

ASD contribution to the consultation on the revision of Guidelines on State aid for climate, environmental protection and energy 2022

Context

The unprecedented economic crisis induced by the COVID-19 pandemic requires making the 'Green Deal' a lever for a successful exit from it. The objective is to make the transition to climate neutrality a success, to mobilise the necessary funding - public and private - and to strengthen the resilience of the European economy. This objective cannot be dissociated from the issue of digital transition. Success on both counts will be a fundamental factor in the competitiveness of businesses. In this context, it is important to stress that the current crisis has greatly reduced the resources of companies, which will have to be more ambitious and take more risks, particularly in terms of research, with fewer available resources. It will therefore be very important that competition law provides, in its various branches, significant incentives in this regard, does not unduly complicate or hamper essential broad cooperation and takes full account of the positive contributions to the European Green Deal.

It should be stressed in this respect that our non-EU competitors (US, China) will be heavily supported by their Home States in pursuing their low-carbon transition, as this will become a key competitiveness factor. This will need to be fully taken into account, both in the definition of the scope of the EEAG guidelines as in the compatibility assessment (para. 23 and 34 for instance). This would be fully in line with the current EU Commission level playing field instrument initiative. It would be recommended, in this respect, to develop some sort of Observatory of public support granted to non-EU competitors. This would also be useful for the implementation of the proposed level playing field EU instrument. From a global level playing field perspective, it should finally be noted that compliance with reinforced EU environmental expectations, particularly climate-related, will represent a significant cost for companies. The fact that certain States or certain companies, European or extra-European, apply a standard lower than European standards could be a source of unfair competition which should be taken into account.

As part of the development of the EU Green Deal and associated objectives and targets, it should be also highlighted that the air transport sector is expected to bring its own strong contribution to fight climate change. Among others, the EU Sustainable and Smart mobility strategy sets a target of zero-emission aircraft to be ready for market by 2035, which also goes together with 1) the development of the appropriate ecosystem to make it practicable and 2) with targets for Sustainable Aviation Fuels scale up to address the rest of the market. The Hydrogen strategy for a climate-neutral Europe recognises hydrogen as a long-term option to decarbonise aviation and also the research and innovation efforts required to achieve this objective. It is of utmost importance that aviation infrastructure for hydrogen, and the notion of clean aircraft are covered and addressed in the Communication.

In addition, the entire European aviation sector acknowledges the importance of working towards net-zero carbon dioxide (CO₂) emissions by 2050, while achieving significant emission reductions by 2030, thus contributing to the EU Climate Action objectives (cf. Aviation Round Table Report on the Recovery of European Aviation, Nov. 2020), and also stressing the importance of technology and innovation in improving the environmental performance of the sector. Notably, on 11th February 2021, the European aviation industry published its *Destination 2050 – A Route to net zero European aviation* [report](#) that

demonstrates how a combination of four key measures¹ could achieve substantial CO2 emission reductions in line with EU climate goals.

Against this background, we set out below our key comments with respect to the draft State aid Communication currently under consultation.

- Generally speaking, the proposed Communication **does not seem to sufficiently take into account the consequences of the Covid crisis on the companies'** ability to fund decarbonisation activities. The EU Commission has rightly acknowledged that this crisis qualified as a serious disturbance of the EU economy under Article 107(3)b TFEU. For instance, in the current context, **a specific increase of available intensities should be provided for, in order to support particularly ambitious and risky projects, which are required to meet the EU Green Deal targets. Regarding aid intensities**, fulfilling the EU Green Deal ambitions will require extensive corporations throughout and across ecosystems. The **bonus currently available to smaller companies only should be extended, in line with what is provided for in other guidelines such as the ones applicable to R&D activities, to allow higher funding as well for large companies when they act in close cooperation projects with SMEs or ETIs.**
- Insufficient consideration is also being given in the EU analysis to the existence of foreign subsidies made available to non-EU competitors. Given the level of support granted to the latter, both to recover from the COVID crisis and engage in the climate and digital transitions, excessively strict EU rules would put our companies at a major competitiveness disadvantage. Beyond all formal EU State aid criteria, which appear to be strongly reinforced in the proposed draft Communication, it remains indispensable to keep the flexibility to adapt to such context, for instance through the inclusion of a **matching clause** and in the context of the analysis of the proportionality **and the assessment of such subsidies in the competition analysis.**
- **Competitive bidding:** we consider that in certain instances (e.g. State aid for the acquisition and leasing of clean transport vehicles, aid for the reduction and removal of greenhouse gas emissions), the proposed Communication follows a too strict approach and should rather **mirror the logic set out at paragraphs 46 and following**, according to which (1) the aid will in principle be limited to the net extra costs or funding gap and (2) if a competitive bidding process is followed, a detailed assessment of the net extra cost will not be required. The competitive bidding process here appears as a mean to simplify the administrative burden on companies rather than as a precondition to the admissibility of State aid. This appears much more proportionate and relevant. Also, competitive bidding processes may lead to significant amounts of EU States support being granted to non-EU players, while no such reciprocity often exists.
- Similarly, the rationale behind the requirement that a **public consultation** be conducted by the State concerned before granting aid for the reduction and removal of greenhouse gas emissions is not clear. What can be feared is that such consultation provides a non-reciprocal advantage to non-EU competitors, who would be well informed and able to influence the EU Member States political choices.

¹ Improvements in aircraft and engine technologies (including hydrogen aircraft), using sustainable aviation fuels (SAFs), implementing economic measures and improvements in air traffic management (ATM) and aircraft operations

Scope

- Products design and manufacture: The Commission general wording principle under paragraph 12, according to which that the Communication does not cover “*the design and manufacture of environmentally friendly products, machines or means of transport with a view to operating with fewer natural resources*” has been maintained since the 2014 Communication, but the footnote has been modified, to include: “*this is without prejudice to the possibility for Member States to grant environmental aid to undertakings to enhance the level of environmental protection of their manufacturing activities*”. Although this is an important improvement in relation to the manufacturing activities, **the regime applicable to design and manufacture of the products themselves** (assets, systems, components) **enabling decarbonisation of air transport should be clarified**. Such investment will indeed be fundamental.
- Carbon Capture: We welcome the fact that Direct Air Carbon Capture and Utilisation has been explicitly added enlarging the scope². Carbon capture will require **investment aid as well as operating aid**. Operating aid will be as important as the investment aid and should therefore be allowed by the future EEAG. Indeed, even beyond Capex investment, **operating aid will most probably be necessary with respect to Power to Liquid, at least in a first phase, to bridge the gap between the production cost and market prices**.
- Fuels: We welcome the alignment of the definition of biofuels and sustainable biofuels **with the Renewable Energy Directive II ones**.
- Energy infrastructure: We also welcome the fact that the definition of **energy infrastructure** is now enlarged to encompass infrastructure necessary to the development of hydrogen (para. 18 (c)), infrastructure relating to carbon dioxide and renewable fuels. Developing an aircraft with capabilities to be close to or zero emissions will not be useful unless the appropriate production means and necessary transportation infrastructures are equally in place.
- Sustainable Aviation Fuels: **However, we would stress, with regards to Sustainable Aviation Fuels (SAFs), that the notion of refuelling infrastructure, as defined at item (59) of paragraph 18 (page 21) refers to the Alternative Fuels 2014 Directive, which does not currently encompass SAFs. If the Communication’s text is not modified, State support will not be available for refuelling infrastructure for such fuels. The definition of refuelling infrastructure therefore needs to be aligned with the amendment proposal in the context of the ‘Fit for 55’ and enlarged to include H2 and SAF infrastructures.**

² One question would simply remain on the justification of the brackets remaining at item (13) of paragraph 18, page 11.

Focus on State aid for the acquisition or replacement by more efficient / clean aircraft

We welcome the fact that the **acquisition or leasing of environmentally friendly transport vehicles (such as more efficient / clean aircraft to be acquired by airlines)** is now explicitly included. In particular, *“aid may be granted for the acquisition or leasing of new or used clean transport vehicles for air, road, railway, inland waterway, sea, and coastal passenger and freight transport, and for the acquisition and leasing of clean ground handling equipment and clean terminal equipment. (...) Aid may also be granted for the retrofitting of transport vehicles, allowing them to qualify as clean transport vehicles”*. (para 140 and 141)

However, the definition of “clean transport vehicles” under paragraph 18 (d) (h) on page 13³ is too restrictive and should be amended:

- **Concerning acquisition or leasing, the requirement should be consistent with what is used in the context of the EU Taxonomy.**

This would provide an incentive to purchase less CO₂ intensive generation of aircraft, thereby triggering an immediate and significant positive (-20% at least) impact on emissions. Maintaining the threshold at 10% would *de facto* exclude the latest generation of aircraft and therefore impede any such positive impact on CO₂ emissions.

- **Concerning aircraft replacement, the condition that the replaced aircraft should exceed the latest noise and emissions environmental protection standards for “New Type” aircraft under ICAO Annex 16 would *de facto* rule out any possibility to use this mechanism in at least the next decade.** Indeed, it would only be able to cover situations of replacement of latest generation aircraft by new versions, the development of which is currently not considered. Again, this would deprive from the ability to use the replacement of aircraft to trigger significant emission reductions while the development of ultra-efficient propulsion systems, hybrid-electric and the hydrogen aircraft is underway.

Beyond these considerations on the scope, we have the following remarks on the assessment modalities of such State support:

- The draft Communication **requires that a credible “counterfactual scenario” is set out**, meaning that the Member State providing the support must be able to explain what would have happened without the aid. **These elements appear generally satisfactory, although we would insist on the fact that counterfactual scenarios need to be characterised on the basis of companies’ actual internal decision making processes rather than on hypothetical scenarios.**
- In addition, the aid would, according to the draft Communication, need to be granted following a competitive bidding process conducted in accordance with criteria contained in paragraphs 48

³ “Clean transport vehicle” means: (...) an aircraft with a certified metric value that exceeds by at least 10% the latest environmental protection standards of the International Civil Aviation Organization (ICAO) contained in Annex 16 to the Chicago Convention²⁶, including the CO₂ metric values for aircraft “New Type”, as referred to in Article 9, point (2), of Regulation (EU) 2018/1139²⁷; or alternatively, if it replaces an aircraft that already exceeds the latest noise and emissions environmental protection ICAO standards for aircraft “New Type”, contained in Annex 16 to the Chicago Convention and as referred to in Article 9, point (2), of Regulation (EU) 2018/1139, an aircraft that delivers an improvement in the level of environmental protection by at least 10% compared to the aircraft that is being replaced.

and 49. By way of derogation, if a competitive bidding process cannot be organised with a sufficient number of competitors, the aid may still be granted but it cannot exceed 40% of eligible cost (+10% for zero-emission transport vehicles ; +10% for medium sized companies and +20% for small enterprises). Finally, *“exceptionally, depending on the specific characteristics of the measure, the Member State may also demonstrate, based on a funding gap analysis, as set out in points 47, 50 and 51, that a higher aid amount is required. In such a case, the Member State must conduct an ex post monitoring to verify the assumptions made about the level of aid required and put in place a claw-back mechanism, as set out in point 53. The aid amount must not exceed the funding gap, as set out in points 50 and 51”*.

- **As previously mentioned, we consider that the proposed communication follows here a too strict approach and should rather mirror the logic set out at paragraphs 46 and following, according to which (1) the aid will in principle be limited to the net extra costs or funding gap and (2) if a competitive bidding process is followed, a detailed assessment of the net extra cost will not be required. The competitive bidding process would then appear as a means to simplify the administrative burden on companies rather than as a precondition to the admissibility of State aid. This would in our view be far more proportionate and relevant.**

*“As regards air transport the Member State must ensure that, where it is granted to an undertaking already active in the sector concerned, the aid is granted for the replacement of a less environmentally friendly aircraft with a clean aircraft in **a comparable aircraft class and that it does not result in fleet expansion of the beneficiary**”*. We consider that these last requirements, and in particular the last one, are not justified and proportionate. These should therefore be amended or removed.

[Signature on file], Jan Pie, ASD Secretary General, 2nd August 2021