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State aid: Commission issues guidance on state aid enforcement by national courts - frequently asked questions

(See also [IP/09/316](#))

Why issue guidance on State aid enforcement by national courts?

National courts play a vital role in the enforcement of the state aid rules. In particular, companies affected by illegal aid to a competitor can refer requests for injunctions and/or damages to national courts (in the meaning of the EU state aid rules, illegal aid is aid that has been paid without prior approval by the Commission). However, actions brought by private persons against unlawful state aid remain rare. The key purpose of the new Notice is to make national courts and potential claimants more aware of the remedies available at national level and to strengthen the Commission's support for national courts.

Why did the 1995 cooperation notice need to be revised?

The 1995 Notice was predominantly aimed at cooperation between the Commission and national courts. The Commission considers that a broader Notice is needed which addresses all the different aspects of private state aid enforcement.

In addition, important legislative developments and European Court of Justice judgments on the role of national courts since 1995 have been reflected in the new Notice.

What issues are covered in the new Notice?

The new Notice contains a detailed description of the role of national courts in state aid enforcement as defined by the European courts. This includes guidance on the national court's obligation to protect individual rights, the recovery of illegal state aid from the beneficiary and the conditions under which competitors can ask for interim measures.

In addition, the new Notice introduces detailed provisions on the possibility for national courts to obtain Commission support in individual cases (see below).

Does the new Notice deal with damages actions?

Damages claims are a vital element of private state aid enforcement because, unlike an action aimed at the recovery of illegal aid, a successful damages action would procure the applicant a direct financial advantage.

The Notice explains, *inter alia*, that damages claims in national courts can be based directly on violations of EU law (the granting of illegal aid). Recourse to national law is therefore not always necessary for such claims.

How does the Commission propose to support national courts?

The new Notice envisages two different forms of Commission support for national courts. National courts can ask the Commission for information in its possession and/or for an opinion on a specific state aid issue. Both types of support measures have already been used in the antitrust field for several years.

The Commission aims to make the national courts' recourse to Commission support as practical and user friendly as possible. It has therefore not only established a single contact point for all state aid related questions but also introduced indicative deadlines for the Commission's responses. In addition, the new Notice contains detailed guidance on the protection of confidential information requested by a national court.

Will the new Notice limit the independence of national courts?

The new Notice is based on the case law of the European courts and does not seek to introduce any further legal obligations for national courts. Consequently, it does not limit the independence of national courts. This is also explicitly stated in the new Notice.

Also the cooperation mechanisms under the new Notice are entirely voluntary. National courts are under no legal obligation to make use of this cooperation.