

## **SAU Guidance Consultation Response**

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### Question 2: (Transparency)

The overall approach is fine, although this an odd line: "Public authorities will not routinely be able to refine or clarify information after the submission of their request, although the SAU may on occasion ask the public authorities for clarification where necessary." Such an approach is not necessary for transparency reasons and unduly restrictive. It is quite possible that refinements or clarifications may be necessary (as is frequently in negotiations with DG COMP in State aid scheme cases)

### Question 3 (Confidentiality)

While there is a statutory obligation on the SAU to 'publish' at the end of the review period, I do not think there is enough time within the statutory period to handle confidentiality requests. It would be more realistic therefore for the SAU to publish a redacted version reflecting whatever confidentiality claims the public authority has made – with a proviso that the SAU's assessment of confidentiality will occur at the end of the process and that this may lead to a revised (and potentially more lightly redacted) version published later. This does not affect the judicial review timetable which is anyway triggered by the PA decision rather than the SAU advice. A Judicial Review application could be accompanied by an order for a confidentiality ring if there were extensive delays with reference to confidentiality.

### Question4: (Content of SAU Reports)

I think the guidance here, especially with respect to evidence that needs to be submitted by public authorities implies a larger burden than Parliament intended. While substantial evidence like this may be called for in especially large and complex SSoPI, (e.g. Hinkley Point or bailing out of a major steelworks) it will be too burdensome for most notifications.

### Question 5: (Monitoring Reports)

I think the SAU should also comment on the international competitiveness of UK subsidies. In my view this is within the meaning of s 65(1)(b) of the Act, whereby monitoring reports should assess "impact of the Act on competition and investment within the United Kingdom". Given that many of the larger projects will be investments that are internationally mobile, the subsidy control regime plays a part in attracting such investment and as such needs to be competitive with the regimes of our trading partners. For example, the SAU could consider whether the levels of subsidy for aided projects similar to international competitors (US, Japan, EU etc). How timescales and perceptions of legal certainty compare.

August 2022