

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

UNICE SUPPLEMENTARY COMMENTS

1. INTRODUCTION

These comments are intended to complement UNICE's position dated 24 May 2000 regarding the Commission's draft guidelines on state aid for environmental protection. These supplementary comments are based on the draft dated 13 September 2000.

As a preliminary remark, UNICE is encouraged to see that the Commission's new draft acknowledges more prominently that divergent environmental tax burdens on companies within the EU might adversely affect the competitive position of these European companies. Having said this, UNICE still has some reservations regarding elements of the draft guidelines. These reservations and suggestions for further development of specific points of the proposed guidelines are set out below.

2. GENERAL CONDITIONS FOR AUTHORISING ENVIRONMENTAL AID

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

UNICE is pleased that the Commission no longer proposes that reductions or exemptions from environmental taxes should only be permitted in the case of new taxes if their rate reduces over time and if they are limited to five years.

As stated in its previous paper, UNICE strongly believes that the Commission, when assessing the compatibility with the common market of a tax reduction or exemption, should take the specific nature of the national tax measure into account, as well as its effects on the competitive position of the sectors concerned in the internal market, 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 competitors located inside or outside the EU.

Reductions or exemptions from particular existing and new national environmental taxes, which by their nature substantially increase production costs for individual companies and sectors in certain Member States, should be permissible insofar, and for as long, as they provide compensation for the substantial cost increase which is not inflicted upon their competitors. This will allow the companies and sectors concerned to remain competitive vis-à-vis their competitors which are not affected by the tax in question whilst appropriate environmental protection incentives are maintained.

Having said this, UNICE recognises as sound the rationale for requiring conclusion of agreements in return for a tax exemption or reduction, but UNICE remains concerned that this policy would penalise firms already facing relatively high costs due to existing environmental taxes and/or regulations in those Member States which have taken a lead in this field. In UNICE's view, the guidelines need redrafting to take account of this.

Tax exemptions that are necessary to counterbalance a competitive disadvantage should be permissible for as long as there is a competitive disadvantage due to divergent tax regimes and the Commission should consider very carefully the circumstances in which this should depend on additional requirements such as conclusion of agreements whereby unnecessary burdens on the Member States and companies are imposed.

The Member States are usually best placed to devise the methods for achieving appropriate environmental objectives that are most suitable for their territory and the Commission should not curtail Member States' discretion in this field. It would cause unequal treatment of companies when, for instance, in one Member State companies would have to implement very costly agreements, as well as paying a residual tax (albeit at a reduced level), which would result in additional competitive burdens and restricted access to capital allowances, whilst in other Member States (e.g. where the tax is zero or low) burdens on companies would be much less. In UNICE's view, the instrument proposed by the Commission should seek to be less burdensome and inflexible to avoid hampering Member States' existing schemes. In exercising their discretion, UNICE believes it is important that the application of tax exemptions should not be taken without careful consideration of market distortions that may occur, between and within sectors.

In addition, UNICE would point out that making tax exemptions conditional on conclusion of agreements raises a number of administrative and technical problems related to the monitoring of large numbers of agreements and the establishment of environmental targets, which will undoubtedly be established case-by-case on a wide range of different bases and methodologies. For example, a target might be calculated using assumptions about the performance of new but untested technologies. It would be unreasonable to require repayment of aid where companies that have failed to achieve agreed targets, are nevertheless able to demonstrate that they have made investments which reasonably would have been expected to deliver the required improvements.

With reference to para 52, where the Commission proposes that reductions or exemptions may be granted only in the case of new taxes, UNICE believes that environmental tax reductions or exemptions may also be granted, under similar conditions, in the case of existing taxes, or amendments to existing taxes, introduced to protect the environment. It should be clearly set out in the guidelines that new derogations granted under existing or amended tax schemes are permitted under the same conditions as reductions or exemptions granted under new taxes. In this context, UNICE would also welcome more explanation as regards the relationship between para 79 and para 52.

3. POLICIES, MEASURES AND INSTRUMENTS FOR REDUCING GREENHOUSE GASES

UNICE notes that the Commission has now included in the new draft guidelines a section on economic instruments and instruments established by the Kyoto Protocol to reduce greenhouse gas reductions, which clearly indicates that, in the absence of any Community provisions in this area, it is for each Member State to formulate the policies, measures and instruments it wishes to adopt and that the guidelines are not designed to impose a particular instrument but simply to indicate how the Commission intends to address this issue in the future. The issue of whether state aid has been granted will be decided on a case-by-case basis.

As stated before, UNICE sees emissions trading as an important element of flexibility for business when contributing to Kyoto targets and would welcome more clarity as regards the

application of state aid rules in this respect. UNICE notes that the draft guidelines are still insufficiently clear to remove current uncertainty and to allow the development of emissions trading schemes already under way in several Member States. UNICE would therefore repeat its request that the Commission clarifies the criteria to enable these schemes to become operational without infringing state aid rules, once interested parties have been consulted.

4. OTHER ISSUES

Rehabilitation of polluted industrial sites

The Commission proposes at para 39 that, in cases where the person responsible for polluting industrial sites is not identified or cannot be made to bear the costs of rehabilitation, the owner of the land performing the rehabilitation may receive aid of up to 100% of the costs of the work less the increase in the value of the land.

In this context, for the sake of clarity, UNICE would welcome an express reference permitting Member States' schemes that seek to ensure rehabilitation of polluted sites in cases where the polluter cannot be made to bear the costs because he is not liable for the damage, through conclusion of environmental agreements that grant firms financial compensation for carrying out clean-up or containment measures and discount the increase in the value of the land in a global manner, provided the financial compensation does not exceed 100% of the eligible costs. This would also be coherent with Commission policy on environmental agreements (Communication from the Commission to the Council and the European Parliament on Environmental Agreements, 27 November 1996, COM (96) 561 final).
