

**LATVIAN COMMENTS ON DRAFT COMMUNICATION FROM THE COMMISSION
GUIDELINES ON REGIONAL STATE AID (HEREAFTER – THE DRAFT GUIDELINES)**

No.	Place in the document text	Comments/Proposals
1.	<i>General comment</i>	For legal certainty, we propose to set a clear period of application of the guidelines, as well please name it in the guidelines title.
2.	<i>Paragraph 12</i> The Commission will apply the principles set out in these guidelines to regional aid in all sectors of economic activity, apart from sectors that are subject to specific State aid rules, which is currently the case in fisheries and aquaculture ⁹ , agricultural ¹⁰ , transport ¹¹ , broadband ¹² , and energy ¹³ .	To make it clear to which sectors these guidelines do not apply and for clarification reason, please provide in the footnote definition for the following terms: aquaculture, agricultural, broadband and energy (by analogy, as already included in the footnote 11).
3.	<i>Paragraph 13</i> The Commission will apply the principles set out in these guidelines for processing and marketing of agricultural products into non-agricultural products. These guidelines apply to aid measures supporting activities outside the scope of Article 42 of the Treaty but covered by the Rural Development Regulation ¹⁴ and are either co-financed by the European Agriculture Fund for Rural Development (EAFRD) or are being	In view of the reduction in the funding of the European Agricultural Fund for Rural Development (EAFRD) for the next programming period, Latvia asks to reconsider to apply the principles set out in these guidelines not only under the EAFRD, for processing and marketing of agricultural products into non-agricultural products, but .

	granted as an additional national financing to such co-financed measures, unless sectoral rules provide for otherwise.	
4.	<p><i>Paragraph 19</i></p> <p>When assessing regional aid awarded to an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered¹⁸.</p>	<p>Taking into account the recent ECJ judgement on "Eesti Pagar" (C-349/17), for reasons of legal certainty, we propose to clarify paragraph 19 in order to understand whether the Deggendorf principle relates only to outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market or also when the recovery of state aid has been found unlawful by national courts or public administration i.e., because the conditions laid down by the GBER are not satisfied.</p>
5.	<p><i>Paragraph 20</i></p> <p>Subparagraphs:</p> <p>c) 'ad hoc aid' means aid that is not awarded on the basis of a scheme;</p> <p>e) 'date of award of the aid' means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime;</p> <p>h) 'gross grant equivalent' (GGE) means the discounted amount of the aid if it had been provided in the form of a grant to the beneficiary, before any deduction of tax or other charge, as</p>	<p>Latvian authorities kindly ask the European Commission to review definitions included in <i>Paragraph 20</i>:</p> <ol style="list-style-type: none"> 1) <i>Technical comment</i>. Please align terminology for the 'date of award of the aid' in paragraph 20 e) and h) subparagraphs. We draw attention to the use of different terms: date/ time. 2) In Paragraph 20 b) is included a definition for 'ad hoc aid' and in paragraph 20 i) is included a definition for 'individual aid'. Please review the use of terms "ad hoc" and "individual aid under the scheme" throughout the draft guidelines. We draw attention to the fact that it is not clear to which aid it applies, for example paragraph 23, 24 foresees 'Individual aid granted under a notified scheme', paragraph 51 "individual investment projects on the basis of a scheme", part 5.1.2. "Notifiable individual investment aid" etc. For clarification reasons we recommend using definition for "individual aid" as defined in Council Regulation (EU) 2015/1589 of July 13

	<p>calculated at the time of award of the aid or at the time of notification of the aid to the Commission, whichever is earlier, on the basis of the reference rate applicable on that date;</p> <p>i) ‘individual aid’ means ad hoc aid or awards of aid to individual beneficiaries on the basis of an aid scheme;</p> <p>j) ‘initial investment’ means</p> <p>a) an investment in tangible and intangible assets related to:</p> <ul style="list-style-type: none"> – the setting-up of a new establishment; – the extension of the capacity of an existing establishment; – the diversification of the output of an establishment into products or services not previously produced in the establishment; or – a fundamental change in the overall production process of an existing establishment; <p>t) ‘relocation’ means a transfer of the same or a similar activity or part thereof</p>	<p>2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.</p> <p>3) For clarification reason, please provide in the footnote definition/clarification for the term “new establishment” which is mentioned in subparagraph j) (for example, as it is explained on the e-wiki platform: https://webgate.ec.europa.eu/fpfis/wikis/display/StateAid/Art.+14.9a+establishment+definition).</p> <p>4) Taking into account clarification on the e-wiki platform: https://webgate.ec.europa.eu/fpfis/wikis/display/StateAid/Article+13%28d%29+-+Scope+of+regional+aid+-+relocation it is suggested to revise the definition ‘relocation’, with an indication that relocation may also take place within one Member State.</p> <p>5) it is suggested to revise the definition ‘start of works’, taking into account that the following actions may also be considered as “preparatory works”: preparing the supporting documentation for the project application (for example, documents of construction conception, including construction project and other documents in accordance with regulatory enactments regarding construction), expert-examination, research, the development of a financial analysis, economic analysis or cost-benefit analysis; preparation of documents specified in the regulatory enactments regarding environmental impact assessment. In addition, please specify in this definition to make it clear that costs of preparatory studies or consultancy costs linked to the investment as mentioned in paragraph 29 cannot define as start of works.</p>
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	<p>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;</p> <p>y) ‘start of works’ means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired</p>	
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	establishment;	
6.	<p><i>Paragraph 23</i></p> <p>Individual aid granted under a notified scheme remains subject to the notification obligation pursuant to Article 108(3) of the Treaty if the aid from all sources exceeds the notification threshold as established below:</p>	<p>Latvian authorities kindly ask the European Commission to review the wording of <i>Paragraph 23</i> to clarify, that “all sources” means all resources over which the Member States have discretion, not the resources that directly comes from the EU institutions and are provided to the beneficiary.</p>
7.	<p><i>Paragraph 25</i></p> <p>25. The eligible costs shall be as follows:</p> <p>a) investment costs in tangible and intangible assets; or</p> <p>a) the estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two years; or</p> <p>b) a combination of part of the costs in point a) and b) but not exceeding the amount of a) or b), whichever is higher.</p>	<p>Required a technical correction in <i>Paragraph 25</i> - two "a" subparagraphs are included.</p> <p>Given the practical (not) applicability of Paragraph 25 (b), would be needed further guidance on its practical implementation. However, if the restriction is the maximum sum such a combination does not make sense and Latvian authorities kindly ask the European Commission to delete the Paragraph 25(b), to make it clear that it is not possible to fund a combination of part of the costs in point a) and b) at the same time. It is necessary to establish a condition that the beneficiary shall choose whether to use investment or wage costs as eligible costs.</p>

8.	<p><i>Paragraph 27</i></p> <p>By way of derogation to the condition in paragraph 26, the costs of vendor tools located in establishments of suppliers may be included in the eligible costs of the aided initial investment if they stay in the ownership and on the balance sheet of the aid beneficiary, and are used exclusively to manufacture intermediate products needed for the production process resulting from the assisted initial investment. In addition, the establishment of the supplier itself has to be located in an assisted region, and the aid intensity applied to the costs of the vendor tools must not exceed the lower of the aid intensities that apply for the region where the initial investment takes place or where the establishment of the supplier using the vendor tools is located, respectively.</p>	<p>Latvian authorities kindly ask the European Commission to review the wording of Paragraph 27. In our view, the content of this paragraph is unclear and confusing.</p> <p>For clarification reason, please provide in the footnote definition/clarification for the term “the costs of vendor tools”.</p>
9.	<p><i>Paragraph 28</i></p> <p>The assets acquired should be new, except for SMEs or in the case of acquisition of an establishment²⁴.</p>	<p>Required a technical correction in <i>Paragraph 29</i> - as the assets acquired by the large companies must be new and they cannot buy used assets the wording needs to be such as to make clear that these conditions are imperative and not optional, we suggest using words like “shall” or “must”.</p>

10.	<p><i>Paragraph 33</i></p> <p>In the case of acquisition of an establishment only the costs of buying the assets from third parties <u>unrelated to the buyer</u> should be taken into consideration. The transaction must take place under market conditions. Where aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets should be deducted from the eligible costs related to the acquisition of an establishment. If the acquisition of an establishment is accompanied by an additional investment eligible for regional aid, the eligible costs of this latter investment should be added to the costs of purchase of the assets of the establishment.</p>	<p>For clarification reason, please provide in the footnote definition/ clarification for the term “unrelated to the buyer”, taking into account the European Commission’s clarification for the definition "Unrelated parties" on the e-wiki platform: https://webgate.ec.europa.eu/fpfis/wikis/pages/viewpage.action?pageId=135382309</p> <p>In addition, please explain why there is an additional restriction on the acquisition of assets that have already received aid before their acquisition if they have been acquired by a third parties unrelated to the buyer? How to verify that the acquisition of assets has not received support in another country? Why those assets should be deducted from the eligible costs? Taking into account that the buyer does not receive a double advantage, this specific condition lacks logic. From our perspective, all costs must be included in the eligible costs.</p>
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11.	<p><i>Paragraph 35</i></p> <p>35. Intangible assets which are eligible for the calculation of the investments costs must remain associated with the assisted area concerned and must not be transferred to other regions. To this end, the intangible assets must fulfil the following conditions:</p> <p>a) they must be used exclusively in the establishment receiving the aid;</p>	<p>Please specify, whether intangible assets must be used exclusively in the establishment receiving the aid or the intangible assets must be used exclusively by undertaking receiving the aid.</p> <p>The situation may arise when one company have several establishments, and these intangible assets are shared with each other.</p>
12.	<p><i>Paragraph 37 and 52</i></p> <p>37. Where eligible costs are calculated by reference to the estimated wage costs as referred to in paragraph 36, the following conditions must be fulfilled:</p> <p>a) the investment project must lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months, meaning that any job lost must be deducted from the apparent created number of jobs during that period;</p> <p>b) each post must be filled within one year of the completion of works;</p> <p>c) each job created through the investment must be maintained in the area concerned for</p>	<p>To make it clear, from which point the reference point begins when the works to investment project may be deemed to be completed, i.e. from the physical completion of the investment project, or from the moment when all the documents are signed about the possibility to put the property into operation, please provide in the footnote or in 2.2. Part “Definitions” clarification for the term “the completion of works”.</p>

	<p>a period of at least five years from the date the post was first filled, or three years in the case of SMEs.</p> <p>52. To ensure that the investment makes a real and sustained contribution to the development of the recipient area, the investment must be maintained in that area for at least five years, or three years for SMEs, after its completion³¹.</p>	
13.	<p><i>Paragraph 53</i></p> <p>53. To ensure that the investment is viable, the Member State must ensure that the beneficiary provides a financial contribution of at least 25 %³² of the eligible costs, through its own resources or by external financing, in a form that is free of any public support³³</p>	<p>Please specify whether condition regarding 25% free of state aid should be fulfilled throughout the implementation of the project or at the time the aid was granted? From our perspective, it is important to ensure that this condition regarding 25% free of state aid is met during the project implementation.</p>
14.	<p><i>Paragraph 55(d) (e)</i></p> <p>55. To demonstrate the regional contribution of notifiable individual investment aid, Member States may use a variety of indicators such as the ones mentioned below that can be both direct (for example, direct jobs created) and</p>	<p>Latvian authorities kindly ask the European Commission to delete this paragraph. We draw attention to the fact that training always have a positive impact on the development of the region. In our view, the fact that training aid has been granted does not mean that there will be a “double counting”.</p> <p><i>Technical comment.</i> Please review the translation of the document into Latvian, for example, the term “cluster” (in Latvian “klasteris”) is interpreted as a “set” (in Latvian “kopa”) and term “cluster” might be understood with a different meaning in Latvian.</p>

	<p>indirect (for example, local innovation, contribution to green and digital transition):</p> <p>d) A commitment by the beneficiary to enter into widespread training activities to improve the skills (general and specific) of its workforce will be considered as a factor that contributes to regional development. Emphasis will also be put on providing traineeships or apprenticeships, especially for young people and on training that improves the knowledge and employability of workers outside the undertaking. General or specific training for which training aid has been granted will not be counted as a positive effect of the regional aid to avoid double counting.</p> <p>e) External economies of scale or other benefits from a regional development viewpoint may arise as a result of proximity (clustering effect). Clustering of undertakings in the same industry allows individual plants to specialise more, which leads to increased efficiency. However, the importance of this indicator in determining the contribution to regional development depends on the state of development of the cluster.</p>	
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15.	<p><i>Paragraph 60</i></p> <p>For ad hoc aid³⁷, the Member State must demonstrate, in addition to the requirements laid down in paragraphs 51 to 54, that the project is coherent with and contributes towards the development strategy of the area concerned.</p>	<p>Latvian authorities kindly ask to review and specify in the paragraph 60 given references to the paragraphs 51 to 54 whether they are appropriate in case of ad hoc aid.</p>
16.	<p><i>Paragraph 77</i></p> <p>77. Regional aid can only be found compatible with the internal market if it has incentive effect. Incentive effect is present when the aid changes the behaviour of an undertaking in a way that it engages in additional activity contributing to the development of an area, which it would not have engaged in or would only have engaged in in a restricted or different manner or in another location without the aid. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.</p>	<p>In order to ensure clear provisions in the paragraph 77 please separate the conditions relating to the incentive effect for the schemes and for ad hoc.</p>

17.	<p><i>Paragraph 82</i></p> <p>82. If works start before submitting the application form for aid, any aid awarded in respect of that individual investment will not be considered compatible with the internal market.</p>	<p>Given that two or more initial investment projects could be a part of a single investment project and taking into account the European Commission's clarification on the e-wiki platform https://webgate.ec.europa.eu/fpfis/wikis/display/StateAid/Art+61+-+Incentive+effect regarding incentive effect in case of a single investment project, it is necessary to establish a condition in the case of a single investment project the incentive effect condition will be assessed for each part of the project separately.</p>
18.	<p><i>Paragraph 84</i></p> <p>84. In addition, large enterprises must submit documentary evidence in support of the counterfactual described in the application form. SMEs are not subject to such obligation for non-notifiable aid granted under a scheme.</p>	<p>Given that paragraph 84 provides the submission of documentary evidence demonstrating counterfactual scenario, please indicate in paragraph 84 the link to paragraphs 87 and 88, to make it clear what information documents should contain.</p>
19.	<p><i>Paragraph 86 - 91</i></p> <p>86. In addition to the requirements of paragraphs 81 to 85, for notifiable individual aid, the Member State must provide clear evidence that the aid effectively has an impact on the investment choice or the location choice⁴⁰. It must specify which scenario described in paragraph 78 applies. To allow a comprehensive assessment, the Member State</p>	<p>Given that the conditions in paragraphs 86 to 91 apply to notifiable individual investment aid, please ensure that all these provisions are under separate chapter.</p> <p><i>Technical comment.</i> We draw your attention to the fact that the reference to paragraph 61 in footnote 40 is not correct, in the paragraph 61 there is no information regarding counterfactual scenarios.</p>

	<p>must provide not only information concerning the aided project but also a comprehensive description of the counterfactual scenario, in which no aid is awarded to the beneficiary by any public authority in the EEA.</p> <p>40 The counterfactual scenarios are described in paragraph 61</p>	
20.	<p><i>Paragraph 106</i></p> <p>106. Investment aid may be awarded concurrently under several regional aid schemes or cumulated with ad hoc aid, provided that the total aid from all sources does not exceed the maximum permissible aid intensity per project that must be calculated in advance by the first granting authority. Cumulation checks must be carried out both when the aid is granted and when the aid is paid out⁴⁷. Where the Member State allows State aid under one scheme to be cumulated with State aid under other schemes, it must specify, in each scheme, the method by which it will ensure compliance with the the conditions set out in this paragraph.</p>	<p>In order to ensure that state aid rules are correctly respected in the practice, including cumulation and the maximum aid intensity, Latvia suggest to define that works on the project should only be started after all the granting authorities have taken decisions on the granting of aid.</p>

21.	<p><i>Paragraph 142</i></p> <p>142. The Member State concerned shall ensure the publication in the European Commission's transparency award module (55) or on a comprehensive State aid website, at national or regional level of:</p> <p>(a) the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it;</p> <p>(b) the information on each individual aid award granted under these guidelines, referring to the standardized format laid down in the Annex VI.</p>	<p>The initial concept of the transparency requirement covered individual grants above the threshold of EUR 500 000. Under the Temporary framework, transparency requirement covers each individual aid above EUR 100 000. In the case of regional aid, there is a disproportionate administrative burden on the provision of transparency requirements for each aid award granted, regardless of its threshold. Therefore, Latvian authorities suggest keeping the initial concept that the transparency requirement is applicable to individual grants above the threshold of EUR 500 000.</p>
22.	<p><i>Paragraph 184</i></p> <p>184. The maximum aid intensities laid down in subsections 7.4.1 and 7.4.2 may be increased by up to 20 percentage points for small enterprises or by up to 10 percentage points for medium-sized enterprises⁷⁸.</p>	<p>In the draft Guidelines in sub-section, 7.4.3 it is foreseen for SME's the possibility to increase aid intensities. Please provide an opportunity to increase aid intensity also in the case of project that implement innovations.</p>

23.	<i>Annex VI</i> — Identity of the granting authority or authorities	For time being TAM does not foresee more than one entry of granting authority. Latvian authorities kindly ask the Commission to adjust TAM system prior to the entry into force of the guidelines in order to ensure data input in timely manner.
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