Explanatory note accompanying the proposal for the revision of the Regional aid guidelines

The purpose of this note is to clarify the objective and scope of the proposal to revise the Regional aid guidelines ("RAG"). It accompanies the consultation on the RAG proposal that will last for a period of 10 weeks.

Citizens, organisations and public authorities are invited to provide their views on the Commission's proposal for the new RAG. In addition to the consultation, a meeting with Member States will be held to gather their feedback on the draft guidelines.

The consultation will be launched based on the English version of the draft guidelines. Translations into all EU languages will be added gradually to the website upon their completion. Stakeholders are invited to provide their comments in electronic format and should clearly indicate if their reply is confidential. In such case, a non-confidential version of the reply, which can be published on the website of DG Competition, should also be provided.

1. Context

The European Union is characterised by a significant regional disparity in terms of economic well-being, income and unemployment, which risk being exacerbated by the economic impact of the current COVID-19 outbreak. Regional aid is to support economic development in disadvantaged regions of the Union, while ensuring a level playing field between Member States. It constitutes an important instrument used by Member States to enhance regional development.

The current architecture of regional aid framework consists of four elements:

- The Treaty[1] provisions defined in Article 107(3)(a) and Article 107(3)(c);
- The regional aid provisions contained in the General Block Exemption Regulation (GBER)[2];
- The Guidelines on Regional State Aid for 2014-2020 (RAG)[3]; and
- The regional aid maps for 2014-2020, each approved by Commission decisions.

In the RAG, the Commission sets out the conditions under which regional aid may be considered to be compatible with the internal market and establishes the criteria for identifying the areas that fulfil the conditions of Article 107(3)(a) and (c) of the Treaty. The regional aid maps determine the regions eligible for aid (assisted regions).

In 2019, the Commission launched an evaluation of the regional aid framework in the context of the Fitness Check[4] of the 2012 State aid modernisation package to assess if the regional aid guidelines were still fit for purpose. The preliminary results showed that the rules worked in principle well but require some punctual adjustments for the period thereafter.

On 11 December 2019, the Commission published the European Green Deal Communication, outlining the policies to make Europe the world's first carbon-neutral continent by 2050. To deliver the European Green Deal, there is a need for action by all sectors. Furthermore, the European Digital Strategy was presented on 19 February 2020 and aims to make the digital transformation work for people and businesses, while helping to achieve its targets of a climate-neutral Europe by 2050. This

[1] Treaty on the functioning of the European Union.
[2] See OJ L 187, 26.06.2014, p.1. In 2017, the GBER were amended (OJ L 156, 20.6.2017, p. 1–18).
[3] See OJ C 209, 23.07.2013, p.1. A one-year prolongation of the RAG until the end of 2021 was adopted on 2 July 2020.
[4] https://ec.europa.eu/commission/presscorner/detail/en/IP_19_182

twin-transition to a green and digital economy requires also an alignment of the current State aid rules. The Commission continues to reflect on and evaluate additional measures in State aid enforcement that can contribute to the achievement of the Green Deal objectives, which must be based on clear and objective criteria.

The RAG 2014-2020 are due to expire at the end of 2020 and were extended on 2 July 2020 until the end of 2021[5]. The adoption of the new RAG is envisaged for the beginning of 2021 to provide Member States sufficient time for the preparation and notification of their regional aid maps given the intended entry into force of the new RAG at the beginning of 2022.

The regional aid provisions in the GBER are not in scope of this consultation. However, the provisions were also evaluated during the ongoing Fitness Check exercise and the results will be published in Q3 2020. On 2 July 2020, the Commission announced a three-year prolongation of the GBER until the end of 2023[6].

2. Proposed changes in the draft text of the revised regional aid guidelines

The revision of the RAG relies largely on the preliminary results[7], evidence and data collected in the context of the evaluation of the RAG 2014-2020, including a stakeholder consultation[8], a retrospective evaluation study[9], and the public consultation on all rules covered by the Fitness Check[10], in combination with the Commission's experience stemming from its case practice. In addition, the guidelines need to be adapted to the current economic conditions and take into account new policy priorities such as the Green Deal and the Digital strategy.

Given its nature of already existing guidelines and following the evaluation results, the RAG are considered as overall fit for purpose. There are only limited changes to the current RAG and there are no significant policy choices to be assessed in a separate impact assessment, which was therefore not deemed necessary for this initiative.

More concretely, the guidelines are revised with focus on the following areas:

- The RAG had been adopted in 2013, a few months before the GBER. This led to a few differences between the two texts, which should be avoided for consistency and clarity. The terminology, definitions etc. are therefore aligned as much as possible to the GBER. There are also limited changes to the structure of the text to improve the logic, eliminate repetitions etc. In addition, there is an update on the sections of evaluation and transparency to allow consistency across State aid rules.

- The RAG excludes from its scope sectors that are covered by specific State aid guidelines and sectors that were facing historic structural overcapacity, namely steel and synthetic fibres. The sector exclusions of paragraph 10 of the current RAG are updated taking into account the evolution of the sectors and the market. As a result, synthetic fibres are no longer excluded, since the preliminary results of the fitness check indicate that this sector is no longer in structural overcapacity. Conversely, the exclusion of the steel sector appears to remain justified. The production of lignite and coal is not considered to be compatible with the internal market as investments in that sector are not in line with the European Green Deal

[5] https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1247
[6] https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1247
[7] The staff-working document was not yet published at the time of consultation launch.
[8] https://ec.europa.eu/competition/consultations/2019_rag/index_en.html
[9] https://ec.europa.eu/competition/state_aid/modernisation/fitness_check_en.html
[10] 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/public-consultation

objectives: it is therefore proposed to exclude this sector from the scope of the future RAG. Finally, the possibility to grant aid under the RAG to broadband and research infrastructures was removed, as the Commission is not aware of an actual use of those provisions and since there are specific guidelines[11] for both, which are also in the process of being revised to remain fit for purpose for the Commission's policy objectives. It appears therefore preferable that any aid to those two sectors should be governed by the specific guidelines.

- The RAG determine the conditions for the selection of the regions eligible for aid that will be represented in the regional aid maps. In general, the first element required for the definition of the maps is to set the starting point of the overall population coverage, determining the percentage of the EU total population that will be covered by assisted regions. In the following steps, the assisted areas designated as a-areas and predefined c-areas will be determined by the Commission based on the methodology defined in the regional aid guidelines and the most recent statistics available on GDP and unemployment. This methodology, which was applied at the time of the design of regional maps in 2013 and to a more limited degree at the time of the mid-term review of the maps, has worked properly and was not subject to fundamental criticism. It is therefore proposed that the methodology remains unchanged. However, the current regional aid maps were determined based on the statistics of 2008-2010 and are therefore no longer reflecting the economic reality. As a consequence, the regional aid coverage, a-areas and predefined c-areas are updated based on the methodology mentioned above, based on most recent statistics on GDP and unemployment, which is in line with the procedure in the last period. The population ceiling has been set at 47%. The regional aid maps will be valid for the period 2022-2027.

  As regards the economic disturbance created by the COVID-19 outbreak, the Commission put in place more targeted instruments. At the same time, the shock caused by the pandemic might have more long-lasting effects on certain regions. At this point in time, it is too early to predict the impact of the COVID-19 crisis in the mid- and long- term and which regions will be particularly affected. To address the difficulties of Member States that have been most affected by the crisis, the Commission plans a mid-term review of the regional aid maps in 2024, which will take into account statistics of the years 2020 to 2022.

- The current aid intensity provisions in the RAG are based on the assumption that high aid intensities are justified in regions with low GDP per capita in order to favour catching-up by the less developed regions. The current RAG introduced a generalised reduction of aid intensity ceilings for all categories of regions, except the worse-off. This was justified by different reasons, such as the decreasing of intra-EU disparities and the increased integration of the internal market (where aid granted in one location is more likely to be felt elsewhere). During the current period, the RAG worked well and regional disparities could be further reduced. In the proposed draft, the maximum aid intensities have still been increased back to the levels of the previous RAG to support the European Green Deal and Digital Strategy objectives by enabling additional incentives for private investments in those regions, including by large undertakings in a-areas.

- At the same time, because aid to large undertakings was found to be unlikely to have an incentive effect for investment, the RAG authorised aid for investments of large enterprises in c-areas to a lower extent than investments by SMEs. Indeed the current RAG restricts the possibility of aid to large undertakings in c-areas to initial investments that bring new economic activities to the area (greenfield investment; diversification into new products). The current RAG introduced the possibility of aid to large undertakings in c-areas for the

[11] EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks (*OJ C25, 26.01.2013, p.1*); Framework for State aid for research and development and innovation (*OJ C 198, 27.6.2014, p. 1–29).*

diversification of existing establishments into new process innovation, subject to notification and approval by the Commission.

The Commission's case practice shows that only one case of "new process innovation" was approved during the 6 years of implementation of the RAG. According to the preliminary evaluation results retrieved from the external evaluation study and comments received during the consultation of stakeholders and Member States, the current provisions on State aid for investments related to new process innovations induce a heavy administrative burden, leading to the preferential use of other aid types. It is therefore proposed to remove that specific provision, while keeping the possibility to receive aid for greenfield investment and diversifications, which has not been questioned in the evaluation.

- The process related to the selection of assisted regions involves, after the designation of a-areas and pre-defined c-areas by the Commission, the selection of so-called non-predefined c-areas by Member States. Under the existing rules (paragraph 168 of the current RAG), there are five – rather heterogeneous – categories of non-predefined c-areas: (i) the first two are defined by reference to the number of inhabitants, GDP per capita, and the unemployment rate; (ii) the third category refers to geographically isolated areas (islands, mountains, peninsulas), subject to conditions; (iii) the fourth refers to regions adjacent to an 'a' area or a third country, subject to conditions; and (iv) the fifth concerns regions that are undergoing major structural change or are in serious relative decline, subject to conditions.

  The five criteria of paragraph 168 of the current RAG, based on which Member States could designate non-predefined c-areas have been maintained, since no fundamental issues were raised at the time of the design of the regional aid maps or in the public consultation in that regard. However, with a view to avoid double work for Member States with regard to Just Transition Areas, it is proposed that Member States can assign the status of non pre-defined c-areas to Just Transition Areas without providing further justification that is normally required to provide for the application of criterion 5. Indeed, for Just Transition Areas, the existence of a structural change is considered to be sufficiently demonstrated as part of the respective Just Transition Plan.

In addition to the changes already proposed in the draft text, the Commission is inviting stakeholders for comments on whether and to what extent it would be appropriate to include in the RAG additional measures, based on clear and objective criteria that contribute to the achievement of the Green Deal objectives.