

Summary of submissions in response to the Public Consultation on the Code of Best Practice on the conduct of State aid control proceedings

In response to the public consultation on the Code of Best Practice¹, the Commission received 21 submissions (14 from Member States², 6 from other stakeholders³ and 1 from a citizen).

The respondents generally considered the Code to be a useful tool for effective cooperation between the Commission and the Member States since it increases clarity and predictability of the procedures. 9 Member States and 1 other stakeholder referred to the part on pre-notification as being particularly helpful. Most of the respondents agreed that, especially following the State aid modernisation, the Code needs to be updated. While certain Member States stressed that beneficiaries would not necessarily have to be involved in the notification procedure, all other stakeholders underlined the importance of involvement of beneficiaries and other third parties, and asked for increased clarity on the role of third parties.

The guidance on the **pre-notification procedure** was considered constructive and useful and results in increased predictability. However, some Member States signalled that it in some cases was unclear whether the interpretation made by the Commission in the pre-notification phase was legally binding. While some Member States found that the duration of the procedure was too long, others had more positive experience on the timing and also stressed that the overall procedure (pre-notification and notification together) had been shortened. Some Member States proposed to adapt the indicative timelines in order to make them more realistic and to have an agreed timing for milestones with the Member State in each case. The involvement of the beneficiary in the pre-notification phase was sometimes considered helpful, but most Member States underlined that such involvement should only take place at the choice of the Member State. Two of the stakeholders asked for increased transparency in the pre-notification procedure.

Although the responding Member States generally stated that the guidance on **mutually agreed planning** (MAP) has been helpful, all of them pointed to a very limited, if any, use of such planning in practice. Some Member States considered that the use of MAP should be reserved for technically complex and sensitive cases. The limited use of MAP was mainly due to a relatively small number of notifications by the Member State, frequent use of the General Block-Exemption Regulation⁴ instead of notification, as well as the difficulty to prioritise between various aid grantors.

Many of the responding Member States considered the duration of **preliminary examinations of notifications** to be too long, although some of them stressed that this was mainly due to difficulties at the national level to submit information requested by the Commission. Two of the stakeholders asked for increased transparency for third parties in the notification phase.

¹ The public consultation was launched by the Commission on 25.11.2016 and was closed on 25.2.2017.

² BU, CZ, DE, DK, EE, FI, FI (Åland), FR, HU, IT, LV, MT, NL and UK.

³ Association of Lawyers in Competition Law (APDC, Paris), Association for Monitoring of State aid (ASAE), Association Française d'étude de la Concurrence, ClientEarth (non-governmental organisation specialised in environmental law), Federation of German Industries (BDI) and Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege e.V. (BAGFW).

⁴ Commission Regulation (EU) No 651/2014 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.

For the **formal investigation procedure**, one Member State suggested that more informal contact between the Commission and the Member State before the opening of the procedure would be useful. Furthermore, 2 Member States and 2 stakeholders remarked that the duration of the procedure often is considerably longer than the indicative time-frame. In particular, some respondents indicated that the period between adoption the decision and its publication in the Official Journal is sometimes excessively long which causes legal uncertainty. One stakeholder appreciated the guidance on involvement of third parties, but considered that such guidance should be expanded to also cover, for instance, the definition of an interested party.

While 4 Member States stated that they had been informed by the Commission about the status of **complaints**, 5 Member States considered that such information should be improved, for instance, Member States should be informed about the grounds on which a complaint was assessed, and about the Commission's preliminary conclusion⁵. One stakeholder stressed the need to update the Code with respect to complaints in order to align it to the Procedural Regulation⁶ (*inter alia* all complainants should be informed about the priority status of their respective complaints).

While most responding Member States indicated that they often use English for their contacts with the Commission, and that that they were willing to use **language waivers** for decisions in urgent cases, they emphasised the importance of maintaining their right to choose their official language.

All Member States agreed that the Code needs to be updated following the State aid modernisation, in particular the rules on complaints, sector inquiries and market information tools in the Procedural Regulation, and that some **new topics** should be covered. Many Member States considered that the Code also should include procedures for *ex post* monitoring (principles, selection of cases, stages, duration, format of the closure) and for handling interpretation questions. As to the portfolio approach, certain Member States thought it should be included in the Code, while others considered that this would be less useful (e.g. due to the limited use of prioritisation and to the fact that such an approach often causes difficulties to reach an agreement at the national level). Many Member States expressed appreciation of the country network within DG Competition and of the Member States' working group. However, it was not clear whether any best practice on this would need to be included in the Code. A few Member States suggested that the Code should also include guidance on *ex officio* cases (e.g. following sector inquiries or monitoring).

Finally, some Member States also requested that the status of the Code would be clarified⁷ and that the level of awareness of the Code (existence and role) could be improved both at national level and the Commission level.

⁵ Also, Member States should be updated regularly on the status of the complaint and they should always be informed about the closure of a complaints case.

⁶ 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 248, 24.9.2015, p. 9.

⁷ For instance, in order to prevent uncertainty, it was suggested that the Code should not include mandatory requirements, since it is solely advisory.