Explanatory note accompanying the proposal for the revision of the Guidelines on State aid for environmental protection and energy 2014-2020[1]

The Commission is publishing for consultation a proposal for the revision of the Guidelines on State aid for environmental protection and energy 2014-2020 ("**EEAG**"). Citizens and stakeholders are invited to provide views on this proposal and on how the revised Guidelines would contribute to delivering the EU Green Deal objectives of carbon neutrality, energy and resource efficiency and circularity, pollution reduction and biodiversity in a cost effective manner while limiting possible distortions of competition. This public consultation will last for eight weeks. In addition, as already announced in the Inception Impact Assessment, a meeting with the Member States will be held to gather their feedback on the draft Guidelines proposed for consultation. The information gathered through this public consultation will feed into the Impact Assessment on which the revision will be based.

In November 2020, the Commission published an Inception Impact Assessment to inform citizens and stakeholders about the initiative to revise the EEAG and launched an Open Public Consultation on the basis of a questionnaire to gather feedback from stakeholders to feed into the revision. At the same time, DG Competition launched a Europe-wide call for contributions for a debate on how EU competition policy can best support the Green Deal. This was followed by a conference, hosted by Executive Vice President Margrethe Vestager, on 4 February 2021 that brought together the different perspectives on this important topic that also fed into this revision.

The purpose of this note is to clarify the objective and scope of the proposal for this revision. This note accompanies the public consultation on the proposed Guidelines on State aid for climate, environmental protection and energy 2022 ("**CEEAG**").

1. Context

The Commission has made the European Green Deal a top priority, with the aim of transforming the EU into a fair and prosperous society with a modern, resource-efficient and competitive economy. The climate ambitions of the Commission were reinforced in 2019 with the European Green Deal Communication[2], setting an objective of zero net emissions of greenhouse gases in 2050. In order to set the EU on a responsible path to becoming climate neutral by 2050, the Commission has also proposed to cut greenhouse gas emissions by at least 55% by 2030[3]. These ambitious targets have been enshrined in the proposed text of the Climate Law.

Delivering on the objectives of carbon neutrality, energy and resource efficiency and circularity, pollution reduction, biodiversity and accompanying the green transition will require significant efforts and targeted support. To achieve the ambition set by the Green Deal, significant investment will be required, including further investment in renewable energy. The Commission has estimated that achieving the newly increased 2030 climate and energy targets will require 350 billion euros of additional annual investment. The magnitude of this investment challenge requires mobilising both

[1] OJ C 200, 28.6.2014, p. 1–55

[2] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, 11 December 2019, COM(2019) 640 final.

[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people, 17 September 2020, COM(2020) 562 final.

the private sector and public funds in a cost-effective manner. This will affect all sectors and therefore the economy as a whole.

State aid rules will play an important role in enabling to fulfil the objectives of the European Green Deal and of the Just Transition Mechanism. The European Green Deal Communication specifically sets out that the State aid rules should be revised to reflect these policy objectives, to support a cost-effective transition to climate neutrality, and to facilitate the phasing out of subsidies for fossil fuels, in particular those that are most polluting, while at the same time ensuring a level-playing field in the internal market.

The current EEAG, which date from 2014, will expire on 31 December 2021. The aim is therefore for the new Guidelines to enter into force at the beginning of 2022.

In 2019, the Commission carried out a fitness check on the State aid modernisation package, which was published on 30 October 2020[4].

The results showed that the EEAG and the rules of the General Block Exemption Regulation (GBER) regarding environmental protection and energy have generally delivered on supporting climate targets but that certain aspects should be simplified and modernised in a way that minimises distortions to trade and competition. In addition, the European Green Deal requires a wider and deeper review of the EEAG to be fully up to the challenge of the Green Deal.

The revision of the Guidelines relies on the evaluation and on various sources of evidence and data, including case practice, an external study and input from stakeholders. The Commission has collected views through an open public consultation carried out in 2020. This will be supplemented with the feedback received from the present public consultation.

In parallel, the GBER is also undergoing a partial revision of the relevant provisions complementing those set out in these Guidelines. A public consultation on the proposal for those revised provisions is expected to take place in summer 2021.

2. Rationale of the revision

The two main buildings blocks of the revision are:

- an enlargement of the scope of the Guidelines to new areas (e.g. clean mobility, biodiversity) and all technologies that can deliver the Green Deal, allowing higher aid amounts (100% of the funding gap) and new aid instruments (e.g. Carbon Contracts for Difference);
- a flexibilisation of compatibility rules with a simplified assessment of cross-cutting measures and generally no individual notifications for large green projects within approved schemes.

This wider scope of the Guidelines needs to be accompanied by safeguards to ensure that the aid is effectively directed where it is needed to improve environmental protection, is limited to what is needed to achieve the environmental goals and does not distort competition or the integrity of the internal market. This revision also aims at ensuring alignment and coherence with relevant EU legislation and policies in the environmental and energy fields.

As regards the phasing out of subsidies for fossil fuels, the proposed Guidelines explain as a general rule that measures that involve support to the most polluting fossil fuels are unlikely to create positive environmental effects and often have important negative effects because they can increase the

[4] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2044-Fitness-check-of-2012-State-aid-modernisation-package-railways-guidelines-and-short-term-export-credit-insurance

negative environmental externalities in the market. The same applies for measures involving new investments in natural gas, unless it is demonstrated that the investments are compatible with the Union's 2030 climate target and the 2050 climate neutrality target. We have therefore indicated in the proposed Guidelines that for such measures a positive conclusion to the balancing test is unlikely (and therefore State aid unlikely to be possible).

As regards the revision of the relevant provisions of the GBER, the aim is to further facilitate green investments by widening the scope to flagship areas like clean mobility infrastructure and biodiversity and by revisiting the provisions on energy efficiency in buildings and on resource efficiency to make them more operational. In addition, the rules will be made more flexible with regards to the definition of eligible costs and aid intensities.

The following sections provide an overview of the main changes the Commission considers at this stage of the revision. The text of draft Guidelines proposed for consultation is not definitive and will be reassessed in light of the feedback and evidence received from the present public consultation.

3. Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy

To facilitate to the greatest possible extent the achievement of the Union's climate targets, the scope of the proposed Guidelines is extended to all technologies that reduce greenhouse gases and improve energy efficiency. This section of the Guidelines deliberately avoids mentioning specific technologies as the intention is to enable all technologies and approaches that can contribute and ensure the Guidelines are as future proof as possible. However, support for renewable energy would be fully covered by that section, and specific renewable schemes continue to be possible within these rules to ensure Member States have the necessary tools to support the achievement of the Union's renewable energy targets.

For reducing greenhouse gas emissions and/or improving energy efficiency, aid for the full net additional costs of more environmentally friendly investments and activities will be possible, and aid in a variety of forms will be possible – including contracts for difference – subject to rules which ensure market price formation is not unduly distorted.

To enhance transparency and to ensure that additional flexibility is well calibrated and incentivise stakeholders' participation in the design of support measures, the CEEAG introduces the requirement of a public consultation on the main features of the envisaged scheme under certain circumstances.

To ensure that aid is necessary and to discourage aid for less cost effective investments in terms of decarbonisation, Member States will have to clearly identify the cost of all supported project types to climate protection in terms of aid amount per unit of greenhouse gas reduction achieved (€/tCO2 equivalent reduced). There will be however no requirement to use this parameter as the basis for selecting the projects to be aided.

To reduce overcompensation and market distortions, competitive bidding is the default mechanism for awarding aid and setting the level of aid. Unless justified, bidding should to the extent possible be open to competing technologies in the Member State which can deliver the target objective of reducing greenhouse gas emissions.

The Commission also specifically seeks comments on the inclusion of aid for removal of greenhouse gases from the environment in the scope of the Guidelines. The technologies allowing for removal of greenhouse gases from ambient air may contribute to the achievement of EU targets, but should not lead to diminished efforts to exhaust any other available means of avoiding or reducing emissions. Further, instances of private, non-subsidised investment in the removal of greenhouse gases exist, indicating that aid might not always be necessary. The comments will be an important basis for informed decision, whether the scope of the Guidelines should include removal of greenhouse gases from the environment or not.

4. Other environmental aid

4.1. Aid for the improvement of the energy and environmental performance of buildings

To achieve the at least 55% emissions reduction target for 2030, the EU must reduce buildings' greenhouse gas emissions by 60%. The Commission's Renovation Wave Communication[5] sets the ambition to at least double renovation rates in the next ten years and make sure renovations lead to higher energy and resource efficiency.

To facilitate deep renovations, Member States will be able to combine aid for the improvement of the energy efficiency of buildings with aid for any investments that improve their energy or environmental performance, such as on-site infrastructure for the generation and storage of renewable energy, charging points for electric vehicles, and digitalisation equipment.

To ensure that the aid brings about a real improvement in energy efficiency, a minimum level of energy savings will be required. Aid measures inducing significant energy savings will be eligible for a green bonus.

The proposed Guidelines include specific rules on aid to ESCOs for the facilitation of energy performance contracting.

4.2. Aid for clean mobility

To achieve the climate neutrality objective by 2050, the European Green Deal established the need to reduce emissions from the transport sector by 90%. The Commission's Communication on a Sustainable and Smart Mobility Strategy[6] confirms the ambition of the European Green Deal and sets out various milestones to show the sectors path towards achieving this objective[7].

To facilitate the transition to clean mobility, under the proposed Guidelines it will be possible to support the acquisition of clean transport vehicles (used for air, road, railway, inland waterway and sea and coastal passenger and freight transport), including natural-gas fuelled vehicles where they constitute a necessary bridging technology towards zero emission mobility, or the retrofitting of transport vehicles. In addition, the scope of the Guidelines will be enlarged to provide for the possibility for Member States to support the deployment of publicly accessible recharging and refuelling infrastructure that is necessary to operate clean vehicles, without crowding out private investments in this sector.

As a general rule, aid shall be awarded through competitive bidding procedures to ensure it remains limited to the minimum necessary. With regard to aid for clean vehicles, the CEEAG would provide flexibility for Member States to identify the most suitable form of aid and would allow to cover up to

[5] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Renovation Wave for Europe - greening our buildings, creating jobs, improving lives, 14 October 2020, COM(2020) 662 final.

[6] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future, 9 December 2020, COM(2020) 789 final.

[7] Those include among others the ambition to have at least 30 million zero-emission cars, 80 000 zero-emission lorries in operation on the road by 2030 and that by 2050 nearly all cars, vans, buses as well as new heavy-duty vehicles will be zero-emission.

the full extra ownership cost. With regard to recharging and refuelling infrastructure, Member States will be able to finance projects up to the full funding gap.

4.3. Aid for resource efficiency and for supporting the transition towards a circular economy

The Circular Economy Action Plan (CEAP)[8] which aims at accelerating the EU's transition to a circular economy as part of the transformational change promoted by the European Green Deal has specifically called to reflect objectives linked to resource efficiency in the context of the revision of the Guidelines.

The Guidelines will include a new section on resource efficiency and circularity covering aid for investments improving resource efficiency and for the prevention, preparing for re-use or recycling and recycling of waste or other products, materials or substances.

The calculation of the eligible costs will rely on the identification of a counterfactual to ensure that aid remains limited to the compensation of environmental costs. An alternative calculation method is proposed for cases where a counterfactual cannot be established. The maximum aid intensity will be 40% of the eligible costs, with bonuses for SMEs, for investments located in assisted areas and for eco-innovation projects. Aid may also be granted through a competitive bidding process.

Aid for operating costs may be allowed on a transitional basis only for separate collection and sorting of waste or other products, materials or substances in relation to specific waste streams or types of waste, in view of preparing for re-use or recycling.

4.4. Other environmental aid

<u>Pollution reduction</u>

A new section will cover aid for the prevention or reduction of pollution and emissions other than greenhouse gas (e.g. nitrogen oxides, sulphur dioxide, noise, phosphate, etc.).

To ensure that aid is directed to investments that have a positive impact on the reduction of pollution, Member States will be required to quantify the environmental benefits of their measures. To simplify the calculation of the eligible costs, the proposed Guidelines provide for alternative proportionality rules if a counterfactual cannot be established. The maximum aid intensity will be 40% of the eligible costs, with bonuses for SMEs and for investments located in assisted areas. Aid may also be granted through a competitive bidding process.

Specific rules will apply for aid in the form of tradable permits.

<u>Rehabilitation and biodiversity</u>

The scope of the proposed Guidelines is extended to cover not only aid for decontamination, but also aid for the rehabilitation of nature and ecosystems, and for the protection and restoration of biodiversity.

The proposed Guidelines allow Member States to cover up to the difference between 100% of the costs of the decontamination, rehabilitation or biodiversity project and the increase in the value of site resulting from the decontamination or rehabilitation. In accordance with the 'polluter pays' principle, aid cannot be granted to the entity liable to prevent and correct environmental degradation and

[8] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan For a cleaner and more competitive Europe, 11 March 2020, COM(2020) 98 final.

contamination, except where it is necessary to increase the scope or ambition of the decontamination or rehabilitation project beyond its legal obligations.

Tax reductions

In light of the fiscal autonomy of Member States and to offer them flexibility when designing a measure in the form of tax reductions, the proposed Guidelines include a dedicated section providing targeted compatibility criteria (e.g. simplified, in particular exemption from competitive bidding requirement). This section is divided into two sub-sections: i) reductions in environmental taxes or levies, which are needed for certain resource-intensive sectors (continuation of the existing provisions contained in section 3.7.1 of the EEAG 2014); ii) reduction of taxes and/or parafiscal levies, which pursue the environmental protection as their primary objective, i.e. incentivise beneficiaries to undertake projects or activities resulting in less pollution or consumption of resources.

The aid must not exceed the normal rate or amount of the tax or levy that would otherwise be applicable. Depending on whether the aid concerns investment or operating aid, further specific safeguards apply.

5. Aid in the energy sector

5.1. Aid for the security of electricity supplies

The proposed Guidelines largely preserve the rules from the EEAG 2014, incorporating the main aspects of the sectoral legislation and codifying case practice since 2014 – in particular clarifying that the Guidelines apply also to network congestion and interruptibility measures.

The proposed Guidelines will enable Member States to make their security of supply measures greener (e.g. by setting strict national emission thresholds or incorporating other environmental criteria into their security of supply measures).

To enhance transparency and incentivise stakeholders' participation in the design of these complex support measures, a public consultation requirement will be introduced under certain circumstances.

5.2. Aid for energy infrastructure

The State aid rules for energy infrastructure operate in a context where many, in particular larger projects, are co-financed by EU structural funds. In addition, a significant amount of Recovery and Resilience Fund (RRF) expenditure under the power-up flagship is intended to be designated for specific infrastructure projects. The proposed Guidelines would clearly reiterate that State aid issues only arise where the infrastructure is operated outside the natural and legal monopolies of the grid operators.

The scope of the proposed Guidelines would also be extended to new infrastructure categories which have become more prominent since the current EEAG were introduced, such as pipelines reserved for hydrogen and renewable gases as well additional new infrastructure categories which may emerge over the next years. Investments in such new infrastructure categories would also be assessed under the general assessment principles as regards proportionality and the avoidance of competition distortions.

Finally, to prevent lock-in of infrastructure facilities related to fossil fuels, additional safeguards will be introduced for support for investments into natural gas infrastructure (e.g. LNG terminals), for example requiring that gas infrastructure is hydrogen ready, or otherwise does not create a lock-in effect. Infrastructure for other forms of fossil fuels (most notably oil) would not be included in the proposed Guidelines.

5.3. Aid for district heating and cooling

For district heating and cooling, the simplifications introduced under the SEIP Communication[9] and the RRF Template[10] will be maintained. These rules: a) open up the possibility of assessing the proportionality of aid for the network as well as the heat source with regard to the funding gap (i.e. disregarding the previous aid intensities) and b) clarify that where the upgrade investment does not yet achieve the standard of energy efficiency, the aid can nevertheless be approved provided a further upgrade to reach energy efficiency is then started within three years.

Also in this case, additional safeguards against lock-in effect for district heating projects involving fossil fuels will be introduced. Following the general approach described in Section 2, the proposed Guidelines explain that support for new heat generation based on the most polluting fossil fuels is unlikely to be possible given the absence of positive environmental effects and the additional negative effects of such support. Positive effects could however likely be found for support for upgrading heat transportation networks around fossil-based generation plants so long as this does not result in increased generation of energy based on fossil fuels (e.g. by connecting additional customers).

For support to district heating generation projects which involve gas, Member States must provide explanations for how they will ensure that the investment is consistent with the overall strategy to achieve the Union's 2050 climate neutrality target.

5.4. Aid for coal, peat and oil shale closure

The shift away from power generation based on coal, peat and oil shale is one of the most important drivers of decarbonisation in the power sector in the Union. The proposed Guidelines will include compatibility rules for two types of support measures that Member States may take to support the closure of power plants that burn coal (including both hard coal and lignite), peat or oil shale and potentially also of mining operations for these fuels (together referred to as "coal, peat and oil shale activities").

A first sub-section concerns aid granted by Member States to compensate for the early closure of profitable coal, peat and oil shale activities, in particular for foregone profits. Where possible, the amount of aid will be defined through competitive bidding processes. To ensure that the most effective projects will be implemented, quantification of environmental benefit will be also necessary.

A second sub-section concerns aid granted by Member States to cover exceptional social and environmental costs arising from the closure of uncompetitive coal, peat and oil shale activities. The categories of eligible costs covered are defined in the proposed Guidelines. Costs resulting from non-compliance with environmental regulations and costs related to current production will not be eligible.

6. Aid in the form of reductions from electricity levies for energy-intensive users (EIUs)

The transformation of the EU's economy in line with the European Green Deal is partially financed through levies on electricity consumption. In this context, it is likely that Member States will continue to finance such policies through levies and it is therefore possible that these levies may increase. Certain sectors which are particularly exposed to international trade and rely heavily on electricity for their value creation can face a large financial burden when paying such levies. The EEAG have therefore allowed Member States to introduce selective reductions on the payment of these levies. The proposed Guidelines would continue to allow for levy reductions, to correct the increased risk that

[9] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable Europe Investment Plan European Green Deal Investment Plan, 14 January 2020, COM(2020) 21 fin.

[10] https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_district_heating.pdf

activities in eligible sectors move outside the European Union to locations where environmental disciplines are absent or less ambitious. The Commission has identified these sectors and introduced proportionality requirements taking into consideration that, if the reductions are too high or awarded to too many electricity consumers, the overall funding of support to energy from renewable sources might be threatened and distortions of competition and trade may be particularly high.

Eligibility is determined on the basis of electro-intensity and trade-intensity thresholds at sector level. Sectors are eligible if they have a trade intensity of at least 20 % at Union level and an electro-intensity of at least 10 % at Union level. In addition, the Commission considers that a similar risk exists in sectors that face an electro-intensity of at least 7% and face a trade intensity of at least 80%. A trade intensity threshold of 20% is consistent with the methodologies used to determine the carbon leakage list under the EU emissions trading system[11] and the list of sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs under the ETS State aid guidelines[12]. Furthermore, the Commission considers that a significant risk that activities in eligible sectors move outside the European Union only arises from the concerned levies where the overall cumulative level of these levies (before any reductions) reaches a minimum level of costs per MWh.

In order to take into account the higher ambition of the Green Deal and to codify the existing Commission case practice, the scope of the reductions will be extended to all social and decarbonisation levies. The competitive disadvantage for energy-intensive users is considered to be particularly present if the electricity levies reach a certain minimum threshold. The reduced levies will be considered proportionate if undertakings pay at least 25% of the levies concerned; however there would also be a possibility to cap undertakings' own contribution to 1.5% of their Gross Value Added. It is also proposed to partially align the provisions on reductions for energy-intensive users with the ETS guidelines including the introduction of green conditionalities.

The Commission specifically seeks comments on (i) whether the above methodology is adequate for identifying sectors particularly at risk of moving outside the European Union, whilst also mitigating the risks identified above as regards distortion of competition and trade and the absence of sufficient funding for support to energy from renewable sources and (ii) what should be the minimum cumulative level per MWh of the concerned levies that is necessary to allow reductions.

[11] Commission Delegated Decision (EU) 2019/708 of 15 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council concerning the determination of sectors and subsectors deemed at risk of carbon leakage for the period 2021 to 2030

[12] Communication from the Commission Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post 2021, 21 September 2020, C(2020) 6400 final