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State Aid at the service of Sustainable Development

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The fight against climate change and the desire to make Europe the first climate-neutral continent by 2050 have become central priorities for the European Commission. The European Union is committed to leading the world by example in what must be seen as the current generational purpose to ensure the sustainability of the planet's resources.

The [European Green Deal](#) is ambitious, challenging and comprises several areas of action. Thus, political and legislative changes are foreseen, aiming, among others, (i) a transition to cleaner and affordable energy, (ii) an industrial mobilization for a true circular economy, (iii) the design of a greener food system, (iv) the acceleration in the creation of sustainable and intelligent mobility solutions, and (v) ensuring that construction and renovation are done efficiently in terms of energy and resource use.

These objectives are not called into question by the current economic crisis scenario, caused by the COVID-19 pandemic. There seems to be a broad consensus that economic recovery should go through a continued and growing commitment to the objectives set out in the European Green Deal. Both the European Commission and the [European Parliament](#), on the one hand, and [several environment ministers](#) on the other, have argued that the European Green Deal and Digital Transformation should be the foundations of the EU's economic recovery. The European Union appears to be focused and dedicated to implementing the idea of "*never waste a good crisis*".

One should bear in mind that, from an economic point of view, some of the solutions to be implemented may prove unviable, due to their cost, complexity and the lack of sufficient incentives for companies to invest. It would be naive and unrealistic to consider that companies would be available to implement projects that, *ab initio*, did not present conditions to succeed in the market. Something even more evident in a post-COVID-19 context.

State aid is, therefore, a very important resource, giving companies access to resources that they would not be able to obtain on the market. An example is the European Commission [decision SA.55100](#), which found compatible a Polish aid for the construction of a thermal power station for the use of waste as a source of energy in the City of Gdańsk.

State aid must be notified to the European Commission so that it can assess its compatibility with the internal market. However, EU's legislation exempts certain categories of aid from the notification obligation, provided that the conditions are met: this is the case with investment aid for the recycling and reuse of waste. However, this category of aid does not include the construction of infrastructure that intends to use waste for energy production.

The project will be implemented through a public-private partnership between a municipal company and a private company selected on the basis of public procurement rules. It is estimated that the aid now approved will enable the annual absorption of 160,000 tonnes of waste, and a reduction in the use of fossil fuels in energy production. In assessing the compatibility of this aid with the internal market, the Commission came to some noteworthy conclusions:

- The goal is to achieve primary energy savings, which will be made possible by the fact that the power station produces electricity in a highly efficient way (§40);
- The waste will be burned according to the hierarchical principles for waste treatment defined in EU law (§41);
- The project will contribute to the reduction of CO2 emissions and the amount of waste in landfills (§43);
- Additionality is proven: without public support the companies would not have a sufficient incentive to invest, given the lack of profitability (§46);
- Even with public support it is not expected that the beneficiary of the aid will make excessive profits from the construction and operation of the project (§58);
- The aid, due to its nature, favours environmentally friendly technologies and products at the expense of other, more polluting ones, but without this leading to undue distortion of competition, since it is intrinsically linked to its objective (§61).

Hence, in the light of the above considerations, the European Commission has declared the aid compatible with the internal market as it serves a **goal of common interest**, there is a **need** for the aid to be granted, it is **proportional** and no undue distortions of competition can be expected.

This decision by the European Commission seems to be a good guide for future investments in these areas. In this sense, and in accordance with the revision of its own [guidelines on public aid in the fields of the environment and energy](#), it will be interesting to see how the European Commission will take on board some of the lessons learned from this decision. The revision of the existing guidelines is, moreover, an important sign of the path that the European Commission proposes to take.

Even bolder would be to enshrine this kind of aid as a category exempt from notification under [Regulation \(EU\) No 651/2014](#), as it would have a positive impact on promoting this type of important measure by removing an administrative barrier to responsible environmental projects. Naturally, in such a scenario, it would be imperative to establish an appropriate framework respecting conditions compatible with the internal market, and the SA.55100 decision (in particular as regards the abovementioned conclusions) could be used as an example. A step such as this could prove to be fundamental in reversing the depletive and degrading trend of the ecosystem, which is increasingly urgent nowadays and which, even in the immemorial period in which we live, cannot be neglected.