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# Sustainability Considerations in Recent Law-Enforcement Practice

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# After this close in: broader perspective

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## **Sustainability, Clean Energy, State Aid**

1. What are we doing in State Aid law?
2. What are the broader considerations the Commission has to balance
3. State aid in the enlargement – neighbourhood context
4. Broader Geopolitical Influences and the Developments in State Aid
5. Other options for State aid rules to advance clean energy



# What are we doing in State Aid law?

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## 1. Identifying State aid (main elements):

- *Seletive advantage* (favouring and providing a benefit)
- *By the State* (who is the State: e.g. SOE)
- To an *undertaking* (markets involved/potential to distort)

## 2. Can we allow this aid (tools):

- *107(2) TFEU/Article 106 TFEU*
- *107(3) (may be declared → discretion)*
- *Infrastructure*
- *Environment*



# What are the broader considerations the Commission has to balance?

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**Starting point:** Limits of power of the Commission/EU (principle of subsidiarity)

→ *It is in general for the Member States to decide how to spend their money*



**But:** Limit where State aid effects cross-border trade and competition within the internal market

→ *prevent the danger of 'doping' own industry with State money*

→ *prevent the subsidy/State aid race*

**But but:** Good reason to provide support: R&D, unemployment, sustainability/renewable energy, energy security



## Commission's tool for influence:

- Conditions set as part of its discretion for approving 'aid'
- Main tool: guidelines

# State aid in the enlargement - neighbourhood context

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## 1. Preparation of full compliance with EU rules

## 2. Before

Opening up markets:

- a) Target: support for national champions e.g. in the energy sector
- b) Transparency/value for money/anti-corruption



# Broader Geopolitical Influences and the Developments in State Aid

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## General Pressure to loosen control (also for clean energy)

### Push Factors:

- Climate Change/Paris Agreement
- COVID
- Subsidy race: Biden's clean energy push
- Russian war against Ukraine and energy prices hikes
- China's renewable/electrical vehicles challenge
- Trump's geopolitical/economic power play



### Commission's reaction:

- Revision of the Climate change and energy guidelines
- Temporary Frameworks

➔ *More freedom to provide aid for clean energy*



# Other options for State aid rules to advance clean energy

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## State Aid **CARROT**:

- Exemption by the Commission for clean energy

## The **STICK**:

- More than 111 billion € of fossil fuel subsidies per year in the EU
  - % of this will be State aid (our earlier estimate: more than 60%)
- Investigating legacy aid for fossil fuel
- Preventing new aid for fossil fuel



# Conclusion

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- State aid law is limited in purpose
- State aid law navigates the difficult field of societal benefit (e.g. clean energy) and distortion of competition
- State aid law as tool of the Commission to steer direction of Member State funds
- Clean energy and State aid law:

➔ *Think not only carrot but also stick*

