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# STATE AID PROCEDURE

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Procedural Regulation 659/1999

Implementing Regulation 794/2004

# Procedural Regulation

- Chapter 1: Definitions
  - Chapter 2: Procedure Notified Aid
  - Chapter 3: Procedure Unlawful Aid
  - Chapter 4: Procedure Misuse Aid
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# Definitions

- Aid
  - Existing aid
    - Pre-accession
    - Approved by Commission or Council
    - Lorenz-procedure
    - Limitation period
    - Have become aid due to the evolution of the common market
  - New aid (« alteration to existing aid »)
  - Aid scheme
  - Individual aid
  - Unlawful aid
  - Misuse of aid
  - Interested party
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# Procedure for notified aid

- Notification & standstill obligation
  - Exceptions:
    - De minimis aid
    - Aid covered by an authorised aid scheme
    - Aid covered by group exemption
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# Procedure for notified aid

- Preliminary examination by Commission
    - Time-limit: 2 months after complete notification
    - If not complete, information request
    - If no answer after reminder, withdrawn; MS can ask for a decision
    - Art. 4(6) Lorenz-procedure:
      - Prior notice that aid will be implemented
      - If no decision within 15 working days, aid is authorised
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# Procedure for notified aid

- Art. 4: decision after preliminary examination
    - Art. 4(2): no aid
    - Art. 4(3): compatible
    - Art. 4(4): doubts about compatibility = opening of formal investigation procedure
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# Procedure for notified aid

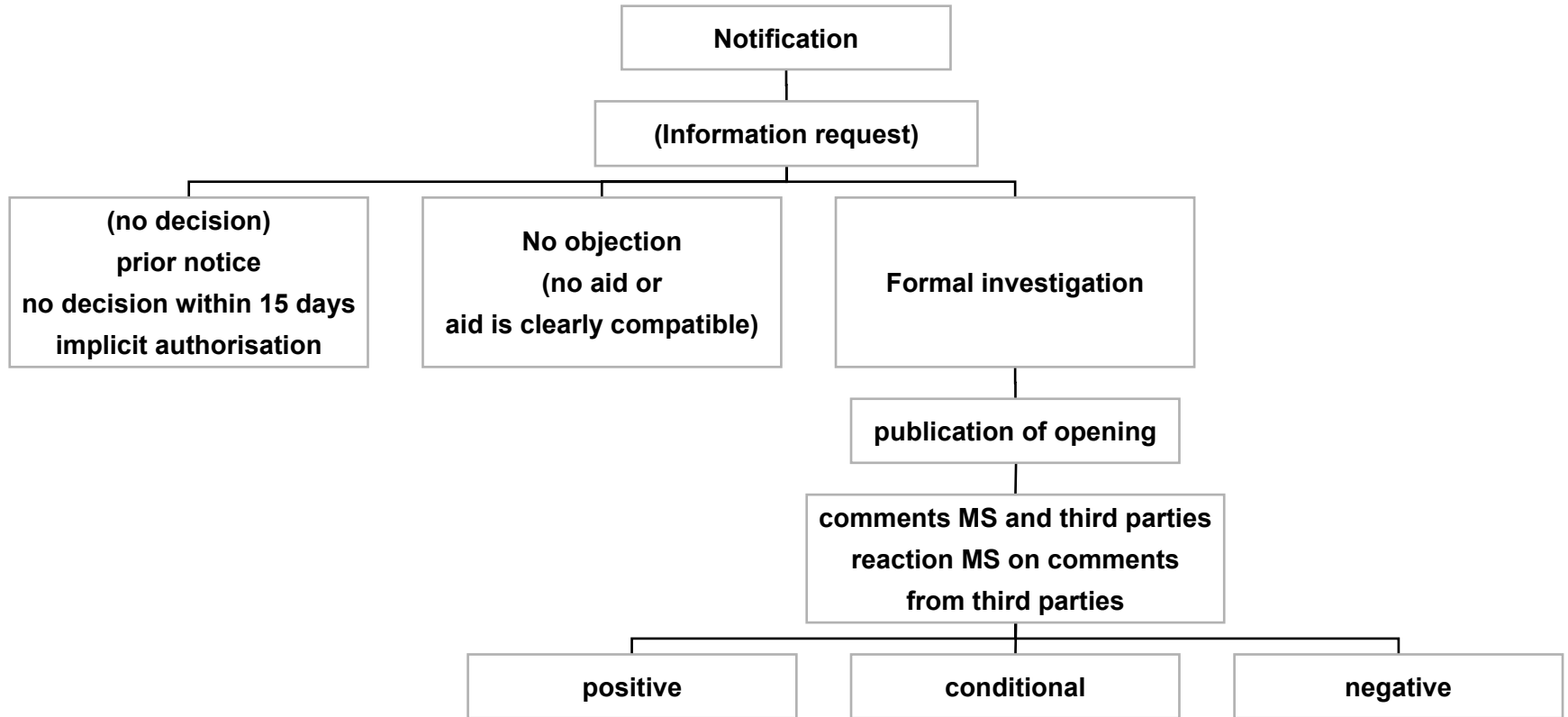
- Formal investigation procedure: Art.6
    - Sent to MS: Art. 25
    - Publication of opening of procedure: Art. 26(2)
    - MS and interested parties are invited to comment
    - MS can comment on the observations from interested parties
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# Procedure for notified aid

- Closure of formal investigation: Art. 7
    - Art. 7(2): no aid
    - Art. 7(3): positive decision
    - Art. 7(4): conditional decision
    - Art. 7(5): negative decision
    - Time-limit: 18 months (non-binding)
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# Notified aid



# Procedure for unlawful aid

- Similar procedure as for notified aid
  - Differences:
    - Art. 10(1): start of the procedure
      - Complaint or *ex officio*
    - Art. 13(2): no time-limits
    - Use of injunctions
      - Information injunction: Art. 10(3)
      - Suspension injunction: Art. 11(1)
      - Recovery injunction: Art. 11(3)
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# Procedure for unlawful aid

- Art. 14(1): if final negative decision, MS must recover according to national law.
    - C-110/02, Commission v. Council (Portuguese pig producers): effectiveness
    - Appropriate interest rate
  - Exceptions:
    - General principle of Community law
    - Prescription
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# Misuse of aid

- Misuse: used by beneficiary in contravention of the decision authorizing the aid
  - Procedure: as for unlawful aid, but Commission must always open the formal investigation procedure
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# Procedure for existing aid

- Art. 18-19: Constant review in cooperation with MS
    - Annual reports: Art. 21
    - Information requests: Art. 17(1)
  - Letter explaining preliminary view: Art. 17(2)
  - Proposal for appropriate measures: Art. 18
    - Basic principle: only changes for the future
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# Procedure for existing aid

- MS accepts or rejects proposal: Art. 19
    - Acceptance: proposed measure must be implemented (Art. 19(1))
    - Refusal:
      - Commission must open the formal investigation procedure
      - After final decision, appropriate measures become binding
  - Only for schemes!!!
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# Interested parties

- Art. 20(1): rights to submit comments after opening of formal investigation procedure
  - Art. 20(2): right to complain
    - examine info submitted
    - Inform complainant
  - Art. 20(3): right to obtain a copy of the decision
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# State aid monitoring

- Art. 21: Annual reports
  - Art. 22: On-site monitoring
    - Where the Commission has serious doubts that a decision authorizing aid has been complied with
    - Not used so far
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# Common provisions

- Art. 24: Professional secrecy (Art. 287 EC Treaty)
    - see also Commission Communication on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6)
  - Art. 25: Addressee of decisions = MS
  - Art. 26: Publication of decisions
    - Summary notice in OJ
    - Meaningful summary
    - Full decision
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# Implementation Regulation

- Art. 27 empowers Commission to adopt implementing provisions for specific points
    - Form, content of notification form
    - Form, content of annual reports
    - Details of time-limits
    - Interest rate for recovery
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# Implementation Regulation

- Art. 2 and annex: Notification forms
    - Standard part
    - Supplementary information sheets per aid type
    - (Note: amendment of regulation necessary for new R&R form)
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# Implementation Regulation

- Art. 3: How and to whom?
    - Notification in principle from PermRep to SG, subsequent correspondence to DG
    - Specific procedures: directly to DG
    - Commission writes to PermRep
    - In future, electronic
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# Implementation Regulation

- Art. 4: Simplified procedure
    - Alteration to existing aid
      - Increase of budget of more than 20%
      - Prolongation of scheme for max. 6 years
      - Tightening of criteria, reduction of aid intensity, reduction of eligible expenses
    - Decision within one month (best effort)
    - Only if annual reports have been submitted
    - (Similar procedure in new R&R guidelines)
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# Implementation Regulation

- Art. 5, 6 & 7: Annual report
    - Format
    - Electronic transmission
    - Commission will publish synopsis
    - Transmission of annual report ≠ notification
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# Implementation Regulation

## ■ Art. 8: Time-limits

### □ Regulation 1182/71

- Period expressed in months: same day in the relevant month or last day of the month.
  - If period expressed in working days, public holidays, Saturdays and Sundays are excluded
    - E.g. notification 25/10/2004 ⇒ end 2 month: 25/12/2004  
15 working days – 3/1/2005 ⇒ 21/1/2005
    - E.g. notification 31/7 ⇒ 30/9
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# Implementation Regulation

## ■ Recovery rate

- In principle 5y interbank swap rate + 75 bp (Art. 9)
    - 75 bp can be increased in justified cases
    - In the absence of data or exceptional circumstances, fix recovery rate in cooperation with MS
  - Current and historical rate published (Art. 10)
  - Method for applying interest (Art. 11)
    - Interest rate from date when aid was put at disposal
    - Compound interest
    - 5-y periods
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