**Consultation paper State aid for environmental protection**

**- Questionnaire for stakeholders -**

**Review of Community Guidelines on State Aid for Environmental Protection and environmental support measures in the General Block Exemption Regulation**

The purpose of the present consultation is to invite both **Member States** and **other stakeholders** to provide comments on the application of the **Community guidelines on State aid for environmental protection** and **environmental support measures in the General Block Exemption Regulation**. Those comments will provide valuable input for the review of the above-mentioned guidelines and regulation in 2013. The Commission invites Member States and stakeholders to submit their comments to DG Competition by **23.10.2012**.

# Introduction

As announced in the Communication on EU State Aid Modernisation the Commission[[1]](#footnote-1) aims to achieve an EU State Aid Modernisation by revising and streamlining the main Commission acts and guidelines by the end of 2013. The purpose of the present consultation is to obtain information on the application of the Community guidelines on state aid for environmental protection and environmental support measures in the General Block Exemption Regulation. The results will provide valuable input for the modernisation project.

The primary objective of State aid control in the field of environmental protection is to ensure that State aid measures will result in a higher level of environmental protection than would occur without the aid and to ensure that the positive effects of the aid outweigh its negative effects in terms of distortions of competition, taking account of the polluter pays principle established by Article 191 of the TFEU.

The Commission has laid down the criteria it uses in assessing the compatibility of State aid for environmental protection in its Community Guidelines on state aid for environmental protection (Official Journal C 82,01.04.2008)[[2]](#footnote-2). In addition a number of categories of environmental support measures have been exempted from prior notification where they meet the conditions set in the General Block Exemption Regulation (Official Journal L 214/3 of 9.8.2008)[[3]](#footnote-3).

# How to contribute to the consultation

Member States and other interested parties are invited to respond to the questionnaire hereunder. Replies can be submitted in all official EU languages. Given the possible delays in translating comments submitted in certain languages, translations of the replies in one of the Commission's working languages (preferably English) would be welcome enable the Commission to process them more swiftly. In addition, any comments beyond the scope of the questionnaire would be welcome.

You are not required to reply to all questions. If you are not concerned by a particular question please leave it open. Any comments and information submitted beyond the scope of the questionnaire will be welcome, in particular other relevant documents, reports, studies, data sources.

The deadline for the replies is **23 October 2012**.

Replies should be sent to the European Commission, preferably via e-mail to [Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu).

European Commission

Directorate-General for Competition

State aid Registry

Subject "**HT 359** - Consultation on Community Guidelines on State Aid for Environmental Protection"

B-1049 Brussel/ Bruxelles

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**E-mail:** [**Stateaidgreffe@ec.europa.eu**](mailto:Stateaidgreffe@ec.europa.eu)

For the sake of transparency, the Commission services plan to make the replies to this questionnaire accessible on its website [http://ec.europa.eu/competition/consultations/open.html](file:///\\net1.cec.eu.int\COMP-Services\Direction-E\E-3\Forum%20other). Therefore, if respondents do not wish their identity or parts of their responses, including any additional information provided, to be divulged, this should be clearly indicated and a non-confidential version should be submitted at the same time. In the absence of any indication of confidential elements, DG COMP will assume that the response contains none and that it can be published in its entirety.

**Nothing in this consultation may be interpreted as stating an official position of the European Commission.**

**QUESTIONNAIRE**

**About You**

**Specific privacy statement**: Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form.

For rules on data protection on the EUROPA website, please see: <http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata>

1. Do you object to the disclosure of your identity?

No

1. Does any of the exceptions foreseen in Article 4 of Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[[4]](#footnote-4) apply to your response? If so, please indicate clearly which parts should not be divulged, justify the need for such confidential treatment and provide also a non-confidential version of your response for publication on our website.

**Please provide your contact details below:**

|  |  |
| --- | --- |
| Name | Daniel Fraile Montoro |
| Organisation represented | Climate Action Network- Europe |
| Location (country) | Belgium |
| E-mail address: | Daniel@caneurope.org |

**Please describe the main activities of your organisation:**

1. Please identify whether you can be considered as being active on the financing supply or demand side or representing public authorities or other stakeholders.

CAN-E represents environmental and development organizations working to preventdangerous climate change and promote sustainable energy and environment policy in Europe.

1. Please indicate the size of your company (in terms of turnover and number of employees) or your organization (in terms of members).

**Climate Action Network Europe (CAN-E)** is recognised as Europe's leading network working on climate and energy issues. With [151 member organisations](http://caneurope.org/about-us/membership" \t "_blank) in 25 European countries, CAN-E works to prevent dangerous climate change and promote sustainable energy and environment policy in Europe.  
  
**The Climate Action Network (CAN) is** a worldwide network of more than 700 Non-Governmental Organizations (NGOs) working to promote government, private sector and individual action to limit human-induced climate change to ecologically sustainable levels. CAN is based on trust, openness and democracy.

**CAN-E Transparency Register number: 55888811123-49**

1. If applicable, please provide the NACE[[5]](#footnote-5) code relevant for the activity of your company.

***NOTE: You are requested to follow the order of the questions, even though you are not required to reply to all questions. You can also submit additional information that you consider relevant and which does not fit any specific question.***

# General Questions on Environmental Protection Measures

*For all questions in this section, please substantiate your answer as much as possible by referring to appropriate statistics, reports or studies.*

***Evolving design of State aid measures***

## Have State aid instruments been adapted in your country since the introduction of the 2008 Environmental Aid Guidelines? For example, changes in types of aid instruments, in aid intensity, in selecting aid beneficiaries (e.g. via subsidy tenders or other selection processes)? Have State aid measures been phased out? Please explain.

State aid, in combination to other important mechanisms and policies, has contributed significantly in a number of Member States to drive investments on renewables energies. Aid needed to overcome existing market failures (e.g. non-internalization of a number of external cost associated to fossil fuel based technologies, heavy subsidies for the last few decades to other energy sources such nuclear power, etc.).

However, in a number of MS support for renewable energy producers (weather or not considered as State aid) has been modified in the last years with negative impact on new and existing investments. Some governments have drastically reduced support and/or have cancelled it fully. In some extreme case, even the measures have been retroactive and investors have lost all confidence in such markets. Due to these unexpected changes, access to capital for new generation projects in those countries is very limited and lending interests are very high.

These change do not necessarily reflect the adoption of the 2008 Environmental Aid guidelines, though.

## Have any changes in environmental support policy been announced or envisaged for the near future such as phasing out existing measures and/or introducing new support measures? If so, what is the reason for making such changes?

Yes. And mostly the announcements are about phasing out support rather than introducing new support mechanisms.

Germany, for instance, has announced that financial support for solar photovoltaics producers (generated through electricity consumers) will come to an end event though a level playing field for the Photovoltaic sector has not been achieved. This has very negative consequences for the industry and the sector as a whole because new companies may not take the risk (e.g. they may not invest in a new production line which is more efficient and can deliver cheaper products if they need large periods of time to amortize the investment) to enter in a market which may come to an end anytime soon and where the regulatory instability is wide-spread.

This is true for any market and any technology type, as soon as those markets do not provide long-term certainty and regulatory stability. That’s why the renewable energy sector needs long term binding target (in 2030) along side with other measures to eliminate market barriers (more transparency, better interconnections at distribution and transmission level, elimination of fossil fuel subsidies)

***The effectiveness of State aid measures***

## In your experience, how do State aid measures contribute to an increase in environmental protection taking into account other already existing mechanisms to promote environmental protection, such as regulation, taxation, or market-based mechanisms (e.g. ETS)? Are such considerations taken into account by Member States when designing State aid measures?

The ETS has not helped to drive investments in renewable energy sources due to several reasons, such as the low carbon price. In the event of high carbon prices this system will still fail to provide investments in a large number of renewable energy technologies (those less competitive) and on transmission/distribution infrastructure[[6]](#footnote-6) need to integrate high share of renewables. Therefore, financial mechanisms (weather or not their are considered as Staid aid) are fundamental element for EU to reach the 2020 RES targets with its positive environmental benefits (not only CO2 emissions reduction but also air and water pollution). And financial mechanisms will continue to be as important/necessary beyond 2020, to ensure that new and emerging types of renewable energies sources are deployed sufficiently to reach competitive costs before they can compete fairly in the market.

It is important to remind that generation cost (LCOE) from RES can not only be reduced through research and development. Initial support for deployment is the key of any successful policy. If deployment is facilitated, the industry and the sector (such as research facilities) can growth faster and thus increase their efforts in more intensive and applied R&D.

## Are in your experience certain aid measures more effective in targeting specific market failures? Please explain.

Therefore, CAN-E believes that State aid (as they currently are) are an effective instrument to promote the market introduction and deployment of electricity generation from RES. However, it is not a sufficiency condition for doing so; it is also of paramount importance to to ensure that RES can be granted access to transmission network, that grids’ capacity and structure be progressively adjusted to allow the full integration of energy from RES. It is also necessary that subsidies to fossil fuels and nuclear energy be phased out and that the EU provisions allowing these subsidies be interpreted and applied in accordance with strict and rigorous criteria.

Feed-in-tariffs have been one of the most successful instruments to support the expansion of RES in Europe. They are very effective because they can be modified quickly to reflect current market condition, reflect the current generation cost for each of the technology and because they can help to support the expansion of all RES technologies, based on their specific conditions. The former is a very important point to consider support to technologies, which are not yet ready to compete with other RES and conventional technologies. However, other measures such as green certificates and direct grants have been also successfully introduced. In any case, the effectiveness of aid measures can be only measured against the specific market conditions at national level.

## Based on your experience which aid instruments rank highest in terms of their overall effectiveness in terms of achieving the environmental objective and phasing out the need for State aid (e.g resulting in competitive and integrated renewable energy)? Please explain.

## Are in your experience certain aid measures more efficient for keeping budgets under control? Is the amount of public spending needed to incentivise private investment in order to achieve a higher degree of environmental protection considered/measured? Please substantiate your answer.

## When different technologies could be supported to achieve an environmental objective, in your experience, is an explicit choice between technologies made in designing State aid schemes? If so, how was such choice made and which? Do you believe that certain technologies or projects should not have access to State funding? Please explain.

State aid schemes should take into account the different conditions of energy technologies (dispatchability, time to enter into operation, additional benefits to the environmental protection, as for instance jobs, growth and industry competitiveness, etc.). MS may give preference to certain technologies based in these conditions but they should also find a balance approach that brings a wide range of diversified RES technologies that can bring more benefits if working together (see complementary of wind and solar power). Dispatchability of concentrated solar power or hydropower versus variable energy sources (wind and solar), storage technologies, etc. In any case, support should be provided to technologies that bring clear environment protection benefits, and thus aid should only address RES technologies (as defined in the current Guidelines- Para. 50 (5)).

CAN-E believes, therefore, that the current structure of the State aid Guidelines related to renewables should be maintained.

## What are the main potential negative effects of State aid for environmental protection in the context of distortions of competition and effects on trade? Is there a difference between operating and investment aid (e.g. in distortive access or allowing market access)? How are or can these effects taken into account? Please substantiate and give concrete examples.

***Studies available***

## Have assessments been made of the effectiveness of State aid to support environmental protection compared to other measures? If so, could you elaborate on the results? Please make available any relevant studies or reports that describe the effectiveness of EAG State aid in your country.

## Have evaluations been carried out of State aid, with respect to both compliance with the State aid conditions by the beneficiaries and the effectiveness of State aid in achieving the policy objective? If so, did it lead to changes/improvements in the design of aid measures? Please provide copies of any documents or studies which may be relevant.

**Questions aiming at public authorities:**

***Financial support for environmental protection***

## Environmental protection is an objective which is widely supported by several government interventions. How do governments support environmental protection? What governmental measures are in place for environmental protection in your country, whether involving State aid or not?

## What budget has been committed annually to support environmental protection over the last 5 years in your Member State? For schemes what proportion of the budget foreseen has in effect been disbursed? Can you where possible please provide a break-down by

1. Type of support:

(i) No State aid measures

- Financial support to firms below the *de minimis*threshold[[7]](#footnote-7).

- Other support measures such as general measures

(ii) State aid: schemes, *ad-hoc* aids (outside schemes).

- Please indicate whether State aid is granted under the General Block Exemption Regulation, the Environmental Aid Guidelines, or other Guidelines (please specify)

1. The environmental objective of the measure;
2. The type of measures where possible as defined by the Environmental Aid Guidelines (e.g. aid for energy saving, aid for renewable energy sources);
3. Sectors concerned (according to the European industry standard classification system NACE code)
4. Size of the beneficiaries (small, medium and large enterprises as defined in the Environmental Aid Guidelines § 70 sub 16)
5. Type of aid instruments (e.g. direct grants, loans, fiscal incentives or other).

# General experience with the Environmental Aid Guidelines

## What is your general assessment of the current Environmental Aid Guidelines on State aid for Environmental Protection: what has worked well, and what has worked not so well? Have they given appropriate guidance for Member States to design well targeted environmental aid measures. Please substantiate your answer.

## Have the Environmental Aid Guidelines in your experience achieved the goal as stated in paragraph 4 of contributing to implement the environmental aspects of the energy- and climate change related targets? Please explain.

## Are the Environmental Aid Guidelines still addressing the most important market failures hindering environmental production and in particular the achievement of EU 2020 objectives?

# Questions on Scope and Definitions (Section 2 of the Environmental Aid Guidelines)

## What is your experience with applying the current distinction between different measures covered by the Environmental Aid Guidelines in designing aid measures?

## Are the definitions (e.g. Best Available Techniques) clearly formulated? Please explain.

## Based on your experience with designing environmental aid measures, do you consider the current scope of measures covered by the Environmental Aid Guidelines to have been appropriately framed? If not, please explain what difficulties you have encountered.

# Questions on aid measures subject to a "standard assessment" (Section 3.1 of the Environmental Aid Guidelines)

* 1. Could you please describe your experience with applying the rules of the different sections of the Guidelines? Could you please outline for each section:

1. your experience with applying the definitions and conditions
2. your experience with calculating the eligible costs or counterfactual

For certain sections more specific questions are asked.

*Aid for undertakings which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards*

## What is your experience with the concept of eco-innovation? Have you considered support for eco-innovative projects?

*Aid for renewable energy sources*

## In your experience, is the possibility for supporting biomass as envisaged by point 109c used? In your view, is the condition sufficiently clear to avoid misunderstandings on the implementation?

## In your experience, is renewable energy more supported by way of investment or operating aid? As regards operating aid, which of the three possibilities to grant operating aid is most used in your experience? In your view, are there any specific reasons?

## Based on your experience, what mechanisms do you consider to be the most effective to ensure that tenders are competitive, transparent and on discriminatory?

## Do certain aid measures or aid instrument to support renewable energy sources on the basis of the Guidelines, provide in better results in terms of renewable energy becoming competitive and being integrated in the energy market? Please explain.

*Aid for cogeneration*

## Did you experience difficulties in determining the high-efficiency of a cogeneration plant?

## 

*Aid for waste management*

## Did you experience difficulties in the (over) "state-of-the-art" of an investment?

## What is your experience in applying the scope of section 3.1.9 as defined in point 126 and for instance in relation to the scope of section 3.1.1?

*Aid for remediation of contaminated sites*

## What has been your experience with demonstrating compliance with the polluter pays principle, and with applying the rules of section 3.1.10 of the Environmental Aid Guidelines??Is in your experience, the definition of polluter by national law sufficient to limit distortions of competition?

# Questions on incentive effect for "standard assessment" (Section 3.2 of the Environmental Aid Guidelines)

## What is your experience with applying the conditions for demonstrating the incentive effect and necessity of the aid (Section 3.2 of the Environmental Aid Guidelines)? Please explain if you have encountered any difficulties in applying the current rules. Please differentiate in your reply between

a) the formal aspect of the incentive effect (the supported activity must not have commenced prior to the aid application by the beneficiary to the national authorities);

b) the distinction between SMEs and large companies;

c) the material aspects of the incentive effect, in particular the analysis of the counterfactual. What tools do you use to ensure the incentive effect?

# Questions on aid measures to promote the execution of important Projects of Common European Interest which are an environmental priority (Section 3.3 of the Environmental Aid Guidelines)

## What is your experience with aid measures to promote the execution of important Projects of Common European Interest which are an environmental priority? Please explain.

# Questions on aid measures in the form of reductions of or exemptions from Environmental Taxes (Chapter 4 of the Environmental Aid Guidelines)

## What is your experience with aid measures in the form of reductions of or exemptions from Environmental Taxes? Are the wording and conditions clearly formulated? Please explain.

## Have you encountered difficulties with the scope of this section concerning aid as regards reductions/exemptions from environmental taxes? Please explain.

## What is your experience with the application of the cumulative conditions for assessing the necessity of aid for reductions of or exemptions from environmental taxes? Did you experience difficulties for instance in determining the increase in production or the possibility to pass on a cost increase? Please explain.

## In your experience, is the 10 year period as set out in point 154 appropriate? Do tax exemptions change or can these be stopped before or after 10 years?

## In your experience, are all possibilities set out in point 159 to meet the proportionality condition equally used? In your view, is the wording sufficiently clear to avoid misunderstandings? Did you experience difficulties in determining the proportionality of the aid? Do all possibilities equally ensure an incentive to improve the environmental behaviour of the beneficiary?

# Questions on Aid measures subject to a Detailed Assessment (Section 5 of the Environmental Aid Guidelines)

## What is your overall experience with implementing the provisions for a detailed assessment according to the Chapter 5 of the Environmental Aid Guidelines? Please explain.

## In your experience, are the conditions for applying a detailed assessment clearly defined? In your experience, is the level of the individual notification threshold meaningful to catch a majority of large aid amounts under a scheme?

* 1. Could you please describe your experience with applying the different conditions of the detailed assessment part of the Guidelines? Could you please outline for each section:

1. your experience with applying the definitions and conditions
2. your experience with calculating the eligible costs or counterfactual

For certain sections more specific questions are asked.

*Section 5.2.1.1 Existence of a market failure*

## What is your experience with defining the existence of a market failure and whether the aid is well targeted at this market failure? What is your experience with demonstrating the expected contribution to environmental protection? Please explain.

## *Section 5.2.1.2 Appropriate instrument*

## What is your experience in determining whether State aid is an appropriate instrument? In particular, how do you assess whether no other less distortive instrument exists (taking into account the polluter pays principle)? Please explain.

## *Section 5.2.1.3 Incentive effect and necessity of the aid*

## In your experience, how do you assess whether the aid changed the behaviour of the beneficiary? Have you encountered difficulties in demonstrating the incentive effect? What tools do you use to ensure the incentive effect? Do you consider the elements set out under "c"-"g" of paragraph 172 of the Environmental Aid Guidelines useful and/or exhaustive? Please explain.

## 

*Section 5.2.2 Distortions of competition and trade*

## In assessing the distortions of competition and trade, the Guidelines include several elements which play a role in such assessment. Could you indicate for each of the lists of elements referred to below whether you consider these lists useful and/or exhaustive? Please explain.

## - the list of elements "a"-"c" mentioned in paragraph 177

## - the list of elements a) – i) mentioned in paragraph 179

## - the list of elements a) – f) mentioned in paragraph 180

## - the list of elements "a"-"d" mentioned in paragraph 182

# Questions on General provisions of the Environmental Aid Guidelines

## What is your experience in monitoring/complying with the Environmental Aid Guidelines' provisions on the cumulation of Environmental State aid with other aid (Chapter 6 of the Environmental Aid Guidelines)? Please explain if you have encountered any difficulties in applying the current rules.

## What is your experience with the application of the Section on:

## Reporting (Section 7.1 of the Environmental Aid Guidelines)? Please explain if you have encountered any difficulties in applying the current rules.

* Transparency (Section 7.2)

## Monitoring and Evaluation (Section 7.3)?

## Please explain if you have encountered any difficulties in applying the current rules.

## What is your experience with the application of the Section on Appropriate measures for existing schemes (Section 7.4 of the Environmental Aid Guidelines)? For instance, do you consider the wording to be clear?

# Questions on Environmental Aid under General Block Exemption Regulation

## Do you have aid measures for environmental protection in place in your country on the basis of the GBER? If yes, could you please specify which measures are in place and what your experiences for each of the measures are?

## In your experience, what measures would you typically put in place on the basis of GBER and why?

## Could you please describe your experience with applying the rules of the Regulation in respect measures concerning environmental protection? Could you please outline your experience with each Article separately?

## Art. 18: Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards?

Art. 19: Aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards

## Art. 20: Aid for early adaptation to future Community standards for SMEs

## Art. 21: Environmental aid for investment in energy saving measures

## Art. 22: Environmental investment aid for high-efficiency cogeneration

## Art. 23 Environmental investment aid for the promotion of energy from renewable energy sources

## Art. 24 Aid for environmental studies

## Art. 25 Environmental aid in the form of tax reductions

## The GBER provide for another methodology to define eligible investment costs. What has been your experience in using this methodology, also in comparison with the methodology provided in the 2008 Environmental aid guidelines?

## How do you carry out evaluation of aid, with respect to both compliance with the rules by beneficiaries eligible on the basis of schemes and effectiveness in achieving the policy objective, with a view to improving the design of aid measures? Please provide copies of any documents or studies which may be relevant.

# Miscellaneous

## Do you have any other comments on the application of the Environmental Aid Guidelines and the GBER (environmental aid measures) on issues other than those covered in the previous questions?

## Please provide copies of any documents or studies which may be relevant for assessing the application of the Environmental Aid Guidelines and the GBER and contributing to the reflection on its future revision.

## Please indicate whether the Commission services may contact you for further details on the information submitted, if required.

Yes

**THANK YOU FOR RESPONDING TO THIS QUESTIONNAIRE.**

1. COM(2012) 209 final [↑](#footnote-ref-1)
2. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:082:0001:0033:EN:PDF [↑](#footnote-ref-2)
3. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:214:0003:0047:EN:PDF [↑](#footnote-ref-3)
4. OJ L 145, 31 May 2001, p. 43. [↑](#footnote-ref-4)
5. NACE is the European industry standard classification system. [↑](#footnote-ref-5)
6. See CAN-E position paper “The need for a 2030 Renewable energy binding target”, attached [↑](#footnote-ref-6)
7. The de minimis threshold amounts to 200.000 € per undertaking over three years. See Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid [↑](#footnote-ref-7)