

**DRAFT COMMUNITY GUIDELINES  
ON STATE AID FOR ENVIRONMENTAL PROTECTION**

**UNICE PRELIMINARY COMMENTS**

1. INTRODUCTION

These preliminary comments are intended to outline UNICE's position regarding the Commission's draft guidelines on state aid for environmental protection. The comments are based on the draft dated 27 January 2000.

UNICE appreciates being given the opportunity to exchange views with the Commission and hopes that close consultation and cooperation between Commission officials and UNICE on this important subject will continue in the upcoming period.

UNICE would welcome the opportunity to provide the Commission with further remarks as and when it receives a new draft of the guidelines. UNICE would therefore kindly ask the Commission to submit to it a copy of a new draft of the guidelines once this is available in order to allow it to comment in good time.

UNICE notes that one of the main reasons why the Commission considers it opportune to adopt new guidelines on state aid for environmental protection is to explain its policy towards new forms of state aid, such as tax reductions and exemptions or systems of guaranteed prices, that are granted by the Member States. In this context, UNICE would like to point out that many aspects of these forms of state aid are already dealt with relatively satisfactorily under current guidelines.

UNICE has consistently held that strict control of state aid, on the basis of clearly defined criteria, is necessary to prevent distortions of competition in the internal market. UNICE has repeatedly called on the Commission to define these criteria through guidelines and block exemptions, while at the same time urging it to ensure that any new guidelines or specific block exemptions do not undermine the efficiency of state aid controls.

UNICE therefore welcomes the Commission's initiative to define more clearly its policy towards state aid for environmental protection, although it has strong reservations regarding some elements of the draft guidelines. These reservations and suggestions for further development of specific points of the suggested Commission guidelines are set out below.

2. DEFINITION AND SCOPE

According to the Commission, the guidelines apply to aid to protect the environment in all sectors governed by the EC Treaty, including those subject to specific Community rules on state aid, such as steel-processing. UNICE notes that in fact the existing guidelines on state aid for environmental protection will continue to apply to the steel-processing sector covered by the Treaty establishing the European Coal and Steel Community until July 2002. Commission guidelines are not the appropriate legal instrument to amend this arrangement; for that a unanimous Council decision is required. UNICE therefore suggests that the Commission amends the reference in the draft guidelines to the steel-processing sector.

Furthermore, UNICE notes that in addition to the fisheries sector, the provisions of the Commission's notice on the *de minimis* rule for state aid also do not apply to the steel-processing sector.

### 3. CONTROL POLICY FOR STATE AID IN THE ENVIRONMENTAL FIELD

UNICE is concerned that section C of the draft guidelines, which sets out the theoretical principles that underpin Community policy on the environment, gives insufficient prominence to the overarching principle of sustainable development. This principle requires that environmental legislation should strike a balance between the three objectives of improved environmental protection, the well-being of the Union's citizens, and the need for economic progress. The need for economic progress is in particular being expressed through the maintenance and improvement of European competitiveness. UNICE notes that the "polluter pays" principle and the associated concept of "internalisation of costs", are merely the tools used to apply the environmental part of sustainable development.

UNICE therefore strongly believes that the Commission, when applying state aid rules in the environmental field, should give equal consideration to preservation of EU competitiveness as it does to improved environmental protection and urges the Commission to amend the guidelines to that effect.

### 4. GENERAL CONDITIONS FOR AUTHORISING ENVIRONMENTAL AID

#### *Rules applicable to all operating aid in the form of tax reductions or exemptions*

UNICE is encouraged that the Commission, at para 16, considers that its policy on the control of state aid for environmental purposes needs to ensure the competitive functioning of markets, while promoting completion of the single market and increased competitiveness in firms.

UNICE is therefore surprised that the Commission proposes, at para 55 and 56, that, regardless of the nature of the tax levied on certain activities for reasons of environmental protection in question and its effects on individual sectors in certain Member States, reductions or exemptions from that tax should only be permitted in the case of new taxes if their rate reduces over time and if they are limited to five years, and that derogation schemes for the energy sector are only renewable on the condition that the level of derogation would be less in the second period than the first.

UNICE believes that reductions or exemptions from particular existing and new national environmental taxes, which by their nature substantially increase production costs for individual sectors in certain Member States, should be permissible insofar as they provide compensation for

the substantial cost increase which is not inflicted upon their competitors in other Member States. That will allow the sectors concerned to remain competitive vis-à-vis their EU competitors which are not affected by the tax in question whilst appropriate environmental protection incentives are maintained.

UNICE considers that environmental tax reductions or exemptions that are necessary to counterbalance a competitive disadvantage should be permissible because they contribute to a level playing field for companies operating in the internal market and are relevant for Member States' environmental protection policy.

UNICE therefore urges the Commission to take into account the specific nature of an existing or new national environmental tax measure, as well as its effects on the competitive position of the sectors concerned in the internal market, when assessing the compatibility with the common market of a reduction or exemption from the tax in question, and permit such reductions or exemptions insofar, and for as long, as they are necessary to repair a competitive disadvantage suffered by companies as a result of that tax vis-à-vis their EU competitors.

In addition, the Commission should also take into account competition from third countries. Environmental tax reductions or exemptions that are necessary to repair a competitive disadvantage vis-à-vis competitors that are located in countries outside the EU should also be permissible.

Lastly, UNICE would like to point out that the above remarks made in respect of tax reductions and exemptions, depending on the individual circumstances, are applicable to all environmental measures, such as taxes on energy, waste, fertilisers, etc.

## 5. POLICIES, MEASURES AND INSTRUMENTS FOR REDUCING GREENHOUSE GASES

UNICE notes that the Commission has included in the draft guidelines a section on emissions trading which merely indicates that emissions trading schemes might constitute a state aid measure pursuant to Article 87 EC. UNICE sees emissions trading as an important element of flexibility for business when contributing to Kyoto targets and therefore welcomes any attempt to introduce more clarity as regards the application of state aid rules to emissions trading. The draft guidelines are insufficiently clear to remove current uncertainty and to allow the development of emission's trading schemes already under way in several Member States. UNICE urges the Commission to clarify as a priority the criteria to enable these schemes to become operational without infringing state aid rules. In the meantime, the guidelines should clearly state that they contain no concrete policy measures as regards emissions trading.

## 6. ENVIRONMENTAL AID IN THE CEECS

In the draft guidelines the Commission states that it is aware that some of the CEEC countries are facing exceptionally serious environmental problems and that specific solutions may be needed.

UNICE would like to repeat that it strongly supports enlargement of the European Union and the Commission's basic position that the applicant countries should not be admitted into the European Union until they are able to comply with internal market regulations.

State aid is one of the key areas that need to be monitored closely before accession. The state aid provisions in the Europe Agreements were designed to maintain pressure on the applicant countries to adapt to EU standards in the pre-accession phase and are binding for these countries. Exceptions to these rules should only be allowed if at the same time clear requirements are imposed on the companies concerned to adapt to market conditions and requiring them to commit themselves firmly to meeting these conditions. In this context, UNICE would welcome clarification as regards the Commission's reference in the draft guidelines to "specific solutions".

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