



EUROPEAN COMMISSION

QUESTIONS AND ANSWERS

Merger Control in the EU – Further simplification of procedures

On 20 April 2023, the Commission adopted a package of revised legal texts aiming to simplify and streamline the merger control review of simplified and non-simplified cases. This package consists of a new [Merger Implementing Regulation](#) ('Implementing Regulation'), including also new Annexes for the Form CO, Short Form CO, Form RS and Form RM and an updated [Communication on Articles 3\(2\), 13\(3\), 20, and 22 of the Implementing Regulation](#), as well as a new [Notice on Simplified Procedure](#) ('Notice'). All information on this new Package can be found on [this webpage](#).

This Q&A document intends to provide clarifications and practical information on the adopted legal texts and their purpose.

1. What is the key content of the Commission's Merger Simplification Package?

This package simplifies the Commission's merger review procedures in four ways:

- It **expands and clarifies** the categories of **cases treated under the simplified procedure**. The initiative adds new categories of cases that could benefit from simplified treatment by default, in particular for certain vertical relations. It also introduces flexibility clauses in the Notice that give the Commission the discretion to treat additional cases under the simplified procedure in certain circumstances. Finally, the Commission has also reviewed the scope and interpretation of the circumstances that may lead the Commission in individual cases to remove the benefit of simplified treatment.
- It **streamlines the review of cases treated under the simplified procedure**. The initiative introduces a streamlined review of jurisdiction in simplified cases with a tick-the-box list of statements on the basic facts relevant for the jurisdictional assessment without the need to provide underlying evidence. It also introduces a streamlined review of the competitive assessment for simplified cases without overlaps between the activities of the parties, with a tick-the-box list of statements on the basic facts relevant for the assessment without the need to provide underlying evidence.
- It **streamlines the review of cases treated under the normal procedure**. The initiative (i) limits the information requirements for markets that benefit from the flexibility clauses; (ii) removes certain information requirements in Section 8 of the current Form CO; (iii) introduces overview tables facilitating the submission of the required information on potential horizontal overlaps; and (iv) identifies certain sections suitable for waivers requests.

Contacts :

[Arianna PODESTA](#) (+32 229 87024)

[Maria TSONI](#) (+32 229 90526)

[Nina FERREIRA](#) (+32 229 98163)

For the public: **Europe Direct** by phone **00 800 6 7 8 9 10 11** or by [e-mail](#)

- It provides for the **electronic submission** of documents as a default. It introduces the fully digital transmission of documents, including of notifications, using digital signatures.

2. Is the use of the new notification forms compulsory? As from which date?

Yes, the new notification forms must be used for all cases notified on or after 1 September 2023.

3. Is it possible to notify a case using the new notification forms before 1 September 2023?

No, cases notified before 1 September 2023 should use the current notification forms.

4. Is it possible to notify a transaction using the old notification forms after 1 September 2023? What happens if the parties have already started pre-notification on the basis of the old notification forms?

The current notification forms will not be accepted after 31 August 2023. The new notification forms have been adopted and published several months ahead of their entry into force to allow law firms and notifying parties to familiarise themselves with them. If the case is expected to be notified on or after 1 September 2023, the new notification form should be used. Case teams are ready to start pre-notification contacts based on the new notification forms before 1 September 2023.

I. Pre-notification

5. What are the measures that the Commission takes to streamline the pre-notification process? Do they also affect non-simplified cases?

Pre-notification is not compulsory, it is a service offered by DG Competition to notifying parties to help them complete their notification. Experience has shown that in cases in which notifications were declared incomplete, there were often no or only very limited pre-notification contacts. For this reason, DG Competition recommends that notifying parties contact DG Competition prior to notification and discuss what information may be required for a complete notification. Indeed, notifying parties seem to make good use of the pre-notification contacts service offered.

The revised legal texts contain a number of provisions aimed at streamlining, speeding up or even completely eliminating pre-notification contacts in some cases. In particular:

- The draft revised Notice foresees a “super-simplified” procedure for certain concentrations. Such a procedure would not include pre-notification contacts, but would rather foresee immediate notification.
- For all concentrations eligible for review under the simplified procedure, merging parties will use the new Short Form CO with “tick-the-box” format and limited information requirements.
- For normal cases, the new Form CO limits the data requested for markets that fall under the flexibility clause, systematises information requests for markets involving pipeline products, eliminates altogether certain information requirements and provides clearer instructions on how and in relation to what information requirements merging parties may consider requesting waivers.

6. What are the simplified cases that can be notified without pre-notification altogether?

For transactions falling under point 5(a) and 5(c) of the Notice, that is extra-European Economic Area ('EEA') joint ventures or cases not resulting in either horizontal or vertical relationships, notifying parties are invited to notify directly with no pre-notification contacts.

II. New categories of cases introduced in the Simplified Notice

7. Which cases now qualify for a simplified review?

The Notice has introduced the following categories of cases that can be treated under the simplified procedure:

- Cases in which the combined market shares upstream are below 30% and the combined purchasing share is below 30%, without any limit on market shares downstream.
- Cases in which the combined market shares are below 50% and the Herfindahl–Hirschman Index delta is below 150 in both the upstream and downstream markets.
- Flexibility clause for horizontal overlaps between 20 and 25% and for vertical relationships between 30 and 35% combined market shares.
- Flexibility clause for cases in which the combined market shares are below 50% in one market and below 10% in the other vertically related market.
- Flexibility clause for joint ventures with turnover and assets between €100 and €150 million (currently up to €100 million).

8. Can the different categories be combined, including with the flexibility clause?

Yes, notifying parties may submit a notification of a concentration on the basis of more than one category. Moreover, if some of the plausible markets concerned by a transaction fulfil the conditions set out in point 5(d)(i)(aa) and others fulfil those in point 5(d)(i)(bb) of the revised Notice, the transaction will be considered to fulfil the conditions set out in point 5(d)(i) of the Notice. The same applies to categories falling under point 5 d(ii) of the Notice. Furthermore, point 8 of the Notice can be combined with point 5(d). Therefore, notifying parties may request the application of the flexibility clause for certain markets, provided that the conditions set out in point 8 are met and benefit from the simplified procedure if all the remaining markets fulfil the conditions laid down in point 5(d) of the Notice.

9. If one or more of the circumstances described in the safeguards are present, will the Commission automatically apply the normal procedure? Will it be different for cases falling under the flexibility clauses?

No, a case-by-case assessment will be necessary in these circumstances. Notifying parties should explain in section 11 of the Short Form CO why the case should be treated under the Notice and provide all relevant details briefly. Case teams will endeavour to communicate as soon as possible whether the simplified procedure can be applied. For markets falling under the flexibility clause, given that market shares are higher, it is more likely that the simplified procedure cannot be applied.

10. How will the Commission ensure a consistent treatment of markets/cases falling under the flexibility clause? How will it ensure legal certainty?

If none of the circumstances described in the safeguards and exclusions section are present, in principle the flexibility clause will be applied. If some of these circumstances are present, a case-by-case assessment is necessary, in which all the arguments of the parties will be considered.

11. What happens if the Commission concludes that the flexibility clause is not applicable?

These cases are treated under the normal procedure by default. Therefore, if the flexibility clause cannot be applied due to the presence of circumstances described in the safeguards and exclusions sections, the case will be treated under the normal procedure. Case teams will endeavour to communicate as soon as possible whether the flexibility clause can be applied.

12. Must Market shares be provided for all plausible market definitions?

Nothing changes on this point. Notifying parties are advised to fully and frankly disclose information relating to all potentially reportable markets based on all plausible alternative market definitions, even where the notifying parties consider that these markets are not affected, for example because market shares remain below the applicable market share thresholds for treatment under the simplified procedure when applying the market definition preferred by the notifying parties. In DG Competition's experience this approach minimises surprise submissions from third parties, may avoid requests for additional information at a late stage in the procedure and will minimise the risk that the Commission needs to declare the notification incomplete.

Plausible alternative markets can be identified on the basis of previous Commission decisions and judgments of the Union Courts. Where no such precedents exist, they can be identified by reference to industry reports, market studies and the companies' internal business documents.

13. What is the "purchasing share"?

An undertaking's purchasing share is calculated by dividing (i) the volume or value of the undertaking's purchases of products in the upstream market by (ii) the total size of the upstream market (in terms of volume or value).

III. Streamlining Simplified Cases - New Short Form CO

14. Which are the measures to streamline the simplified procedure?

This initiative introduces a streamlined review of jurisdiction in simplified cases with a tick-the-box list of statements on the basic facts relevant for the jurisdictional assessment without the need to provide underlying evidence. It also introduces a streamlined review of the competitive assessment for simplified cases without overlaps between the activities of the parties, with a tick-the-box list of statements on the basic facts relevant for the assessment without the need to provide underlying evidence.

15. Is it compulsory to complete all sections in all cases?

Different sections of the Short Form CO must be completed, depending on characteristics of the concentration and the reasons why the concentration qualifies for simplified treatment:

- Sections 1, 2, 3, 4, 5, 6, 7, 13, 14, 15, and 16 must be completed in all cases;
- Section 8 must be completed if the concentration gives rise to horizontal overlaps between the parties' activities;
- Sections 9 and/or 10 must be completed if the concentration gives rise to vertical relationships between the parties' activities;
- Section 11 must be completed in all cases, except for concentrations falling under point 5(a) or 5(c) of the Notice on Simplified Procedure;
- Section 12 must be completed in the case of a joint venture.

16. Is it possible to modify the structure of the Short Form CO?

No. The Short Form CO should be used to notify cases under the simplified procedure without modifying any of the questions. The Short Form CO offers sufficient flexibility with open text boxes to provide additional information if necessary. The market share tables provided in sections 8, 9 and 10 of the Short Form CO must be used. As explained in the Short Form CO, notifying parties must replicate the table as many times as required to cover all the plausible markets.

17. Some questions are difficult to answer objectively in yes/no or "tick-the-box" format. Is it possible to provide additional information?

Open text boxes have been included in the Short Form CO to allow the notifying parties to provide additional details where necessary. Additional information provided should be as brief as possible and limited to what is strictly necessary for the assessment of the question asked in each section.

18. Will the Commission ask for additional information or supporting evidence with regard to jurisdiction?

In principle, no. The information required in the Short Form CO should normally be sufficient to assess jurisdiction for cases treated under the simplified procedure. Notifying parties should not submit additional information which is not required in the Short Form CO. However, if the information provided in the Short Form CO clearly does not support the conclusion of the notifying parties regarding jurisdiction, the Commission may ask for clarifications (e.g. the parties submit there is joint control based on veto rights, but there are no veto rights over the appointment of management, the business plan or budget).

IV. Streamlining Normal Cases – New Form CO

19. Which are the measures to streamline the non-simplified procedure?

There are four main measures intended to reduce the amount of information required to submit a complete Form CO. In the introduction a revised section on waivers aims to make it easier and clearer to ask for and obtain a waiver. Some information requirements in current Section 8 have been removed entirely. The new section 7 imports the flexibility clauses of the simplified procedure. Lastly, there are overview tables facilitating the submission of the required information on potential horizontal overlaps.

20. Will the Commission streamline the internal documents requirements?

No, the current section 5 remains unchanged. However, depending on the case, the notifying party(ies) may request a waiver to limit the number of documents to be submitted.

21. What changes exactly with regard to waiver requests?

The revamped section 4 on waiver requests clarifies and codifies existing practice. It sets out two non-cumulative conditions required in order to obtain a waiver from the Commission: The information is either not reasonably available and/or not necessary for the assessment. Furthermore, beyond this general approach, the new Form CO points to various standard information requirements in sections 3 (“Details of the concentration, ownership and control”) and section 10 (“Product differentiation and closeness of competition”), which are particularly suited for waivers in certain cases.

22. Does the Commission streamline the assessment on jurisdiction also for non-simplified cases?

No. For cases subject to the normal procedure jurisdiction must be established with reasonable certainty on the basis of all available facts and evidence needed for such an assessment.

23. Should all pipeline-to-pipeline overlaps be disclosed, even when none of the parties have any marketed product? Also for vertical relations?

Yes. Protecting innovation is a key enforcement priority for the Commission. All pipeline-to-pipeline overlaps or overlaps between pipeline and marketed products should be disclosed in section 8, including for vertical relations. If the parties are developing pipeline products which will compete horizontally or which will be in a vertical relationship, these should be disclosed. Notifying parties must provide market shares for the parties and/or the competitors who offer marketed products. If there are no marketed products, notifying parties must identify at least three competitors developing rival pipeline products.

24. What are the expected benefits of using the flexibility clauses under the normal procedure?

As the flexibility clause widens the scope of markets benefitting from the reduced information requirements under the simplified procedure, businesses will in many cases have to submit less information and save costs.

25. What happens if some plausible market definitions fall under the flexibility clauses and others do not?

In that case, the notifying party(ies) need to fill in section 8 for all the alternative plausible market definitions.

26. What happens if the Commission concludes that the flexibility clause is not applicable for some markets?

In that case, the notifying party(ies) need to fill in the section for affected markets.

V. Electronic Notifications

27. What changes are introduced with regard to the notification of transactions?

As per the new rules, notification of transactions should be done electronically by default. Notification forms must be digitally signed and transmitted to the Commission via “[EU Send Web](#)” (also called eTrustEx), the Commission’s web-based exchange platform for secure transmission of

documents. This will make the notification process more efficient and environmentally friendly as well as less costly.

28. Consequently, what are the requirements to validly notify electronically?

Notification forms should be signed electronically using at least one Qualified Electronic Signature (“QES”) complying with the requirements set out in Regulation (EU) No 910/2014 (the “eIDAS Regulation”). To sign documents using a QES, a certificate for electronic signatures is needed. As part of the eIDAS Regulation, these certificates can be purchased from specific providers, named Qualified Trust Service Providers (“QTSP”). Providers of qualified certificates for electronic signatures are listed in the corresponding national [Trusted List](#). Once a certificate for electronic signature is obtained, you will be able to sign documents. QTSPs might offer their own process for signing digitally.

29. Are all electronic signatures accepted?

No. Only QES are explicitly recognised to have the equivalent legal effect of hand-written signatures across all EU Member States. Other types of electronic signatures, such as scanned signatures or Advanced Electronic Signatures, as defined in the eIDAS Regulation, that do not meet the requirements of QES are not accepted.

30. Can I test my Qualified Electronic Signature to ensure that it will be accepted by the Commission?

Yes. The European Commission proposes a [demo of DSS](#), a tool enabling, among other features, the signature of documents. This demo is based on the open-source library Digital Signature Software (“DSS”). DSS supports the creation and verification of interoperable and secure electronic signatures in line with the eIDAS Regulation. More information is available in the [documentation](#). This platform must not be used to submit any case-related documents, any confidential or case-specific information.

31. Do all communications with the Commission need to be electronically signed?

No. Only notifications, reasoned submissions, comments on the Commission's objections, commitments offered by the undertakings concerned and the Form RM should be electronically signed using one or more QES.

32. Will the DG COMP registry continue to accept notifications on paper?

Exceptionally yes. If the Commission agrees that signing documents with a QES is not feasible, a hand signed paper copy of the complete notification (including annexes) may be hand delivered or sent by registered post. In this case, the submission must be accompanied by two digital copies for information as well as a hand signed declaration stating that the signed paper copy and the digital copies are identical.

In addition, if the EU Send Web application is not available, notifications can still be submitted electronically. In this case the notification may be hand delivered or sent by registered post to DG Competition using external storage devices such as USB, CD, or DVD, or external hard disk drives or USBs. These documents must be digitally signed with a QES.