

PRIVACY STATEMENT

This statement refers to the processing of personal data in the context of State aid investigations and related tasks in the common interest carried out by the Commission. The data that are collected and further processed in such investigations and tasks include information relating to identified or identifiable natural persons and the processing of such data is subject to Regulation (EU) 2018/1725¹. The processing occurs under the responsibility of the Unit Registry and Transparency in DG Competition, acting as the Controller.

The name and the contact details of the controller:

Unit R1 – Registry and Transparency, DG Competition,

COMP-R1-MAIL@ec.europa.eu

The name and the contact details of the data protection officer:

data-protection-officer@ec.europa.eu

What is the purpose of the data collection? What is the legal basis for the processing?

The purpose of an EU State aid investigation is to determine whether State aid is granted and if so, to assess its compatibility under Articles 93, 106 and 107 of the Treaty on the Functioning of the European Union (hereinafter the ‘TFEU’). As regards State aid for the production of and trade in agricultural products, the rules on competition are applicable only to the extent determined by the European Parliament and the Council, pursuant to Article 42 of the TFEU.

For the purpose of enabling the Commission to conduct State aid investigations, Member States have to notify to the Commission their plans to grant State aid, according to the specific regulations in this field. Furthermore, as provided in 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 (hereinafter the ‘Procedural Regulation’), the Commission can ask additional information from Member States, undertakings and

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39–98.

associations of undertakings. Information can also be received from complainants and interested parties.

Information that is collected and further processed by the Commission mainly relates to undertakings that are a beneficiary or an alleged beneficiary of State aid, are otherwise related to a public measure under EU State aid investigation, or are an interested party in a EU State aid investigation. Such information is mainly used in evidence for the purpose of applying the EU competition rules and in respect of the subject matter for which it was collected. It may also be used for other purposes within the Commission's responsibilities, such as other sector inquiries in the area of State aid but also general cohesion or industrial policy development.

Furthermore, the Commission may process data when carrying out tasks in the public interest that are related to State aid control, such as conducting market surveys, consultations and evaluations of its procedures, in order to improve its practice and legislation. The data subject's input is provided on a voluntary basis on such occasions and for example is aggregated in mailing lists.

What personal data do we collect? The categories of personal data concerned

Personal data that are collected and further processed in the context of State aid investigations include names, contact details (work (e-mail) address, telephone and fax number and occasionally also private contact details), the position and functions of the natural person in an undertaking (e.g., CEO, marketing manager, etc.) and potentially statements and records made by or attributed to individuals. Other data are contact details of complainants, or business holdings of individuals, for instance in order to examine the SME-status of certain undertakings.

Recipients and transfers

Who has access to your information and to whom is it disclosed?

Within the Commission

Access to State aid files is restricted to Commission personnel. The documents collected are stored electronically and, when applicable, in paper files. Access to the electronic files stored in the case management applications is restricted to Commission personnel. The original paper files are kept at the State aid Registry, in a specific location, which is locked outside the office hours. In addition, entrance to the Commission premises is restricted. Beyond the personnel from the DG in charge of the investigation, certain data may also be made available to other Commission services, on a strictly need-to-know basis, for example in the context of inter-service consultations, with the purpose of assessing the State aid case. The Commission saves and keeps up-to-date mailing lists for administrative purposes.

Other EU bodies and institutions

Where a complaint is sent to an EU institution for information, comments or an opinion, the personal data may be transferred to that institution (e.g. complaints to the Ombudsman or to the EDPS). These recipients are subject to the Regulation (EU) 2018/1725.

Member States and EFTA Surveillance Authority

Transfer of information in the State aid file can only occur in very specific circumstances, either to the Member State under investigation, to national courts or to the EFTA Surveillance Authority under the cooperation provisions of the EEA Agreement.

The Commission shall not use confidential information provided by respondents, which cannot be aggregated or otherwise be anonymised, in any decision taken in State aid cases, unless it has obtained their agreement to disclose that information to the Member State concerned. The Commission may take a reasoned decision, which shall be notified to the undertaking or association of undertakings concerned, finding that information provided by a respondent and marked as confidential is not protected, and setting a date after which the information will be disclosed.

An undertaking or an association of undertakings providing information and which is not a beneficiary of the State aid measure in question may request, on grounds of potential damage, that its identity be withheld from the Member State concerned (Article 6(2) of the Procedural Regulation).

The Commission notice on the enforcement of State aid law by national courts allows for certain cases where national courts can ask for information from the Commission. In addition to the possibility of transmitting information in the Commission's possession to the national courts, the Procedural Regulation provides that the courts may ask for the Commission's opinion on questions concerning the application of State aid rules. The Commission, on its own initiative and with prior information of the Member State of its intention, may submit written observations to the courts of the Member States that are responsible for applying the State aid rules. The Commission may request the relevant court to transmit documents at the disposal of the court, necessary for the Commission's assessment of the matter (Article 29 of the Procedural Regulation). Furthermore, the Commission also needs to respect its obligation of professional secrecy. Hence, in view of the limited scope of such cooperation, it seems unlikely that this could entail communication of personal data.

Finally, the Commission can also transfer information under the cooperation provisions of the EEA Agreement to the EFTA Surveillance Authority. According to Protocol 27 to the EEA Agreement, any information exchanged on individual State aid programmes and cases shall be treated as confidential.

Consultants

For certain consultation and evaluation purposes in view of increasing effectiveness of the Commission procedures, the contact details of individuals may be transferred to contractors who will be bound to observe the same data protection and confidentiality standards as the institutions.

How do we protect and safeguard your information?

In addition to the physical measures outlined above, data may only be processed where necessary for the Commission's tasks under Articles 93, 106 and 107-109 of the TFEU and in conformity with the Procedural Regulation. The Procedural Regulation, as well as the case-law of the EU Courts set out clear limits to the powers of investigation of the Commission, as well as to the use of the information.

Information covered by the obligation of professional secrecy may normally not be disclosed. Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6-9) clarifies the nature of this obligation and the procedure to be followed.

The various competition regulations also guarantee that any data is collected for specified, explicit and legitimate purposes. The data may only be collected and further processed for the purpose of applying the EU State aid rules and in respect of the subject matter for which it was collected.

How can you verify the accuracy of your personal data and, if necessary, rectify it?

Granting to data subjects a right of access, restriction of processing or erasure of their data present in the Commission's case files would hinder the monitoring and inspection tasks of the Commission when enforcing competition law, which is necessary to safeguard important economic or financial interests of the European Union (i.e., the proper functioning of competitive markets). The restrictions of Article 25 of Regulation (EU) 2018/1725 and the Commission decision (EU) 2018/1927 of 5.12.2018² therefore apply in these cases. However the data subject will have the chance to address to the mailbox mentioned in the privacy statement a request for restriction of processing or erasure of his/her data which had allegedly been unlawfully processed.

² Commission Decision (EU) 2018/1927 of 5 December 2018 laying down internal rules concerning the processing of personal data by the European Commission in the field of competition in relation to the provision of information to data subjects and the restriction of certain rights, OJ L 313, 10.12.2018, p. 39–44.

How long does the Commission keep your data?

The Commission retains competition files until the final closure of the case which is necessary for a sound administrative procedure. At that point, the electronic file is closed in the case management application. While the documents and case metadata remain accessible to the Commission personnel, full text searches (using a separate tool) are not available anymore within two years after the closure of the case. With regard to replies to the Commission through the recently introduced electronic questionnaire application (eQuestionnaire), such answers will be stored in the application for a certain period, as follows: (i) with regard to contact details, one year after the closure of the case, and (ii) with regard to other answers, 5 years after the closure of the case.

After closure of the case, the file is sent to the Commission's historical archives. This is necessary in order to comply with the Commission's general obligation to preserve the documents that it has obtained within the exercise of its duties and which relate to EU activities. This should be seen in the broader context of the archiving policy of the Commission.

Personal data processed in the context of consultations, evaluations and other type of feedback regarding the activities of the Commission will be stored for a period of time necessary to be able to contact the stakeholders for feedback. For each specific consultation, evaluation or other type of feedback, the retention period for a contractor would not exceed 6 months after the date when the final report/ output was provided by the contractor to the Commission or when the contract otherwise ended between the contractor and the Commission.

Contact information

Should you have any question or request concerning the information submitted or on your rights, feel free to contact the Data Protection Coordinator of the DG Competition by sending an email message to the following contact mailbox: comp-data-protection@ec.europa.eu or contact the Commission's Data Protection Officer by sending an email message to data-protection-officer@ec.europa.eu.

Recourse

Complaints, in case of conflict, can be addressed to the European Data Protection Supervisor. All details can be found on the following website <http://www.edps.europa.eu/EDPSWEB>.