



**MINISTER FOR INDUSTRY,  
BUSINESS AND FINANCIAL  
AFFAIRS**

## **The Danish Government's response to the Commission's consultation on the Code of Conduct of State Aid Control Proceedings**

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The Danish Government welcomes the Commission's initiative to review the Code of Best Practice on the Conduct of State Aid Control Proceedings (hereinafter referred to as "the Code") and appreciate the opportunity to submit the views of the Danish Government on this initial stage of the review process.

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### ***General remarks***

In the Danish Government's view the Code is a useful tool to provide general information on the different steps in state aid procedures and the effective cooperation between the Commission and Member States. The Code encourages use of pre notification contacts which is a highly important tool to handle state aid issues effectively. Thus, the Code has had a positive impact on the state aid procedures.

Since the entering into force of the Code on 1 September 2009, the State Aid Modernisation process has taken place. It is now important that the Code reflects this modernisation. Namely, since the 2013 revision of Regulation 659/1999 (the Procedural Regulation) changed the procedures on handling complaints and gave the Commission powers to request information from sources other than Member States and the possibility to impose fines for failure to reply to requests for information, introduced sector inquiries etc. The Danish Government finds it very important that the revised Code improves transparency and predictability of state aid procedures in these areas too.

Furthermore, as a result of the state aid modernisation, more state aid is now covered by the General Block Exemption Regulation (GBER) and will not be notified to the Commission. The Danish Government finds that there is a need to address the procedural steps in respect to the partnership between Member States and the Commission in order to ensure a uniform interpretation and enforcement of the GBER throughout the EU.

The Code should underline that focus for the Commission will be on solving specific state aid issues. If no specific state aid issues can be identified in the informal contacts during pre-notification contact this should result in a fast response from the Commission in order for the Member States to proceed e.g. with a formal notification as quickly as possible.

In the following these general views are elaborated in light of the Commission's consultation questionnaire. The Danish Government's response will focus on Section C of the questionnaire: "*New topics to be considered in the Code of Best Practice*"

### ***Questionnaire***

***Q: Following the revision of the Procedural Regulation and the State Aid Modernisation process, what changes could be introduced to make the Code more useful?***

**A:** The State Aid Modernisation has placed more responsibility on the Member States in designing and implementing compatible aid under the GBER. As a result the Commission can now focus on larger cases that have the greatest impact on competition. The Code should reflect the Commission's considerations in respect to how it focuses its enforcement resources. It should reflect how the Commission prioritize cases with the most significant impact on competition in the EU, while at the same time ensuring the coherent application of the state aid rules in Member States.

Following the State Aid Modernisation the GBER is now used to a large extent by aid granting authorities. As the GBER now covers 90% of all aid measures, the Danish Government finds that important procedural aspects in respect to the partnership between Member States and the Commission interpreting the GBER should be dealt with in the Code.

Despite Member States' implementing aid measures without prior notification to the Commission, prior assessment or dialogue with the Commission is often necessary. The Code should address the procedure of this informal dialogue on interpretation of the GBER. Moreover, the Commission should describe what tools are available to Member States in these situations: The possibility to ask questions on e-state aid wiki, sharing this information with all Member States, and/or the possibility to make informal contact with the Commission's case handlers on questions on interpretation.

The increased responsibility for Member States to grant state aid directly under the GBER risk increasing errors and non-uniform interpretation of the state aid rules. The Danish Government believes that streamlining this

process on interpretation of the GBER too would encourage Member States to consult the Commission on questions of interpretation when designing their measures in order to match the requirements of the GBER.

The Danish Government considers it highly important that all measures are taken in order to encourage uniform application of the GBER in the Member States. The Code could in that way provide an even better framework for streamlining the exchange of information between the Commission and Member States.

***Q: The Procedural Regulation provides the possibility for the Commission to conduct an inquiry across Member States into a sector of the economy or the use of an aid instrument. Do you find it useful to propose guidance on such an inquiry within the Code?***

A: The current Code only addresses the process of a state aid procedure when the case origin is either a notification or a complaint. The code should clarify that the Commission may also open a case on its own initiative, as a result of sector enquiries, monitoring etc. In our view the Code should also include detailed information on the process to be expected when the Commission carries out sector inquiries and market investigations. And what might be the possible outcome of such processes.

***Q: The Procedural Regulation provides the possibility to Commission to ask questions to undertakings following the opening of the formal investigation procedure. Do you find it useful to propose guidance on such market investigation tools within the Code?***

A: Yes. Cf. answer to question above.

***Q: To accompany the State aid modernisation and enable contacts with Member States, DG Competition has set up a network of country contact points. Should the Code refer to this network and explain their role?***

A: Cf. below.

***Q: Do you have any suggestions on how to improve the cooperation between DG COMP and the network of country contact points?***

A: It would indeed be useful if the Code explains the role of the network of country contact points. A possible way to improve the cooperation in the network would be to make the future ECN2-networksystem the natural contact point for exchange of information in the network, e.g. information on meeting material and coordination etc.

***Q: Should the Code refer to and explain the portfolio approach for the treatment of cases. For example, the process whereby Member States and Commission agree on a process for timely delivery on a group of cases, possibly by deprioritising other cases?***

**A:** Yes. The Danish Government support transparency on the procedures in respect to the portfolio approach and finds that the Code should reflect the Commission's criteria for prioritizing the portfolio of cases.

***Q: To accompany the State aid modernisation and enable its uptake at the national level, the Commission has promoted a strengthened partnership with the Member States. How do you think the Code could reflect the practices of the partnership?***

**A:** Cf. answer to first question.

***Q: Following the revision of the State aid rules in the context of the State Aid Modernisation process, a significant number of measures have been implemented by Member States under the General Block Exemption Regulation and monitored by the Commission ex post. Would it be useful to make a reference in the Code to the monitoring and its objectives?***

**A:** The Commission should ensure as much transparency on the monitoring process as possible. Thus, the Danish government finds it very important that the Commission's ex post monitoring and its objectives are addressed in the Code.

The Code should give detailed guidance to the Member States on what they can expect of the Commission's monitoring exercise. This could include how Member States enter into dialogue with the Commission on the Commission's potential findings, which time frames Member States can expect when answering questions from the Commission, time frames for the Commission's follow up on the answers submitted and next steps. E.g. follow up is still outstanding in a specific Danish case where answers to the Commission in an ex post monitoring procedure were submitted more than a year ago.

Member States should receive a clear and prompt response from the Commission on what the outcome of the monitoring exercise is expected to be, and what steps the Commission intends to take in this respect.

As for the possible outcome of the Commission's ex post monitoring the Danish Government urges the Commission to elaborate on the scenarios

Member States can expect to be met with. In the Commission's official reply to the European Court of Auditors Special report No 24/2016 compliance with State aid rules in cohesion policy, the Commission provides useful guidance in respect to the situations where the Commission, in its monitoring, e.g. detect instances of non-compliance with the state aid rules. It follows from the Commission's official reply that *"If the DG COMP's monitoring detects an illegal aid measure, it first examines whether such measure can be found compatible with the internal market. Only if the error detected results into granting of incompatible aid, corrective measures consisting in recovery of aid can be used. For other types of errors, adjustment to the design of the scheme and/or to the control mechanisms is more appropriate. For some errors, corrective measures would be difficult to achieve (e.g. the aid was incompatible at the moment when it was granted, but can be found compatible on the basis of the later revised rules)."* This should be reflected in the Code, followed by examples.

#### ***Final remarks***

Please do not hesitate to contact the Danish Authorities for clarification and elaboration on any of the above stated preliminary comments.