POSITION PAPER

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# BUSINESSEUROPE VIEWS ON THE COMMISSION DRAFT ENVIRONMENT AND ENERGY STATE AID GUIDELINES

## PRELIMINARY COMMENTS

### *Rationale and main objectives of the revision*

1. BUSINESSEUROPE agrees that the pursuit of environmental objectives has had such a profound impact on energy markets that it is appropriate for the Commission to enlarge the scope of the environmental aid guidelines to encompass energy issues. Climate change and energy policies are now inextricably interlinked.

2. The main aim of state aid control is to reduce market distortions within the single market. In theory, the fewer the market distortions in place and the closer to free market conditions that markets become, the more competitive the market players become. Energy markets however are frequently highly regulated. The pursuit of environmental policies tends to further complicate regulation. Furthermore, there is inadequate cross-border competition due to limited cross-border interconnection. The costs of environmental policies are often reflected in energy prices and therefore affect energy consumers. We therefore agree that the ultimate goal of state aid control should be to improve competitiveness in energy production and supply, but are concerned that the existing market structures can be an obstacle to this objective.

3. The competitive impact of energy and environmental policy is currently felt both on the consumption side and on the supply side. It is therefore important that the revision of guidelines addresses also the loss of competitiveness caused to energy consumers, and energy intensive industries in particular. An important goal of state aid control must be to ensure that European industry maintains its competitiveness, while minimising market distortions within the Union.

### *Key considerations for the review of the guidelines*

4. We agree that carbon abatement will be achieved at lowest cost if policy measures are designed to be technology neutral, allowing the market to select the most cost effective technologies. Accordingly we strongly support the concept of technology neutrality being incorporated in future guidelines.

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5. The Commission has correctly identified the problems for system stability created by the increasing proportions of renewable generation in many Member States. The need to invest in flexible instruments to accommodate RES variability and guarantee security of supply will inevitably push up the average cost of power generation and may increase overall costs to consumers, so it is crucial that Member States are encouraged to adopt cost-effective means of ensuring system security. In principle, this means allowing the market to encourage the required system stability and generation adequacy services. The following measures should be prioritised in improving generation adequacy: removal of market distortions, integration of electricity markets, level playing field for all technologies and development of properly remunerated demand-side responses. The future guidelines should in any case encourage the adoption of the most competitive solutions in a technology neutral way.

6. Differing uses of state aid across the Member States to provide for system security may complicate the completion of the single market for energy. A great market distortion could well be caused by the varying impacts of such measures on the competitiveness of consuming industries in different Member States (if for example the cost of a subsidy scheme is spread across the power market as a whole, rather than being covered by state resources). The guidelines should take account of this factor.

7. We are concerned by the statement (paragraph 24) that "it **may** be necessary to consider how the increasing costs of rendering the energy system more sustainable and more secure are shared across the different market players" [emphasis added]. This is not an option, it is a necessity. Decarbonisation programmes across the EU are impacting severely on the competitiveness of energy intensive industries, creating artificial costs not borne by competitors. It is these programmes that are creating market distortions in the consuming sectors, not measures put in place to ameliorate their worst impacts. In many Member States a tipping point is being reached as a result of the cumulative impact of a multiplicity of EU and national policy measures. It is crucial that the guidelines permit state aid measures that fully offset the cost impacts of decarbonisation policies on energy intensive sectors.

8. Paragraph 24 refers to the EU ETS Directive, which sets the precedent of allowing Member States to compensate electro-intensive sectors for the indirect costs of carbon trading. It is worth repeating that the EU ETS is just one measure amongst many, the cumulative burden of which at national level needs to be understood by the Commission.

9. Improving resource efficiency must be a key objective for the EU. EU energy prices are already so high compared with key competitors that market pressure alone may be sufficient to drive industrial energy efficiency – and are demonstrably so in the case of energy intensive industries. Priority should be given to implementation of existing measures for energy efficiency.

10. BUSINESSEUROPE agrees that resource efficiency must a key objective for EU environmental policy (paragraph 25). In the case of energy, EU prices are already so high compared with key competitors that market pressures are often sufficient to drive industrial energy efficiency – particularly for energy intensive industries. BUSINESSEUROPE agrees that State aid measures to promote resource efficiency

should only be allowed to the extent that unaided investments in resource efficiency would not yield an adequate rate of return.

***Harmonise and simplify rules, in particular encourage the use of GBER***

11. Any simplification of the rules would be welcome. We agree that the use of counter-factual analyses can pose particular problems and do not necessarily provide a robust and predictable means of determining compatibility.

12. Extending the scope of the GBER in this area would in principle be acceptable provided the rules on both eligibility and aid intensity are very tightly defined. As an example, the rules on competitiveness aid in the EU ETS state aid guidelines give a precise definition of eligibility and an explicit calculation of aid intensity, leaving Member States no flexibility of interpretation (other than to pay less or no aid). This category of aid could therefore be included in the GBER with no risk of increased distortions.

***Energy infrastructure***

13. Investment in energy infrastructure should in principle be financed by the market. Also, before turning to State aid to ensure the development of energy infrastructure, BUSINESSEUROPE believes that the relevant basis for energy infrastructure development should primarily be left to the regulatory instruments and procedures included in the third internal market for energy package. However, we agree that in certain instances (as identified by the Commission) it may not be possible for the market by itself to fund desirable infrastructure investments without state intervention.

14. It may make little difference to competition whether this intervention takes the form of state aid or the imposition of a market mechanism. Ultimately, the main difference relates to who pays the cost: energy consumers or taxpayers. Where market mechanisms result in energy consumers paying higher prices, energy intensive consumers should in principle be eligible for competitiveness aid.

15. We agree that an obligation to provide third party access should be a condition for the approval of aid for infrastructure.

16. While BUSINESSEUROPE agrees with the objective of encouraging the improvement of cross-border interconnection, we are not sure that “nationally focused infrastructure without a clear cross-border benefit” should automatically *per se* require a stricter test than state aided investment in cross-border interconnection. One might say that investment in cross-border interconnection should be facilitated, without necessarily penalising other types of investment. For these, the key determinant should be whether they would not be made without the aid, based on an examination of internal rates of return.

17. We agree that market arrangements (provided they are not funded indirectly by energy consumers), including demand side measures, should in principle be encouraged in preference to state aid.

***Issues of system stability and generation adequacy***

18. We agree that capacity mechanisms should only be introduced where a detailed analysis has proved that the market is incapable of ensuring system stability (or generation adequacy). The most efficient solutions should be encouraged, be they the installation of additional generation capacity or demand side responses.

19. As regards investment in infrastructure, although there is merit to such measures, it must be borne in mind that they require long-term implementation, while system stability problems caused by increasing penetration of intermittent RES need to be addressed in the short to medium term.

20. Capacity mechanisms can involve state aid, but can also take the form of market mechanisms where the costs are spread amongst consumers. In the latter case, energy intensive consumers should be eligible for competitiveness aid.

***Support to low carbon energy sources***

21. We agree that the state aid rules should as far as possible follow the principle of technology neutrality, so as to minimise the cost to society of decarbonisation. It follows that the state aid rules themselves should not discriminate between different forms of low carbon generation.

22. We agree that RES (and other low carbon) support systems should be designed with degressivity built in, so as to minimise the risk of over-compensation and the consequent costs to the economy. Any RES support should be designed as start-up financing and be progressively phased out in order to avoid permanent subsidisation. RES support schemes also need to be designed in a more coordinated and targeted way.

23. The Commission suggests (paragraph 62) that the use of more market-based systems should be encouraged. To the extent that such schemes are more cost-effective, we would agree. However, it must be borne in mind that market-based schemes which spread the costs across energy consumers (as opposed to direct state funded support, paid for by the taxpayer) impact disproportionately on energy intensive consuming sectors.

24. Support schemes should expose electricity generation to market dynamics (e.g. competition between technologies and exposure to wholesale prices). Investment aid is usually the preferable option as it is a one-time payment and as such is likely to distort market price signals less.

***Exemptions from environmental taxes or other charges on electricity consumption***

25. The current EAG, in addressing only the issue of aid for the effects of environmental taxes, no longer fit the more complex needs of today's energy and climate change policy landscape.

26. In particular, the current revision needs to clarify and create legal certainty as to the relationship between the guidelines and the revision of the Energy Tax Directive, and in particular reduction and exemption schemes in line with the Energy Tax Directive should be considered compatible under State Aid rules.

27. The purpose of the EU Emissions Trading System (ETS) and a CO2 tax is to reduce emissions. The quota regulation and the tax regulation have the same effect on the marginal costs of the business and represent the same marginal incentive to reduce the CO2 emissions. The double regulation by taxes and quotas will not lead to any further CO2 reduction, but only increase the firms' costs. The revised guidelines should address this double burden regulation, and ensure that companies do not suffer from this problem, as this burden is both inefficient and distorts competition.

28. The ETS guidelines already establish the precedent that competitiveness aid should be given to offset the increased costs from policy measures incurred by energy intensive industries. It is vital that this precedent should now be consolidated and extended to similar situations.

29. We agree that to meet this changing environment, a simpler test should be developed, related to sectors' or companies' ability to pass on the additional costs, without loss of market share in either the EU or export markets.

30. However, we are concerned that the reference (paragraph 67) to the need to "preserve the price signal" misunderstands today's complex situation. Energy intensive consumers are subject to a multiplicity of additional costs imposed on them via both taxation and interventions in the energy markets, in addition to the impact of EU ETS. The situation varies enormously across the Member States, but in many countries the cumulation of these burdens means that a tipping point is now being reached where policy-related energy costs are making manufacturing in the EU unsustainable. In this situation the concept of a price signal becomes spurious. If for example a company is subject to five cost-increasing measures, and if a Member State proposes to provide some form of offsetting relief for each of those measures, restricting the aid intensity of each relief to say 80% would result in a large residual burden that would continue to distort competition. This large residual burden could not possibly stimulate the company to become more energy efficient: as previously stated, the high price of energy (before the addition of policy measures) in the EU already incentivises energy intensive manufacturers to maximise their energy efficiency.

31. Equally with regard to paragraph 68, we assert that competitiveness aid in this context aims to compensate for policy-induced costs that themselves distort competition. Such aid therefore in fact has "a high potential" to **reduce** distortions of extra-EU competition. Furthermore, such aid by helping ensure that manufacturing

activities remain in the EU **does** contribute to growth (or at the very least helps prevent economic decline) – and, for the reasons stated in the previous paragraph, in a sustainable way. As previously stated, energy prices are so high in the EU that the efficient use of energy is already maximised by energy intensive industries.

32. We therefore maintain that allowing aid to offset the cost burdens of the Member States' decarbonisation programmes is crucial to the survival of energy intensive manufacturing in the EU. This applies both to the effects of all **types** of support programme (taxes, certificate schemes, market interventions etc.) and also to a variety of **objectives** for such schemes. In other words, competitiveness aid must not only be permitted to offset the costs of RES support schemes, but also for the costs of supporting other low carbon technologies, capacity mechanisms and infrastructure support schemes.

33. Finally, we notice that one condition of the Commission's analysis of the necessity of a notified aid measure is that the environmental tax without reduction must lead to a substantial increase in production costs for each sector or category of individual beneficiaries. This condition seems to favour member states having few large environmental taxes, compared to those with a large number of rather small environmental taxes, which - viewed in isolation – do not lead to a substantial increase. However the cumulative effect of many small environmental taxes does in fact have a negative effect on competiveness compared with other member states, which can benefit from tax exemptions.

***Other issues***

34. There are instances of low carbon support schemes in some Member States which do not involve state aid: there is no transfer of state resources, but rather the cross-subsidisation of e.g. renewables is achieved entirely within the structure of the electricity supply market, albeit as a result of a legislative requirement. Similarly, when that market mechanism is structured in such a way that the costs of the cross-subsidisation are spread unevenly across different categories of consumer so as to shield energy intensive consumers from otherwise intolerable cost burdens, the resultant support provided to those consumers is also not state aid. We do not seek in any way to question the legitimacy of such systems nor to suggest that they should be brought within the ambit of state aid control. We do however assert that the Commission must take into account the effects of such schemes when assessing whether proposals by other Member States that have the same objective and effect, but do comprise state aid, would distort intra-EU competition.

35. We also suggest that the "Deggendorf" principle is incorporated explicitly in the revised guidelines, to the effect of suspending the payment of a new compatible aid until the beneficiary has reimbursed previous unlawful and incompatible aid that is subject to a recovery decision.

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