



# **Recast of the Guidelines on state aid for climate, environment and energy**

**Fair competition - A prerequisite for distributive justice**

# Executive summary

One of the most important policy objectives for the EU is to combat climate change. The use of fossil fuels (coal, oil, natural gas) is to be reduced more and more in order to ensure a CO<sub>2</sub>-free energy supply from 2050. This phase-out of fossil fuels will bring about a profound change in society and the economy, comparable to the industrial revolution. Therefore, from AK's point of view, it is necessary to analyse the macroeconomic effects in detail. For AK, the climate and energy transition is not primarily a technical issue, but above all a social challenge. The costs and benefits associated with climate and energy policy measures must be fairly distributed to ensure the necessary broad social acceptance.

The state aid system also contributes to achieving the ambitious energy and climate targets by 2030 and 2050 respectively. It is therefore essential, especially in state aid legislation, to strengthen those state subsidies and regulations that support the goals of the Green Deal. On the other hand, regulations that hinder the achievement of these goals should be identified and repealed. At the same time, it should be noted that the realisation of the decarbonisation goals can be better implemented with the help of regulatory measures than via the diversions of state aid legislation. In AK's view, regulatory legislation should therefore be given priority over subsidies in the form of complex tenders or even tax reductions at the expense of taxpayers.

## AK's recommendations for action: an overview

- **Energy efficiency first** should be a central priority in all sectors.
- **Regulatory legislation should take precedence over operating aid:** no complex tenders or tax reductions at the expense of taxpayers.
- To ensure a fair transition towards a CO<sub>2</sub>-neutral economy, a "**social bonus**" is needed to reward the creation and maintenance of sustainable and quality jobs as well as measures against energy poverty by means of a higher aid intensity.
- It should be made easier for employee representative organisations and organisations for the protection of consumer interests to **lodge complaints with the EU Commission** in case of alleged granting of unlawful state aid.
- The **publication of subsidies and reductions granted** should be made mandatory - comparable to the transparency register for agricultural subsidies.
- In the new guidelines, **investment subsidies and competitive tendering must be the rule**, operating aid should be the exception.
- The new **EU state aid guidelines must become significantly more restrictive in the area of energy infrastructure financing (grid charges)**. Hidden (industrial) subsidies in this area must be stopped in order to ensure a fair distribution of the burden between large consumers and private households.
- **Contracts for difference need an accurate calibration of the CO<sub>2</sub> contract price** and a functioning emissions trading system to avoid over-subsidisation.
- **The promotion of public transport must be the focus of decarbonisation measures.**

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# The AK's position

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The transition of energy production away from fossil energy cannot be left to market forces. This is why the European Union, at the turn of the century, decided to radically restructure energy production through state subsidies for renewable energy sources. The EU Commission essentially sets out its policy in this regard in the Guidelines on State aid for environmental protection and energy. Now, a reform of the State aid Guidelines is imminent by the end of this year.

From an Austrian point of view, it is particularly regrettable that the EU Commission does not offer any framework conditions for the granting of subsidies for nuclear power or exit scenarios from nuclear energy - comparable to those for fossil energy. Furthermore, in the view of AK, there is a lack of clear regulations, both regarding the conditions for state aid measures for export-oriented, energy-intensive, large-scale consumers and in the area of exemptions from the financing costs of the energy transition.

AK recommends to include the following key points to the reform.

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## 1. Energy efficiency first

Each state aid framework and each state aid project should follow the **principle of "energy efficiency first"**. The energy and climate goals can only be achieved if we succeed in sustainably reducing energy consumption. Failure to comply with this principle should result in a reduction of the state aid intensity or should call into question the eligibility of the project. It is all the more regrettable that this fundamental principle is not included in the guideline proposal.

In principle, an increase in state aid intensity should only take place if the energy efficiency measure is associated with **actual and substantial energy savings**. For example, the targets set for improving energy performance in the building sector, which aim to reduce primary energy demand by at least 20% in the case of renovation of existing buildings or by at least 10 % in the case of new buildings, do not seem very ambitious (para. 118). This is shown by the

comparison with Austria: Here, the prerequisite for funding the renovation of buildings older than 20 years is that the heating requirement is reduced by at least 40 %. In order to increase the energy saving potentials, energy saving targets should not be set uniformly, but rather **differentiated according to the age of the buildings**.

The proposed increase in aid intensity for small enterprises by 20 % and for medium-sized enterprises by 10 %, without a reduction in primary energy consumption being linked to it, appears undifferentiated and is therefore not expedient in AK's view (para. 128).

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## 2. Anchoring a "social bonus" in state aid legislation

EU citizens are not only confronted with the consequences of the Covid-19 pandemic, unemployment and energy poverty, but also have to cope with the consequences of the climate crisis (such as hot spells, floods) and the resulting necessary transformation of entire economic sectors and the energy system. Therefore, to ensure a fair transition, there is the need for a "social bonus" in state aid legislation. It must be possible to reward the creation or maintenance of sustainable and high-quality jobs with a higher aid intensity. In view of the high unemployment rate, special attention should be paid to employment opportunities for the long-term unemployed and young people in the sense of a "Just Transition", but also to those employees who are negatively affected by the phase-out of fossil energy.

According to AK, the increase in energy efficiency - because of the "double dividend" associated with it - should be rewarded with an increase in aid support of at least 20%. On the one hand, renovations of buildings are employment-intensive, and on the other hand - in addition to the reduction of energy demand and energy costs - they also have the effect of increasing the quality of living and thus the quality of life. Renovations can thus make an important contribution to alleviating energy poverty.

### 3. Extension of procedural participation

It is particularly important to enable consumer interest groups and employee representatives to lodge complaints with the EU Commission in case of alleged granting of unlawful state aid. The Procedural Regulation 2015/1589 on state aid procedures makes this more difficult for employees' associations or consumer organisations, because the requirement of individual concern is presupposed, whereas companies and associations (in the German version) or business associations (in the English and French versions) are defined as individually concerned per se. Workers' and consumer protection associations usually have to content themselves with the market monitoring procedure. This regulation de facto leads to an exclusion of both workers' and consumers' interests, which is not in the spirit of the Green Deal. Without the broad involvement of workers - also in their role as consumers - the energy transition will not succeed. An unequal classification of procedural autonomy also does not seem justified for reasons of equal treatment, which is why a corresponding equal treatment should be applied to workers' associations and consumer organisations.

### 4. Investment grants and tenders as the norm - not operating aid

Operating aid was justified for the transition to renewable energy sources in the initial phase but needs to be reoriented after almost 30 years. In the new guidelines, subsidies for renewable energies should therefore be awarded primarily in the form of investment aid and competitive tenders, whereby the physical characteristics of the electricity grid due to the steadily increasing share of fluctuating electricity production from renewable energy sources are to be given special consideration (grid stability, security of supply).

### 5. No hidden industrial policy at the expense of consumers and the climate

In order to bring about the necessary broad societal support for the enormous challenges associated with the decarbonisation of the entire social and economic system and the associated high financing requirements, costs and benefits must be distributed fairly. However, AK is concerned about the tendency that all costs for financing the energy transition and the grid charges (cf. in detail in chapter 6) are increasingly disproportionately passed on to private households, whilst energy-intensive industry in particular is relieved of the costs of the energy

transition. A [survey by AK](#) has also analysed these distributional effects of energy costs.

Therefore, in future exemptions from the financing costs for the energy transition (para. 351) should only be applied very restrictively and only be permitted if they support the achievement of ecological or social policy objectives, or if there are demonstrable massive competitive disadvantages of energy-intensive industries compared to third countries. The latter is to be proven within the framework of individual examinations. In addition, the list of sectors eligible for aid (para. 357 and Annex 1 of the draft guidelines) should be supplemented with information on electricity intensity and trade intensity in order to make competitive disadvantages vis-à-vis third countries visible. There are still sectors on this list for which the achievement of the aid-relevant parameters is questionable, such as "other processing of fruit and vegetables" or the processing of malt. Furthermore, it is incomprehensible why companies in an industry based on environmentally harmful fossil fuels, such as coal mining, should be allowed to benefit from subsidies, thereby increasing negative environmental effects and counteracting the decarbonisation goals. AK opposes to subsidise these sectors.

In principle, AK rejects exemptions from the financing costs of decarbonisation in the form of reductions in taxes or parafiscal charges. These measures are usually technically complicated, difficult to verify and there is an inherent danger of overcompensation at the expense of taxpayers. The decarbonisation targets can be achieved far more effectively and quickly through legislative requirements. In general, AK is of the opinion that all granted reductions should be published annually, comparable to the transparency register for agricultural subsidies (para. 363).

### 6. Create restrictive aid schemes for grid charges

From AK's point of view, regulations with regards to exemptions from the payment of grid charges should also be anchored in the future guidelines. These are completely missing in the current guidelines, which leads to undesirable developments in energy policy. For example, energy-intensive industry in Germany receives an exemption to the extent of 80% to 90% of the grid fee. Such preferential treatment not only leads to massive distortions of competition (up to and including job relocations) between Member States, but also to negative environmental disincentives. The more electricity an industrial company consumes in Germany, the higher its exemption from grid fees. Legislative clarification is currently lacking and is therefore urgently needed in the new guidelines.

## 7. Contracts for difference with exact calibration of the CO2 contract price

For decarbonisation subsidies in the form of contracts for difference (para. 103), AK believes that a very precise determination of the contractual price for CO2 and a symmetrical design of the price for difference are needed in order to avoid over-subsidisation. The weakness of the so-called "Carbon Contracts for Difference" (CCfD) would have to be countered by means of a transparent, comprehensible and thus also verifiable determination of the contractual price. There are no findings on this in the present draft of the guidelines. In any case, a functioning emissions trading system with clear price signals is important for this system.

## 8. Clean mobility - public transport in the focus of decarbonisation measures

According to the proposed guidelines, an aircraft is considered a "clean means of transport" if its CO2 performance is 10% better than that of the aircraft to be replaced (para. 140 in conjunction with para. 20 lit h). As long as no all-encompassing paraffin tax is implemented in the European Union and air transport enjoys an unfair competitive advantage over comparatively cleaner means of transport (e.g. rail) through tax exemption, investment subsidies are to be regarded as unjustified with such a low threshold for environmental protection measures. This is rather simple "greenwashing", and the distortion of competition to the detriment of environmentally friendly means of transport is perpetuated.

Chapter 4.3. of the present draft guidelines is strongly focused on competition between vehicle manufacturers and their drive systems. For climate policy reasons, however, public transport should be expanded and made more attractive. This is not taken sufficiently into account by the present draft guideline. Through subsidies, Austrian public transport operators will for example receive a subsidy of 80% from the European Reconstruction Fund until 2025 when switching from diesel to zero-emission buses. In AK's opinion, such funding should be made possible beyond 2025.

Public transport operators need to provide a new overall public transport system in the coming years. Sufficient aid intensity should be provided for this purpose. Estimates show that the investment required for the implementation of the directive on the promotion of clean and energy-efficient road vehicles (CVD) amounts to 600 million euro for the nine Austrian provincial capitals alone (procurement

of vehicles) and 100 million euro for infrastructure (garages, filling stations, etc) ([AK Vienna - Bus Transport](#)).

AK takes a critical view of the granting of aid for clean mobility (para. 137), on the basis of tenders. Companies should be able to undertake in-house environmental improvement projects (e.g. electrification of refuse-collecting vehicles and diesel buses, fitting emission reduction systems to diesel locomotives) if their own resources (such as expertise) are available and/or existing staff needs to be employed. Publicly controlled companies should in any case have the possibility of in-house procurement without being excluded from state subsidies as a result.

## 9. Aid for district heating and cooling - use of waste heat

In principle, AK welcomes the eligibility of waste as an energy source (including waste heat) for energy-efficient district heating and cooling (in compliance with the waste hierarchy). In order to make use of the potential of existing waste heat, aid recipients should be obliged, as a condition of state support, to use waste heat as an energy source - insofar as this is technically and economically reasonable - i.e. to feed it into the district heating network. Beneficiaries must prove that they have made all reasonable efforts to conclude a contract to feed energy into the district heating network. Other regulations should also be checked to see whether they prevent or impede the feeding of waste heat into the district heating network. In any case, the discharge of waste heat into water or air and thus the non-utilisation of existing waste heat must not be made possible in connection with state subsidies or even be accepted as a "side effect".

## 10. "Lock-in effect" for fossil energies (natural gas) - precise definition required

Highly efficient combined heat and power (CHP) plants using natural gas as fuel are still needed to stabilise the electricity grids (congestion management measures) due to the steadily increasing share of fluctuating renewable electricity production. The "lock-in" effect should also be evaluated in this light. This refers to the problem that a change in the current situation is made inefficient by high switching costs. With every new fossil power plant, the system change to renewable energy generation is delayed because the construction of these power plants is associated with high investment costs, which the operator of the power plant wants to earn back. In the

event of a premature shutdown, these investments are lost (stranded investments). In the context of the Green Deal, such lock-in effects are often described as harmful because they delay or prevent the achievement of objectives. However, this must be put into perspective or taken into account with regards to the above-mentioned important function of, for example, high-efficiency CHPs in the context of congestion management.

Unfortunately, the definition of the lock-in effect for natural gas is missing in the draft guidelines (para. 110). When is there one? How is it to be demonstrated that a lock-in effect can be excluded? Under what conditions can it be justified?

Furthermore, timelines for binding commitments - such as for a phase-out - should already be included in the guidelines.

## **11. Resource efficiency and transition to a recycling economy**

AK welcomes the fact that operating subsidies are only permitted in exceptional cases and for a maximum period of 5 years for the separate collection and recovery of waste or other products with a view to re-use (para. 216). In principle, investment subsidies should only be granted as start-up financing for new technologies to improve sorting and recycling technologies.

In order to improve the competitiveness of recycled products, AK believes that regulatory measures are needed, such as giving preference to recycled products when awarding public contracts or minimum quotas for a share of recycled materials in plastic products. In this sense, the EU minimum use quota for recyclates, which currently applies to disposable beverage bottles, should, as a matter of urgency, be extended. Finally, the CO<sub>2</sub> must create effective incentives for material efficiency and recycling. Due to the largely free allocation of ETS certificates to the plastics industry, the significant climate impacts of plastics production are not reflected in product prices. This makes products made from recycled material less competitive. A correction can therefore only be made through regulatory legislation, and not through state aid.

## **12. Subsidies for moving away from coal, peat and oil shale**

According to the present draft guidelines, compensation for lost profits may be granted in the event of a mandatory, early cessation of profitable coal, peat or oil shale activities (para. 370). This includes measures to develop alternative, environmentally-friendly industries to compensate for the reduction in electricity generation caused by the premature closure of power plants using these fuels. AK welcomes the guideline proposal that the cessation of the polluting activity should take place no later than one year after the granting of this measure, unless comprehensible, exceptional circumstances are presented for the necessity of a longer period.

Decisions of national courts on the damages to be paid, which are based on national legislation, are in principle not covered by state aid law (para. 374). The EU Commission expressly reserves its review competence in order to avoid cases in which companies are treated preferentially by decisions or agreements between authorities of the Member States. AK welcomes this judicial clarification. In addition, the granting of fictitious lost profits awarded by private arbitration tribunals in the context of investor-state disputes should also be scrutinised in future by the EU Commission's state aid review and extremely strictly assessed.



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## About us

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The Austrian Federal Chamber of Labour (AK) is by law representing the interests of about 3.8 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.