



3 February 2009

## **BEST PRACTICES CODE ON THE CONDUCT OF STATE AID CONTROL PROCEEDINGS**

### **1. INTRODUCTION**

BUSINESSEUROPE welcomes the publication of a Commission notice establishing a set of best practices to be followed in State aid control proceedings.

State aid rules play an important role in the regulation of the Internal Market. Considering that the difficult economic situation has led to increased Member States' intervention in the economy, efficient and swift procedures to evaluate their compliance to State aid rules are even more essential.

BUSINESSEUROPE strongly supports the willingness and effort of the Commission to provide more effective, simple and predictable procedures in the field of State aid. This will be beneficial both for the parties directly involved in the proceedings and for third parties, ultimately resulting in a more efficient State aid control. This will better respond to the need to maintain a level playing field for all undertakings in the internal market, no matter in which Member State they are established.

The European Commission is also proposing the introduction of a simplified procedure for certain types of State aid that only require the Commission to verify the compliance with existing rules and practices without exercising any discretionary powers. We believe this is coherent with the general objectives highlighted above and support this initiative.

The comments that follow are aimed at suggesting further improvements to the draft best practices code presented by the Commission.

### **2. GENERAL COMMENTS**

BUSINESSEUROPE certainly agrees with the Commission that there are currently shortcomings in the practices and procedures of State aid policy and, in the past, it welcomed the fact that these issues were addressed in the State Aid Action Plan.

On several occasions, BUSINESSEUROPE has identified a number of problems related to the delays in the substantive assessment of State aid measures by the Commission and the lack of transparency. Delays in Commission decisions significantly hinder the effectiveness of EU State aid discipline. Third parties often lack the incentive to bring complaints and often lack investigatory powers and may therefore be unable to establish that illegal aid was granted. The code improves the transparency of information available to complainants and the rights of third parties in the investigative process.



BUSINESSEUROPE greatly supports the general objectives of the draft code for the reasons stated above. The implementation of best practices and the subsequent improvement of the whole process ought to be reflected by a more cooperative conduct by Member States. In turn, this ought to be reflected in better notifications of proposals compatible from the start. If this is achieved, there will be fewer openings of formal investigation procedures, leading to a faster turnover in cases.

We strongly appreciate Commission suggestions to improve its internal practice and administration and increase efficiency. More predictable and shorter timelines, clear intermediary steps in the procedure, the introduction of mechanisms to encourage Member States to duly and correctly notify, and higher transparency by providing more information on the Internet are welcome measures towards improving State aid control and strengthening third party involvement.

Ideally, this would lead to swift approval of the notified measures, in the interest of the Member State concerned and of the beneficiaries on the one hand, and of the Commission who could make the most of its resources on the other hand.

### **3. SPECIFIC COMMENTS**

The codification of pre-notification contacts is a significant step in better defining the timelines and the intermediary steps in the procedure. A generalised pre-notification practice will also shorten the overall length of the process, as it will in all likelihood lead to more complete notifications by Member States. In addition, it is clearly preferable for any concerns or issues to be dealt with and possibly solved before the notification is made. BUSINESSEUROPE trusts that the Commission and Member States will engage in carrying out pre-notification contacts quickly and efficiently.

We agree with the Commission on the importance of involving aid beneficiaries in the pre-notification case. Their participation might be helpful in clarifying certain aspects in the most complex cases and therefore speed-up the process further.

The provisions for improved transparency, with the practice of publishing non-confidential summaries of notifications in the Commission's website, will largely facilitate information to the public and participation of interested third parties. The proposed summary balances the interests of the Member States in protecting the confidentiality of information with the interests of third parties, which need to have a minimum level of information in order to submit comments.

However, in the light of the period (10 working days) envisaged for comments, we suggest the publication in the Commission's website to be complemented by an automated alert system. This would allow interested parties to subscribe and receive automatically generated communications any time proposals for particular types of aid, or to particular sectors, or affecting particular Member States etc are published. With regard to the deadline for third parties' comments, some flexibility should be allowed in case late comments have real relevance to the Commission's investigation.





A clarification is needed with regard to the language in which the summaries of notifications should be published. We suggest them to be made available in the language of the Member State concerned and the three working languages of the European Commission.

As to the information available in the summaries, we suggest the inclusion of information from the General Information Form annex to Commission Regulation 2711/2008. In particular, point 10.3 of the form, describing the impact on competition and on trade between Member States would be of interest to third parties.

With regard to the “state of play contacts” for notifying Member States, BUSINESSEUROPE notes that receiving full disclosure about the position that the Commission has reached in relation to individual cases is also important for beneficiaries and indeed complainants. We therefore suggest this possibility is also left open to the latter categories.

BUSINESSEUROPE welcomes the provision on requests for information by the Commission, where on the one hand, the Commission services commit to rationalise their requests and on the other, Member States are more strictly bound to their duty to provide full and timely information, therefore eliminating avoidable delays.

We appreciate the commission attempt to clarify the way in which it intends to use its entitlement to prioritise State aid complaints. Some form of prioritisation is acceptable provided it is fair and reasonable. However, we believe that the envisaged proposal to postpone dealing with those measures that do not raise serious difficulties does not meet these requirements. It would in fact lead to a situation where less controversial cases take longer than ones that are more complex. This seems unreasonable, as the Commission should tend to clear easier cases quickly and then focus on the most difficult ones. In addition, we suggest that any prioritisation ought also to take account of the degree of urgency with which the Member State needs to implement the proposal.

According to point 51, reflections will be launched on the opportunity to reject State aid complaints for lack of Community interest. BUSINESSEUROPE does not support such an approach. The current State aid regime does not provide any basis for bringing in of the proposed criterion of "lack of Community interest". However, BUSINESSEUROPE would appreciate further opportunities to discuss an alternative approach with regard to those cases that have little or no impact on intra-Community trade.

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