



EUROPEAN COMMISSION

MEMO

Brussels, 5 December 2012

State aid: Proposed reform of state aid procedures - frequently asked questions

A- GENERAL QUESTIONS

1. What are the main characteristics of state aid investigations?

The rules of procedure governing state aid investigations are set out in Council Regulation 659/99 (the [Procedural Regulation](#)) and are built around three main pillars:

Member States may not grant state aid before the Commission has authorised it ("standstill obligation"), except if it is covered by a Block Exemption Regulation (BER). To that end, Member States need to notify any aid project to the Commission, who - after a preliminary investigation, limited in principle to two months - either approves the aid or opens an in-depth investigation. The preliminary investigation is conducted in an essentially bilateral procedure between the Commission and the notifying Member State. If the Commission has doubts about the compatibility of an aid project, it has to open an in-depth investigation, which it endeavours to conclude within 18 months, with a decision either approving (if necessary, subject to conditions) or prohibiting the aid.

The Commission is required to conduct a diligent and impartial examination of complaints and take a decision without undue delay. If the Commission adopts a decision finding that the facts of a complaint involve no state aid, the Commission must provide the complainant with an adequate explanation of the reasons for such a finding.

Finally, the Commission must keep under constant review all existing aid measures in Member States. If the evolution of the Internal Market requires an adaptation of such existing aid measures to bring them in line with EU state aid rules, the Commission may propose appropriate measures to the Member State concerned.

2. Why revise the Procedural Regulation now?

Experience in applying the [Procedural Regulation](#), since its entry into force 13 years ago, has shown the need for regular updates to state aid rules in order to adapt them to evolving institutional, economic and legal developments.

The Commission's 2005 [State Aid Action Plan](#) therefore initiated a review process in two steps. As a first step, the Commission adopted a Best Practices code in 2009 (see [IP/09/659](#) and [MEMO/09/208](#)), implementing those rationalisation measures that it was possible to introduce within the existing framework. With a view to achieving the objectives of the [State Aid Modernisation](#) initiative launched in May 2012, the Commission has prepared a comprehensive reform of the Procedural Regulation to improve the handling of complaints and the collection of information from the market.

B- STATE AID COMPLAINTS HANDLING

3. Why reform the State aid procedures for handling complaints?

Complaints are a useful source of information to direct the Commission's investigations towards cases where distortive state aid hampers competition in the Internal Market. However, the Commission receives on average more than 300 complaints every year, among which many are either not motivated by genuine competition concerns or not sufficiently substantiated. Under the current [Procedural Regulation](#), the Commission has to investigate every alleged infringement of EU state aid rules and adopt a formal decision on each of them. This is time-consuming and as a result the average duration of such cases tends to increase. Therefore, the procedure for handling complaints is sometimes perceived by Member States and complainants as unpredictable and lacking transparency. Moreover, in times of scarce resources, time spent in investigating manifestly unfounded complaints could be better invested in pursuing investigations that involve genuine distortions of competition.

4. Which amendments does the Commission propose?

In the interest of transparency and legal certainty, the conditions for lodging a complaint should be clarified. The Commission therefore proposes that complainants have to submit a certain amount of compulsory information to be listed in a complaint form and demonstrate how their interests would be affected by the granting of the aid.

In the absence of such information, a submission would not be classified as a complaint but would be registered as market information. Such information may be used at a later stage to feed into other cases or into own initiative investigations conducted by the Commission.

To complete the procedure introduced by the [Best Practices Code](#), the Commission also proposes to formalise the possibility for the Commission to consider complaints as withdrawn if complainants fail to produce meaningful information or to cooperate.

5. Will the Commission stop dealing with small cases?

The Commission has an exclusive competence to assess the compatibility of aid in the EU internal market. The aim of the reform is not to stop dealing with cases featuring small distortions of competition but to deal in the most efficient way with information regarding alleged unlawful aid. The Commission should only be under the obligation to investigate well-founded complaints.

6. How will you guarantee that the rights of complainants will be upheld?

The reform proposals fully respect the rights of complainants. Clearer rules for the admissibility of complaints will enable complainants to provide upfront the information that the Commission needs in order to investigate. This will reduce the need for repeated information requests and ensure that the Commission investigates those complaints that raise relevant state aid issues within business-relevant deadlines. The reform should also increase the transparency of procedures, so that complainants understand better at which stage of the procedure a case stands and what their rights are.

7. How will the reform affect Member States?

The Commission consults Member States on all complaints received, because they have the right to comment. A potential reduction in the number of complaints handled by the Commission will automatically reduce the workload for Member States. In addition, the fact that the Commission will gather more information upfront through the complaints form should considerably limit the amount of additional information needed from Member States.

8. How will the reform affect national courts?

Complainants mainly draw the attention of the Commission to aid that has already been granted without prior notification to the Commission and is therefore potentially illegal in the meaning of EU state aid rules. The Commission's 2009 [Notice on cooperation with national courts](#) informs about remedies available to national courts against such illegal aid and contains practical tools for supporting national judges in their daily work.

The Commission proposes, as part of the procedural reform, to formalise the right of national courts to obtain information from the Commission and to ask for an opinion of the Commission on questions related to the application of EU state aid rules. It is also proposed to introduce the right for the Commission to make submissions to national courts in written or oral form. The Commission would be able to act under that provision only in the public EU interest (*as amicus curiae*), i.e. not in support of one of the parties.

C- MARKET INFORMATION TOOLS (MIT)

9. How will market information tools be used?

As is already the case in antitrust and merger investigations, it is proposed to allow the Commission to seek targeted information directly from concerned market players with effective means of enforcement when incomplete or incorrect data is submitted. This will allow the Commission to obtain timely, reliable and factually correct information directly from the market in order to effectively investigate the most distortive cases.

MIT would only be used after the opening of the formal investigation phase.

Two new types of requests are envisaged to this effect: (i) simple requests for information with the possibility to apply pecuniary sanctions in case of incorrect or misleading information (but no obligation to reply); (ii) a Commission decision requesting information which is to be provided within a certain deadline. Pecuniary sanctions could be imposed by decision for both, incorrect, incomplete or misleading replies and late replies (including the possibility to impose a periodic penalty). Requests sent to other Member States and public authorities would not entail the imposition of fines.

10. What is the added value of MIT? Why are the existing powers of the Commission not enough to collect market information?

Currently, Member States are the Commission's primary information source. However, with the increasing role of economic analysis in the assessment of state aid measures, the Commission may in addition need information from market players. This is particularly relevant where Member States do not have the required information. In such cases, MIT would enable the Commission to collect timely, complete and reliable factual information from the market. Currently, the Commission can only ask for comments from third parties when it opens an in-depth investigation and needs to rely on their voluntary cooperation.

Since the EU Courts have recognised that the Commission may engage in talks, not only with the Member States but also with market participants, the Commission would like to clarify and render more transparent direct information exchanges with third parties, while at the same time ensuring that Member States are kept fully informed.

11. When and for which purpose MIT would be used?

The new MIT tools would mostly be used for complex individual cases requiring an in-depth assessment, to tackle issues regarding the qualification of aid or its compatibility assessment, if the information in the Commission's possession is not sufficient.

The information sought will be readily available to the market players concerned. It would typically cover factual market data (e.g. market size and share, level of imports etc.), company data (e.g. cost structure, profits, ownership, control, participations in other companies, etc.), facts-based analysis of the market functioning (e.g. regulatory and entry barriers, entry cost, growth rate of the market, growth perspectives, overcapacity), the likely impact of the aid on the beneficiary, proposed remedies or compensatory measures.

D- SECTOR INQUIRIES

12. Why propose to conduct sector inquiries?

The Commission proposes to introduce a tool allowing to conduct sector inquiries in order to obtain (i) horizontal information for assessing cases where data in the Commission's possession raise issues linked to a specific sector (e.g. postal services, the health sector) or aid instrument in several Member States and (ii) information clarifying the functioning and commercial practices specific to a sector, to be able to adopt well documented enforcement guidelines that reflect market realities.

13. How will sector inquiries impact companies receiving information requests?

Sector inquiries are by nature work intensive. The Commission will therefore use this instrument when less expensive measures, such as expert studies, will clearly not serve the same purpose. When a sector inquiry is launched, it will follow the principle of proportionality. Therefore, the administrative burden for companies will be limited.

14. What would be the consequence of a sector inquiry?

After the answers from the market are received, the Commission will publish a report setting out the results of the inquiry. Following the report, individual own initiative investigations may be initiated by the Commission in cases where state aid concerns were detected.

Please see also: [MEMO/12/936](#) for the Enabling Regulation.