

LATVIAN COMMENTS ON DRAFT COMMUNICATION FROM THE COMMISSION

Guidelines on State aid for climate, environmental protection and energy 2022

No.	Place in the document text	Comments/Proposals
1.	<p>Point 15 n)</p> <p><i>15. The Commission has identified a number of categories of environmental protection and energy measures for which State aid may be compatible with the internal market under Article 107(3), point (c), of the Treaty under certain conditions:</i></p> <p>[..]</p> <p><i>(n) aid for studies or consultancy services on environmental protection and energy matters.</i></p>	<p>In accordance with the point 12 b) “these guidelines do not apply to state aid for research, development and innovation which is subject to the rules set out in the Commission Communication on the Framework for State aid for research and development and innovation”. Please, review the translation of the draft guidelines (Latvian translation of draft guidelines is misleading) because it is not clear and does not provide clear distinction in the applicability of these guidelines and the Framework for State aid for research and development and innovation. Additionally, for clarification purposes, please, include a footnote providing clarification for the term “aid for studies” (for example, expert-examination or feasibility studies that are necessary for an environmental project that is further implemented observing these guidelines as it was clarified during the meeting of July 12-13, 2021).</p>
2.	<p>Point 18 (1) and (46)</p> <p><i>For the purposes of this framework, the following definitions apply:</i></p> <p><i>(1) 'ad hoc aid' means aid not granted on the basis of an aid scheme;</i></p> <p>[..]</p> <p><i>(46) 'individual aid' means ad hoc aid and notifiable awards of aid on the basis of an aid scheme.</i></p>	<p>In Point 18 (1) a definition for ‘ad hoc aid’ is included and in Point 18 (46) a definition for ‘individual aid’ is included. These definitions somewhat overlap and create confusion in their applicability. For clarification reasons, we recommend using the definition for “individual aid” as defined in Council Regulation (EU) 2015/1589 of July 13 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.</p> <p>Also, we draw attention to the fact that ‘ad hoc aid’ is mentioned only in point 54 regarding cumulation of aid and it is not clear to which aid it actually applies, because cumulation of aid may be possible also with individual aid. Please, review the need to clarify point 54 – adding also reference to individual aid.</p> <p>Additionally, please review also text in point 17 and 56 (b).</p>
3.	<p>Point 18 (71)</p> <p><i>For the purposes of this framework, the following definition apply:</i></p>	<p>We suggest revising the definition for ‘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</p>

	<p>[..]</p> <p>(71) ‘start of works’ means the first firm commitment (for example, to order equipment or start construction) that makes an investment irreversible. The 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 establishment;</p>	<p>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. We consider it necessary to add these to the definition (71). In addition, please, specify in this definition to make it absolutely clear that the costs of preparatory studies or consultancy costs linked to the investment as mentioned in Point 15 n) are not considered as start of works.</p>
4.	<p>Point 48 (d)</p> <p>(d) the expected number of bidders is sufficient to ensure effective competition; the design of undersubscribed bidding processes during the implementation of a scheme is corrected to restore effective competition in the subsequent bidding processes or as soon as possible;</p>	<p>As it is not clear how much is “sufficient”, please, provide in the footnote clarification for the term “number of bidders is sufficient to ensure effective competition”. We would like to note that use of subjective terms create interpretation situations later in practice and lead to mistakes in application of state aid rules.</p>
5.	<p>Point 50</p> <p>50. [...] To determine the funding gap in such cases, the Member State must submit a quantification, for the factual scenario and a credible counterfactual scenario, of all main costs and revenues, the estimated weighted average cost of capital (WACC) of the beneficiaries to discount future cash flows, as well as the net present value (NPV) for the factual and counterfactual scenarios, over the project lifetime. [...]</p>	<p>Please, provide in the footnote a clarification for the term “the project lifetime”. We consider that project lifetime is usually linked to the depreciation period of particular assets; and when the project monitoring period is specified in the legislation of the EU Funds that monitoring periods also can be used as the “project lifetime”. Of course, when it comes to calculation of the funding gap if the project monitoring period specified in the legislation of the EU Funds is used and it is, for instance, 15 years but the asset depreciation period is actually 30 years then the residual should paid back in the end of the funding gap /project monitoring period. We would appreciate these two aspects being clearly elaborated in the guidelines.</p>
6.	<p>Point 55</p> <p>55. Centrally managed Union funding that is not directly or indirectly under the control of the Member State, does not constitute State aid. Where such Union funding is combined with State aid, it has to be ensured that the total</p>	<p>Please, provide in the footnote a clarification for the term “overcompensation” (for example: Where such Union funding is combined with State aid, the total amount of public funding awarded in relation to the same eligible costs must however not exceed the most favorable funding rate laid down in the applicable rules of Union law.)</p>

	<i>amount of public funding granted in relation to the same eligible costs does not lead to overcompensation.</i>	
7.	Point 56 (b) <i>56 (b) information on each individual aid award granted ad hoc or under an aid scheme approved based on these guidelines and exceeding EUR 100 000.</i>	<p>The initial concept of the transparency requirement covered individual grants above the threshold of EUR 500 000. In the case of EEAG aid there is a disproportionate administrative burden foreseen here on the provision of transparency requirements for each aid award granted regardless of its threshold. In addition, there has been no explanation from the Commission if this information will be used at all and for what purpose. If there is no clear perspective as to how the data will be used, imposing such requirement does not outweigh the administrative burden it entails. Therefore, Latvian authorities insist on keeping the initial concept that the transparency requirement applies to individual grants above the threshold of EUR 500 000.</p>
8.	Point 163. <i>163. Alternatives to vehicles using the most polluting fossil fuels, (such as diesel or liquid petroleum gas (LPG) are already available on the market for use in the road transport, inland and sea and coastal water transport, and railway transport sectors. Therefore, aid for the acquisition or leasing of those vehicles, even new generation vehicles going beyond Union standards where applicable, is not considered to yield the same positive effects as aid for the acquisition or leasing of clean vehicles with lower direct (tailpipe/exhaust) CO₂ emissions. [..]</i>	<p>We suppose a common terminology should be used across various parts of legislation in order to avoid unnecessary confusion. A major concern in aviation for the near future are sustainable aviation fuel additives (SAF) to fossil fuel, however, the guidelines only mention biofuel. We would like the Commission to clearly elaborate in the text whether or not the upcoming SAF proposal will be applicable in the context of these guidelines.</p>
9.	Section 4.3.1.	<p>In cases when the market is completely new (for instance, European gage 1435 mm railway), not only could it prove challenging to identify and develop a counterfactual scenario, it may also be difficult to find the most effective and appropriate support instrument for new market actors. For example, decarbonization due to the transfer from more polluting transport modes to less polluting ones is not included in the guidelines. We consider that this could be integrated in Section 4.3.1.</p>

10.	Point 201 <i>201. In limited cases, the environmentally friendly investment may consist of installations or equipment that are added to an existing investment. In that case, the eligible costs should consist of the total investment costs.</i>	Please, provide in the footnote a clarification for the term “ in limited cases ” or provide concrete examples on what the limited cases are . We would like to note that use of subjective terms create interpretation situations later in practice and lead to mistakes in application of state aid rules.
11.	Point 264 (b) <i>(b) the environmental tax or parafiscal levy without the reduction leads to a substantial increase in production costs calculated as a proportion of the gross value added for each sector or category of individual beneficiaries;</i>	Since it is not clear how much is “substantial increase”, to avoid later interpretation we ask to provide in the footnote a clarification for the term “ substantial increase”. We would like to note that use of subjective terms create interpretation situations later in practice and lead to mistakes in application of state aid rules. Perhaps, the Commission could consider providing percentage to describe the substantial increase?
12.	Point 363. <i>363. [...] Where the aid is granted in the form of a reduction in levies, an ex post monitoring mechanism needs to be put in place to ensure that any over-payment of aid will be repaid before 1 July of the following year. [...]</i>	For clarification purpose, please, provide in the footnote an explanation if “any over-payment of aid” should be repaid with illegality interest or not .