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State aid: European Commission adopts Best Practices Code to streamline State aid control

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State aid: European Commission adopts Best Practices Code to streamline State aid control

On 16 July 2018, the Code of Best Practices for the conduct of State aid control procedures was adopted by the European Commission. The Best Practices Code was published in the Official Journal of the European Union no. C 253, on 19 July 2018, and the European Commission will apply this Code to measures which were brought to its attention 30 days after publishing date.

The Best Practices Code conveys details of the manner in which State aid procedures are carried out and sets out the steps the European Commission is taking to increase the speed, transparency and predictability of these procedures. In particular, it includes guidance and information on:

Pre-notification

The Commission recommends Member States to contact it, mainly through a draft notification, before formally notifying potential State aid measures, especially in complex cases, as well as in projects of common interest with high EU relevance. Pre-notification contacts last up to 6 months and usually end with a non-binding guidance and a non-binding preliminary assessment of the measure.

Case portfolio approach and mutually agreed planning

In a “portfolio exercise”, the Commission will ask Member States, twice per year, to inform it which notified cases in their portfolio they consider to be of high or low priority. After receiving the information

information, the Commission and the Member States may establish a Mutually Agreed Planning for those cases to ensure they are dealt with promptly and predictably.

Preliminary examination

The Commission focuses on gathering complete information concerning the notified measures. Within 4 weeks following the formal notification, it will address the Member State a comprehensive request for information, to which the Member State must respond within the deadline or run the risk of having the notification considered as withdrawn.

Streamlined procedure

At the request of the Member State, and subject to pre-notification contacts having taken place, the Commission may apply the streamlined procedure to straightforward cases and if certain criteria are fulfilled. In this case, the Commission adopts a short-form decision finding that the notified measure does not constitute aid or a decision not to raise objections within 25 working days from notification.



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Formal investigation procedure

By contrast to previous guidance, the Code provides that the Commission may issue a request for information to sources other than the Member State, subject to the information being available. However, the request for information from the aid beneficiary is dependent on the Member state's express consent.

Formal complaints

The person submitting a complaint is required to provide all the requested information and show an affected interest. If the Commission deems the conditions met, it will register the case as a formal complaint. If not, it will treat the submission as market information. Market information may lead to further investigation. The Commission may treat formal complaints on aid measures which are being challenged before national courts as a low priority for the duration of those proceedings.

Evaluation plans and monitoring

The Commission encourages effective ex post evaluation of aid schemes, especially where significant market changes are expected.

The evaluation necessity will generally be decided by the Commission during the pre-notification phase. In case of notified schemes which must be evaluated, Member States must submit their 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 Commission has set up an annual monitoring process during which it selects a sample of State aid cases for further scrutiny, based on information obtained from the Member States. The Commission will complete the monitoring of a State aid measure within 12 months.

Coordination and partnership with Member States

For improved cooperation with the Member States, the Commission has set up working groups bringing together representatives from both the Member States and the Commission. The working groups meet regularly and exchange information, with informal guidance on the interpretation of new laws and other topics being provided by the Commission. Furthermore, the Commission has set up a network of country coordinators to facilitate day-to-day contacts with the Member States.

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