union.

Specific comments

Provision 83

The draft states that "*With regard to the prescription period applied to national court's powers to order recovery, the Union Courts have ruled that the ten-year limitation period provided for by the Procedural Regulation applies solely to the Commission. As long as national procedures provide for a longer prescription period, a national judge must order the recovery of aid granted in violation of the standstill obligation, even after the limitation period provided for the Commission has expired. National prescription periods shorter than the 10 years also bind national courts, unless there is a Commission recovery decision...*"

With regard to provision 83 in the draft Notice, the Danish Government notes that the same applies regarding illegality interests.

To make this clear, the Danish Government proposes that the first sentence in the provision is changed to the following:

“With regard to the prescription period applied to national court’s powers to order recovery or to pay illegality interests, the Union Courts have ruled that the ten-year limitation period provided for by the Procedural Regulation applies solely to the Commission.”