

Practical guidance to Member States for a swift treatment of State aid notifications in the framework of the Recovery and Resilience Facility

Disclaimer: this is a document drafted by the services of the European Commission for information purposes and it is not intended to constitute a statement of the law. It is without prejudice to the interpretation of the Treaty provisions on State aid by the Union Court and does not create any new rights in addition to those laid down in the Treaty, the State aid Procedural Regulation¹ and the Implementing Regulation² and their interpretation by the EU Courts. It also does not alter those rights in any way. In any case, the services of the Directorate General for Competition (DG Competition) are available to provide further guidance to Member States on the issues below in the context of the preparation of their respective Recovery and Resilience Plans.

A. Purpose of this practical guidance

As set out in recital 8 of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility³ (“RRF”), Member States should ensure that all reforms and investments included in the national Recovery and Resilience Plans (“RRPs”) comply with the relevant EU State aid rules and follow all State aid procedures.

The Commission has published several State aid guiding templates to assist Member States in the design of the State aid elements of their RRP in line with EU State aid rules and to provide guidance on the State aid-related aspects of the types of investments which are expected to be common to most of those plans.⁴ In addition, to address potential State aid issues upfront, the Commission is also directly engaging with Member States on the reforms and investments under consideration in their national RRP.

It is expected that many measures likely to be proposed by Member States, such as certain infrastructure investments and direct support to citizens, will not be subject to State aid control. For such measures, prior notification to the Commission is not necessary. Other measures are however likely to constitute aid but will be exempted from the prior notification obligation as they will fall within the scope of block-exemption rules, in particular the General Block Exemption Regulation⁵ (“GBER”), or be covered by an existing approved scheme. These measures can therefore be immediately implemented by Member States.

When State aid measures included in an RRP need to be notified to the Commission for approval prior to their implementation, the services of DG Competition will deal with them

¹ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.

² Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.4.2004, p. 1.

³ OJ L 57, 18.2.2021, p. 17.

⁴ Available at https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html.

⁵ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

with priority and endeavour to complete its assessment concerning notifiable State aid measures within six weeks from complete notification from the Member State.

To this end, Member States' cooperation is essential in ensuring that the 6-week deadline can be met. Close and timely cooperation as well as full transparency on the intended measures are equally important to ensure efficient pre-notification and notification discussions. In this context, this document provides Member States with practical guidance and proposes specific actions that Member States are invited to undertake to facilitate a swift treatment of the State aid measures to be notified. Only if Member States follow this practical guidance can the services of DG Competition strive to achieve the abovementioned deadline.

B. Early identification of State aid measures to be pre-notified or notified

The Commission services have invited Member States to use the template attached to the Guidance for RRP⁶ when drafting their national plans. According to this Guidance Member States are invited to specify in the RRP for each measure (reforms and investments), whether in their view:

- the support for the reform or investment will not constitute State aid in the sense of Article 107(1) TFEU; or
- the reform or investment will be financed on the basis of an existing State aid scheme falling under a block exemption regulation, in particular the GBER, or approved by a Commission State aid decision (providing the reference number to such scheme (SA.nnnnn)); or
- if the reform or investment will result in a new State aid measure, an explanation of whether it will comply with the conditions of a block exemption regulation or the GBER (indicating which Article thereof); or
- if the measure requires a State aid notification, an indication of when the measure will be pre-notified or notified to the Commission and details on the planned compatibility basis.

In order to alert the relevant service of DG Competition and prepare it to deal with the notifiable State aid measures as a matter of priority, Member States are invited to share the information indicated in the last bullet point above with the State aid country coordinator in DG Competition (list of contact points enclosed as **Annex I**), as well as with the dedicated RRF team in DG Competition (COMP-RRF@ec.europa.eu).

C. Pre-notification and notification of individual State aid measures and schemes

Member States are encouraged to pre-notify and/or notify the relevant individual State aid measures and schemes via the State aid notification system SANI2, according to the planned

⁶ See Guidance to Member States – Recovery and Resilience Plans, published on 22 January 2021 (https://ec.europa.eu/info/files/guidance-member-states-recovery-and-resilience-plans_en), and the accompanying template for the RRP (https://ec.europa.eu/info/files/commission-staff-working-document-draft-template-recovery-and-resilience-plans_en).

timing (as per section B above). Member States are also advised to reach out to DG Competition via informal contacts with the relevant case-team – in case of doubt, the State aid country coordinators and the dedicated RRF team in DG Competition (COMP-RRF@ec.europa.eu) can provide the contact details of the relevant case-team.

The informal contacts and/or pre-notification with DG Competition will allow starting a dialogue for the preparation of a complete notification file. In line with the Code of Best Practices for the conduct of State aid control procedures⁷, during the pre-notification contacts, the services of DG Competition and the Member State will discuss what information is needed for the notification of the State aid measure in question to be considered as complete. The pre-notification contacts moreover allow a discussion on the legal and economic aspects of a proposed measure in an informal and confidential manner before it is formally notified. When the file is deemed complete, Member States will be invited to fill in the formal notification form in the State aid notification system SANI2.

The pre-notification and notification forms in SANI2 have been updated to allow for a quick identification of RRF-related measures. When pre-notifying or notifying in SANI2, Member States are asked to create new pre-notification and notification forms and to indicate in section 5.7 of the form whether the measure is a reform and/or investment financed under the RRF⁸. Member States are also invited to clearly indicate the relevant component and reform/investment of the RRP to which the pre-notified or notified measure relates to.

D. Language regime and others practical aspects

Both during pre-notification contacts and at the stage of formal notification, Member States are encouraged to contact the services of DG Competition directly in English. Also, where applicable, translations into English of the annexes and accompanying documents should be provided. This will very much facilitate the discussions and will avoid supplementary delays due to translations.

At the time of formal notification, Member States are invited to provide a language waiver (template enclosed as **Annex II**) in order to allow dealing with the notification and the adoption of the corresponding State aid decision in English. Once the English version of the decision is adopted, the Commission will endeavour to provide as soon as possible a courtesy translation in the official language(s) if requested by the Member State.

To the extent possible, with the aim to speed up the discussions, Member States are invited to provide a single and direct contact point at technical level in the relevant entity. This contact point should be the main counterpart of the services of DG Competition during the pre-notification and notification discussions and would allow the services of DG Competition to channel all relevant information requests through that contact point to the relevant authorities.

If relevant for the measure(s) at stake, Member States should indicate if the notification contains confidential information, clearly specifying the information considered confidential or containing business secrets.

⁷ OJ C 253, 19.7.2018, p. 14.

⁸ In addition, Member States should indicate in the name of the measure to be pre-notified or notified that it relates to the RRF. For example, “*RRF – Construction of infrastructure for transport of hydrogen*”.

Annex I – List of e-mail addresses of State aid country coordinators in DG Competition

Austria	COMP-SA-AT@ec.europa.eu
Belgium	COMP-SA-BE@ec.europa.eu
Bulgaria	COMP-SA-BG@ec.europa.eu
Cyprus	COMP-SA-CY@ec.europa.eu
Croatia	COMP-SA-HR@ec.europa.eu
Czech Republic	COMP-SA-CZ@ec.europa.eu
Denmark	COMP-SA-DK@ec.europa.eu
Estonia	COMP-SA-EE@ec.europa.eu
Finland	COMP-SA-FI@ec.europa.eu
France	COMP-SA-FR@ec.europa.eu
Germany	COMP-SA-DE@ec.europa.eu
Greece	COMP-SA-EL@ec.europa.eu
Hungary	COMP-SA-HU@ec.europa.eu
Ireland	COMP-SA-IE@ec.europa.eu
Italy	COMP-SA-IT@ec.europa.eu
Latvia	COMP-SA-LV@ec.europa.eu
Lithuania	COMP-SA-LT@ec.europa.eu
Luxembourg	COMP-SA-LU@ec.europa.eu
Malta	COMP-SA-MT@ec.europa.eu
Netherlands	COMP-SA-NL@ec.europa.eu
Poland	COMP-SA-PL@ec.europa.eu
Portugal	COMP-SA-PT@ec.europa.eu
Romania	COMP-SA-RO@ec.europa.eu
Slovakia	COMP-SA-SK@ec.europa.eu
Slovenia	COMP-SA-SI@ec.europa.eu
Spain	COMP-SA-ES@ec.europa.eu
Sweden	COMP-SA-SE@ec.europa.eu

Annex II – Language waiver

In order to speed up the processing of the notification, the below language waiver should be provided with the notification, on letterhead of the relevant authorities, dated and signed. Please clearly identify the measure(s) for which the language waiver is provided.

Due to the urgent need to adopt and notify a Decision in relation to the present notification relating to [brief description of the measure/scheme subject to the notification], the [national: specify] government agrees exceptionally to waive its rights deriving from Art. 342 TFEU in conjunction with Art. 3 of the EC Regulation 1/1958 and to have the planned Decision adopted and notified pursuant to Article 297 of the Treaty in English language.