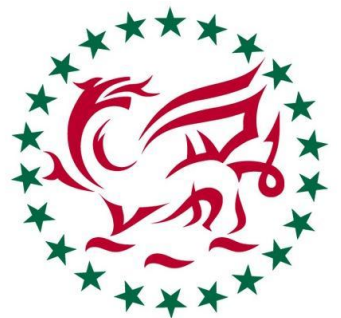




CONFIDENTIAL
European Commission:
Preliminary Draft
Community Guidelines
for State Aid for
Environmental Protection

19th June 2007



WLGA • CLILC

INTRODUCTION

Introduction

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

Background

3. Welsh Local government has extensive practical experience in the management and delivery of state aids policy in Wales. As a result the WLGA wishes to see local government, due to its local democratic accountability, being a key stakeholder in the future, with regards to state aid practises and procedures.
4. The WLGA welcomes the Commission's preliminary draft Community Guidelines for State Aid for Environmental Protection. Local government is a key stakeholder in the delivery of environmental protection in Wales and therefore welcomes the opportunity to respond to this consultation.
5. The WLGA responded to the Commission's road map for state aid reform 2005-2009, agreeing with the main principles of less and better targeted state aid and that any new state aids regime needs to be more aligned with the Lisbon Strategy and the Third Cohesion report, as state aid control plays an important role in the contribution of both these policies throughout Europe.
6. The WLGA sees the preliminary draft Community Guidelines for State Aid for Environmental Protection resulting from the Commissions need to reform the State Aid regime and believes it will assist in delivering better targeted state aid across Europe.

General Comments

7. The WLGA believes that the current environmental aid guidelines are complex, often difficult to apply and limited in scope. In addition they do not allow flexibility when considering new developments within the environmental sector. As a result the reform of the guidelines provides an opportunity for change to support aid in the field of environmental protection. However, the proposed draft is limited in terms of the much needed change in this sector and does not provide the step change required to ensure that the new environmental aid guidelines provide Member States with a practical, useful tool for tackling key environmental issues, including climate change and waste management.
8. The WLGA would urge the Commission to provide an overview of all the changes between the current environmental protection guidelines and the proposed changes as outlined within the draft Community Guidelines for State Aid for Environmental Protection as part of the next stage in the consultation.
9. In light of the consultation on the Community Guidelines for State Aid for Environmental Protection the WLGA believes that the Commission should re-draft and amend the recently published draft General Block Exemption Regulation, which includes Environmental Protection, in order to take on board comments and the final Guidelines for State Aid for Environmental Protection.
10. The Commission explains in practical terms the difference between the new General Block Exemption Regulation and the draft Community Guidelines for State Aid for Environmental Protection and how the state aid regimes will work together in the future.

Comments in relation to Aid for Waste Management

11. The WLGA believes that, with regard to aid to Waste Management it is important for the European Commission to provide information to public sector with regard to approaches which could be viewed either as (a) not amounting to State aid or (b) which could be viewed by the European Commission as compatible aid under the EC

Treaty without the need for prior approval by the European Commission by way of a formal notification.

12. The WLGA welcomes the addition of 'Aid for waste management' in the draft Community Guidelines for State Aid for Environmental Protection.
13. However, there is an unclear relationship between local authority involvement in waste management and state aid. Therefore WLGA would like to make a number of comments at this stage in relation to point 1.5.7 on page 14, which states for the purposes of aid for waste management as:
"This kind of aid aims to give individual incentives to reach environmental targets linked to waste management. The Sixth Community Environmental Action Programmes identifies waste prevention and management as one of the four top priorities. Its primary objective is to separate waste generation from economic activity, so that EU growth will not lead to more and more waste. In this context, State aid may be granted to the producer of the waste as well as to undertakings managing or recycling waste created by other undertakings. However, the positive effects on the environment must be ensured, the polluter pays principle (PPP) must not be circumvented and the normal functioning of secondary materials markets should not be distorted."
14. The WLGA recognises that State Aid is subject to interpretation – hence why case law is often used to bring about an outcome when dealing with environmental issues. The Association would therefore urge the Commission to clarify a number of issues as part of the draft Community Guidelines for State Aid for Environmental Protection.
15. Reference is made to "the producer" of the waste. It is not clear whether the reference to "the producer" is intending to refer to waste a local authority creates itself or something wider, such as household waste created by individuals living in the relevant municipal area. Clarification is sought from the European Commission on the definition of "the producer" for local authorities.

16. As far as Welsh local government and waste management is concerned the 'Local Government Act 2003' encourages local authorities to work through arms length trading with companies, intermediaries, and collaborate with voluntary orgs etc. However this could potentially lead to a number of state aid issues. It seems that our domestic legislation - encouraging this sort of activity is potentially in conflict with European rules.
17. State aid principles can only be applied if 'economic activity' in the context of the waste management is evident. This implies that (a) there is a market for waste management services and (b) waste management is beyond the normal activities of the public sector.
18. In relation to there being a market for waste management in Wales – the market is evolving all the time. The Association therefore believes that due to the fact that in some areas of Wales there has been little or no market the Commission must appreciate that local authorities implement waste management strategies in order to reach an optimal social or environmental result.
19. In addition, due to the fact the waste management market is more than likely not constant throughout Wales, that is to say peripheral rural Wales versus urban Wales – any analysis carried out on the market position needs to be considered at a local authority level. This is a timely and lengthy exercise, therefore whilst this market analysis is being carried out the WLGA would urge the Commission to apply the Services of General Interest argument.
20. The extent of the waste management market in Wales is unclear, in terms of both capacity and the range of products that are recycled. The effectiveness of any market is also unclear. It could be argued that without public intervention recycling would not occur. In addition the situation might prevail whereby there is a market but the market does not operate in such a way as to lead to the optimal social or environmental result.

21. The WLGA recognises the need to further develop the recycling market in support of meeting key landfill targets set by the European Commission. However, the market in this area is often immature and undeveloped with a requirement for 'pump priming' to develop the necessary technology and capacity in the market. At present, it seems that such aid is awarded under the SME Block exemption or in line with the Regional Aid Guidelines as there is no direct provision for such support under the existing environmental aid guidelines.
22. The proposed draft for environmental protection states that (point 110 (c)):
"the investment goes beyond the "state of the art" or uses conventional technologies in an innovative manner".
The WLGA advocates that this clause will limit the usefulness of the guidelines in support of 'pump priming'.
23. Currently Member States rely on the European Treaty which allows each Member State to define what services they consider to be provided in the 'services of general economic interest (SGEI)'. The UK Government is firmly against a European level definition of SGEI due to the changing economic landscape and the fact that many public services are becoming more economic in nature, especially in the UK. We would urge the Commission to respect this Member State authority.
24. With regards to the application of funding as compensation for provision of Services of Economic Interest in relation to the position of waste management, the European Commission has stated within Section 3.4 of its White Paper on Service of General Economic Interest (COM 2004 374) that:
"In line with the Union's policy on sustainable development, due consideration has to be taken also of the role of services of general interest for the protection of the environment and of the specific characteristics of services of general interest directly relating to the environmental field, such as water and waste services."
25. In the context of waste management in Wales, the purpose is effectively to reduce reliance on landfill which in itself is an environmental issue within Wales, and if it is not

economically viable for an entity to undertake such activities (disposal other than by landfill) in a particular area it can be argued such activities can be viewed as SGEIs.

26. The WLGA believes waste management activities of local authorities, form part of the core public functions of local authorities in Wales. As such, public funding to facilitate the undertaking of such a function may not trigger State aid issues, as it forms a part of a public bodies function as an emanation of the State.
27. Due to the fact that local authorities are involved in the normal activities of the State through the public sector and as such are not classed as undertaking involved in economic activities, state aid will not apply.
28. Local authorities have a duty under UK domestic law to collect and manage municipal waste. As a result the Association believes that State aid rules should not apply because local authorities are involved in the normal activities of the public sector and as such are not classed as undertakings involved in economic activities. The same principle is used for the private education market – where funding of local authority schools is not a breach of the State aid rules.
29. It is clear that as part of their functions under the Environmental Protection Act 1990 local authorities in Wales may choose to recycle waste. It seems sensible therefore to suggest that it is possible to distinguish between waste collection and disposal and recycling. As a result the Commission should consider these as separate markets for State aid issues.
30. Additionally, local authorities are required, as part of their obligations to dispose of waste, to divert waste from landfill (the Waste and Emissions Trading Act 2003 and the Landfill Allowance Scheme (Wales) Regulations 2004). Recycling is the primary way in which local authorities met these legal obligations. As a result the WLGA believes that state aid should not apply – and seeks clarification from the Commission on this issue.

Additional comments

31. The WLGA suggests that once adopted, these Guidelines are reviewed in 2010 in order to take into consideration changes over the first 2 - 3 years of implementation.

32. The Association would urge the European Commission, in the context of the ongoing Systematic dialogue with national local government associations, to ensure that local government continues to play a pivotal role in state aid policy, through continued consultation and increased transparency.

33. The WLGA looks forward to providing further details on these issues when the Commission consults wider on the draft Community Guidelines for State Aid for Environmental Protection in the autumn.

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