

[Translation]

**Comments of the Italian authorities on the second draft of the
*Community guidelines on State aid for environmental protection***

31 October 2007

INTRODUCTION

Italy is most grateful to the Commission for having taken into account a number of comments made on the first draft of the Community guidelines on State aid for environmental protection, although a number of basic issues still need to be taken into account in the revision of the current guidelines:

- the development as much as possible of aid favouring renewable energy, by making provision for aid intensity of up to 100% of additional costs, as included in the current guidelines;
- the justification for the unfavourable treatment given to tax instruments as opposed to other instruments;
- the need for all types of aid to be available for the prevention and reduction of environmental risk, in line with the definition of “environmental protection”;
- the need for an approach that is not solely economic in cases where environmental investment is aimed at ensuring a more efficient use of natural resources (soil and water resources, energy, raw materials), and best available techniques (“BAT”), where required;¹
- the appropriateness of granting aid (detailed assessment) even in cases of investment which differs from that included in the draft, provided that such aid can be categorised as being extremely innovative, experimental and/or involving a variety of sectors.

SCOPE OF APPLICATION OF THE GUIDELINES

Point 52

We request that the “design and manufacture of environmentally friendly products, machines or means of transport which can be operated with fewer natural resources” should not be excluded from the scope of application of the guidelines.

The exclusion of more environmentally friendly products from the guidelines contradicts point 33, which states that a purpose of the measure is to shift production away from more polluting products towards more environmentally friendly ones.

DEFINITIONS

Point 60(a)

¹ On this subject, we refer to State aid case N 72/04, where an Italian undertaking was to be helped to replace a high environment-impact technology used in its own production cycle with a new technology classified as BAT. The proposed investment programme, as well as completely removing the mercury pollution caused by end-cycle water resources, also ensured a reduction in the consumption of such resources. In its assessment of the measure, the Commission, despite deducting the resulting economic benefit, took into account the benefit to the environment of the more efficient use of natural resources (water resources, energy, raw materials), and allowed the aid.

The definition of “environmental protection” should cover all types of aid provided for under the guidelines and not just environmental damage “by a beneficiary's own activities”, as is currently the case.

In the draft “environmental protection” is understood to mean any action designed to remedy or prevent damage to the physical surroundings or natural resources by a beneficiary’s own activities, to reduce the risk of such damage or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy.

This reference to beneficiaries appears to exclude investment in new installations where the beneficiary does not conduct a polluting activity ‘up-stream’ which it intends to modify. In this case, the beneficiary is therefore not the same as the originator of the pollution.

This provision would also appear to contradict the provisions of point 33.

Point 60(c)(ii)

It would be clearer to refer to the obligation (under Directive 96/61/EC) to “comply with respect the emission limit values and requirements laid down by the competent authority based on the application of best available techniques.

Point 60(1)

We once again request that the definition of “environmental tax” be replaced by that of “tax used for environmental purposes”.

The definition we are proposing would allow for the inclusion of taxes, such as excise duties referred to by the Commission itself in the draft, which are not environmental taxes but are often used as market instruments to guide the choices of producers and consumers towards products or behaviour that contribute to the achievement of environmentally friendly objectives.

AID FOR UNDERTAKINGS IMPROVING ON COMMUNITY STANDARDS OR INCREASING THE LEVEL OF ENVIRONMENTAL PROTECTION IN THE ABSENCE OF COMMUNITY STANDARDS

Point 63(a) and (b)

This type of aid should not be restricted to enabling the beneficiary to “reduce” pollution.

Paragraph 63 needs to be re-worded so that its provisions are brought into line with the definition of “environmental protection”, a term covering both the reduction of environmental risk and the more rational use of resources.

This would enable the promotion in real terms of a more rational use of natural resources: such types of investment could be considered to have an environmental purpose, rather than a purely economic one.²

Point 67

² See note 1.

The second and third columns in the table contain printing errors. All intensity figures in the table should be increased to reflect those given in the text.*

Point 71

The concept of “eligible costs” is unclear.

We agree that operating benefits should be deducted from additional investment costs, but do not understand why it should be necessary to deduct operating costs (these being understood as additional production costs). Additional investment costs already exclude operating costs, and therefore there is no reason why they need to be deducted.

We would also ask that the reference to “cost savings” in the definition of operating benefits be limited to **savings relating to energy use**, so that the classes of savings connected to the reduced use of natural resources (such as water resources) qualify as an environmental and not an economic benefit.

Point 72

In the Italian version, the second sentence is incorrect. Please therefore insert the following at the start of the sentence: “Possono essere considerati ammissibili”.

"([The following] may be considered eligible).⁺

AID FOR SMEs FOR EARLY ADAPTATION TO FUTURE COMMUNITY STANDARDS

Point 74

The reference to the date of transposition is incorrect since a number of Community acts, including regulations, are directly applicable.

AID FOR ENERGY SAVING

Point 104

We prefer the previous version of the draft, in which this table included a third column.

AID FOR RENEWABLE ENERGY SOURCES

* [Translator's note: In the draft available on DG COMP's website, the figures in the table are higher in the English version than they are in the Italian version.]

⁺ [Translator's note: The translator cannot identify the problem in the draft available on DG COMP's website. The third sentence may possibly be meant.]

Italy places particular importance on aid which favours renewable energy.

The aid intensity provided for in the current guidelines must therefore be maintained at 100% of eligible costs if aid is indispensable, and there should be an increase of 10% in the case of renewable energy plants which meet the needs of an entire community.

Point 43

The statement that the shrinking of the gap between the cost of renewable energy and conventional energy has reduced the need for aid to provide an incentive for renewable energy is exaggerated and does not reflect the conditions of the energy market.

The ongoing study on the impact of the objective to be reached by 2020 in the European technology market indicates that there is a possibility of high demand causing an increase in plants' costs as a result of limited availability, (as it did in the case of photovoltaic plants).

Furthermore, the reduction in the cost of parts has affected only a few technologies, whereas for some renewable sources, account has to be taken of the drop in capability (and therefore profitability as a whole) which has occurred. Examples are the gradual saturation of the sites for the installation of wind farms which have the highest capability factors, or the effect of climate change, causing the capability of hydroelectric plants to fall considerably (**graph 2**, attached, shows changes in the installed power of hydroelectric plants of >10 MW, compared to related energy production).

As a result, even if the cost of technologies can indeed be shown to be falling, the profitability of the related investment may drop at the same time, and quite significantly, so that an increase in aid intensity for renewable energy is entirely justified.

Point 87

There is a misprint in the third column of the table. The phrase “in the case of second-generation bio-fuel” should be deleted.**

Point 94

We ask that operating aid also be allowed outside plants' depreciation periods.

The method of calculation may vary from plant to plant and is closely linked to operating conditions. If Member States are able to demonstrate that the differential in the costs met by undertakings continues even when plants' depreciation periods have ended, operating aid included under paragraph d), currently restricted to biomass, should be extended to cover all types of renewable energy sources.

AID FOR WASTE MANAGEMENT

Point 108

** [Translator's note: The phrase is in the Italian version of the draft available on DG COMP's website, but not in the English version.]

We ask for this type of aid to be extended to cover prevention, which is at the top of the waste management priorities.

Point 112

This paragraph states that eligible costs must be limited to the extra investment costs necessary to realise an investment leading to waste management and borne by the beneficiary “compared to conventional production not involving waste management with the same capacity”. This reference to conventional production is not an appropriate way of including all types of activity; for example, in the case of recycling plastic, it is not easy to identify a corresponding form of conventional production.

AID FOR THE REMEDIATION OF CONTAMINATED SITES

Point 117

We ask that the increase of 15% of the cost of the work, as provided for in the current guidelines, be maintained.

This increase is the only incentive to remediation of contaminated sites; it might be excluded only in the event that remediation precedes the sale of the site at a price which is higher than its market value and which internalises the costs incurred for the ecological restoration.

AID IN THE FORM OF REDUCTIONS IN OR EXEMPTIONS FROM ENVIRONMENTAL TAXES

Firstly, we reiterate our request to replace the term “environmental tax” with that of “tax to be used for environmental purposes”.

Please refer to the comments made under point 60(1).

We do not understand the unfavourable treatment given by the Commission to tax instruments, which provide some of the most suitable and efficient ways of meeting a number of environmental objectives.

The rules set out in the draft are designed *de facto* to limit the use of these instruments, restricting their use in real terms, despite the fact that there is no justification given for this difference in treatment.

Point 123(a) and point 138(b)

We ask that the fixed limit of 20% be removed.

The provision of a fixed level, where in the case of sectors or products not subject to harmonisation a significant proportion of national tax is taken to be 20%, does not appear to be sufficiently justified, in the first place, therefore, and we request its removal.

This 20% limit cannot be economically justified, and under certain circumstances the setting of a fixed limit may put those countries where taxation levels are higher than the European average at a disadvantage.

There should not be a fixed level that constitutes an immutable rule. Instead of removal, this paragraph might alternatively include a clause with the words “generally” or “usually”, to allow for specific cases where the 20% limit would clearly be unfair.

Consequently, the setting of thresholds of consumption in point 138(b) is likewise arbitrary; when compared to the previous version, in addition to extending the application of limits on all tax aid (not just taxes on energy, as in the previous draft), the new version also indicates a series of new limits, without providing any explanation.

Points 127 et seq.

With reference to the need to demonstrate an incentive effect referred to in this paragraph (and also in points 150 et seq.), we should like to point out that here too these guidelines should be consistent with other guidelines, in order to avoid complicating procedures for notification and annual reporting.

At least for large undertakings, the conditions for demonstrating an incentive effect set out in the draft guidelines under consideration appear much more onerous than those in both point 38 of the regional guidelines and in Article 8 of the second draft of the general exemption regulation.

Furthermore, the guidelines under discussion do not allow for an exemption from the requirement to demonstrate an incentive effect in cases of *automatic tax aid*, whereas both of the sets of guidelines mentioned above make these conditions inapplicable to tax measures which confer a legal right to aid, on objective criteria, without the Member State exercising any further discretion, in cases where such measures were approved prior to the beginning of work on the project or activity which is the subject of the aid.

Point 138

We ask that individual environmental aid granted in the form of tax exemptions be subject to a detailed assessment only in the event that the limits indicated in point 138(b) are exceeded.

Point 138 stipulates that the following measures are to be subject to **detailed assessment**:

1. (Point 138(a)) “For measures covered by a BER: “all cases notified to the Commission pursuant to a duty to notify aid individually as prescribed in the BER.”
2. (Point 138(b)(vi)(b)): operating aid in the form of energy tax reductions/exemptions.

Individual environmental aid falling under the BER in addition to operating aid in the form of tax reductions and/or exemptions is therefore subject to notification to and detailed assessment by the Commission.

These rules appear to be particularly prejudicial for individual tax exemptions and reductions when compared with other aid instruments.

We therefore ask that individual environmental aid in the form of tax reductions be subject to a detailed assessment only when the limits set out in point 138(b) have been exceeded.

Point 143

We feel that the burden of proving that the beneficiary has irreducible taxable levels of consumption or emissions is excessive.

The use of external audits and comparison with comparable companies is so complicated that it will be impossible in practice to establish that levels are irreducible.

The possibility of allocating individual aid in the form of tax reductions/exemptions for environmental purposes therefore appears to be nil.

Point 173

We ask that the word “*detail*” be changed, but agree to a general reference to the category of company benefiting from reductions or exemptions.

We also ask that the wording be brought into line with that of the regional guidelines and the BER, in avoid complicating procedures for notification and annual reporting.

Finally, as regards the need to demonstrate an incentive effect in the annual report referred to in this paragraph, we refer to our comments above on point 127.

AID INVOLVED IN TRADABLE PERMIT SCHEMES

Point 125(d)

The Italian version of the text should be brought into line with the English version, by adding the words “in linea di principio” [in principle] after “nuovi operatori”.

SECTION 4

We reiterate that it is advisable to allow Member States to request authorisation even for environmental investment other than that listed in the paragraph in question, provided that the investment can be characterised as being extremely innovative, experimental and/or involving a variety of sectors, even if it falls outside the rules for example on type of activity, the sector of activity (transport, research) or the aid intensity with specific bonuses for particular areas.

APPROPRIATE MEASURES

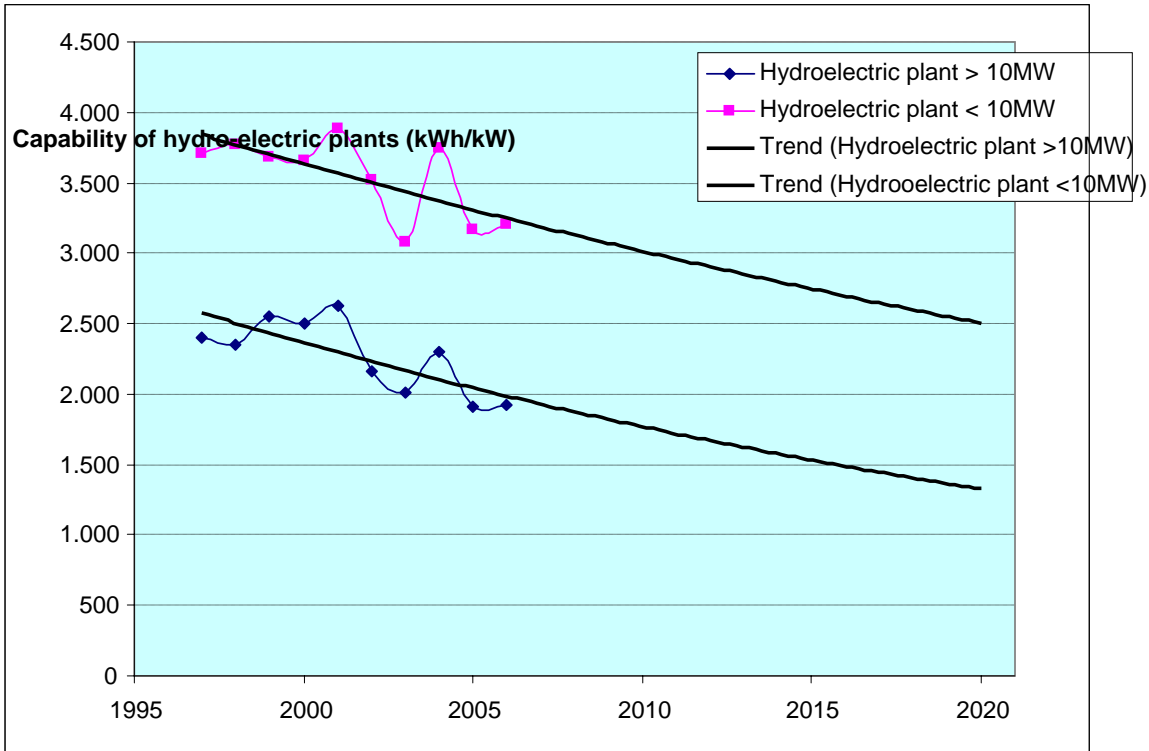
Point 179

The purpose of the request for information should be clarified. If the purpose behind the request is the assessment of the actual impact of the guidelines, the inconvenience would in any case be unjustified. To this end sending a summary of aid granted, with statistics, would suffice.

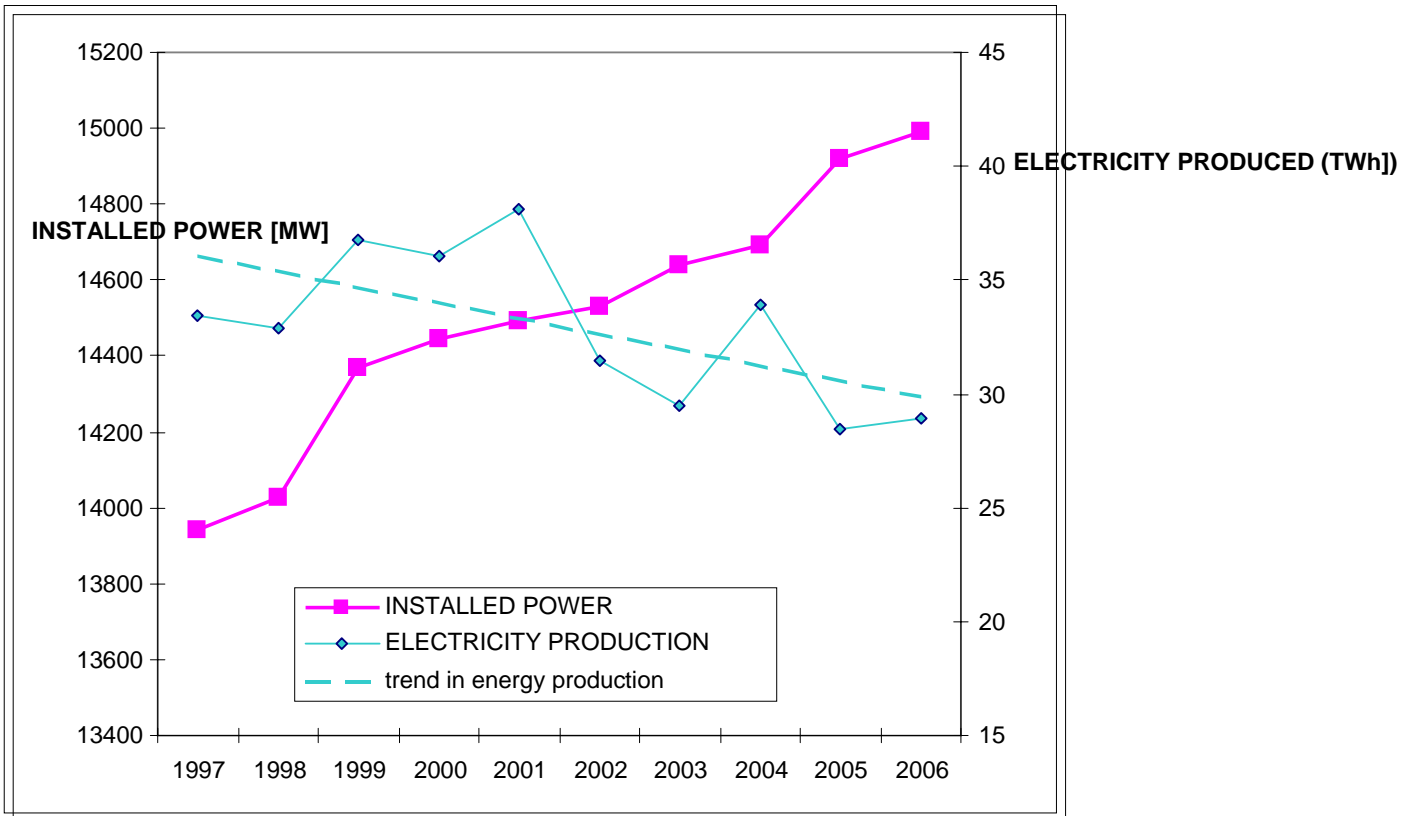
Point 180

A period of time greater than six months must be allowed.

The retroactive application of the additional obligations contained in the new guidelines involves extremely onerous and lengthy work for Member States, particularly as regards updating computer systems for already authorised aid schemes.



Graph1: recorded and predicted capability trends for hydroelectric plants in Italy



Graph 2: installed power and energy production for hydroelectric plants in Italy