

Competition Policy supporting the Green Deal: Call for contributions

Transport & Environment's Response

The European Federation for Transport and Environment AISBL, Europe's leading NGO campaigning for cleaner transport, welcomes the opportunity to provide comments to the European Commission's public consultation on Competition Policy supporting the Green Deal. Transport & Environment promotes a vision of a zero-emission mobility system, with minimal impact on health, climate and environment. It supports initiatives that aim at reducing the environmental impact of transport.[1]

An important objective of the European Union is to work for a high level of protection and improvement of the quality of the environment (Article 3(3) TEU). Article 11 TFEU obliges the Union to integrate environmental protection requirements not only into the *definition* of the Union's policies and activities, but also into the *implementation* of the Union's policies and activities.[2]

The current Commission has rightly made the Green Transition one of its two key policy goals. On 11 December 2019, the Commission presented its European Green Deal plan,^[3] which aims at turning climate and environmental challenges into opportunities across all policy areas.^[4] The ambition is to make Europe the first climate-neutral continent by 2050, as stated in the recent proposal of the Commission for a European Climate Law.^[5] The Commission also issued a 2030 Climate Target Plan, under which it proposes to cut greenhouse gas emissions by at least 55% by 2030.^[6] In their Mission Letters, all Commissioners have been asked to "*ensure the delivery of the United Nations Sustainable Development Goals within their policy area*".[7]

Giving greater consideration to environmental aspects in the application of EU policies, including the EU's competition policy, can meaningfully contribute to these environmental and climate goals in line with the existing Treaty framework.

But the Commission's current competition policy lags behind. This is particularly visible in the area of State aid. The State aid rules do not restrict the Member States' ability to transfer significant amounts of public resources to companies operating in carbon intensive industries if these aid measures meet the legal criteria for compatible aid, regardless of the degree to which the activities supported by the aid will continue to cause harm to the environment. Currently, only rules on some specific forms of aid, and in particular certain forms of aid covered by the Guidelines on State aid for environmental protection and energy (the 'EEAG')^[8] are subject to specific legal requirements that take the environmental impact of the aid into account. This State aid policy is fundamentally incoherent: on the one hand, it sets some requirements to support measures for investments that directly benefit the environment and, on the other hand, it is lax towards other aid measures for companies' activities that perpetuate harm to the environment.

In particular, in the wake of the Covid-19 outbreak, the Commission has approved Member State aid packages for highly polluting industries. For example, aid measures totalling more than EUR 33 billion^[9] have been approved in support of the airline industry, which is one of the most significant contributors to climate change.

Turning a blind eye on the environmental impact of State aid when applying the general State aid rules cannot be the right approach.^[10]

Already the Commission's 2012 Communication on State aid modernisation made clear that modern State aid control should ensure that "*public support stimulates innovation, green technologies, human capital development, avoids environmental harm and ultimately promotes growth, employment and EU competitiveness*".^[11] However, the current legal instruments do not meet this objective. The Commission should and can do more.

First, with immediate effect, the Commission should review with particular care whether suggested aid measures to the airline or other polluting industries meet the requirements of necessity, appropriateness, and proportionality, whatever the specific legal basis for such aid. That means in particular that reviewing Member State measures compensating for consequences of the COVID-19 pandemic, the Commission should not assume that historic high levels of air traffic -- with its negative consequences on the environment -- will likely continue in the future. A more realistic benchmark for aid in terms of necessity or proportionality would factor in *reduced* airline traffic in the 'new normal' caused by the pandemic.

Second, the Commission should urgently revise the Temporary Framework.^[12] It should introduce a stricter stance on the compatibility of aid granted under this framework to companies engaged in carbon intensive industries. For COVID-19-related aid to be declared compatible under a revised Temporary Framework, aid measures that support carbon intensive industries should necessarily include clear environmental commitments to reduce the negative environmental impact of the activity that the aid supports. For example, in the airline industry, effective commitments benefiting the environment can relate to a reduction of traffic, notably on short-haul routes, the reduction of overall CO₂ emissions, the use of sustainable alternative fuels or minimum ticket prices.

Some Member States have obtained environmental commitments from airlines that have received aid under the Temporary Framework.^[13] However, the legal force of these commitments is often questionable. And without a uniform approach at EU level, such isolated initiatives from Member States may lead to different standards and hence a fragmented Internal Market. The Commission should ensure that the implementation of the State aid policy leads to a uniformly high standard of environmental protection with regard to aid measures granted in all Member States and avoids distortions that can result from diverging national approaches.

Third, going beyond the Temporary Framework, the other secondary law instruments and guidelines in the area of State Aid should be reviewed and revised to require taking into account an aid's impact on the environment. In particular, aid supporting economic activity in sectors with a substantial environmental impact, such as airports, should be tied to a reduction of this impact.

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[1] <https://www.transportenvironment.org/about-us>. EU Transparency Register number: 58744833263-19.

[2] See also Article 37 of the Charter of Fundamental Rights of the European Union.

[3] 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, COM/2019/640 final. See: https://ec.europa.eu/info/publications/communication-european-green-deal_en.

[4] European Commission, Press Release, 11 December 2019, "*The European Green Deal sets out how to make Europe the first climate-neutral continent by 2050, boosting the economy,*

improving people's health and quality of life, caring for nature, and leaving no one behind," available at: https://ec.europa.eu/commission/presscorner/detail/e%20n/ip_19_6691.

[5] European Commission, 4 March 2020, "Proposal for a REGULATION establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)," COM/2020/80 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588581905912&uri=CELEX:52020PC0080>

[6] See https://ec.europa.eu/clima/policies/eu-climate-action/2030_ctp_en.

[7] Among which Goal 13 which aims at "Integrate climate change measures into national policies, strategies and planning," see: <https://www.un.org/sustainabledevelopment/climate-change/>. See, e.g., the Mission Letter to Vice President Vestager at https://ec.europa.eu/commission/commissioners/sites/comm-cwt2019/files/commissioner_mission_letters/mission-letter-margrethe-vestager_2019_en.pdf.

[8] European Commission, *Guidelines on State aid for environmental protection and energy 2014-2020*, (2014/C 200/01).

[9] Transport & Environment, *Airlines bailout tracker*, available at: <https://www.transportenvironment.org/what-we-do/flying-and-climate-change/bailout-tracker>.

[10] See also the judgment of the Grand Chamber of the Court of Justice in *Hinkley Point* - judgment of the Court of Justice of 22 September 2020, Austria v. Commission, C-594/18P, ECLI:EU:C:2020:742, notably paragraphs 45 and 100.

[11] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU State Aid Modernisation (SAM)*, 8 May 2012, para. 12.

[12] Communication from the Commission, 19 March 2020, *Temporary Framework to support the economy in the context of the COVID-19 outbreak*.

[13] European Commission, decision SA.57082, Air France, see press release https://ec.europa.eu/commission/presscorner/detail/en/IP_20_796; European Commission, decision SA.57116, KLM see https://ec.europa.eu/competition/state_aid/cases1/202036/286858_2185314_197_2.pdf; European Commission, decision SA.57539, see https://ec.europa.eu/competition/state_aid/cases1/202040/286797_2192360_134_2.pdf.