



State aid Procedures

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Procedures - overview

- Legal bases
- Procedural Regulation
- Implementing Regulation
- Code of best practices 2018
- Recovery

Procedures – Legal bases

- Article 108 TFEU
- Jurisprudence of EU Courts
- Procedural Regulation 2015/1589
- Implementing Regulation 794/2004
as amended inter alia by Regulation 2015/2282

Procedures – Legal bases

- Code of best practices 2018
- Communication on Professional Secrecy
- Commission Notice on the recovery of unlawful and incompatible State aid 2019
- Notice on the enforcement of State aid law by National Courts



Procedural Regulation

Chapter 1: Definitions

Chapter 2: Procedure **Notified Aid**

Chapter 3: Procedure **Unlawful Aid**

Chapter 4: Limitation Periods

Chapter 5: Procedure **Misuse of Aid**

Chapter 6: Procedure **Existing Aid**

Chapter 7: Interested Parties

Chapter 8: Sector Inquiry

Chapter 9: Monitoring

Chapter 10: Cooperation with national courts

Chapter 11: Common Provisions



Procedural Regulation – definitions

- new aid / existing aid
- aid scheme / individual aid
- notified aid / unlawful aid (= illegal = aid not notified despite obligation to do so)

NB: Completely different from compatible vs. incompatible aid

- misuse of aid

Procedures – notified aid

- Art. 108 (3)
 - notification obligation
 - standstill obligation
- exceptions:
 - de minimis "aid"
 - aid covered by an authorised aid scheme
 - aid covered by block-exemption

Procedures – notified aid

2-phase investigation:

- preliminary investigation
- formal investigation procedure

Phase 1: preliminary examination

- time limit: 2 months after complete notification
 - if not complete, information request
 - if no answer after reminder, deemed withdrawn
- Lorenz procedure

Procedures – notified aid

Phase 1: decision after preliminary examination

- no aid decision
- no objection decision (compatible aid)
- opening decision (doubts on compatibility = opening of formal investigation procedure)

Procedures – notified aid

Phase 2: formal investigation procedure

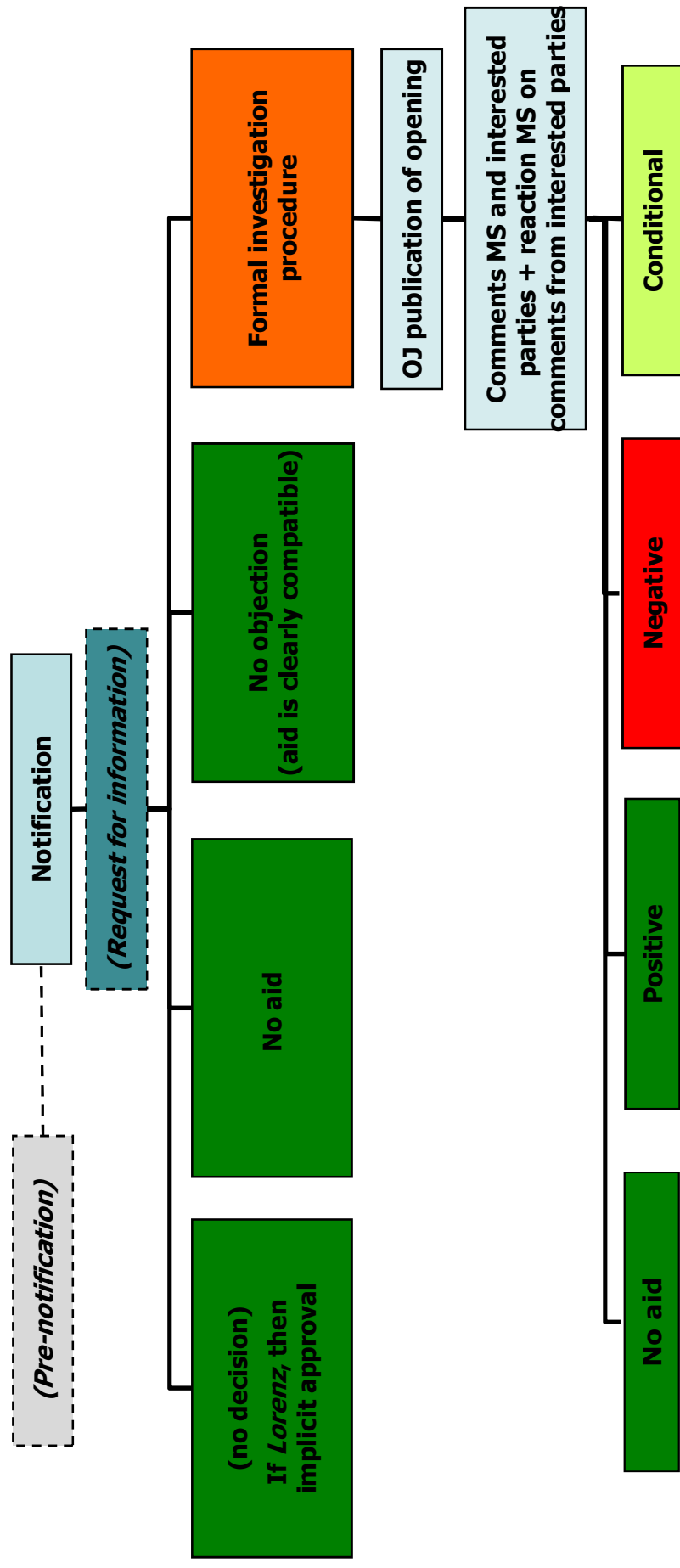
- time limit: 18 months (non-binding)
- publication of opening decision
- Member States and interested parties invited to comment
- possible outcomes:
 - no aid decision
 - positive decision
 - conditional decision
 - negative decision





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Procedures – notified aid



Procedure – unlawful aid

Similar procedure as for notified aid

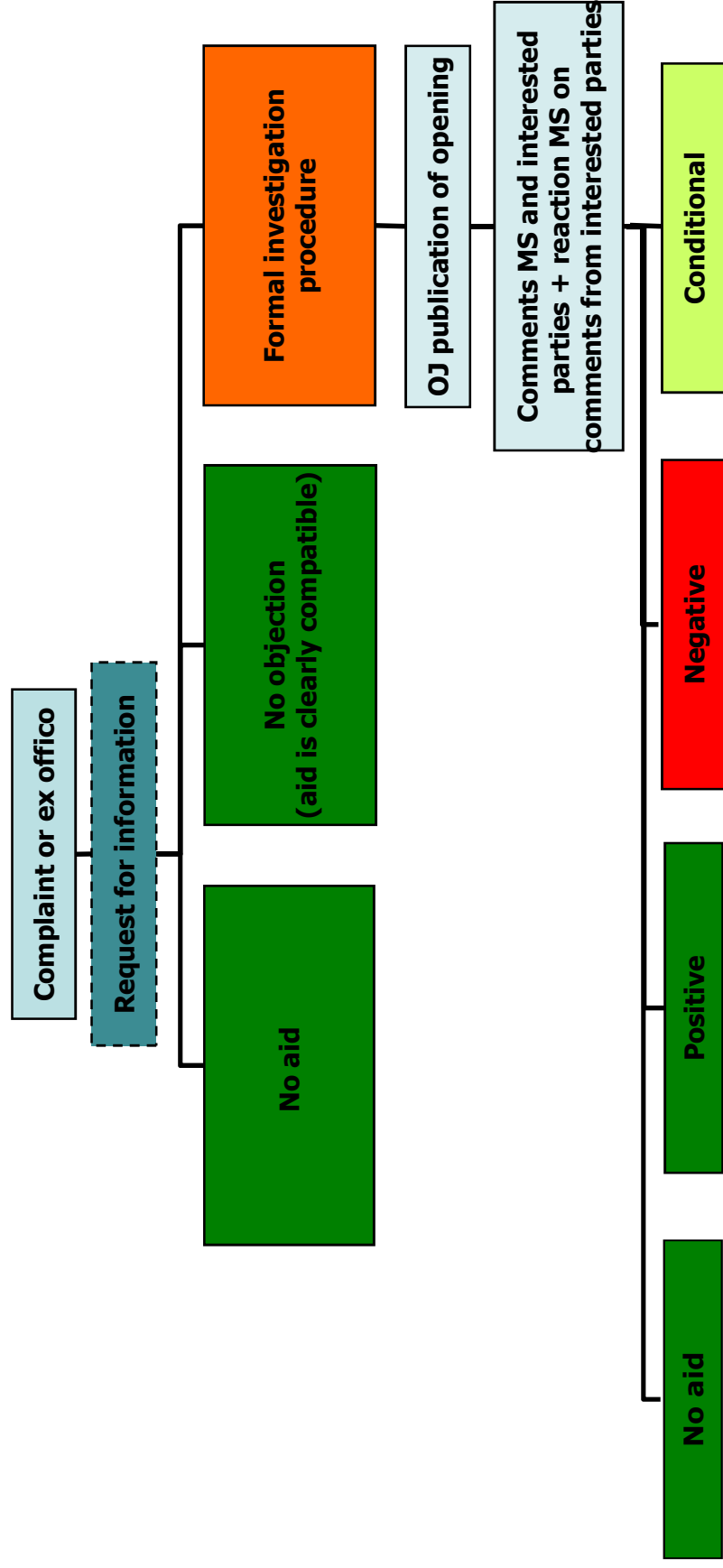
Differences:

- start of the procedure: complaint or ex officio
- no time limits
- use of injunctions
 - information injunction
 - suspension injunction
 - recovery injunction
- negative decision leads to recovery



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Procedures – unlawful aid



Procedure – misuse of aid

- situation where beneficiary uses aid in contravention of decision authorising it
- procedure: as for unlawful aid

Procedure – existing aid

- definition: Article 1(b) Procedural Regulation
- most common: aid granted before accession
- new Member States: existing aid lists
- procedure applies to existing aid schemes, not individual aid measures
- basic principle: only changes for the future

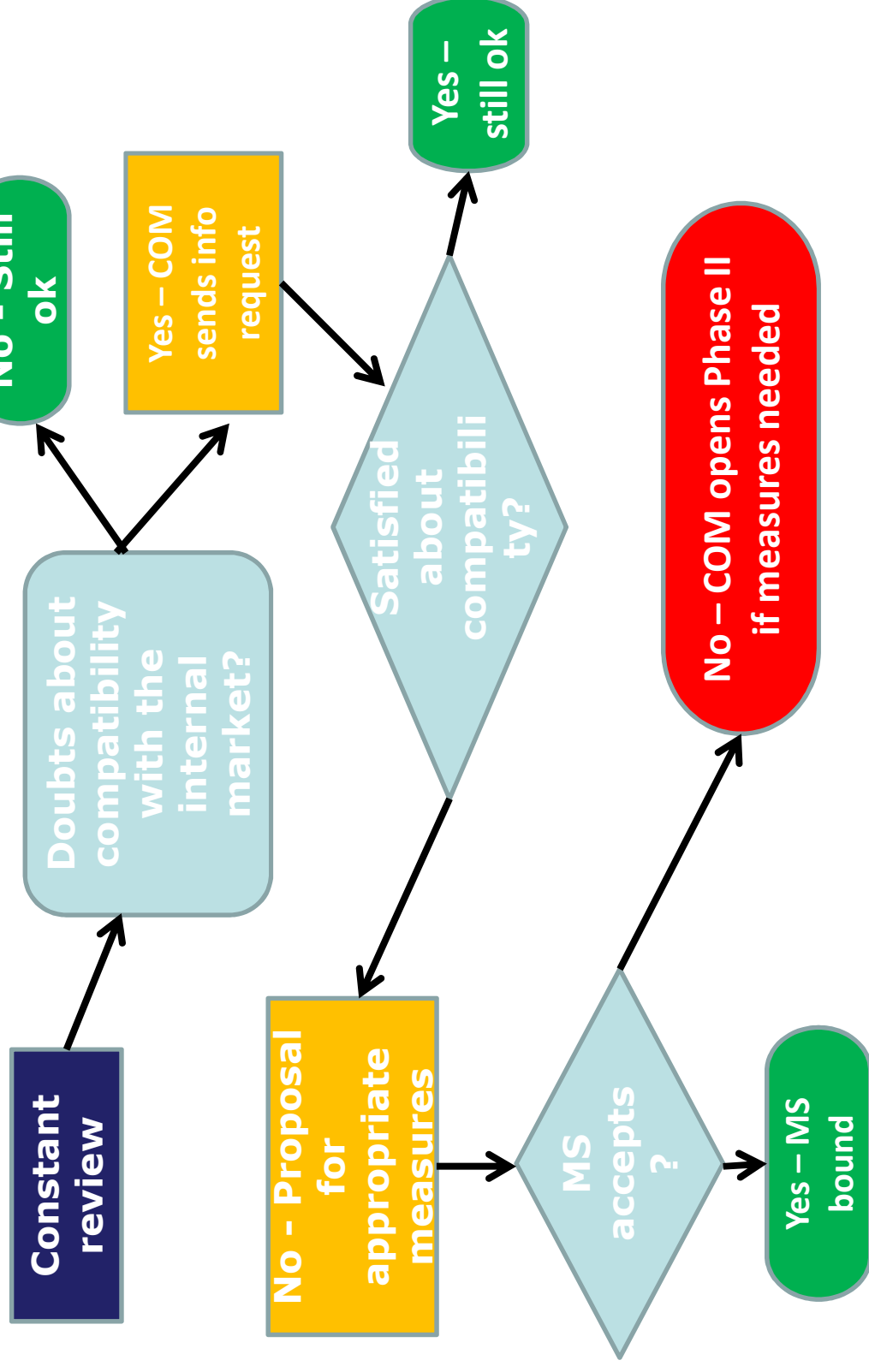
Procedure – existing aid

- letter explaining preliminary view
- proposal for appropriate measures
- MS accepts or rejects proposal
 - acceptance: proposed measure must be implemented
 - refusal: Commission must open the formal investigation procedure
- after final decision, appropriate measures become binding



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Procedure – existing aid in practice



Procedures – common provisions

- Professional secrecy (Art. 339 TFEU)
 - see also Commission Communication on professional secrecy in State aid decisions
- addressee of decisions = Member States
- publication of decisions
 - summary notice in OJ
 - meaningful summary
 - full decision

Procedures – other tools

- Market information tools:
 - Commission can seek information from other sources than Member States
 - During Phase 2
- Sector inquiries:
 - Commission can investigate sector or aid instrument in several Member States
 - Reasonable suspicion
- Cooperation with national courts
 - Amicus curiae

Implementing Regulation

- notification forms:
 - standard part
 - supplementary information sheets per aid type
- Simplified notification procedure for certain alterations to existing aid

Implementing Regulation

Annual reports

- annual report on existing aid schemes
- format
- electronic transmission
- publication of synopsis by Commission
- note: transmission of annual report ≠ notification

Implementing Regulation

Calculation of time limits – precise rules for

- periods expressed in months
- periods expressed in working days

interest rates for recovery of unlawful aid

Code of best practices 2018

- guidance to the Commission, Member States, businesses and other stakeholders on conduct of State aid procedures
- to improve effectiveness, transparency and predictability of procedures.
- Includes for example:
 - how to ensure that complex State aid cases are handled most effectively
 - how complaints about State aid are followed up

Recovery

- purpose of recovery: re-establish the situation that existed on the market prior to the granting of the aid
- not a penalty, but the logical consequence of finding aid illegal and incompatible
- aid must be recovered together with recovery interest (Article 16 of Procedural Regulation 2015/1589).
- Recovery is governed by national law (procedural autonomy), provided this allows for immediate and effective recovery

Recovery

- role of Commission: aims to clearly identify amount to be recovered, undertakings concerned and deadline for recovery
- role of MS: recovery decision binding on all organs
- consequence of failure to effect recovery:
 - infringement proceedings under Arts.108(2) and 260(2)
 - Deggendorf case law: suspension of compatible aid to undertaking subject to ongoing recovery order

Recovery

See also

- Commission Notice on the recovery of unlawful and incompatible State aid 2019
- Notice on the enforcement of State aid law by National Courts



Thank you for your attention!

