

Comment on the proposal of the revised Climate, Energy and Environmental Aid Guidelines (CEEAG)

State aid rules play a significant role to fulfil the ambitious objectives of the European Green Deal. To reflect those policy objectives, the Directorate General Competition (DG Competition) recently published a revised proposal of the Climate, Energy and Environmental Aid Guidelines (CEEAG). The guidelines aim to lead the European Commission when assessing the compatibility of environmental protection measures that are subject to the notification requirement under Article 107(3), point (c), of the Treaty on the Functioning of the European Union (TFEU).

We welcome the opportunity to comment on the proposed revised guidelines and therefore contribute to adjust the State Aid rules in that matter. In the following we mainly address two justification requirements that are demanded concerning

- A. aid without a bidding process and
- B. technology-specific support schemes.

We are concerned, that these justification requirements

- (iii) impose large bureaucratic costs on Member States and DG Competition
- (iv) create uncertainty for state aid approval decisions and
- (v) confer discretionary choices withupon DG Competition.

As a result, the notification process can result in serious delays and obstacles for the implementation and adjustments of support mechanisms undermining the ambition of the EU Green Deal of economic recovery and transition to climate neutrality. As Member States have an incentive to use public resources efficiently towards achieving their policy objectives where no intra-European competition is at stake, they are in the best position to determine the structure of their support mechanism.

Hence, we recommend the retention of the full national autonomy concerning the possibility to grant aid without a bidding process and to use a technology-specific design of support schemes, and thus also full national responsibility for its success and failure towards domestic constituencies. This should be accompanied by a strengthening of the reporting mechanisms to ensure the quality of support schemes, and to allow EU monitoring and intervention where necessary based on the existing prohibition of excesses of state aid.

A. Justification requirements concerning aid without a bidding process

Chapter 3 of the proposal sets out the general compatibility criteria that apply to all categories of aid covered by the Guidelines.¹ According to section 3.2.1.3 of the proposal, aid measures are considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided activity or project. Proportionality of the aid is particularly ensured if the aid amounts are determined through a **competitive bidding process**.² The reasoning behind this assumption is that auctions should lead to the minimisation of support cost by having several stakeholders compete for support. If a Member State decides to grant an aid without conducting a bidding process, it is facing several justification requirements (e.g. submitting a quantification, for the factual scenario and a credible counterfactual scenario, of all main costs and revenues or justifying applied methodologies).³

Specific proportionality criteria of aid measures aimed at reducing greenhouse gas emissions

Section 4.1 of the CEEAG proposal lays down the specific compatibility rules for aid measures primarily aimed at reducing greenhouse gas emissions, including aid to produce renewable and low carbon energy. Concerning proportionality requirements, it specifies that “aid for reducing greenhouse gas emissions should in general be granted through a competitive bidding process”.

Exceptions can only be justified - where evidence is provided that there is insufficient potential supply to ensure competition. In that case, the Member State must demonstrate that it is not possible to increase competition by reducing the budget or expanding the eligibility of the scheme. Additionally, exceptions can be made if the beneficiaries are small projects.⁴

If a Member State seeks to award an individual aid without an auction it has to justify the proposed aid levels based on an individual business plan for the specific project. In that case, the Member State has to prepare all the requirements of justification that are set out in the general section of the Guidelines (see above).⁵

B. Justification requirements concerning technology-specific support schemes

The Commission assumes that decarbonization measures targeting specific activities which compete with other unsubsidized activities can be expected to lead to greater distortions of competition, compared to measures open to all competing activities. Therefore, Member States should opt for auctions that are **tech-**

nology-neutral, meaning that the auction is open to all available technologies which would compete under a common budget. If they want to choose a **technology-specific** support scheme, they have to provide reasons and justify their decision. These reasons need to be based on objective considerations linked, for example, to efficiency, costs or other relevant circumstances and may be based on evidence gathered public consultation processes.⁶ The accompanying “EEAG revision support study”⁷ has not demonstrated that technology-specific support mechanisms have in general performed worse than multi-technology support mechanisms. We therefore consider it unreasonable that Member States are to be required to prove, of as part of a notification process, the benefits of a technology-specific over a multi-technology support mechanism.

C. Consequences of the justification requirements

The general requirement for Member States to justify thoroughly why they want to grant state aid without an auction or apply a technology-specific bidding process lead to the following consequences:

- (i) The requirements impose large bureaucratic costs on Member States to provide the evidence base for an application and for DG Competition to approve a process without an auction or a technology-specific support scheme.
- (ii) The requirements create uncertainty for state aid approval decisions due to error bars associated with evidence and assumptions required for a comparison of technology-specific and multi-technology tenders. The same applies when comparing aid schemes that are granted by conducting a bidding process and aid that are awarded without.
- (iii) Additionally, the requirement confers discretionary choices withupon DG Competition regarding the definition of a ‘multi-technology auction’ and potentially associated technology-specific bid cap that it will use in the approval of technology-specific support mechanisms.

Negative implications for EU policy objectives

In principle, competitive bidding processes and multi-technology tenders are commendable. However, we are deeply concerned that these requirements have two major negative implications for EU policy objectives:

First, the notification process results in serious delays in the implementation of support mechanisms undermining the ambition of the EU Green Deal of economic recovery and transition to climate neutrality. It also results in serious delays in any adjustment of support mechanisms in response to changes in markets and technologies, risking excessive costs to consumers and delays in investments. Smaller communes with less staff might, as a result of the significant bureaucratic requirements, decide to refrain from providing support-schemes completely. We therefore recommend instead that reporting mechanisms should be strengthened, including as part of 2030 governance, to ensure the quality of support schemes, and to allow EU intervention where necessary based on the existing prohibition of excesses of State aid.

Second, the notification requirements affect the subsidiarity principle by granting DG Competition ultimate decision power over the design of national support mechanisms. Member States have an incentive to use public resources efficiently towards achieving their policy objectives where no intra-European competition is at stake, and are therefore in the best position to determine the structure of their support mechanism. Unrestricted freedom of choice concerning the procedure-design is currently only provided as far as block exemptions apply. It is also important to stress that the European Treaties don’t involve the obligation for Member States to design aid-granting-processes in a certain way.⁸ In order to strike a balance between the unfitting tool of a block exemption and the strict requirements set out by the analyzed proposal of the guidelines, a third way should be envisaged to allow Member States greater flexibility as regards procedure design. Hence, we recommend the retention of the full national autonomy concerning the possibility to grant aid without a bidding process and to use a technology-specific design of support schemes, and thus also full national responsibility for its success and failure towards domestic constituencies.

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- 1 Eg. Aid for improvement of the energy and environmental performance of buildings; for clean mobility or security of electricity supply.
 - 2 European Commission, Guidelines on State aid for climate, environmental protection and energy 2022, p. 30, available under: https://ec.europa.eu/competition-policy/system/files/2021-06/CEEAG_Draft_communication_EN.pdf (last downloaded 28-07-2021).
 - 3 European Commission, Guidelines on State aid for climate, environmental protection and energy 2022, p. 31, available under: https://ec.europa.eu/competition-policy/system/files/2021-06/CEEAG_Draft_communication_EN.pdf (last downloaded 28-07-2021).
 - 4 European Commission, Guidelines on State aid for climate, environmental protection and energy 2022, p. 40, available under: https://ec.europa.eu/competition-policy/system/files/2021-06/CEEAG_Draft_communication_EN.pdf (last downloaded 28-07-2021); Possible 'small projects' are: 1. Electricity generation or storage projects – projects below the threshold in Article 5 of Regulation (EU) 2019/943; 2. for electricity consumption – projects with a maximum demand less than 400kW; 3. for heat generation and gas production technologies – projects below 400kW installed capacity.
 - 5 European Commission, Guidelines on State aid for climate, environmental protection and energy 2022, p. 31 point 50-51, available under: https://ec.europa.eu/competition-policy/system/files/2021-06/CEEAG_Draft_communication_EN.pdf (last downloaded 02-08-2021).
 - 6 European Commission, Guidelines on State aid for climate, environmental protection and energy 2022, p. 37, available under: https://ec.europa.eu/competition-policy/system/files/2021-06/CEEAG_Draft_communication_EN.pdf (last downloaded 02-08-2021).
 - 7 E.CA Economics; DIW Berlin; LEAR; Sheppard Mullin and University of East Anglia (UEA), EEAG revision support study, available under: https://ec.europa.eu/competition-policy/system/files/2021-06/kd0521173enn_EEAG_revision_2021_0.pdf (last downloaded 02-08-21).
 - 8 Kahl, ZUR 2015, 67, 68.

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