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EAPB position on revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

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General comments

We welcome the European Commission's initiative to support the EU priorities (Green Deal, biodiversity strategy, etc.) with a fundamental revision of the State aid rules. In this context, the integration of new aid categories into the aid guidelines is particularly positive.

EAPB fully supports the Commission's proposals to generally broaden the scope of the Guidelines, allowing for aid amounts covering up to 100% of the funding gap, and eliminating the requirement for individual notifications of large green projects within approved aid schemes.

EAPB represents the national, regional and municipal promotional and special finance institutions. We see that favourable and long-term loans from our members are typically a prerequisite for large green investments being made. We would like to stress the importance of favourable loan options from our members. The European Commission's approval of State aid schemes for these types of financing under the new Guidelines would promote necessary green investments at national, regional and local level.

While our members promote green finance in a large spectrum of fields, we would also like to draw your attention to a trend towards more competitive heating markets in Member States (e.g. in Denmark) – which could render State aid approval necessary. An increased and more flexible access to provide State aid for district heating, as proposed, would be a way to secure the future of cost-effective financing of local district heating investments via EAPB members.

Despite several welcome EC proposals, we have doubts as to whether the current draft is sufficient to provide the necessary incentives to reduce greenhouse gas emissions by at least 55% by 2030 and to make the EU climate neutral by 2050. Please find below our detailed proposals to improve the clarity and efficiency of the rules and facilitate green investments.

Specific comments

Please find here some specific points concerning the new draft guidelines that we would like to address:

- **Scope (point 12)**

On the basis of the new guidelines, the development and manufacture of environmentally friendly products, machines and means of transport that are to be operated with a lower use of natural resources would not be eligible for support.

In our view, coherence with the EU taxonomy should be established for producer support. This could be justified - even if the promised improvements only occur through the use of the manufactured climate-friendly products and technologies in another company - with a view to the change in understanding of the role of "enabling activities" expressed in the EU taxonomy: According to this, the manufacturer's activity makes just as significant a contribution to the achievement of environmental objectives as those activities that are made possible by it in the first place (cf. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 establishing a framework to facilitate sustainable investments and amending Regulation (EU) 2019/2088, "Taxonomy Regulation", para. 42 and Art. 16).

In this context, we consider the following should be eligible for support, among others

- Production of renewable energy technologies,
- Production of equipment for the production and use of hydrogen,
- Production of low-CO2 vehicles, rail vehicles and ships,
- Production of rechargeable batteries, battery packs and accumulators (and their corresponding components) that lead to a significant reduction of greenhouse gas emissions in transport, stationary and decentralised energy storage and other industrial applications,
- Production of energy-efficient building equipment,
- Production of other low-carbon technologies that aim at a significant reduction of greenhouse gas emissions in other sectors of the economy and demonstrably achieve significant life-cycle GHG emission savings compared to the best performing alternative technology or solution available on the market or to the best performing alternative product available on the market.

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- **Competitive bidding process obligation**

The Commission would like to introduce a regulatory mechanism for the bidding process obligation in the new guidelines. We consider this approach to be too far-reaching.

While a tendering procedure seems to make sense, e.g. in the area of electricity generation for the promotion of renewable energies, a tendering obligation in the context of the promotion of energy efficiency measures by companies, leads to an unreasonable additional effort and insufficient planning certainty, among other things because the awarding of the contract and the amount of subsidy are uncertain ex ante for the companies. In addition, there is the risk of "sunk costs" if an elaborately planned project is not successful in the bidding process and cannot be realised as a result. Higher costs and uncertainty for companies will generally reduce their willingness to take advantage of funding programmes and to make the climate protection investments that are urgently needed to achieve the climate targets.

Particularly in the case of small and medium-sized enterprises, it is to be feared that they will not be selected due to size disadvantages in the selection process. The decisive factor for investment decisions by SMEs is uncomplicated and simple access to funding and subsidised loans. Funding programmes designed to have a broad impact are in danger of failing to achieve their funding objectives through bidding procedures. As a rule, these funding programmes are not suitable for bidding procedures. Here it is imperative to leave the mechanism of aid intensities in place.

- **Simplified Cost Options (SCO)**

The Common Provisions Regulation for the new funding period contains rules for simplified cost options (SCO) in Art. 53 et seq. (Regulation (EU) 2021/1060). The General Block Exemption Regulation (GBER) also contains a corresponding opening clause for the use of SCO to determine eligible costs in Article 7 (1) sentence 2.

In contrast, the proposed draft version of the guidelines does not contain any provisions on the use of SCO. We recommend - analogous to the currently consulted R&D&I Guidelines – inserting a corresponding clarification on the eligibility of the use of SCO. We believe it is not justified to restrict SCO to EU co-financed measures. It should be permitted in the same way for purely nationally financed aid.

- **Determination of the funding gap and claw back mechanism (point 47 and 53)**

In its draft guidelines, the Commission continues to adhere to the net extra approach for determining the funding gap. However, the net extra cost approach does not do justice to the challenges associated with the implementation of the Green Deal, but will continue to act as an obstacle to corresponding environmental and climate aid.

Economic goods for which funding is requested often have very special and sometimes unique characteristics (e.g. special machines, complex integrated production processes), so that the applicant can only determine the net extra costs with a great deal of effort and sometimes only by making assumptions. Reference investments are often not available on the market. This problem applies in particular to highly innovative projects. In practice, this results in legal uncertainties and increased costs (e.g. by obtaining additional expert opinions).

In order to establish funding programmes with the necessary incentive effect, there is an urgent need for a practicable and simpler method for determining the eligible costs, especially for achieving the ambitious EU climate targets in the timeframes envisaged for this purpose. Although the regularly permissible "bidding procedure" is a possibility for this, it is not sufficient as the sole solution, as it is not suitable in all constellations, for example if a very large number of projects are to be funded within the scope of a funding object.

Moreover, the obligatory introduction of a claw-back mechanism should be viewed critically. Despite the importance of the framework conditions under State aid law for the goal of climate neutrality, the proposed requirement goes beyond the provisions of the GBER on infrastructure financing in Article 55 et seq. These require a claw-back mechanism only if no reliable forecast is possible in advance.

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The introduction of new and more risky technologies is usually associated with a learning curve including follow-up costs. This risk of additional costs for necessary improvements is not covered by points 46 and 47 and thus inhibits investments in these areas. This could be counteracted by allowing the aid amount, which is limited to the minimum, to be exceeded by 10% for investments in innovative key technologies or innovative and particularly environmentally friendly technologies, provided that corresponding additional costs are incurred.

- **Tightening of transparency obligations (point 56)**

Under the current provisions, aid recipients with an aid amount of more than EUR 500,000 are required to publish certain aid data. According to the draft regulation in point 56, this amount is to be lowered to EUR 100,000. Lowering the threshold would create immense practical difficulties and administrative burden. The previous threshold of EUR 500,000 has proven itself and is also sufficient in the view of EAPB members. This makes it possible to identify projects of a relevant amount and at the same time to sensibly limit the administrative burden.

- **Resource efficiency**

In our view, the issue of resource efficiency does not only play a role in connection with the aid category Aid for resource efficiency and for supporting the transition towards a circular economy (4.4). In the manufacturing sector, raw materials and materials are often used that are already responsible for significant amounts of greenhouse gas emissions during their extraction/processing or production. A reduction of these resources in the production process therefore leads to CO₂ savings upstream.

We therefore advocate that the reduction of greenhouse gases resulting from a substitution or reduction of resources be also taken into account as aid-relevant in the category "Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy " (4.1).

A more far-reaching and desirable approach would be to take into account CO₂ emissions that can be saved over the entire life cycle of a product or measure.

- **Aid for clean mobility - appropriateness (point 151 and following)**

Regarding the adequacy of aid for clean mobility, there are three options for determining the eligible amount of aid: a bidding procedure, support of eligible costs with a maximum aid rate of 40% or support of the funding gap.

In the third option (funding gap), the funding gap must first be analysed. This analysis is to be verified later in an ex-post evaluation and excess amounts are to be recovered. This mechanism seems to make sense for large projects. However, in the case of aid for clean mobility, smaller aid schemes are also conceivable, which cannot be exempted via the GBER so far and for which this procedure seems disproportionate. We propose- insofar the introduction of a mandatory claw-back mechanism is not reconsidered (see our concerns above)- to exempt at least projects that do not exceed a certain financial size from this obligation.

- **Support possibilities for mid-caps (point 18 and 119)**

The Guidelines define the term "small mid-caps" under point 18 (68) as non-SMEs that do not reach a number of employees of 499 and whose annual turnover does not exceed EUR 100 million or whose annual balance sheet does not exceed EUR 86 million. In the further course, however, the term "small mid caps" can only be found in point 119. The Commission thus falls short of the expectations to create extended support options for these companies as well.

- **Investments in energy efficiency via third-party companies**

As highlighted in the Fi-Compass publication "[The potential for investment in energy efficiency through financial instruments in the European Union](#)" by the EC and the EIB, many of the barriers that hold back green investments are financial and the economic crisis produced by the pandemic can only further reduce the propensity to make such investments, in particular by public administration and by SMEs. The report therefore suggests supporting alternative financial solutions such as "Energy Saving Companies (ESCO) financing, third parties financing (TPF), Energy Performance Contracting (EPC)". In these cases, the green investment is made by a third party (ESCO, TPF, Energy Performance Provider) with its own financial resources on behalf of the system user, often the energy consumer who pays for a service that also remunerates the capital invested by the third-party company (often a large company).

It would be important for the Guidelines to clarify under what conditions State aid rules apply when energy efficiency measures are publicly financed via and with the help of such third parties and to keep administrative burden low with regard to possible tender obligations.

In particular it should be clarified under what conditions the economic advantage of public funding - can be considered transferred by the third party to the user of the investment, under what conditions this does not constitute State aid (for example because the user does not perform economic activities, e.g. in the case of local authorities, schools, condominiums, etc.) and under what conditions aid is considered attributed to a company (considering its business size, its De Minimis ceiling, etc.).

With regard to tendering obligations, they should be kept as simple as possible in this context. It should be possible for example for a public authority to make an investment in an owned property (for example a school renovation) and for another public authority (for instance the Managing Authority of a PO) to grant a subsidy proportionate only to investments for environmental protection regardless of the nature of the third-party company that has won the tender, without having to do another tender. It would seem sufficient that the second public authority, granting the subsidy obliges the successful third party bidder to transfer the economic advantage to the end beneficiary e.g. by means of a financial discount.

* **The European Association of Public Banks (EAPB)** gathers over 30 member organisations which include promotional banks such as national or regional public development banks and local funding agencies, public financial institutions, associations of public banks and banks with similar interests from 17 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders.