

REFORM OF THE ENVIRONMENTAL GUIDELINES

This note explains briefly why the EU's Guidelines on State Aid for Environmental Protection ("the Environmental Guidelines") need to be reformed and makes some suggestions as to the changes that are required. First, a few preliminary remarks:

- (i) We support tight control of distortive state aid: the suggestions here are entirely consistent with the Commission's stated policy of focusing resources on such distortive aid and of taking a more flexible approach to state aid that is generally considered not to have a significant impact on competition. We also support the Commission's attempt to inject more economic and market impact analysis into the assessment of which aids should be approvable. This paper suggests how this might be done in the context of environmental aid.
- (ii) There is a fundamental economic difference between a "pure" subsidy to a company on the one hand and a payment to achieve an environmental objective, **which would not otherwise be achieved** on the other. The Guidelines should recognise that:
 - where companies are not obliged to improve environmental performance and such improvement involves a net cost to the company, state payment of the minimum necessary to secure the improvement will not provide a material advantage to the company receiving the payment and will therefore not significantly distort competition. It will merely offset the non-economic cost to the company of the environmental gain. Such payments are not aid at all if they provide no advantage whatsoever to the recipient. In cases where marginal advantage to the recipient cannot be entirely excluded, the aid should always be approvable, regardless of the location of the investment, as long as the environmental gain is legitimate and the procedures for ensuring that the minimum necessary is paid are sufficiently robust;
 - where companies are subject to environmental regulations (or taxes) which impose costs upon them, this will distort competition unless such regulations/taxes are imposed equally on all their competitors. In practice this is often not the case, so to avoid Member States and the EU as a whole being deterred from introducing such regulations/taxes, the Commission must allow some flexibility for Member States to respond to the additional costs of achieving environmental gains with compensation, especially if that Member State has in practice imposed higher environmental standards than other EU Member States. Such compensation may be pro-competitive, rather than distortive as well as enabling a greater degree of pro-activity by Member States for achieving environmental gain.
- (iii) at all times, no more aid should be permitted than is strictly necessary and this should be in proportion to the objectives sought;
- (iv) the purpose of environmental aid must be solely to achieve European and Member State environmental goals – not to achieve industrial goals. This means that environmental aid should either be offered to all companies subject to a particular environmental challenge or in a position to achieve the particular environmental gain or be offered through competitive process to those undertakings which can best achieve the environmental gain at the lowest cost.; and
- (v) we recognise that this area is complex and that there may be more than one way of achieving these objectives. What follows are ideas to assist the reform process and the UK would be very happy to discuss them with the Commission.

Against this background, some of the main reasons for reform are summarised below and, secondly, some suggestions for change are made.

A REASONS FOR REFORM

These can be grouped under the following broad headings:

1 Achieving Environmental Objectives

The fundamental reason why the Environmental Guidelines need to be reformed as soon as possible is to ensure that environmental support can be given more effectively and to support more global and strategic measures which are vital in the interests of environmental protection and

sustainable development. This should not be seen as a radical development as the current Environmental Guidelines state clearly that they are concerned with support for:

- "environmental protection";
- action to "remedy or prevent damage to our physical surroundings or natural resources";
- "sustainable development"; and
- "environmental objectives"; and recognise
- the need to "encourage the efficient use of these natural resources".

However, while these objectives are set out clearly at the beginning of the current Environmental Guidelines, later passages, and the Commission's interpretation of them, have meant that a number of important environmental initiatives cannot be supported under them. We would particularly refer to three aspects:

(a) Environmental Harms

"Emissions and pollution" are only one of many sorts of environmental harm: it is vital that Member States should be able to take steps to achieve the above environmental objectives and to tackle other forms of environmental harm by all available means (including state aid where the other pre-conditions for granting aid are met);

(b) Pump Priming

The current application of the Environmental Guidelines focuses on support to help a company "improve its own environmental record" or "to reduce its own pollution". This is not always the most efficient way of dealing with an environmental problem – either from a state aid or an environmental policy perspective. It is often more effective to support investments which act as a catalyst and deliver environmental benefits well beyond the point at which the intervention is made in the production cycle. This would allow Member States to determine the point in the supply/production/services chain where intervention will most effectively be able to incentivise environmental gains along the entire chain: this enables the maximum environmental benefit to be derived from the minimum state intervention and ensuring that no more aid is given than is "strictly necessary" to achieve the objective in question.¹

(c) Environmental Benefits

The Commission's current interpretation of the Environmental Guidelines ignores many direct and indirect environmental benefits, not just to the recipient of the aid, but to the wider Community (and, indeed, the Member State and the EU as a whole) in terms of a better use of natural resources, reduced emissions of greenhouse gases and other pollutants, increased recycling of waste, reduction and remediation of pollution, reduced landfill etc. etc.

2 Minimising Distortions of Competition

As stated above: "the purpose of environmental aid must be solely to achieve European and Member State environmental goals – not to achieve industrial goals. This means that environmental aid should either be offered to all companies subject to a particular environmental challenge or in a position to achieve the particular environmental gain or be offered through competitive process to those undertakings which can best achieve the environmental gain at the lowest cost."

The current guidelines allow selective assistance of 30 or 40% (or more for small businesses and/or in certain regions) of the net cost of certain environmental enhancements. This is allowed regardless of whether this level of aid is the minimum necessary or not and even if such aid is only given to a sub-set of companies. This may allow Member States to distort competition by making

¹ This is consistent with the EU's Sixth Environmental Action Programme: "Subsidies can be used in a beneficial way when they are used to pump prime the development of environmentally-friendly processes and products provided they respect the Community state aid rules".

grants available to some firms but not others. It also threatens to distort competition by allowing higher aid in some regions than in others, regardless of whether the firms in those regions require higher aid to achieve the same result.

Arbitrary investment aid limits, especially those which are allowed to vary in this way, are an inappropriate basis for assessing which aids will distort competition contrary to the Community interest and which will not. The Commission should instead focus on ensuring the following:

- That the environmental purpose is valid
- That the environmental purpose would not be delivered by the market by itself (i.e. that there is a market failure)
- That the payment is the minimum necessary to achieve the desired environmental policy objective
- That the aid is offered equally to all companies in the same position

Any extra support for firms in assisted areas or for SMEs should have to be treated as regional/SME aid and approved separately on this basis.

3 Financial Aspects

Excluding innovative and cost-effective schemes from the scope of the Environmental Guidelines could have serious implications from a financing and environmental policy perspective. If Member States cannot support private companies which are prepared to help Member States achieve environmental objectives (often themselves set by the EU or under international obligations), then Member States will have to:

- support only companies which are, in a narrow sense, reducing their own pollution rather than making a wider contribution to achieving environmental goals (as mentioned above, this latter approach will often be more efficient and require less state aid to achieve a given environmental objective – "more bang for your buck");
- do all the work, and incur all the expenditure itself: i.e. carry out its own R&D, build its own infrastructure etc. This is likely to put unnecessary pressure on state budgets and may, in many cases, be less effective and more distortive of competition;
- amend or dilute their plans so that they fall within other state aid regimes which were not designed for environmental purposes (e.g. regional aid or support for SMEs); or
- fail to meet environmental objectives.

In particular, permitting support for wider environmental objectives would promote "public-private" initiatives (or, put another way, better cooperation between social partners). The Commission has recognised that a public-private partnership approach to environmental issues can be the most efficient from both an environmental and state aid policy perspective.²

4 Subsidiarity

The Commission has, in many cases, underlined that it is the right of Member States to determine their own public policy. The UK considers that, as noted above, the State aid rules should facilitate that process to the extent that it does not cause unacceptable distortion of the common market. In providing guidance on whether a proposed Member State measure provides an acceptable level of distortion the guidelines should allow the Commission to consider the effects beyond the direct recipient in order to weigh its wider effects and to allow Member States to put in place the most efficient solutions to environmental problems. In this context, we note that:

- environmental policy is a shared responsibility of the EU and Member States and Member States should be free to pursue their own environmental objectives as best

² See, for example, paragraph 3.1.5 of the UK Support for Land Remediation Decision.

suits their own circumstances (as long as this does not conflict with EU law – including state aid law); and

- in many cases where the EU has agreed environmental objectives to be achieved, it is for the Member State to determine the precise manner and the appropriate policy instruments to achieve those environmental objectives³ (except of course where Member States agree to do this at Community level).

Because environmental policy in the different Member States is varied and because it is also constantly evolving, the environmental aid guidelines need to be capable of accommodating a variety of policy responses across a range of areas and of reacting to innovative policy changes. The current rules are too complex, prescriptive and limitative. The guidelines need to set out the principles according to which aid will be assessed, but leave room for innovative approaches, as long as these do not distort competition contrary to the common interest.⁴

5 Support for the Environment

The UK strongly supports the drive to reduce the total amount of state aid given by Member States. However, it is important that Member States have the possibility to provide state aid in appropriate cases and there may be circumstances, at least in the medium term, where more state aid may need to be given for environmental initiatives given the scale of the environmental problem faced by the Community and the relatively low level of support currently provided.

Reform of the Environmental Guidelines will not, as such, increase the amount of aid given but would simply mean that, where providing targeted support for environmental initiatives was the best method for achieving an environmental objective, this would be classed as Environmental aid. Reform should also assist in reducing the level of aid necessary to achieve a particular environmental effect by facilitating more effective and efficient uses of aid.

Furthermore, it should improve transparency as some aid currently given for environmental reasons is being approved under different measures (e.g. regional guidelines) because of the limitations on the current use of the Environmental Guidelines.

B POSSIBLE AMENDMENTS TO THE ENVIRONMENTAL GUIDELINES

There is much in the existing Environmental Guidelines to support a less restrictive view of them. However, the Commission has clearly felt compelled to take a restrictive view of them. It is therefore important to amend those features of the current Guidelines that have led the Commission to take this approach. The UK believes that the Commission should take a fundamentally different line with the Environmental Guidelines allowing Member States more flexibility of response and assessing proposed measures according to simple economic criteria designed to avoid serious distortions of competition.

The UK believes that where a company is under no obligation to undertake environmental improvement, which is in the broader public interest, and such improvement involves a net cost to the company, the relevant permitted aid intensity should be “the minimum necessary”.

Where companies are subject to a regulatory obligation or environmental tax, helping some of them to meet the cost may at times be necessary to maintain fair competition, depending on the situation of their competitors. The Commission should allow state aid to counterbalance higher environmental standards in order to encourage such higher standards to exist.

In both the above cases the application of arbitrary maximum aid intensities, especially those which vary by region, is inappropriate. Such an approach risks leading to far more aid than is necessary being paid in some circumstances and too little aid being available to meet the

³ For example, the EC Landfill and EC Packaging directives only set “general targets” for Member States to fulfil (not specific targets binding on individual companies).

⁴ While approval of certain aid directly under Article 87(3)(c) in cases such as the UK’s WRAP Scheme or Support for Land Remediation is possible, it is clearly preferable that, going forward, aid given for environmental reasons is generally only supported under the Environmental Guidelines. The Commission should ensure that the drafting of any revised guidelines is sufficiently flexible to allow them to accommodate developments within the environmental sector.

environmental challenge in others. It permits selectivity and therefore distortion of competition and the EU does not want to see environmental gain only in its assisted areas.

The Commission should instead focus on ensuring the following:

- That the proposed aid addresses an environmental purpose rather than purely an economic or industrial policy /purpose;
- That the environmental purpose would not be delivered by the market by itself (i.e. that there is a market failure);
- That the payment is the minimum necessary to achieve the objective;
- That the payment is offered equally or competitively to all companies in the same position.

In the UK's response to the Commission's "Action Plan" or "roadmap" for State aid reform, we put forward the idea that market impact assessments be conducted for certain types of proposed aid and that decisions on approving notified aids be taken subject to fixed timeframes and on the basis of reviewing whether the proposed measure was likely to seriously distort competition. We suggest that independent competition authorities in the Member States might have a role in advising whether State aid is likely to materially distort competition and/or that third parties be invited to register concern at an early stage to offer further insight over whether distortions of competition were likely. . All this would work particularly well if the Guidelines consisted of largely economic tests such as the above. The UK also considers that there should be scope for some environmental aid to be approved through a block exemption regulation. It should be feasible for the Commission to set out types of aid which have a sufficiently limited distortionary effect that, so long as they meet the criteria in the block exemption regulation, they should not require full prior approval by the Commission. This block exemption approach should be possible whether the Commission adopts the proposals set out in this paper or retains its current approach to aid for environmental protection.

We would also like to suggest some further amendments and clarifications to the Guidelines if they are to continue in anything like their current form. The following suggestions are illustrative of some of our areas of concern.

1 Environmental Protection / Sustainable Development.

It should be stated unequivocally that (if the other pre-conditions of the Guidelines are met) support can be provided for any measure or project which is designed to improve "environmental protection" or performance and contribute to "sustainable development" (i.e. not just reduce "emissions and pollution").

It might also be helpful to set out some (non-exhaustive and purely illustrative) examples of the sort of initiatives which could be potentially supported in the interests of environmental protection/performance and sustainable development but where the market was not sufficiently well developed to allow them to proceed without support. For example:

- making more efficient use of scarce resources (including reduction of energy usage and increasing use of renewables);
- reducing emissions and pollution to air, land and water (including reduction of landfill)
- encouraging the collection and use of recycling materials;
- remediating contaminated or derelict land such that it can be reused;
- preventing and minimising waste, improving waste management; and
- encouraging the development and take-up of new environmental technologies.

2 Wider Benefits

Equally, it could be made clear that it is immaterial whether the support improves the environmental record of the recipient or that of a third party or provides environmental benefits for the wider public.⁵ As noted above the most effective manner to address an environmental problem may be to support investments which act as a catalyst and deliver environmental benefits beyond the point at which the intervention is made. This would allow Member States to target aid at the point intervention will most effectively create environmental gains along a supply/service chain – enabling maximum environmental benefit to be derived from the minimum state intervention and ensuring that no more aid is given than is "strictly necessary" to achieve the objective in question

3 Incentive Effect

It should be made clear that just as support can be provided to help companies meet national environmental standards that are higher than those applicable elsewhere in the EU, if there is no relevant (Community or national) law with which a recipient firm must comply, then support for that company to take environmentally beneficial steps should be allowable (provided it has a clear incentive effect).⁶ It should be clear that a company should not be precluded from receiving state aid under the Environmental Guidelines merely because, in doing so, this helps a Member State, or the Community as a whole, achieve some environmental objective.⁷ This is immaterial to the company receiving the payment and therefore not a relevant consideration when assessing to what extent a payment distorts competition. Because Member State compliance with environmental laws must be in the Community interest, such a factor should make any aid more, rather than less likely to be approved.

4 Polluter Pays

We strongly support the "polluter pays" principle but the Environmental Guidelines need to recognise that there are limits to the concept of cost internalisation in the context of environmental issues, especially where a more environmentally-beneficial approach is not mandatory. For example, it is not clear that a producer should be required "to internalise" the environmental costs of his current choice of, for example, virgin raw materials, rather than recycled raw materials.⁸ There are also situations where, even though costs may be internalised, it may still be appropriate to permit state aid under the guidelines – for example, to stimulate new technology.

5 State of the Art

It should be clear that support for environmental objectives should not be precluded where the process/approach/technology being supported is not yet the state of the art: i.e. its use is not yet the norm and is unlikely to be so in the medium term (e.g. within two or three years) without some form of intervention – e.g. by the use of state aid.

It should also be clear that support can be given to help environmental technologies move forward from niche applications towards mainstream and/or state of the art (e.g. cleaner production, the

⁵ The Commission recognised this clearly in paragraph 73 of the WRAP Scheme decision where it stated that it was proposing to amend the Guidelines to include "environmental benefits at the global level of the Member State or the Community, and not [just] at the individual level of the beneficiary".

⁶ It is clear that aid should only be granted to assist the implementation of environmental improvements which would not occur spontaneously (or even for some period of time) through existing market forces – otherwise there is no incentive effect.

⁷ This seems consistent with paragraph 21 of the existing Environmental Guidelines, which explains that it is not necessary to provide aid to firms merely to "encourage them to obey the law". However, there is clearly room for different views here as the Commission has used paragraph 29 of the Environmental Guidelines as the basis for not applying the Environmental Guidelines even where the only obligation was at the Member State level (cf paragraphs 37 and 56 – 58 of the WRAP Scheme decision). In these circumstances, it is appropriate to clarify paragraphs 20, 21, 29 and 40 of the Environmental Guidelines (all of which touch on this subject and which are internally inconsistent).

⁸ The producer should not be seen as the "polluter" in these circumstances. Furthermore, there is no need to view the producer as a polluter once it is accepted that the Environmental Guidelines can permit support for measures designed to achieve global objectives, rather than simply reducing on-site pollution (cf point B.2 above).

use of more energy-efficient goods, use of renewable technologies, or the production of goods with higher recycled contents). This would include support for demonstration equipment and demonstration facilities.

6 Investment Aid / Operating Aid

The rules governing investment aid for the environment (and for waste management and energy saving in particular) should be at least as favourable as those governing operating aid for these purposes. In the WRAP Scheme decision, the Commission noted that paragraphs 42 to 46 of the existing Environmental Guidelines, dealing with aid to promote waste management and energy saving, deal only with "operating" aid, and could not be used to justify "investment" aid. In a narrow sense, this may be legally correct but, from an environmental and state aid policy perspective, it would seem to be the wrong way round: generally, state aid policy is (quite rightly) more restrictive in relation to operating aid than investment aid.

7 Eligible Costs

Some clarification of point 37 of the Environmental Guidelines would be helpful. In particular, this point tends to lead to an approach which looks to compare the costs of an environmentally friendly investment, with the cost of an environmentally "unfriendly" project. While, in some cases, this would be appropriate, in many cases it will not (because there is no "unfriendly" comparator). As the Commission has recognised in a number of cases,⁹ this approach is not required by paragraph 37 and refocusing the paragraph would therefore be welcome. We would make three comments/suggestions on this:

- the "minimalist" approach to such a clarification might simply entail deleting the word "extra" in the first paragraph of paragraph 37;
- the Guidelines should allow support for investments which compensate for environmental "externalities". For example, the rules on operating aid for renewable energy in section E.3.3 (Option 3, para 63) of the Environmental Guidelines allow aid to be calculated on the basis of the avoided external costs (in effect, the real environmental benefits of the investment or the cost of the market failure). There is no reason, in principle, why this approach should only be confined to renewable energy – it could equally well apply to other environmental technologies, including resource efficiency investments such as those designed to establish recycling capacity; and
- the costs would be eligible up to the lesser of the cost of the extra cost of the environmentally "friendly" technology or the cost of the avoided external costs.

8 Aid Intensity

The Commission should reconsider the effective allowable percentages at which interventions can be made under the guidelines in the light of changes in markets and technologies. The UK would prefer the maximum permitted aid intensity for environmental aid to be "the minimum necessary", as explained above, but even if the Commission does not accept this, the current system still needs reform.

While the maximum aid intensities provided under the guidelines of around 30-40% may seem appropriate and in line with the intensities allowed in other horizontal frameworks, this gives a misleading view of the actual aid intensities which are allowable. The restriction to aiding purely marginal environmental costs of a project actually leads to aid intensities which are significantly lower than the nominal figures. In many cases the effective maximum level of aid allowed under the Environmental Guidelines may simply be insufficient to allow a project to go ahead.

In particular, where the aim of a measure is to address a market or financing failure in an environmental market (rather than "greening" an existing market's activities) the model described above and in section 7 breaks down. The amount of aid needed depends on the scale of the

⁹ E.g. in the *WRAP Scheme* decision or in the *Photovoltaic* decision.

market failure and because these are multiple and varied across the entire environmental field, fixed percentages cannot hope to be flexible enough for purpose. This has been demonstrated in the difficulty which the Commission has had in approving entirely reasonable and proportionate Member State schemes within the scope of the guidelines.

There should be scope for wider environmental effects to be taken into account in the consideration of a proposed aid: in particular, schemes which support activities which will have a wider effect across a market to produce an environmental benefit (or a number of environmental benefits).¹⁰ If aid is particularly beneficial, some small distortions of competition may be an acceptable price to pay.

If, despite this paper, the Commission retains regional aid-style maximum aid intensities, at the very least, it should be possible for the Commission to re-consider the way in which the eligible costs to which the aid intensities apply are calculated. For example, as noted above, no account is taken in the current guidelines of environmental effects beyond the direct recipient of the aid. This should be included within any future guidelines. Furthermore, as noted above, the model on which the calculation of marginal environmental costs is based is no longer sufficient to cover the range of projects for which approval is sought under the guidelines. Many current aid schemes, particularly those which are designed to remedy market failure to achieve the desirable environmental outcome and offer the minimum necessary to achieve that objective can be argued to contain little or no "non-environmental" element and, therefore, all their eligible costs should be able to be considered for funding. The revised guidelines should deal with such a possibility.

If the Commission considers that this is not possible then there may be other ways to ensure that there is sufficient scope to provide levels of aid sufficient to incentivise improved environmental performance. For example, an approach along the following lines could be adopted. It may be possible to increase the aid intensity which may be applied to the marginal environmental costs of a project to a higher level – say 50-60% - while retaining a provision that no aid may be granted above 30% of the total eligible costs of the project. This would provide for higher levels of aid where necessary while retaining discipline on overall levels of aid. It should be emphasised again, here, that the UK believes that even under such arrangements, no more aid should ever be permitted than that strictly necessary to achieve the objective in question and additionality should be demonstrated in all cases.

9 Tax Issues

It would also be helpful to clarify two tax issues:

- (i) the rules on tax reductions or exemptions should be more flexible to allow Member States to adapt reductions or exemptions already granted, in the light of new information on their effect on the market, competition and the environment;¹¹ and
- (ii) provided all other conditions are met (necessity, proportionality etc), it should be possible to permit temporary tax reductions from environmental taxes (e.g. the climate change levy) because of a temporary loss of industrial competitiveness in sectors exposed to international competition. An example of this would be new discounts for energy-intensive sectors under the climate change levy where new information has revealed competitiveness problems which had not originally been anticipated.

10 Tradeable Permits

The Guidelines should make it clear when tradeable permits may amount to state aid and the circumstances in which this may be approved. In particular, it could be stated that trading permits

¹⁰ For example, an investment in a recycling facility will have a direct benefit that recycling of a particular product will increase. However, the project may also be configured to achieve other important environmental effects as second or third-order effects – for example, an increase in use of waste feedstock will remove material from landfill, increase efficient usage of existing natural resources and the arrangements for collection of the waste feedstock may create sufficient critical mass to incentivise the collection and recycling of other materials etc

¹¹ The Environmental Guidelines currently only allow derogations in the light of "significant changes in economic conditions that placed the firm in a particularly difficult competitive situation" (para 51(2)(b)).

allocated on a "grandfathered" basis will not amount to state aid where this is done on an objective and non-discriminatory basis and the level of tradeable permits allowed is proportionate to the level of effort required by the recipient to meet the environmental standard in question.

11 Further Safeguards

In amending the Environmental Guidelines, the Commission (and some Member States) will, quite rightly, be concerned not to open the floodgates to excessive or inappropriate aid. This is not the intention of the proposed reforms and, to allay concerns, it may be helpful to build in some further safeguards and/or to re-affirm or clarify some existing principles. The following are some examples/suggestions:

(a) Polluter pays

With an appropriate qualification (see point B.4 above) re-affirm the "polluter pays" principle.

(b) Legal obligations

It could be re-emphasised that state aid should not generally be available merely to help the recipient meet a legal obligation applicable to that recipient, unless its competitors are not subject to similar obligations. If a Member State proposes to offer aid to help companies meet EU-wide obligations, the presumption would be that such aid was unwarranted, but there could be exceptions if a Member State hosting a major competitor had manifestly failed to apply the EU rules correctly, for example, or if a company primarily faced non-EU competition and all other Member States hosting competitors were not opposed to such aid being granted.

(c) Necessity

It could be confirmed that state aid should only be permissible under the Guidelines where this is "necessary" from an environmental perspective. This could include showing, at the time of granting the aid, that the market will not support activities leading to environmental benefits and, as a result, the project being supported is not currently economically viable; For example, this might be the case where a project involves:

- (a) supporting innovation and new process and technology developments (establishing new technologies, e.g. pilot plants, demonstration activities and, where appropriate, full production facilities);
- (b) supporting existing technology which has not yet been proven for use in novel applications or for new markets or new material;
- (c) encouraging the development of new end-uses or markets for existing materials;
- (d) supporting technology transfer where technology has been proven elsewhere in the world but for which market failure is preventing its development here; and
- (e) facilitating the development of new recycling capacity where the principal purpose of the project is environmental (and not industrial).

Further relevant factors to help demonstrate the aid is necessary to achieve environmental objectives could include showing that:

the body giving the aid is a bona fide environmental body with environmental objectives;¹²

* examples of the scheme or measure in question show that they are directed to environmental, and not solely industrial, objectives;

¹² Although it should not be limited to this as, obviously, public bodies with a wider mandate may give support wholly, or primarily, for environmental purposes.

- * the objectives of the proposed investments are in line with EU policy on the environment;¹³
- * no more aid is given than is necessary to meet that environmental purpose. Again, this can be demonstrated in a variety of ways but relevant factors could include showing that the criteria for selecting companies/projects were open, transparent and non-discriminatory.

(d) Proportionality

Confirm that the principle of proportionality must, in all cases, be respected. For example, show that every effort has been made to off-set and reduce any potential adverse effects on competition.

End

¹³ This should not be the only way in which the environmental objectives can be demonstrated as Member States are entitled to pursue environmental objectives different, or going beyond, Community environmental objectives (as long as they do not conflict with Community law).