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

1. INTRODUCTION

BUSINESSEUROPE is pleased that a preliminary draft of the Community guidelines for state aid for environmental protection has been published allowing stakeholders to express their views at an early stage. Considering that the draft sets out what the criteria for new guidelines may be BUSINESSEUROPE's views are preliminary. It will complement its views when the final draft is available.

Although BUSINESSEUROPE agrees that state aid can be necessary to support environmental protection, particularly in case of market failures, and that new guidelines should ensure that the Member States may use state aid as a positive incentive to achieve higher levels of environmental protection to off-set the additional costs for undertakings whose competitive conditions are negatively affected by national environmental rules that are stricter than Community standards, BUSINESSEUROPE would like to stress that several European Council decisions have called on the Member States to continue working towards a reduction in the general level of state aid. BUSINESSEUROPE has supported this policy towards less and better targeted state aid. State aid is often the second best solution and it should be verified whether other less distortive measures could remedy the market failure. 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 and the positive effects of the aid should outweigh the negative effects so that there is no undue distortion of competition.

Having said this, BUSINESSEUROPE commends DG Competition for having greatly improved the structure and readability of the guidelines. It has some suggestions and requests for clarification regarding some particular issues which are set out below.



2. PRELIMINARY DRAFT COMMUNITY GUIDELINES

State aid for carbon capture and storage projects

BUSINESSEUROPE is pleased that state aid for carbon capture and storage (CCS) projects is possible even though no concrete guidance on this issue is given. Although we understand that there is only limited experience with these projects and that new guidelines should not force undertakings into a straitjacket, BUSINESSEUROPE believes that it is of vital importance 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.

Additionally, BUSINESSEUROPE notes in passing that the Commission should not become fixated on CCS as the only future technology capable of delivering the required environmental solutions. The new guidelines should allow the Commission the flexibility also to approve aid for such technologies.

State aid for energy-saving measures

The draft guidelines only refer to action which enables undertakings to reduce the amount of energy used in their production cycle (see para 59 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

BUSINESSEUROPE believes that the use of renewable energy should be a profitable alternative for companies. However, BUSINESSEUROPE is concerned that the 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 90). 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 maximum period of ten years only (see para 95). The same time limitation applies to aid in the form of tax reductions or exemptions. While BUSINESSEUROPE notes that the draft guidelines might not necessarily



preclude such aid being re-notified and re-authorised after the period of ten years, the current wording gives rise to uncertainty as to whether this would in fact be possible. BUSINESSEUROPE therefore suggests that further clarification is given regarding the validity and duration of contracts and that the guidelines explicitly state that further authorisations of such aid after the ten year period are possible, provided all the relevant conditions are still met and that the long-term goals of the EU in this area are kept in mind.

Lastly, regarding hydropower installations, only installations with a capacity below 10MW are included (see para 59 under e). Although BUSINESSEUROPE recognises that large hydropower installations generally may not qualify for state aid, their blanket exclusion is unwarranted. The requirement to calculate eligible costs net of any operating benefits (para. 90(a)) would ensure that competition was not distorted.

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 (provided the possibility for re-notification is explicitly stated as outlined above), it believes that the requirement that companies pay at least 20% of the tax is too high (see para 125). BUSINESSEUROPE believes 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 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.

Reporting and monitoring

BUSINESSEUROPE believes that the proposed reporting and monitoring requirements are too strict and difficult to apply especially with respect to tax measures. For example, electricity tax reductions can be transferred to a very large number of companies via electricity network operators who do not possess the required detailed information about every individual beneficiary. The collection of this information would require the establishment of a totally new monitoring and reporting system which will considerably increase administrative burdens for companies and authorities. The fact that the reporting obligations would only concern aid exceeding € 200.000 in case of fiscal aid would not significantly reduce burdens considering that inspections would affect all companies.



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

Incentive effect

In the past, in the context of R&D aid, BUSINESSEUROPE warned that the Commission should not be too strict when requesting evidence in relation to the requirement that aid has a clear incentive effect and leads to activities in addition to a firm's normal day-to-day operations. In practice it is very difficult to prove that certain activities or projects would not have been carried out in the absence of the aid. 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 to the authorities is sufficient. Extending these requirements to other aid measures than R&D aid 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 exempt from an incentive effect analysis.

Proportionality of the aid

BUSINESSEUROPE suggests that more clarification is 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 156).

Recovery of aid

BUSINESSEUROPE suggests that provision is made 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.

Better regulation

The draft guidelines, when adopted, will simplify state aid rules in this area and in this respect, BUSINESSEUROPE welcomes the contribution of the project to the Commission's better regulation agenda. Having said this, BUSINESSEUROPE 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.
