

Draft procedural guidance on state aid notifications and reporting

Consultation document

© Crown copyright 2019

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to: State Aid Team, Competition and Markets Authority, 6th Floor, Victoria House, 37 Southampton Row, London, WC1B 4AD, or by email to stateaidproceduralguidance@cma.gov.uk

This publication is also available from the CMA's webpages at www.gov.uk/cma.

Contents

	<i>Page</i>
1. About the consultation	2
2. Consultation process	4
3. Questions for consideration	7

1. About the consultation

Introduction

- 1.1 The European Union (Withdrawal) Act 2018 (the Withdrawal Act) provides that certain rights and obligations under European Union (EU) law continue to be recognised in domestic law after the United Kingdom (UK)'s exit from the European Union (EU). The same Act incorporates EU regulations and certain decisions into domestic law as they stand at exit day. As part of this process, certain state aid rules from the Treaty on the Functioning of the European Union (TFEU) and related EU regulations and decisions continue to be recognised or have effect in UK law.
- 1.2 The Government laid a draft state aid Statutory Instrument (SI) before Parliament on 21 January 2019, the State Aid (EU Exit) Regulations 2019 (the Regulations), to ensure a domestic state aid regime would be in place by 29 March 2019 in the event the UK leaves the EU without a deal. This SI, in the event that the UK leaves the EU without a deal and without an implementation period, gives the CMA the function of being the UK state aid enforcement authority, in place of the European Commission, from the date on which the UK leaves the EU.
- 1.3 The CMA has published draft guidance on its new power to approve notified state aid measures, the information required to be submitted to the CMA for aid benefiting from a block exemption and the transparency and annual reporting requirements for notified aid and aid exempt from notification. The CMA intends to publish this guidance in the event that UK leaves the EU without a deal and without an implementation period and subject to the Regulations being adopted.
- 1.4 The CMA is consulting on the draft guidance before the Regulations have been made because, in the event that the UK leaves the EU without a deal and without an implementation period on 29 March 2019, it is important that interested parties have had notice on the procedures that the CMA proposes to use for state aid cases, as well as an opportunity to comment on them.
- 1.5 The draft guidance is intended for public and other bodies that grant, or are considering granting state aid in the UK, other government departments involved in state aid notifications, businesses and their advisers.
- 1.6 The draft guidance is not intended to cover all aspects of the state aid regime in the UK, and the CMA intends to publish further guidance dealing with other aspects in due course. In particular, the draft guidance does not cover in

detail how the CMA will deal with complaints regarding alleged unlawful aid or alleged misuse of aid or investigations regarding existing aid. However, the proposed process for investigations set out in the draft guidance is likely to be relevant to all investigations conducted by the CMA under the Regulations.

- 1.7 Given that the development of the CMA's state aid regime is at an early stage, the CMA expects that it will be necessary to revise this guidance to reflect the CMA's emerging experience as well as any changes in best practice and the law.

Scope of this consultation

- 1.8 This consultation seeks respondents' views on the content of the draft procedural guidance on aid notifications and reporting. We want to ensure that the guidance is clear, comprehensive and useful for its intended readers.
- 1.9 This consultation is aimed at those who have an interest in the UK's state aid regime. We are therefore seeking the views of interested parties, including but not limited to government departments and other bodies which currently grant aid or may grant aid in the future, businesses, consumers and their legal and other advisors, and other parties or persons involved in state aid notifications, examinations and investigations with the European Commission.
- 1.10 We are publishing this consultation on the CMA website and drawing it to the attention of a range of stakeholders to invite comments.
- 1.11 Given that the CMA intends to publish the guidance before exit day if the UK leaves the EU without a deal and without an implementation period, the time period for consultation is necessarily short. The CMA will endeavour to take into consideration all views received in response to this consultation in the time available. In any event, interested parties will have further opportunities to provide their views to the CMA regarding its state aid regime. In particular, the CMA plans to review its draft guidance periodically after the start of the regime in order to reflect developments in procedure, best practices and the law, as well as issue other guidance on the functioning of the regime as it develops.

2. Consultation process

- 2.1 We encourage you to respond to the consultation in writing (by email or by letter) using the contact details provided in paragraph 2.5 below.
- 2.2 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make it clear who you are representing and their role or interest.
- 2.3 In pursuance of our policy of openness and transparency, we will publish non-confidential versions of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive at the same time.

Duration

- 2.4 The consultation will run for two weeks, from 4 March 2019 to midnight on 18 March 2019.

Contact details

- 2.5 Responses should be submitted by post or email, by no later than midnight on 18 March 2019, and should be sent to:

The State Aid Team
Competition and Markets Authority
6th Floor
Victoria House
37 Southampton Row
London WC1B 4AD

Email: stateaidproceduralguidance@cma.gov.uk

Compliance with government consultation principles

- 2.6 In preparing this consultation, the CMA has taken into account the published [government consultation principles](#), which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

Statement about how we use information and personal data that is supplied in consultation responses

- 2.7 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.
- 2.8 We are processing this personal data for the purposes of our work. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account and to ensure that we properly consult on the procedural guidance on state aid notifications and reporting, before it is finalised and issued.
- 2.9 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our [Privacy Notice](#).
- 2.10 Our use of all information and personal data that we receive is also subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.
- 2.11 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration any representations made by you here in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under Part 9 of the Enterprise Act 2002.
- 2.12 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

After the consultation

- 2.13 After the consultation, we will decide whether any changes are necessary to the draft guidance. We will then publish the final version of the guidance on our webpages at www.gov.uk/cma. We will also publish a summary of the responses received during the consultation. These documents will be available on our webpages and respondents will be notified when they are available.

3. Questions for consideration

- 3.1 The CMA would welcome the views of interested parties on any aspects of the draft guidance.