BUSINESSEUROPE

THE DIRECTOR GENERAL

Mr Alexander Italianer
Director General
Directorate General for Competition
European Commission
200 rue de la Loi
1049 Bruxelles

26 March 2014

Dear Director General, Dear Alexander,

BUSINESSEUROPE would like to provide its views on the ongoing revision of the draft environmental and energy aid guidelines.

We appreciate that overall the ongoing revision is more properly addressing some of the concerns expressed by BUSINESSEUROPE. There is however still a risk of exacerbating competitiveness losses and of higher energy prices.

As stated previously, since decarbonisation programmes are impacting severely on Europe's global competitiveness, providing the right framework for European companies to be globally competitive is decisive.

The need to address high energy costs for industry is also highlighted by the latest European Council conclusions, in particular paragraphs 14, 22 and 23. Putting in place a State aid framework that is consistent with these conclusions is therefore crucial.

You will find below our specific comments on the remaining sensitive aspects for European industry.

Exemptions for energy intensive industry

The guidelines should not only refer to aid in the form of reductions in funding support for energy from renewable sources. Member States are adopting a wide range of other measures to stimulate investment in low carbon energy other than renewables. When any such measures result in higher energy prices, Member States should be able to provide support to Energy-Intensive Industries (EIIs) also for those costs.

- **Eligibility**

  As regards the exemptions for EII, the approach of listing the eligible sectors is an improvement. While appreciating the substantial enlargement of the sectors eligible for aid in the form of reductions in funding support for electricity from renewable surcharges, we question the insufficient transparency about the criteria chosen for the definition of this list.

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Given the heterogeneity of sectors in relation to their electro-intensity, it is also right to exempt undertakings that are not listed if they comply with certain criteria. While setting the trade-intensity threshold to 4% at EU-level seems appropriate, the Commission should clarify that this takes into account both intra-EU trade and extra-EU trade, as support for renewables and the shape of the energy mix are also not harmonized at European level yet.

The 25% threshold for electro-intensity is lacking clear definition as to how the percentage is measured.. In any case the threshold appears to be set so high that it would be very difficult to meet this criterion, with the consequence that in practice too many sectors would still be excluded. BUSINESSEUROPE therefore calls for a clear definition and a lower threshold.

- **Proportionality**:

  Capping aid at 80% (by requiring EIIs to pay at least 20% of additional costs) to ensure proportionality is inappropriate.

  While aid is proportionate when limited to the minimum needed to achieve certain environmental or energy objectives, **EIIs exemptions are not intended to motivate a conduct by the beneficiary or to promote a particular environmental outcome**. This type of aid aims to protect EIIs from distortions of global competition resulting from the EU's decarbonisation programme. Thus capping the aid achieves no environmental objective.

  Proposing as an alternative to provide Member States with the option to cap renewable surcharges to 5% of the gross value added (GVA) of the beneficiary undertaking – or to 2.5% if the beneficiary has an electro-intensity of 20% (electro-intensity has to be more clearly defined) - is also insufficient to achieve the aimed relief for energy intensive industries, as this threshold is too high to truly allow to capture the companies concerned.

  Also, this approach is potentially distortive, as it would allow more aid in Member States having one large renewables scheme, compared with others having several smaller ones.

  Therefore, as a first option BUSINESSEUROPE still proposes that aid intensities of up to 100% should be permitted. Alternatively, the proportionality requirement should be substantially reduced. Also, Member States should be explicitly allowed to assess the necessity of aid based on the cumulative impact of all cost burdens.

Finally, as regards co-generation, we regret that the conditions for electricity from renewable sources continue to apply also to combined heat and power (CHP). Specific conditions should be laid out, since industrial CHP receives operating aid in various

forms which must be taken into account when defining conditions for promoting highly efficient co-generation.

National renewable support schemes

With regard to aid to energy from renewable sources, **BUSINESSEUROPE supports the direction taken by the Commission to encourage measures which will gradually integrate RES production into the energy market.** Poorly designed and uncoordinated national support schemes for renewable promotion have been an element of distortion of the energy market and contributed significantly to an increase of retail electricity prices.

We agree with the Commission's proposal that as of 1 January 2017, aid should be granted to new installations from renewable energy sources in the form of a competitive bidding process only. **However, we strongly believe that the only exception to this should be for first commercial scale installations, defined as projects aiming at creating a new industrial field at a stage of pilot project under real operating conditions.** This gives the opportunity to Member States to develop the long-term potential of new and innovative technology.

Tax reductions

We appreciate the efforts to avoid inconsistencies between the state aid guidelines and existing relevant tax provisions.

Still, the current approach entails an eligibility assessment for each tax individually. This may lead to discrimination as it can be fulfilled more easily by undertakings subject to few taxes with a high rate. On the contrary, firms that are subject to more taxes with lower rates would be disadvantaged, even though they would be exposed to a similar competitive pressure.

The Commission should therefore explicitly allow Member States to assess the necessity of aid based on the cumulative impact of all taxes and similar cost burdens, even if a Member State does not propose to offset or compensate the full cumulative burden.

Applicability

The guidelines should not apply retroactively, even for unlawful aid, which should be assessed according the current, relevant framework. The new rules should apply to schemes notified or amended after the entry into force of the new Guidelines.

BUSINESSEUROPE

Given the limited time available in the context of the ongoing interservice consultation, this letter is focusing on the most important issues, while other comments expressed by BUSINESSEUROPE in the previous consultations remain relevant and valid.

We trust you will take BUSINESSEUROPE's comments into account in the context of the ongoing revision.

Yours sincerely,

Markus J. Beyrer