Hungarian position for the European Commission's proposal for the Communication on the Guidelines on regional state aid applicable from 2022

The Hungarian authorities welcome the Commission's proposal for a new set of Regional Aid Guidelines for the period beyond 2022. The Hungarian authorities particularly appreciate that the draft provides stability to the existing rules while codifying some key elements of the Commission's case practice and guidance made available to Member States.

The Hungarian authorities have the following proposals to the text (text to be deleted is ~~crossed out~~, while any proposed new text is in **bold**).

1. The draft indirectly provides that no aid may be granted under the regional aid guidelines in the energy sector, i.e. to energy generation, as such aid measures are assessed by the Commission under the Energy and Environment Aid Guidelines (EEAG) (paragraph (12) of the draft).

However, the Hungarian authorities are of the opinion that in certain cases, when the energy production is an integral part of the initial investment and the energy produced is practically only used for the initial investment's operation, the energy production's investment costs should be eligible for regional aid.

For this reason, the Hungarian authorities suggest that the following rule should be added to the draft (in Section 4.1.1, for instance):

> ***"Energy generation related costs may be considered as eligible costs for regional investment aid if the following conditions are met:***
>
> ***1) Energy generation is not the primary objective of the initial investment,***
>
> ***2) The energy generation related investment costs constitute less than half of the overall eligible costs***
>
> ***3) The capacity of energy generation is adapted to the needs of the initial investment, i.e. at most 20% of the planned energy generated would be sold (based on an ex ante analysis), and***
>
> ***4) the source of energy generation is renewable."***

2. The Hungarian authorities are of the opinion that the exclusion of the steel sector should not be absolute as exceptionally the guidelines should allow regional aid to the establishment of new steel industry capacity with carbon-free production technology, also because the green and digital transformation will require carbon-free production capacity for steel.

The Hungarian authorities propose the following change to paragraph (10):

Regional aid to the steel sector will not be considered to be compatible with the internal market ***unless it is granted for initial investments using carbon-free production technology.***

3. The Hungarian authorities request the Commission to include a definition for the energy sector for clarity and legal certainty reasons. The current draft, in paragraph (12), states that the regional aid guidelines do not apply in the energy sector, and clarifies in footnote 13 that aid to the energy sector is to be assessed on the effective and the future Energy and Environment Aid Guidelines. The Hungarian authorities believe that the energy sector should be defined to allow legal practitioners to tell if a project belongs to the energy sector excluded from regional aid.

For this reason, the Hungarian authorities suggest the following new definition in paragraph (20):

*"****'energy sector': the energy generation, distribution and infrastructure sector, i.e. the activities within the framework of 35 division of NACE Rev 2****."*

4. It is the Hungarian authorities' opinion that replacement investments should be specifically excluded from the scope of regional aid. While the definition of initial investments on paper exclude the eligiblity of replacement investments, the Hungarian authorities consider it vital that they are specifically included, so that the definition of initial investment is not circumvented.

The Hungarian authorities thus suggest the following addition to paragraph (20)(j) and (k) of the draft:

*"****Replacement investments, consisting in particular in a simple replacement of assets without fulfilling the notion of initial investment, are not eligible for aid.****"*

5. The Hungarian authorities would like the Commission to restructure the relocation definition in paragraph (20)(t) to better reflect the individual items of the definition. In the draft and the GBER, the definition consists of two sentences in which it is difficult to identify the parts of the definitions.

Also, the Hungarian authorities suggest that the "jobs are lost" condition, which means two jobs in practice, should be increased. While the Hungarian authorities agree that regional aid should not be used for relocation, they are convinced that the loss of two jobs at a plant in the EEA should not be taken as relocation automatically and should not deprive the Member States from granting aid to new investments. The Hungarian authorities suggest that the thresholds of 100 jobs or 50% of the workforce at the establishment, which have been in use between 2014 and 2017 in the GBER, are sufficient to identify cases of actual relocation risk.

Finally, the Hungarian authorities suggest that a comparison basis should be added to the job loss (the previous year's statistical average).

For this reason, the Hungarian authorities suggest that the relocation definition (paragraph (20)(t)) should be reworded as follows:

> *~~'relocation' means a transfer of the same or a similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer if the product or service in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the beneficiary in the EEA~~*
>
> ***"'relocation' means a case when all the following conditions are met:***
>
> ***1. the beneficiary or another undertaking of its group relocates the same or similar activity, or a part of this activity from one EEA country (original establishment) to the establishment in another EEA country where the investment is implemented (aided establishment);***
>
> ***2. the product or the service provided by the original and aided establishment serves at least partly the same purposes;***
>
> ***3. the product or the service serves the needs of the same consumer group;***
>
> ***4. at least 100 jobs or 50% of the jobs are lost in the original establishment within the same or similar activity compared to the previous year's statistical average number of staff at the establishment."***

6. The Hungarian authorities believe that the major issue with the relocation definition in the GBER and the RAG is that if the beneficiary is forced to lay off two employees at present in the relevant period (i.e. during the investment period+2 years) in another EEA Member State, it loses its eligiblity for aid under the GBER. The aid can be notified, of course, but then the aid must be assessed and approved by the Commission under the more complex and restrictive rules of the RAG if it can be proven that there is no causal link between the aid in one Member State and the loss of jobs/the closing of an establishment in another Member State. So, notification is always an option, but the procedure under the RAG is a complex procedure where the beneficiary is required to prove much more than under the GBER, and where the Commission's assessment must go beyond the causal link.

The Hungarian authorities therefore suggest that the RAG should include the option of notifying individual aid that is caught by the relocation definition in the RAG/GBER, but in this case the procedure could be limited to the scrutiny of the causal link. If the Commission finds that there is no causal link, it can issue a decision establishing this, and the Member State can grant aid under the GBER.

The Hungarian authorities suggest that the following wording should be added to paragraph (24):

> *"Individual aid granted under a notified scheme remains also subject to the notification obligation pursuant to Article 108(3) of the Treaty unless the beneficiary has confirmed that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two years preceding the application for aid and the beneficiary has given a commitment that it will not do so for a period of up to two years after the initial investment for which aid is requested is completed.* ***If the beneficiary violates this commitment, the Member State can notify the aid and if the Commission finds that there is no causal link between the relocation and the aid, it can establish in a decision the lack of causal link only, allowing the Member State to keep the aid award in effect.****"*

7. The restrictions applicable to fundamental changes and diversifications in paragraphs (30) and (31) would apply, according to the draft, to all undertakings and not just to large undertakings (in the GBER, the same limitations do not apply to SMEs). The Hungarian authorities propose that these rules should be coherent in the GBER and the RAG and therefore suggest the following changes to paragraphs (30) and (31):

> *"30. For aid awarded* **to a large undertaking** *for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years.*
>
> *31. For aid awarded* **to a large undertaking** *for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works. "*

8. To help the correct and uniform application of the single investment project rule, the Hungarian authorities believe that the exchange rate and the discount rate to be applied should be set in the guidelines. As a result, the Hungarian authorities propose the following text to supplement paragraph (98) of the draft:

> *"98. When the initial investment is part of a single investment project and that single investment project is a large investment project, the aid amount for the single investment project must not exceed the adjusted aid amount.* ***The exchange rate and discount rate to be applied for the purpose of this rule is the one applicable at the time of the aid award for first project of the single investment project.****"*

9. According to paragraph (106) of the draft, compliance with cumulation rules must be checked at the time of granting and at the time when aid is paid out. The Hungarian authorities are convinced that this is an unnecessary burden on aid grantors as all aid grantors,

when granting aid, must check compliance with cumulation, and they are legally required to avoid the granting of aid above the maximum intensity or amount, taking into account cumulation rules.

10. The Hungarian authorities noticed that the transparency rules of the draft (paragraphs (142) to (145)) do not contain a minimum threshold under which individual aid awards need not be published. However, all current State aid rules, including the GBER and the RAG in effect, contain a threshold of EUR 500,000, which greatly reduces the related administrative burden. Also, if a general publication obligation was introduced, it would require Member States to amend all their existing laws which are currently based on a minimum threshold, which would further increase red tape.

For this reason, the Hungarian authorities propose the following changes to the draft.

> Paragraph 142(b): *"the information on each individual aid award* ***with a gross grant equivalent exceeding EUR 500,000*** *granted under these guidelines, referring to the standardized format laid down in the Annex VI"*
>
> Paragraph 143: *"For schemes in the form of tax advantages, the conditions set out in paragraph 142(b) shall be considered fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million):*
>
> ***~~0–0,5;~~***
>
> *0,5-1;*
>
> *(...)"*

11. The Hungarian authorities are convinced that the introduction of the new alternative EUR 750 million threshold for evaluations for the entire duration of the schemes will create excessive administrative burden. For new schemes, the proposed rule states that if the spending or the budget exceeds EUR 150 million in any given year, the scheme will be subject to ex post evaluation. However, the EUR 750 million threshold is unnecessary as the EUR 150 million threshold that must be checked every year will include all truly large schemes. The extension of the EUR 750 million threshold to new schemes with predecessors, with the predecessor scheme's figures to be taken into account, creates a burden on smaller schemes. As a result, the EUR 750 millon threshold should be either removed or increased significantly in the Hungarian authorities' opinion.

In addition, the Hungarian authorities suggest that the evaluation obligation should not apply to schemes that are subject to evaluation under European Structural and Investment Fund rules to cut red tape.

Finally, the Hungarian authorities believe that the phrase “predecessor scheme” is very vaguely described in the draft (paragraph (147)): “any predecessor scheme covering a similar objective and geographical area”. The Hungarian authorities suggest that the predecessor scheme should only be taken account if the scheme to be evaluated is the result of an extension to the predecessor scheme’s duration, and the defininion of predecessor scheme has to be included in the RAG.

12. Paragraphs (148) and (152) introduce two new (previously non-codified) legal consequences of evaluation plans. According to paragraph (148), if the final report does not comply with the evaluation plan, the scheme has to be suspended immediately. In addition, paragraph 152 states that subsequent aid measures with a similar objective must describe to the Commission how the results of the evaluation have been taken into account. As the legal consequences are severe, the Hungarian authorities request the Commission to regulate in the guidelines in more detail when a final report is considered not to be in compliance with the evaluation plan, and also to specify exactly what is meant by aid measures of a similar objective (e.g. whether this should be understood as all subsequent regional aid measures).

13. According to paragraph (152) of the draft, “the final evaluation report must be submitted to the Commission in due time to allow for the assessment of the possible prolongation of the aid scheme and at the latest 9 months before its expiry.” The Hungarian authorities would like to note that in the case of schemes that exceed the threshold in one of their last years, this rule is practically impossible to comply with. For this reason, the draft should allow an exception to the proposed rule.

14. The Hungarian authorities request the Commission to clarify how land purchase is to be evaluated in connection with incentive effect. Although under the GBER the purchase of a land plot before the aid application does not result in the start of works, in the RAG, land purchase is not mentioned. In the Commission’s assessment, land purchase may be taken as a sign of lack of incentive effect even if the land has been purchased after the investment decision or the land can be used for other purposes. As a result, the Hungarian authorities would like the Commission to add the following text to Section 5.4.1 of the draft in order to clarify for potential beneficiaries the role of land plot purchase regarding the incentive effect.

> ***“The purchase of land for the investment is only taken into account by the Commission as evidence implying a lack of incentive effect if the land has been purchased before the beneficiary’s investment decision and the land purchased can only be used for the purposes of the initial investment.”***

15. In paragraph (179), it is unclear to which aid intensity category a region with exactly 55% of the per capita GDP of EU27 belongs to. The Hungarian authorities suggest the following correction:

> *The aid intensity in 'a' areas must not exceed:*
>
> *a) 50 % in NUTS 2 regions whose GDP per capita is below or equal to 55 % of the EU27 average;*
>
> *b) 40 % in NUTS 2 regions whose GDP per capita is ~~between or equal to~~* ***above*** *55 % and* ***is below or equal to*** *65 % of the EU27 average;*
>
> *c) 30 % in NUTS 2 regions with a GDP per capita above 65 % of the EU27 average.*

16. Paragraph (183) of the draft states that "[i]f a 'c' area is adjacent to an 'a' area, the maximum aid intensity in the NUTS3 regions or parts of NUTS3 regions within that 'c' area which are adjacent to the 'a' area may be increased as necessary so that the difference in aid intensity between the two areas does not exceed 15 percentage points", which is a very reasonable balancing rule to eliminate significant disparities between the maximum aid intensities in neighbouring regions. The Hungarian authorities suggest a similar rule in case there are similar differences between 'a' areas adjacent to each other as a new paragraph in Section 7.4.1:

> *"**The maximum aid intensity in a NUTS 3 region adjacent to another 'a' area may be increased as necessary so that the difference in aid intensity between the two areas does not exceed 15 percentage points.**"*