
DRAFT STATUTORY INSTRUMENTS

2019 No.

The State Aid (EU Exit) Regulations 2019

PART 3

Procedure

CHAPTER 1

Notified aid

Notification

7.—(1) An aid grantor must notify the CMA of plans to grant new aid by submitting a notification to the CMA that—

- (a) is made in the specified form; and
- (b) contains the specified information.

(2) After receiving a notification, the CMA may request an aid grantor to send any necessary additional information within a set period.

(3) The CMA may request information under this regulation more than once.

(4) A notification is considered to be a complete notification if—

- (a) the CMA notifies the aid grantor that the notification is a complete notification; or
- (b) the CMA does not, within the relevant period, request an aid grantor to send any additional information.

(5) In this regulation—

“relevant period” means a period of 40 working days starting with the first working day after receipt of a notification or receipt of any additional information requested under this regulation (as appropriate); and

“specified” means specified by the CMA in a notice published under regulation 55.

Examination of notification

8.—(1) The CMA must examine a complete notification and take one of the following decisions—

- (a) that the notified measure does not constitute aid;
- (b) to approve the aid; or
- (c) if the CMA is not satisfied that it can take a decision under sub-paragraph (a) or (b), to open an investigation in respect of the notified measure.

(2) The CMA must take a decision under paragraph (1) within a period of 40 working days starting with the first working day after the day on which the notification is considered to be a complete notification under regulation 7(4).

Failure to take decision

9.—(1) If the CMA does not take a decision in accordance with regulation 8, the notified measure is deemed to be approved by the CMA.

(2) However, the aid grantor must not implement the measure unless—

- (a) the aid grantor notifies the CMA that it intends to implement the measure; and
- (b) the CMA does not take a decision referred to in paragraph (3) within a period of 15 working days starting with the first working day after the day on which the aid grantor notifies the CMA under sub-paragraph (a).

(3) If the aid grantor notifies the CMA under paragraph (2)(a), the CMA may take a decision under regulation 8(1) in respect of the measure.

(4) If the CMA takes a decision referred to in paragraph (3) within the period referred to in paragraph (2)(b), the decision applies as if the notified measure had not been deemed to be approved under paragraph (1).

Publicity

10.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 8(1)—

- (a) the decision;
- (b) the reasons for the decision; and
- (c) in relation to a decision taken under regulation 8(1)(c), the period during which representations may be sent to the CMA by the aid grantor and interested parties.

(2) The period referred to in paragraph (1)(c) is 20 working days starting with the first working day after the day on which the reasons for the decision are published by the CMA.

(3) The CMA must send to the aid grantor any representations it receives from interested parties under this regulation, and any market information it receives from a person under Chapter 5, except that the CMA may withhold—

- (a) any representations or market information to the extent that they contain confidential information; and
- (b) the identity of an interested party or person who sent market information (as appropriate) if requested to do by the interested party or person on grounds of potential damage.

(4) The aid grantor may, in response to representations made by interested parties or market information provided under Chapter 5, send representations to the CMA within a period of 20 working days starting with the first working day after the day on which the aid grantor receives the representations or information.

Notified aid investigation

11.—(1) If the CMA decides to open an investigation under regulation 8(1)(c), the CMA must carry out such investigations as it considers appropriate to take a decision under paragraph (2).

(2) The CMA must, after carrying out an investigation, decide—

- (a) whether the notified measure constitutes aid; and
- (b) if so, whether to approve the aid.

(3) The CMA may consider the notified measure as modified by the aid grantor if the CMA considers it appropriate to do so.

Publication of decision after notified aid investigation

12.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 11—

- (a) the decision; and
- (b) the reasons for the decision.

(2) The CMA must notify any interested party who sent representations that the decision has been published.

Time limit for notified aid investigation

13.—(1) The CMA must use its best endeavours to take a decision under regulation 11 within a period of 18 months starting with the date on which the decision to open the investigation was taken.

(2) If the CMA has not taken a decision within the period referred to in paragraph (1), the aid grantor may request the CMA to take a decision on the basis of the information available to the CMA.

(3) If the aid grantor makes a request under paragraph (2), the CMA must take a decision under regulation 11 within a period of 8 weeks starting with the day after the day on which the CMA receives the request.

Withdrawal of notification

14.—(1) An aid grantor may withdraw a notification at any time before the CMA takes a decision under regulation 11.

(2) If an aid grantor withdraws a notification—

- (a) the CMA must stop its examination or investigation (as appropriate); and
- (b) the CMA is not required to take or publish any further decisions in respect of the notification.

(3) A notification is deemed to be withdrawn if—

- (a) the CMA makes a request for additional information under regulation 7(2); and
- (b) within the set period—
 - (i) the aid grantor does not send the information; or
 - (ii) the aid grantor does not notify the CMA that the information does not exist.

(4) The CMA must notify the aid grantor if a notification is deemed to be withdrawn.

CHAPTER 2

Unlawful aid

Examination of alleged unlawful aid

15.—(1) The CMA may on its own initiative examine information from any source regarding alleged unlawful aid and may, after an examination, take a decision under paragraph (5).

(2) The CMA must examine any properly submitted complaint regarding alleged unlawful aid and must, after an examination, take a decision under paragraph (5).

(3) If the CMA reasonably requires information for the purpose of taking a decision under paragraph (5), the CMA may request the aid grantor to send the information within a set period.

(4) If the aid grantor does not send the information within the set period, the CMA may take the decision on the basis of the information available to the CMA.

(5) The decisions referred to in paragraphs (1) and (2) are—

- (a) that the alleged unlawful aid does not constitute unlawful aid;
 - (b) to approve the aid; or
 - (c) if the CMA is not satisfied that it can take a decision under sub-paragraph (a) or (b), to open an investigation in respect of the alleged unlawful aid.
- (6) If the CMA approves the aid, the aid is considered to have been approved in accordance with Article 108(3) of the TFEU.

Publicity

16. Regulation 10 (publicity) applies to a decision taken under regulation 15(5) as it applies to a decision taken under regulation 8(1).

Unlawful aid investigation

17.—(1) If the CMA decides to open an investigation under regulation 15(5)(c), the CMA must carry out such investigations as it considers appropriate to take a decision under paragraph (2).

- (2) The CMA must, after carrying out an investigation, decide—
 - (a) whether the alleged unlawful aid constitutes unlawful aid; and
 - (b) if so, whether to approve the aid.

(3) The CMA may consider the alleged unlawful aid as modified by the aid grantor if the CMA considers it appropriate to do so.

(4) If the CMA approves the aid, the aid is considered to have been approved in accordance with Article 108(3) of the TFEU.

Publication of decision after unlawful aid investigation

18.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 17—

- (a) the decision; and
- (b) the reasons for the decision.

(2) The CMA must notify any interested party who sent representations that the decision has been published.

CHAPTER 3**Misuse of aid****Examination of alleged misuse of aid**

19.—(1) The CMA may on its own initiative examine information from any source regarding alleged misuse of aid and may, after an examination, decide whether there has been a misuse of aid.

(2) The CMA must examine any properly submitted complaint regarding alleged misuse of aid and must, after an examination, decide whether there has been a misuse of aid.

(3) If the CMA reasonably requires information for the purpose of taking a decision under this regulation, the CMA may request the aid grantor to send the information within a set period.

- (4) If the aid grantor does not send the information within the set period, the CMA may—
 - (a) take a decision under this regulation on the basis of the information available to the CMA, including any information obtained in accordance with Schedule 4; or
 - (b) request the beneficiary to send the information within a set period.

(5) If the beneficiary does not send the information within the set period, the CMA may take a decision under this regulation on the basis of the information available to the CMA, including any information obtained in accordance with Schedule 4.

(6) If the CMA decides there has been a misuse of aid, the CMA must open an investigation in respect of the misused aid.

(7) Schedule 4, which relates to powers of entry in misuse of aid examinations, has effect.

Publicity

20. Regulation 10 (publicity) applies to a decision taken under regulation 19(6) as it applies to a decision taken under regulation 8(1)(c).

Misuse of aid investigation

21.—(1) If the CMA decides to open an investigation under regulation 19(6), the CMA must carry out such investigations as it considers appropriate to take a decision under paragraph (2).

(2) The CMA must, after carrying out an investigation, decide whether to approve the aid.

(3) The CMA may consider the aid as modified by the aid grantor if the CMA considers it appropriate to do so.

(4) If the CMA approves the aid, the aid is considered to have been approved in accordance with Article 108(3) of the TFEU.

Publication of decision after misuse of aid investigation

22.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 21—

- (a) the decision; and
- (b) the reasons for the decision.

(2) The CMA must notify any interested party who sent representations that the decision has been published.

CHAPTER 4

Existing aid schemes

Review of existing aid scheme

23.—(1) The CMA may review an existing aid scheme for the purpose of deciding whether the scheme could be approved by the CMA if the aid was notified under Chapter 1 of this Part.

(2) If the CMA reasonably requires information for the purpose of this regulation, the CMA may request the aid grantor to send the information within a set period.

(3) If the aid grantor does not send the information within the set period, the CMA may take a decision under this regulation on the basis of the information available to the CMA.

(4) If the CMA considers that an existing aid scheme could not be approved by the CMA were the aid to be notified under Chapter 1 of this Part, the CMA must—

- (a) notify the aid grantor of its preliminary view; and
- (b) give the aid grantor an opportunity to send representations within a period of 20 working days starting with the first working day after the day on which the CMA notifies the aid grantor under sub-paragraph (a).

Proposal for appropriate modifications

24.—(1) The CMA must send a recommendation to an aid grantor proposing appropriate modifications to an existing aid scheme if both of the following apply—

- (a) the CMA notifies the aid grantor, under regulation 23(4), of its preliminary view that an existing aid scheme could not be approved by the CMA were the aid to be notified under Chapter 1 of this Part; and
- (b) after considering any representations sent by the aid grantor, the CMA concludes that the existing aid scheme could not be approved by the CMA were the aid to be notified under Chapter 1 of this Part.

(2) A recommendation must include a time period within which the recommendation must be implemented.

(3) A recommendation may, in particular, propose—

- (a) substantive amendment of the aid scheme;
- (b) the introduction of reporting requirements; or
- (c) the termination of the aid scheme.

Consequences of proposal for appropriate modifications

25.—(1) If the aid grantor accepts the CMA's recommendation—

- (a) the aid grantor must notify the CMA; and
- (b) the aid grantor must implement the CMA's recommendation within the relevant time period.

(2) The CMA must open an investigation in respect of the existing aid scheme if—

- (a) the aid grantor—
 - (i) does not accept the CMA's recommendation; or
 - (ii) accepts the CMA's recommendation but fails to implement the CMA's recommendation within the relevant time period; and
- (b) the CMA considers that implementation of the recommendation is still necessary.

Publicity

26. Regulation 10 (publicity) applies to a decision taken under regulation 25(2) as it applies to a decision taken under regulation 8(1)(c).

Existing aid scheme investigation

27.—(1) If the CMA decides to open an investigation under regulation 25(2), the CMA must carry out such investigations as it considers appropriate to take a decision under paragraph (2).

(2) The CMA must, after carrying out an investigation, decide whether the aid scheme could be approved if the aid was notified under Chapter 1 of this Part.

(3) The CMA may consider the existing aid scheme as modified by the aid grantor if the CMA considers it appropriate to do so.

Publication of decision after existing aid scheme investigation

28.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 27—

- (a) the decision; and
- (b) the reasons for the decision.

(2) The CMA must notify any interested party who sent representations that the decision has been published.

Time limit for existing aid scheme investigation

29.—(1) The CMA must use its best endeavours to take a decision under regulation 27 within a period of 18 months starting with the date on which the decision to open the investigation was taken.

(2) If the CMA has not taken a decision within the period referred to in paragraph (1), the aid grantor may request the CMA to take a decision on the basis of the information available to the CMA.

(3) If the aid grantor makes a request under paragraph (2), the CMA must take a decision under regulation 27 within a period of 8 weeks starting with the day after the day on which the CMA receives the request.

CHAPTER 5

Market information

Request for market information

30.—(1) This regulation applies if the CMA opens an investigation under regulation 8(1)(c), 15(5)(c) or 19(6).

(2) The CMA may request a person (other than the aid grantor) to send market information to the CMA within a set period if—

- (a) any information provided by the aid grantor is not sufficient to enable the CMA to take a decision under regulation 11, 17 or 21 (as appropriate); and
- (b) the CMA reasonably requires the market information for the purpose of taking a decision under regulation 11, 17 or 21 (as appropriate).

(3) A request under paragraph (2) must be sent to the person concerned and specify—

- (a) the market information that is requested;
- (b) the legal basis for requesting the information; and
- (c) the possible consequences of providing incorrect or misleading information in response to the request.

(4) If the person is, or will be, a beneficiary of the aid, the CMA must give the aid grantor reasonable notice before making a request under paragraph (2).

(5) If the CMA makes a request under paragraph (2), the CMA must—

- (a) send a copy of the request to the aid grantor at the same time as sending it to the person; and
- (b) notify the aid grantor why the information has been requested.

Market information order

31.—(1) If a person does not comply with a request for market information under regulation 30, the CMA may make a market information order requiring the person to send the market information within a set period.

(2) A market information order must be sent to the person concerned and specify—

- (a) the market information that must be provided;
- (b) the form and manner in which the information must be provided;

- (c) the date by which the information must be provided;
 - (d) the legal basis for requiring the information; and
 - (e) the possible consequences of not complying with the order.
- (3) However, a person is not required to provide information that—
- (a) the person could not be compelled to provide in evidence in civil proceedings before the court; or
 - (b) is not at the disposal of the person.
- (4) If the CMA makes a market information order, the CMA must—
- (a) send a copy of the order to the aid grantor at the same time as sending it to the person; and
 - (b) notify the aid grantor why the order has been made.

Enforcement of market information requests and orders

32.—(1) The CMA may impose a penalty on a person in accordance with Schedule 5 if the CMA considers that the person has, without reasonable excuse—

- (a) provided incorrect or misleading information in response to a request for market information made under regulation 30(2);
- (b) provided incorrect, incomplete or misleading information in response to a market information order made under regulation 31; or
- (c) otherwise failed to comply with a requirement of a market information order made under regulation 31.

(2) The CMA must have regard to the statement of policy on penalties published under Schedule 5 in deciding whether and, if so, how to proceed under paragraph (1).

(3) If a person fails to comply with a request for market information or a market information order, the CMA may take a decision under regulation 11, 17 or 21 (as appropriate) on the basis of the information available to the CMA.

(4) The CMA must not impose a penalty under paragraph (1) if more than 4 weeks have passed since the date on which the CMA published its decision for the investigation concerned.

(5) However, paragraph (4) does not apply in relation to any variation or substitution of the penalty which is permitted by Schedule 5.

(6) Schedule 5, which relates to administrative penalties, has effect.

CHAPTER 6

General

Complaints

33.—(1) An interested party may send a complaint to the CMA regarding alleged unlawful aid or alleged misuse of aid.

(2) A complaint must display reasonable grounds to show the existence of unlawful aid or misuse of aid and—

- (a) be in the specified form; and
- (b) contain the specified information.

(3) If the CMA considers that a complaint does not comply with paragraph (2), the CMA must—

- (a) notify the interested party; and

- (b) request that the interested party send further representations to the CMA within a set period.
- (4) If the interested party does not send further representations within the set period—
 - (a) the complaint is deemed to be withdrawn; and
 - (b) the CMA must notify the interested party that the complaint is deemed to be withdrawn.
- (5) If a complaint complies with paragraph (2) and the CMA is examining the complaint under regulation 15(2) or 19(2), the CMA must keep the aid grantor concerned regularly informed of the progress and outcome of the complaint.
- (6) In this regulation—
 - “set period” means 20 working days starting with the first working day after the day on which the CMA notifies the interested party under paragraph (3)(a); and
 - “specified” means specified by the CMA in a notice published under regulation 55.

Decision based on incorrect information

- 34.**—(1) This regulation applies if—
- (a) the CMA takes a specified decision; and
 - (b) the CMA subsequently considers that—
 - (i) the CMA may have been provided with incorrect or misleading information during the relevant examination or investigation; and
 - (ii) the incorrect or misleading information may have been a determining factor for the decision.
- (2) The CMA may open an investigation for the purpose of deciding—
- (a) whether to revoke the specified decision; and
 - (b) if so, what replacement decision to take.
- (3) If the CMA opens an investigation and decides to revoke a specified decision that was a decision that a measure does not constitute aid—
- (a) taken under regulation 8(1)(a) or 11(2), regulations 11 and 12 apply as if the investigation was an investigation opened under regulation 8(1)(c);
 - (b) taken under regulation 15(5)(a) or 17(2), regulations 17 and 18 apply as if the investigation was an investigation opened under regulation 15(5)(c).
- (4) If the CMA opens an investigation and decides to revoke a specified decision that was a decision to approve aid—
- (a) taken under regulation 8(1)(b) or 11(2), regulations 11 and 12 apply as if the investigation was an investigation opened under regulation 8(1)(c);
 - (b) taken under regulation 15(5)(b) or 17(2), regulations 17 and 18 apply as if the investigation was an investigation opened under regulation 15(5)(c);
 - (c) taken under regulation 21(2), regulations 21 and 22 apply as if the investigation was an investigation opened under regulation 19(6).
- (5) In this chapter, “specified decision” means a decision taken by the CMA—
- (a) that a measure does not constitute aid under regulation 8(1)(a), 11(2), 15(5)(a) or 17(2); or
 - (b) to approve aid under regulation 8(1)(b), 11(2), 15(5)(b), 17(2) or 21(2).

Approvals

35. If the CMA takes a decision to approve aid under regulation 8(1)(b), 11(2), 15(5)(b), 17(2) or 21(2), the decision may include—

- (a) conditions to which the approval is subject; and
- (b) reporting obligations.

Timing for publication of decisions

36.—(1) This regulation applies if the CMA is required to publish a decision and the reasons for the decision under—

- (a) regulation 10 (including as applied by regulations 16, 20 and 26); or
- (b) regulation 12, 18, 22 or 28.

(2) The CMA does not need to publish the reasons at the same time as the relevant decision if it is not reasonably practicable to do so.

(3) The CMA must notify the aid grantor of the decision and the reasons for the decision in advance of publication to provide an opportunity for the aid grantor to indicate whether it considers that the CMA should treat any information in the decision or the reasons as confidential information.