Review of the Guidelines for State Aid for Environmental Protection

Questionnaire

The current set of Guidelines are set to expire by the end of 2007. To prepare the revision of the Guidelines, the Commission would like to invite all Member States and other interested parties to share their experience with the current guidelines with the Commission. The Commission has prepared a questionnaire, which can be used as a point of departure for this kind of feedback. Detailed comments are more than welcome, and feedback on whether the scope of the current guidelines could be restrained or expanded would be useful.

The questions are put relatively openly, to invite as many useful answers and comments as possible. In any case we welcome any further information that you would like to add, which you would consider useful for the update of the environmental state aid guidelines.

Thanks in advance for your replies.

Deadline for replies is the 10th of October 2005. Replies should be sent to the European Commission, DG COMP, rue de la Loi 200, 1049 Brussels, preferably via e-mail to COMP-I1@cec.eu.int
QUESTIONNAIRE

A. General Questions

1. Scope and Application of the Guidelines

So far, the scope of the Guidelines has been kept limited to environmental aid. But several areas are connected to or similar to environmental aid with strong parallels in the argumentation for aid grants. One question is therefore whether the current scope of the Guidelines should be kept, or if other areas could be included?

- Safety and the environment: Should the "safety of civilians and their environment", "safety of employees", "health of consumers" and "health of employees" be included in the scope? If so, are specific rules needed - other than the current rules for environmental aid?

The current rules for environmental investment aid cover aid for investments that help to reduce the beneficiary's own pollution. The Commission sees a clear need to lay down explicit rules for environmental investment aid to companies in order to deal with pollution caused by other companies. See more specific questions under B7

2. Refined economic approach

The State Aid Action Plan has outlined the general ‘balancing test’ that is used in state aid policy:

1. a well-defined objective of common interest has to be identified (ex: cohesion, growth, employment, environment)
2. the aid instrument has to well target the identified objective of common interest:
   - State aid is the appropriate policy instrument
   - The aid measure has an incentive effect
   - The aid measure is proportional to the problem tackled
3. the distortions of competition and effect on trade should be limited so that the aid measure is not on balance contrary to the common interest.

The current guidelines are already largely consistent with this test, but the revision of the Guidelines on State Aid for Environmental Protection should be used to clearly implement the balancing test and to better justify the proposed rules on the basis of a refined economic approach.

On the basis of past experience, the Commission is interested in getting views about identified market failures, which have a negative impact on Environmental Protection, and which could be remedied through State aid. It is also interested in getting views about other justifications that have been used to grant State aid for Environmental Protection.

More generally, the Commission is interested in gathering opinions about the opportunity to adjust the current approach in the guidelines, e.g. to elaborate further on the distortions of competition and effect on trade of specific measures and possibly differentiating the rules according to economic parameters (ex: market structure, relevant market, market shares of the aid recipient etc.).
3. Possible Block-exemption Regulation

As laid down in the State aid action plan, a block-exemption regulation could be introduced for environmental aid. Which category/ies of environmental aid would you consider suitable for inclusion in such a block exemption?

4. The Polluter-Pays Principle

Should the polluter-pays principle be strengthened? This could mean a somewhat stricter application of the Guidelines, resulting in less aid being approved for companies polluting. Which consequences for instance concerning tax derogations?)

5. Current aid percentages kept, increased or lowered?

A critical element in the current guidelines is the ability to create an incentive to achieve levels of protection which are higher than those required by Community standards. On the basis of experience, and for each of the Chapters in the Guidelines, should the current percentages for accepted aid be kept, increased or lowered?

6. Higher aid levels for SMEs and assisted regions – justified?

In the current Guidelines, SMEs are allowed higher aid levels in a number of cases 10 % higher than aid for other companies (points 35). Although generally SMEs may be limited by market imperfections, have restricted access to information and perhaps limited access to risk capital, it can be discussed whether a 10% higher aid level for SMEs has a positive effect on the environment.

Similar questions could be raised for the additional aid for assisted regions which allow a similar bonus (points 33-34), which can be cumulated with the SME-bonus. Does this have a positive effect, and should this still be allowed?

7. Possible aid for Environmental Innovation

The State aid action plan explained stated that the Commission will attempt to encourage eco-innovation and improvements in productivity through eco-efficiency in line with the Environmental Technologies Action Plan (ETAP).

Environmental investment aid can be granted when companies invest to reduce pollution further than would be required on the basis of community norms. Community norms may often derive from the Best Available Techniques, so environmental investment aid can be expected to encourage companies to introduce environmental innovations in their production process. The current rules do not foresee investment or operating aid for innovative products that reduce pollution because they are direct substitutes for more polluting conventional products.
Where aid goes beyond the “state of the art”, this could in some cases be considered aid for new technology. Environmental aid is often related to innovation, although this depends on the kind of technology in question. Which category of eco-innovation aid would you consider necessary/compatible? Which kinds of rules are needed?


8. Individual Notification Thresholds

Should the thresholds in point 76, above which individual cases under approved schemes have to be notified individually, be revised? Is there a need to have different thresholds for different types of cases?

B. Specific chapters of the current Guidelines

9. Investment Aid

Should SMEs still be allowed transitional investment aid up to 15% of eligible costs for three years from the adoption of new Community Standards? Normally no aid is allowed for aid to reach community standards – but up to 30% aid for eligible costs can be authorised to improve on Community Standards. Is there a guarantee that the transitional investment aid up to 15% of eligible costs for SMEs has an effect - or should the percentage be lowered/increased?

For renewable energy and cogeneration up to 40% of eligible investment aid may be authorised, in some special cases for renewables up to 100% - Which area of renewable energy do you consider most experimental/furthest away from market maturity to justify such higher intensities? Would you consider rates of up to 100% still justifiable? Should the levels be increased/lowered?

Could a better/stricter definition of eligible costs be formulated, to avoid difficulties?

Should aid for rehabilitation of polluted industrial sites of 100% of eligible costs as well as 15% of the cost of the work be authorised? Is the level too high/too low?

The scope of relocation rules is limited, and restricted to environmental protection grounds. Should the scope be loosened or expanded to include other criteria, e.g. security in urban areas?

Should aid to live up to national standards higher than the Community Standards be authorised?

On aid for spending on technology transfer: Do the three conditions reflect current market realities, or should they be changed?

As mentioned above (point A.1), the Commission sees a clear need to lay down explicit rules for environmental investment aid to companies in order to deal with pollution caused by other companies. This may concern a wide range of situations, e.g. investment aid in waste
treatment or recycling capacity, investment in transport infrastructure such as pipelines, investment in production capacity of products which are environmentally friendly substitutes for conventional products. The new rules will have to ensure, among others, that the 'polluter pays principle' is not circumvented and that the environmental benefits are real. Which rules are needed and how much aid could be allowed?

The calculation of eligible cost, taking into account the net benefits over 5 years, can be quite complicated in certain cases. Is a simplified calculation needed and possible (perhaps limited only to cases up to a certain size)?

10. Operating Aid - Waste Management, Energy-Saving, Renewables, CHP and Tax Reductions/Exemptions

Should the scope of the rules for operating aid be expanded beyond waste management, energy-saving, renewables, CHP and tax reductions/exemptions, or should the scope be restricted or modified?

Are the percentages for degressive and non-degressive aid appropriate (point 45-46), and is the 5-year period appropriate?

Should the rules for tax reductions/exemptions be modified to better ensure fair competition between beneficiaries of such aid in different Member States?

Are the options for operating aid authorised for renewables aid appropriately defined to encompass the types of aid granted for renewable energy? Is the level of EUR 0.05 per kWh as grant for renewable energy still appropriate (option 3)? Have any decisions been adopted on this basis - if not, should we keep this option? Are the rules defining the possibilities for accepting aid to CHP too restrictive or too lax? Do they correspond to the most recent legislative initiatives from the Community?