

# Competition: State aid procedures

[Article 107](#) of the Treaty on the Functioning of the European Union (TFEU) ensures that aid granted by a Member State or through State resources does not distort competition and trade within the EU by favouring certain companies or the production of certain goods.

To prevent that companies doing business in the Internal Market receive selective advantages that distort competition, the TFEU contains a **general prohibition** of State aid.

However, in some circumstances, government intervention is necessary for a well-functioning economy to offset market failure. The TFEU leaves room for a number of policy objectives which can be supported through State aid and are considered compatible with the internal Market. The Commission is responsible for enforcing the EU State aid rules<sup>1</sup>.

## Notified aid

EU State aid control requires prior notification of all new aid measures to the Commission. Member States must wait for the Commission's decision before they can put the measure into effect. There are a few **exceptions to mandatory notification**, for example:

- aid covered by a Block Exemption (giving automatic approval for a range of aid measures defined by the Commission),
- *de minimis* aid not exceeding €200,000 per undertaking over any period of 3 fiscal years (€100,000 in the road transport sector) or
- aid granted under an aid scheme already authorised by the Commission.

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<sup>1</sup> Primarily the Directorate-General (DG) for Competition. DG Agriculture and Rural Development and DG Maritime Affairs and Fisheries deal with the agricultural and fisheries sectors respectively.

## Preliminary investigation

Each notification triggers a preliminary investigation by the Commission. The Commission may request information from the notifying Member State, if the notification is incomplete. If the Member State fails to reply to an information request in the prescribed period of time, the notification is deemed to be withdrawn. From the time it has received a completed notification, the Commission has two months to decide that:

- there is **no aid** within the meaning of the EU rules, and the measure may be implemented; or
- the **aid is compatible with EU rules**, because its positive effects outweigh distortions of competition, and may be implemented; or
- **serious doubts** remain as to the compatibility of the notified measure with EU State aid rules, prompting the Commission to open an **in-depth investigation**. In this instance, the measure may not be implemented until the investigation is concluded. (See formal investigation procedure).

## Simplified procedure

This procedure is intended to expedite more straightforward cases. For certain categories of aid and if all the conditions are met, the Commission must adopt a short-form approval decision within 20 working days from the date of notification.

## Misuse of aid

The Commission can also open a formal investigation procedure where it finds that authorised aid is being misused.

## Existing aid

To secure the abolition or adaptation of old pre-accession aid that is incompatible with the internal market or to review aid schemes which were authorized in the past but which may no longer be compatible with the internal market under the conditions currently prevailing, the Commission must

inform the Member State concerned, who can submit comments within one month. The Commission then examines these comments and - if necessary - proposes appropriate measures to bring the existing aid in line with EU State aid rules. If the Member State does not accept these measures, the Commission must then initiate the formal investigation procedure.

## Unlawful aid

Unlawful aid is aid **granted without prior Commission authorisation**. The Commission must examine all information it receives concerning alleged unlawful aid immediately. If indeed there is unlawful aid, as for cases of notified aid, the Commission first opens a preliminary investigation and, if doubts as to the compatibility of the measure persist, subsequently carries out an in-depth investigation. The Commission may use injunctions to obtain information from Member States, suspend the further granting of aid or impose provisional recovery obligation on the Member State.

In case of a final negative decision, recovery of the aid already paid out, with interests, will take place (see "Recovery").

## Formal investigation procedure

The Commission is obliged to open a formal investigation under [Article 108\(2\)](#) TFEU where it has serious doubts about the aid's compatibility with EU State aid rules, or where it faces procedural difficulties in obtaining the necessary information.

The decision to initiate this procedure is sent to the relevant Member State. It summarises the factual and legal bases for the investigation and includes the Commission's preliminary assessment, outlining any doubts as to the measure's compatibility with EU state aid rules. The decision is published in the EU's Official Journal, and Member States and interested third parties have one month from the date of publication to submit comments. The Member State concerned is in turn invited to comment on observations submitted by interested parties.

## Adopting a final decision

The Commission adopts a final decision at the end of the formal investigation. There is **no legal deadline** to complete an in-depth investigation and its actual length depends on many factors, including the complexity of the case, the quality of the information provided and the level of cooperation from the Member State concerned.

There are mainly three possible outcomes:

- **Positive decision:** where the measure is no aid or the aid is compatible with the internal market.
- **Conditional decision:** the measure is found compatible, but its implementation is subject to the conditions stated in the decision.
- **Negative decision:** The measure is incompatible and cannot be implemented. The Commission in principle orders the Member State to recover aid that has already been paid out from the beneficiaries (see "Recovery"). Where the decision is on existing aid, the Commission cannot order the recovery of aid already given, but will prevent the Member State from granting future aid.

The case can also be closed following the withdrawal of the notification by the Member State.

## Recovery of aid

If the Commission has taken a negative decision in the context of aid that has already been paid out, the Commission requires the Member State to recover the aid with interest from the beneficiary (unless such recovery would be contrary to a general principle of EU law). In this case, the Commission opens a 'recovery case' to enforce the implementation of its decision. If the Member State does not comply with the decision in due time, the Commission may refer it to the [European Court of Justice](#) (ECJ), without initiating an infringement procedure under [Article 258](#) TFEU.

The aim of recovery is to remove the undue advantage granted to a company (or companies) and to restore the market to its state before the aforementioned aid was granted. There is a limitation period of ten years for recovery.

## Judicial review

All decisions and procedural conduct of the Commission are subject to review by the General Court and ultimately by the ECJ.

July 2013. This factsheet provides basic information on competition procedures and is not a substitute for the applicable legislation. More information on State aid control: [http://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](http://ec.europa.eu/competition/state_aid/overview/index_en.html) This and other factsheets are available at: <http://ec.europa.eu/competition/publications>

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