BUSINESSEUROPE

THE DIRECTOR GENERAL

Mr Alexander Italianer
Director General
Directorate General for Competition
European Commission
200 rue de la Loi
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21 November 2013

Dear Director General, Dear Alexander,

I am writing to you in view of the upcoming discussion among Directorates General on the ongoing **revision of the Environment and Energy State Aid Guidelines**.

I would like to point out some crucial points that in BUSINESSEUROPE's view should be taken into account in order to improve the competitiveness of Europe's energy market and facilitate jobs and growth creation.

The draft Guidelines can be improved to **ensure that European industry maintains its competitiveness, while minimising distortions of competition within the Union**.

It is crucial to **increase overall efficiency in renewable energies' promotion** through a streamlining and greater coordination of national support schemes. This should be achieved by improving the effectiveness and cost efficiency of aid measures for low-carbon technologies by including clear criteria in the guidelines, so to ensure more technology-neutral and market-oriented measures.

In addition, decarbonisation programmes across the EU are impacting severely on the competitiveness of energy intensive industries by creating costs not borne by competitors. These programmes are creating distortions, especially due to the cumulative impact of various EU and national policy measures adopted in many Member States. **It is crucial that the guidelines permit measures that fully offset the cost impacts of decarbonisation policies** on energy intensive sectors.

In this context, BUSINESSEUROPE would like to propose a number of specific changes to the draft Guidelines which are requested to support the Union's growth agenda and its 2020 target for manufacturing to comprise 20% of Union GDP.

1. **Eligibility**

Paragraphs 170 and 179 impose rigid eligibility criteria as they only allow for aid to beneficiaries that are already included in the ETS guidelines. Restricting eligibility only to those sectors already on a list that was established purely by reference to the indirect effects of EU ETS carbon pricing will permanently exclude other energy intensive sectors from eligibility for this type of aid, regardless of the actual impact on those sectors of decarbonisation measures adopted by Member States. This will increase the risk of carbon leakage for those sectors and will undermine the principal objective for allowing this category of aid.

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Furthermore, imposing an additional test requiring that each decarbonisation measure for which support is to be given must increase eligible sectors' production costs by an amount equivalent to at least 5% of gross value added is discriminatory. It would favour undertakings in Member States having only one or two large decarbonisation schemes, compared to those with a large number of smaller schemes, which - viewed in isolation – do not lead to a substantial increase in costs, but nevertheless cumulatively impose a considerable burden on energy intensive industries (EIIs).

BUSINESSEUROPE therefore proposes that the eligibility criteria should be amended:

(a) To allow the cumulative impact of two or more decarbonisation measures to be taken into account; and

(b) To allow Member States to propose alternative methodologies for assessing the necessity of aid, as was permitted in earlier drafts. We suggest referring to the current (2008) Guidelines and the Energy tax Directive which provide for less prescriptive criteria, referring to "a business entity, where either the purchases of energy products and electricity amount to at least 3,0 % of the production value or the national energy tax payable amounts to at least 0,5 % of the added value (article 17 of the Energy Tax Directive).

2. Tax reductions

The link between the guidelines and the revision of the Energy Tax Directive needs clarification. In particular, reduction and exemption schemes in line with the **Energy Tax Directive** should be considered compatible under State Aid rules.

In addition, any energy tax exemptions allowed by the Energy Tax Directive and not going beyond the stated minimum rates should be automatically considered in line with state aid rules and fall under the revised General Block Exemption Regulation.

This would avoid unnecessary additional burdens in terms of notification and demonstration of necessity and proportionality of the aid/tax reduction in question.

3. Scope

Section 5.7 refers only to aid to aid in the form of reductions in funding support for *energy from renewable sources*. However, Member States are adopting **a wide range of other measures** due to their electricity decarbonisation programmes, including for example capacity mechanisms and infrastructure support schemes. When these measures result in additional cost burdens, Member States should have the option to provide support to EIIs to shield them also from those costs.

BUSINESSEUROPE therefore proposes that section 5.7 be amended to refer consistently aid in the form of reductions in funding support for the decarbonisation of energy supplies.

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4. Aid intensities

Paragraphs 170(b) and 181 would cap any aid at 80%-85%, as being "proportionate". The Commission normally specifies maxima aid intensities with the intention of ensuring that the level of aid given is commensurate with the minimum needed to achieve a given objective. More specifically paragraph 83 states that aid needs to be capped in order to ensure that it is "proportionate to the market failure it intends to address".

However, in the case of the types of aid addressed in paragraph 170 and in section 5.7, there is no market failure being addressed. The aid is not intended to motivate a behaviour by the beneficiary EII or to promote a particular environmental outcome. Instead, this type of aid aims to protect EIIs from international competition from the Union's decarbonisation programme.

Thus capping the aid achieves no environmental objective. Furthermore, in Member States where there are multiple electricity decarbonisation measures in place, the cumulative impact of multiple 20% residual costs can of itself seriously damage EII competitiveness.

BUSINESSEUROPE therefore proposes that exceptionally in this instance aid intensities of up to 100% should be permitted.

5. Time limits

The draft Guidelines (paragraph 181(c)) require that aid can only be paid until 31 December 2020.

BUSINESSEUROPE proposes for the same reasons as set out in point 4 above that aid should be permitted for as long as it remains necessary – in other words for as long as the conditions that initially gave rise to it remain in place. In order to ensure compliance with this condition, aid measures should be subjected to periodic reviews to ensure that the necessity test continues to be met.

Finally, we recommend a simplification of the rules. Extending the scope of the general block exemption regulation (GBER) in this area would be welcome, if rules on eligibility and aid intensity are tightly defined. For example, the rules on competitiveness aid in the EU ETS aid guidelines give are very precise, leaving Member States no flexibility. This type of aid could therefore be included in the GBER with no risk of increased distortions.

We trust you will take our comments into account and remain at your disposal to discuss the above recommendations further.

Yours sincerely,

Markus J. Beyrer