



5 November 2007

## STATE AID Community guidelines for state aid for environmental protection – preliminary draft 3

### 1. INTRODUCTION

BUSINESSEUROPE has already reacted to the first preliminary draft of the Community guidelines for state aid for environmental protection and is now pleased to comment on the version which will be discussed with the Member States at the second multilateral meeting.

As a preliminary remark, BUSINESSEUROPE would like to stress once more that several European Council decisions have called on the Member States to continue working towards a reduction in the general level of state aid. State aid is often the second best solution and it should be verified whether other less distortive measures could remedy relevant market failures. State aid should be the appropriate policy instrument and should be designed so that it effectively solves the market failure whilst not distorting competition to an extent contrary to the common interest. It is important that state aid measures for environmental protection should lead to a higher level of protection that would not occur without the aid, that they bring about transparency, and that the positive effects of the aid should outweigh the negative effects so that there is no undue distortion of competition.

As a second initial point, BUSINESSEUROPE would like to repeat its suggestion to make provision in the new guidelines to ensure that payment of new aid is suspended for companies that have not repaid previous illegal and incompatible aid in order to also implement the Court of Justice's *Deggendorf* case law in this area as it has been in the guidelines for state aid for rescuing and restructuring firms in difficulty and the new draft General Block Exemption Regulation.

Having said this, BUSINESSEUROPE is pleased that some of its suggestions regarding the first draft have been included in the new draft. Unfortunately, there are still points which in BUSINESSEUROPE's view would improve the guidelines if they were to be adopted. These points are set out below.



## **2. PRELIMINARY DRAFT COMMUNITY GUIDELINES (THIRD VERSION)**

### *State aid for carbon capture and storage projects*

As stated previously, BUSINESSEUROPE welcomes that state aid for carbon capture and storage (CCS) projects is possible but it continues to believe that it is important for the planning and implementation of CCS projects (which are essential for the development of clean energy) that the guidelines expressly accept that state aid for CCS projects is necessary considering that there is at present no market for CCS solutions and that the costs and risks are too high to attract private investors. The new guidelines should also allow the Commission the flexibility to approve aid for other technologies than CCS that are capable of delivering the required environmental solutions.

### *State aid for energy-saving measures*

The draft guidelines still only refer to action which enables undertakings to reduce the amount of energy used in their production cycle (see para 60 under b). BUSINESSEUROPE believes that action taken within plants or production units with a view to improving energy efficiency (e.g. renovations of buildings) should also be covered provided that this does not subsidise companies' normal expansion or change of production equipment. The fact that, under para 81(c), any cost savings resulting from such investments would be offset against the eligible costs would ensure that extending as proposed the purposes for which aid could be granted would not distort competition.

### *State aid for renewable energy sources*

As stated before, BUSINESSEUROPE believes that the use of renewable energy should be a profitable alternative for companies and that the proposed method for calculating eligible costs could deter such investments. The guidelines state that eligible costs must be calculated net of any operating benefits or costs for the first five years of the investment (see para 89). However, since companies expect to make returns on their investments, five years would be disproportionate in BUSINESSEUROPE's view. Two or three years would be more appropriate, otherwise there is a danger that companies would not be encouraged to invest in renewable energy sources.

Additionally, the draft guidelines state that operating aid through systems which allow producers to benefit indirectly from guaranteed demand for their energy at a price above the market price for conventional power may be authorised but that such authorisation will be for a period of ten years (see para 94). The same time limitation applies to aid in the form of tax reductions or exemptions. This wording could give rise to uncertainty as to whether such aid can be re-notified and re-authorised after the period of ten years. BUSINESSEUROPE is thus pleased that it is now clarified in para 61 that a Member State has the possibility to re-notify aid measures after the time limits have passed.



BUSINESSEUROPE equally welcomes that large hydropower installations are no longer excluded from the definition of renewable energy sources.

Lastly, BUSINESSEUROPE believes that high standards for energy and resource efficiency, cost-effectiveness and environmental performance should be met when considering possible state aid to resources that can be applied both as material and energy source to allow the greatest value to be extracted from their sustainable use and to avoid unfair competition on the raw material market. In this context it welcomes the lower intensities for biomass.

#### *State aid for waste management*

Para 108 seems to indicate that investment aid may only be granted for the management of waste of other undertakings. Considering that according to para 45, aid may also be granted to the producer of the waste under section 3.1.1, BUSINESSEUROPE suggests, in order to avoid confusion, that it is clarified in the context of section 3.1.8 that aid for waste producers is also possible.

#### *State aid in form of tax reductions or exemptions*

Although BUSINESSEUROPE in principle supports that reduction regimes may be declared compatible with the common market for a maximum period of ten years for non-harmonised taxes, it still believes that the requirement that companies pay at least 20% of the tax is too high (see para 123). BUSINESSEUROPE continues to believe that 10% would be more appropriate, particularly for those countries that have adopted high environmental taxes and raised them several times. If the tax base is extended, for example to new products or sectors, 20% is a high starting level.

Furthermore, BUSINESSEUROPE still believes that the limitation of the compatibility of reduction regimes for a maximum period of ten years with respect to harmonised taxes is unreasonable considering that Council Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products and electricity provides minimum tax levels which have to be considered by the Member States and which represent the significant proportion of the tax agreed by the Council without time limits. Harmonised tax measures should thus be compatible with the common market when minimum taxes are considered for as long as the validity of the relevant Community directives.

With respect to para 123 under b, it appears that only beneficiaries with demonstrably irreducible consumption or emission level are exempted from concluding agreements. BUSINESSEUROPE suggests that it is clarified in this context that this standard will be assessed with reference to the concept of best available techniques. This would also ensure consistent application across the Member States. Moreover, with respect to the agreements, BUSINESSEUROPE believes that the requirement to specify all the measures and investments concerned is too strict considering that often (umbrella) agreements just contain targets without specifying the concrete measures and investments which are necessary to achieve these environmental protection objectives. Maintaining this



requirement could also easily lead to uneven application across the EU which would distort competition between firms in more flexible Member States and those located in more prescriptive ones. In any case, BUSINESSEUROPE would welcome more guidance, e.g. in a footnote, on the practical application of this section of the guidelines.

Lastly, BUSINESSEUROPE believes that the revision of the environmental guidelines should take account of the double regulation problem which is caused by the use of CO2 quotas and CO2 taxes which both entail economic costs regardless of whether the quota has been allocated for free or has been bought considering that the alternative of using the quota would be selling it on the market.

#### *Aid involved in tradable permit schemes*

BUSINESSEUROPE notes that it is no longer proposed that new entrants shall receive permits or allowances on the same conditions as existing undertakings operating on the same markets. The differential treatment between new entrants and existing undertakings that is now possible (provided that no undue barriers to entry are created) is regrettable and should only be allowed when proportionate and environmentally justifiable. BUSINESSEUROPE therefore suggests that the last sentence of para 125 (d) is replaced by the following text: 'Granting higher allocations to existing installations compared to new entrants should not result in creating disproportionate barriers to entry, and such differential treatment must in particular be suitable and necessary for attaining the environmental objective of the tradable permit scheme'.

#### *Incentive effect*

As stated before, BUSINESSEUROPE is worried that requirements regarding an incentive effect will give rise to legal uncertainty. They place companies in a situation where they cannot be certain whether the documentation provided is sufficient. The requirements would also lead to an increase in burdens which is difficult to reconcile with better regulation objectives. In any case, as proposed in the general block exemption regulation, tax measures should be completely exempt from an incentive effect analysis.

#### *Proportionality of the aid*

BUSINESSEUROPE still believes that more clarification should be given with respect to the proposal that there should be effective penalty arrangements if the beneficiary of aid does not respect agreed conditions (see para 155).

#### *Reporting and monitoring*

BUSINESSEUROPE welcomes the less strict reporting and monitoring requirements proposed for tax measures, although, as stated above, it believes that there should not be any explanation necessary regarding an incentive effect in this context.



With respect to the annual reports which the Commission will publish on the internet, BUSINESSEUROPE would still welcome a confirmation that company sensitive information will not be made public.

### *Better regulation*

As stated before, BUSINESSEUROPE still believes that an impact assessment carried out in accordance with the Commission's impact assessment guidelines could provide valuable insights into the practical functioning of the new rules and provide the Commission in addition with an opportunity to assess and quantify any changes in administrative burdens which will result from the new policy.

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