



ANTITRUST CLIENT BRIEFING

State Aid and Environmental Protection and Energy

**European Commission publishes and
launches consultation on
draft 2022 State aid Guidelines on Climate,
Environmental Protection and Energy**

16 June 2021

The Development

- On 7 June 2021, the European Commission (EC) published a draft Communication on the “Guidelines on State aid for climate, environmental protection and energy 2022” (CEEAG) that will replace the 2014 “Guidelines on State aid for Energy and Environmental Protection” (EEAG). The EC has added climate to the title of EEAG to underscore the increased focus on climate protection.
- The draft CEEAG reflects the new climate, environmental, and energy priorities of the Green Deal and sets out the conditions for EC approval of State aid granted by EU Member States. The CEEAG will be adopted by the end of 2021.
- Before adopting the final version, the EC is seeking stakeholders’ views. The public consultation is open until 2 August 2021. This consultation follows the November 2020 publication of an Inception Impact Assessment and a public consultation through online questionnaires on the revision of the EEAG.

Opportunity for Business

- Under the Green Deal, the EU has set the ambitious target of becoming carbon neutral by 2050, with a 50%-55% cut in emissions by 2030. The Green Deal will directly affect costs for many businesses that will need to invest in carbon-free production processes and prepare for more expensive sources of energy (e.g., renewables, hydrogen).
- The EC’s consultation is an important opportunity for businesses to provide their input on the approval conditions for the necessary public support required in their sectors to deal with the higher costs involved in the green transformation.
- The CEEAG, scheduled to enter into force on 1 January 2022, will be the central State aid framework for environmental protection and energy projects for many years.

The CEEAG and the GBER

- The CEEAG sets out the framework under which the EC assesses the compatibility of State aid granted by EU Member States to support projects for climate and environmental protection and energy generation adequacy in a way that is as cost-effective for taxpayers and as non-distortive of competition as possible.
- The current EEAG 1) has promoted a move to market-based support for renewable energy, while providing relief for energy intensive companies from the relevant charges/levies, and 2) introduced provisions for aid to support energy infrastructure and for security of electricity supply.
- The General Block Exemption Regulation (GBER) complements these provisions by allowing Member States to grant aid for smaller and simpler projects without notifying the measure to the EC in advance, provided the aid meets certain criteria. A partial revision of the corresponding GBER provisions (notably on clean mobility infrastructure, biodiversity energy efficiency in buildings, and resource efficiency) is ongoing. A public consultation is expected in summer 2021.
- The current EEAG and the GBER have been important tools for dealing with the sharp increase in EU governments’ spending for environmental protection since 2014.

Objectives and scope of the revision

- The EC's previous consultation showed the need to broaden the EEAG's scope to include new areas and aid instruments, as well as to simplify and increase the rules' flexibility. The revision addresses these points in the following ways:
 - New areas covered under the CEEAG include decarbonisation measures, clean mobility, energy efficiency in buildings, circularity, and biodiversity.
 - All aid instruments, including Carbon Contracts for Difference, and all technologies may be eligible. In many areas, aid amounts can generally reach up to 100% of the funding gap.
 - Assessment of cross-cutting measures are simplified under a single section of the CEEAG. Large projects within already approved schemes no longer require individual notifications.
 - Conversely, safeguards such as prior public consultations on the main features of national support schemes are introduced — in some cases to ensure cost-efficiency and competition.
- To ensure coherence with the relevant EU legislation, the draft CEEAG aims to phase out subsidies for new investments into energy sources that are deemed unlikely to have positive environmental effects, notably fossil fuels and — to a lesser extent — natural gas.
- The rules in the draft CEEAG also apply to those sectors that are subject to specific EU rules on State aid (transport, coal, agriculture, forestry, and fisheries and aquaculture) unless such specific rules provide otherwise. The CEEAG would apply to a broad range of activities, excluding only a handful activities (e.g., research, development, and innovation).

Draft 2022 CEEAG: assessment criteria and notable changes

Part 1: Assessment criteria applicable to all types of climate, energy, and environmental aid

- The assessment of an aid measure will focus on a positive condition and a negative condition with several criteria to determine its compatibility with EU State aid law. The EC will also weigh the positive effects of the aid against its negative effects on competition and trade.
- The positive condition and its criteria relate to facilitating the relevant economic activities and the positive effects for society.
 - Does the aid have positive effects for the society at large and, if applicable, does the aid contribute to specific EU climate, environmental, or energy policies? The Member State granting the aid needs to identify the positive contribution.
 - Does the aid have an incentive effect? The aid needs to bring about either a change in behaviour or an engagement in additional economic activities by the beneficiary that would not have occurred without the aid.
 - Is there a breach of any relevant provision of EU law? If so, the aid or its financing method breaches relevant EU law and will not be approved.

- The negative condition and its criteria concern the effect on competition and trade.
 - Is there a need for State intervention? The aid must address market failures, that cannot be remedied by the market itself.
 - Is the aid appropriate? There must not be another policy or aid instrument that is less distortive of competition and trade that could achieve the same results.
 - Is the aid proportional, i.e. limited to the minimum necessary? The aid must not go beyond or above the net extra cost necessary to meet its objective. This detailed verification is not necessary for a competitive bidding processes.
 - Is the aid transparent? The Member State must publish the full text of the approved aid measure and information on each individual aid award granted above €100,000.
 - Does the aid unduly affect competition and trade? The broader the range of the aid's potential beneficiaries, the more limited its distortive effect will be. In addition, the aid should not strengthen substantial market power, undermine market rewards to the most efficient producers, or merely affect trade or location choice without providing a net EU-wide benefit.
- As a final step, the EC will carry out a balancing test to verify that the positive effects outweigh the negative ones. The EC may also limit the duration, require an *ex post* evaluation or individual notification of certain projects for certain aid schemes, e.g. those with large budgets (over €150 million per year or €750 million in total); those that contain novel characteristics; or those that may cause significant market, technology, or regulatory changes.

Part 2: Assessment criteria for specific types of climate, energy, and environmental aid

The CEEAG sets out assessment criteria (often very technical) for 13 specific types of aid. A few highlights can be summarized as follows:

- Aid for the reduction and removal of greenhouse gas emissions: The broad scope of this category now covers industrial decarbonisation, Carbon Capture Use and Storage, renewables, combined heat and power (CHP), and biofuels.
 - All technologies and approaches are eligible to ensure the CEEAG are future proof. Aid can reach the full net additional costs of more eco-friendly investments and activities, and take a variety of forms (e.g. contracts for difference or tax/levy reductions instead of grants).
 - Competitive bidding is the default mechanism for awarding aid and setting the level of aid. Bidding should be open to all competing activities, subject to justified exceptions. The cost of aid per CO₂ equivalent reduced must be identified.
 - For transparency, flexibility, and stakeholder participation, a prior public consultation on the main aid features will be generally required, subject to justified exceptions. Additional evidence will be required for the aid with limited beneficiaries.
 - Aid should not lead to lock in or displace cleaner technologies. Therefore, there should be appropriate evidence or binding commitments for aid to natural gas to ensure long-term compliance with the 2050 goals and for aid to fossil fuels to lead to a phase-out.

- Other environmental aid
 - Aid to improve energy and environmental performance of buildings (renovated or newly built) that leads to reduced energy demand. The aid is capped at a certain percentage of the costs, depending on the size of the reduction.
 - Aid for clean mobility supporting the acquisition of clean transport vehicles and creation of recharging or refuelling infrastructure, generally granted through competitive bidding.
 - Aid for resource efficiency, and for transitioning to a circular economy including for reuse or recycling of waste and raw materials. Aid can reach 40% of eligible costs (plus SME, regional, or eco-innovation bonuses) or granted through competitive bidding.
 - Aid to prevent or reduce pollution beyond mandatory standards, and aid for decontamination, rehabilitation, and biodiversity .
 - Reduction of taxes/levies in lieu of grants for the above types of aid.
 - Reduction of environmental taxes/levies for some undertakings that are most affected by high-production costs that cannot be passed on, in order to ensure acceptance of a higher tax rate overall.
- Aid to the energy sector
 - Aid for the security of electricity supply (through capacity mechanisms, strategic reserves, and demand-response support). Rules are updated to reflect the amended sectoral legislation (e.g. public consultation requirements) and to codify the EC's decision-making practice.
 - Aid for energy infrastructure now covers new and emerging categories. To receive aid, natural gas infrastructure (e.g. LNG) should be suitable to use hydrogen and renewable gases in the long-term. Aid for fossil fuel infrastructure is not included in the scope of CEEAG.
 - Aid for district heating and cooling introduces simplifications and now allows aid to cover the funding gap and to reach efficiency standards through upgrade investments. Similar safeguards against lock-in are introduced for fossil fuel and gas heating networks.
 - Aid for closing coal, peat, and oil shale power plants and mines, to compensate for eligible cost from early closure (e.g. foregone profits or social and environmental costs).
- Reductions of electricity levies for energy-intensive users (EIUs) to avoid relocation outside the EU
 - All levies for an energy policy objective are covered (e.g. renewables, CHP, social tariffs, decarbonization). Aid will only be granted if cumulatively these levies rise above a certain (to be determined) cost per MWh (before reduction) — the EC asks stakeholders for their views on this point.
 - In alignment with the Emissions Trading Scheme State aid guidelines, eligible sectors are reduced significantly, due to stricter trade-intensity and electro-intensity thresholds. The CEEAG introduces the same green conditionality and energy audits.
 - Beneficiaries still need to pay at least 25% of a levy or up to 1.5% of their Gross Value Added.

Key takeaways

- The EC has considerably expanded the scope of the draft CEEAG to reflect the Green Deal. To reach the greenhouse gas emission reduction targets, annual EU-wide investments of €350 billion will be required — such investments cannot be borne by private means alone, and so will require public support. The expanded CEEAG acknowledges this need, also in line with the green transition supported through EU funds and the COVID Recovery and Resilience Fund.
- To prevent competition distortions from the increased scope, new instruments, and the amount of aid allowed, the CEEAG adds safeguards such as market-based instruments, e.g. competitive bidding and stakeholder participation through public consultation on the main design of aid scheme.
- This increased ‘proceduralization’ for aid awards is combined with a detailed EC verification of eligible costs on the basis of business plans and of eligibility criteria including or excluding certain sectors, undertaking technologies etc. into the scope of beneficiaries. Accordingly, Member States, beneficiaries, their competitors, and other stakeholders can expect active engagement with the EC.

Next Steps: Timeline

July 2021: Meeting between the EC and Member States to discuss the draft CEEAG

2 August 2021: End of public consultation on the draft CEEAG

Summer 2021: EC report on CEEAG public consultation, and public consultation on GBER provisions

End of 2021: Adoption of new CEEAG

1 January 2022: Entry into force of new CEEAG

Sources

[EC Press Release](#) announcing the publication of the draft CEEAG.

Contacts

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