Draft Communication from the Commission — Guidelines on State aid for climate, environmental protection and energy 2022

AM 1 – "Protection of energy intensive industries (EIIs) against undue energy costs"

4.11.3.2 Proportionality of the aid measure *359. The Commission will consider the aid to be proportionate if the beneficiaries pay at least 25 % of the costs generated by the electricity levies which a Member State includes in its scheme.* *360. However, an own contribution of 25 % of the eligible electricity levies might go beyond what undertakings which are particularly exposed can bear. Therefore, the Member State may instead limit the additional costs resulting from the electricity levies to 1.5 % of the gross value added (GVA) of the undertaking concerned.*	4.11.3.2 Proportionality of the aid measure *359. The Commission will consider the aid to be proportionate if the beneficiaries pay at least ~~25~~ **15** % of the costs generated by the electricity levies which a Member State includes in its scheme.* *360. However, an own contribution of ~~25~~ **15** % of the eligible electricity levies might go beyond what undertakings which are particularly exposed can bear. Therefore, the Member State may instead limit the additional costs resulting from the electricity levies to ~~1.5~~ **0.5** % of the gross value added (GVA) of the undertaking concerned.*
Justification These reductions and exemptions ensure the competitiveness of EIIs sectors - including the steel industry - and contribute to the overall environmental objectives as they support environmental ambition in the EU while avoiding carbon, investment, jobs leakage to third countries with less environmental ambition. The European Commission's proposals substantially weaken those provisions. We urge the Commission to maintain state aid intensity at the level of 85% and the level of protection to the most exposed undertakings at 0.5% GVA, as compared to the current period (EEAG 2014-2020). Furthermore, affordable and competitive electricity prices are essential to facilitate the transition to low carbon technologies, which require even larger amounts of electricity.	

AM 2 – "Protection of energy intensive industries (EIIs) against undue energy costs"

4.11.2 Scope: Levies from which reductions can be granted *354. Under this Section, Member States may grant reductions from levies on electricity consumption which finance an energy policy objective. This includes levies financing support to renewable sources or to combined heat and power and levies financing social tariffs or energy prices in isolated regions. This Section does not cover levies which reflect part of the cost of providing electricity to the beneficiaries in question. For example, exemptions from network charges or from charges financing capacity mechanisms are not covered by this Section.*	*4.11.2 Scope: Levies from which reductions can be granted* *354. Under this Section, Member States may grant reductions from levies on electricity consumption which finance an energy policy objective. This includes levies financing support to renewable sources or to combined heat and power and levies financing social tariffs or energy prices in isolated regions. ~~This Section does not cover levies which reflect part of the cost of providing electricity to the beneficiaries in question. For example, exemptions from network charges or from charges financing capacity mechanisms are not covered by this~~*

Levies on the consumption of other forms of energy, in particular natural gas, are also not covered by this Section.	~~*Section. Levies on the consumption of other forms of energy, in particular natural gas, are also not covered by this Section.*~~ ***Above principles shall apply analogously to environmental charges financing the support of highly-efficient cogeneration, capacity mechanism and other charges which directly fund the implementation of the climate objectives set out in the European Green Deal.***

Justification

Under the existing EEAG (section 3.7), Energy Intensive Users (EIUs) exposed to international competition are entitled to aid in the form of reductions in or exemptions from environmental taxes and in the form of reductions in funding support for electricity from renewable sources. Without such reductions and exemptions EEIs would be placed at such a competitive disadvantage that it would not be feasible to introduce the support for renewables at all. Such reductions and exemptions need not only to be maintained, but must be strengthened.

This becomes increasingly important in relation to the contribution of EIUs to the overall EU climate change policy targets, while avoiding carbon, investment, jobs leakage to third countries with less environmental ambition. Rising shares of renewables will most likely be accompanied with increased generation adequacy measures in the form of capacity mechanisms. In analogy to the situation with contributions to renewables, financing such costs could easily undermine the competitiveness of EIIs exposed to international competition, such as steel. Furthermore, EEIs offer solutions in these fields as they contribute to the stability of the grid thanks to their specific consumers' profiles. Hence, they should be also shielded from an undue extent of these and similar regulatory costs, taking into account their overall contributions to taxes and levies. We thus call on the Commission to lift the proposed restrictions in the draft CEEAG (paragraph 354).

The new CEEAG should allow for reductions based on a flexible definition of environmental charges. This would avoid long processes for individual notifications and would harmonize rules across member states, leading ultimately to a more effective EU climate change policy. The lack of uniform rules would otherwise hampers legal certainty and affects competition in the EU internal market. The issue of legal certainty becomes particularly important in view of investment planning in relation to the transition to low-carbon production processes.

AM 3 – "Exclusion of the industrial gases sector"

4.11.3.1 Eligibility 357. *The aid under this Section should be limited to sectors that are at a significant competitive disadvantage and risk of relocation outside the Union because of the eligible levies. The risk of relocation depends on the electro-intensity of the sector in question and its exposure to international trade. Accordingly, aid can only be granted if the undertaking belongs to a sector*	4.11.3.1 Eligibility 357. *The aid under this Section should be limited to sectors that are at a significant competitive disadvantage and risk of relocation outside the Union because of the eligible levies. The risk of relocation depends on the electro-intensity of the sector in question and its exposure to international trade. Accordingly, aid can only be granted if the undertaking belongs to a sector*

facing a trade intensity of at least 20 % at Union level and an electro-intensity of at least 10 % at Union level. In addition, the Commission considers that a similar risk exists in sectors that face an electro-intensity of at least 7% and face a trade intensity of at least 80%. The sectors meeting these eligibility criteria are listed in Annex I.	*facing a trade intensity of at least 20 % at Union level and an electro-intensity of at least 10 % at Union level. In addition, the Commission considers that a similar risk exists in sectors that face an electro-intensity of at least 7% and face a trade intensity of at least 80%* ***or in sectors that face a lower trade exposure but at least 4% and have a much higher electro-intensity of at least 20%****. The sectors meeting these eligibility criteria are listed in Annex I.*
Justification	
The eligibility criteria do not include the option of 4% trade intensity and 20% electro-intensity that was present in the previous guidelines. Due to that, the list of eligible sectors excludes the industrial gases (NACE code 2011) – e.g. hydrogen and oxygen - from the scope of application of the reductions. These are an integral part of the steel value chain today, and will be even more crucial for the transition to low carbon technologies in the nearest future.	

AM 4 – "Conditionality criteria"

365. *The Member State must also commit to monitoring that beneficiaries required to conduct an energy audit under Article 8(4) of Directive 2012/27/EU do one or more of the following:* *(a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate;* *(b) reduce the carbon footprint of their electricity consumption, so as to cover at least 30 % of their electricity consumption from carbon-free sources;* *(c) invest a significant share of at least 50 % of the aid amount in projects that lead to substantial reductions of the installation's greenhouse gas emissions; where applicable, the investment should lead to reductions well below the relevant benchmark used for free allocation in the Union ETS.*	~~365. *The Member State must also commit to monitoring that beneficiaries required to conduct an energy audit under Article 8(4) of Directive 2012/27/EU do one or more of the following:*~~ ~~*(a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate;*~~ ~~*(b) reduce the carbon footprint of their electricity consumption, so as to cover at least 30 % of their electricity consumption from carbon-free sources;*~~ ~~*(c) invest a significant share of at least 50 % of the aid amount in projects that lead to substantial reductions of the installation's greenhouse gas emissions; where applicable, the investment should lead to reductions well below the relevant benchmark used for free allocation in the Union ETS.*~~
Justification	
Compensation should not be made conditional. If now state aid is made conditional to additional measures to be taken by a company, de facto it is not anymore a (partial) reimbursement of incurred costs as it requires additional costs to the company. Moreover, related proposals do not reflect the specificities of different industrial sectors and of companies and might lead to different and disproportionate outcomes.	

AM 5 – "Conditionality criteria"

356. *The Commission considers that Member States may grant reductions to levies under this Section only where the overall cumulative level of these levies (before any reductions) is at least […] EUR/MWh.*	~~356. *The Commission considers that Member States may grant reductions to levies under this Section only where the overall cumulative level of these levies (before any reductions) is at least […] EUR/MWh.*~~
Justification Compensation should not be made conditional to a minimum level of the levies. Due to the very large energy consumption and the partial nature of exemptions, energy intensive industries such as steel would have major competitive disadvantage compared to producers based in third countries that do not have comparable climate legislation and related regulatory costs. Provisions on minimum contribution levels already ensure that also energy intensive industries support the funding of renewable schemes in all member states.	

AM 6 – "Aid for the reduction and removal of greenhouse gas emissions"

3.2.1.2.1 Appropriateness among alternative policy instruments *40. Different measures to remedy the same market failure may counteract each other. This is the case where an efficient, market-based mechanism has been put in place to specifically counter the problem of externalities, as for instance the Union's ETS. An additional support measure to address the same market failure risks undermining the efficiency of the market-based mechanism. Therefore, when an aid scheme aims at addressing residual market failures, the aid scheme must be designed in such a way as to not undermine the efficiency of the market-based mechanism.*	3.2.1.2.1 Appropriateness among alternative policy instruments *40. Different measures to remedy the same market failure may counteract each other. This ~~is~~* ***might be*** *the case ~~where an efficient, market-based mechanism has been~~* ***with existing policies and measures*** *put in place to specifically counter the problem of externalities, as for instance the Union's ETS. An additional support measure to address the same market failure* ***might*** *risk~~s~~ undermining the efficiency of the market-based mechanism. Therefore, when an aid scheme aims at addressing residual market failures, the aid scheme must be designed in such a way as to not undermine the* ***existing degree of*** *efficiency of the market-based mechanism.*
Justification The lack of a global-level playing field compared to third countries needs to be taken into account, in particular where production is not subject to similar CO_2 costs constraint as production in the EU. It should be recognised that for sectors particularly exposed to international competition, existing carbon pricing policy measures do not tackle effectively the problem of externalities. It is necessary that state aid rules – for example via Carbon Contracts for Difference - allow the full abatement costs of the new low-carbon processes to be covered.	

AM 7 – "Aid for the reduction and removal of greenhouse gas emissions"

4.1.3.1 Necessity of the aid *78. Points 33, 34, 35 and 36 do not apply to measures for the reduction of greenhouse gas emissions. The Member State must identify the policy measures already in place to reduce greenhouse gas emissions. However, while the Union's ETS and related policies and measures internalise some of the costs of greenhouse gas emissions, they may not yet fully internalise those costs.*	4.1.3.1 Necessity of the aid *78. Points 33, 34, 35 and 36 do not apply to measures for the reduction of greenhouse gas emissions. The Member State must identify the policy measures already in place to reduce greenhouse gas emissions. However, while ~~the Union's ETS and related~~* ***carbon pricing*** *policies and measures* ***, such as the ETS,*** *internalise some of the costs of greenhouse gas emissions, they may not yet fully internalise those costs* ***or fail to do so for sectors most exposed to international competition****.*
Justification It is necessary that state aid rules – for example via Carbon Contracts for Difference - allow the full abatement costs of the new low-carbon processes to be covered. The lack of a global-level playing field compared to third countries needs to be taken into account, in particular where production is not subject to similar CO_2 costs constraint as production in the EU. For materials - such as steel - where the pass-through of unilateral regulatory costs is not possible due to fierce international competition, the aid level necessitates to cover the full abatement costs in the EU, i.e. the "difference" should be calculated between production costs of low carbon technologies and production costs of conventional ones, without discounting the avoided ETS-related costs. This is the only way to ensure that the actual realisation of respective projects will be guaranteed. Compensation limited to the amount of the difference to the CO_2 price in the European emissions trading system would be insufficient since a significant part of the extra costs would not be compensated and a competitive disadvantage compared with competitors from outside Europe would persist.	

AM 8 – "Aid for the reduction and removal of greenhouse gas emissions"

4.1.4 Avoidance of undue negative effects on competition and trade and balancing *103. Aid for decarbonisation can take a variety of forms including up front grants and contracts for ongoing aid payments such as contracts for difference[61]. Aid which covers costs mostly linked to operation rather than investment should only be used where the Member State clearly demonstrates that this results in more environmentally friendly operating decisions.* *[61] A contract for difference entitles the beneficiary to a payment equal to the difference between a fixed 'strike' price and a reference price – such as a market price, per unit of output.*	4.1.4 Avoidance of undue negative effects on competition and trade and balancing *103. Aid for decarbonisation can take a variety of forms including up front grants and contracts for ongoing aid payments such as contracts for difference[61]. Aid which covers costs mostly linked to operation rather than investment should only be used where the Member State clearly demonstrates that this results in more environmentally friendly operating decisions.* *[61] A contract for difference entitles the beneficiary to a payment equal to the difference between a fixed 'strike' price and a reference price – such as a market price, per unit of output. They have been used for*

They have been used for electricity generation measures in recent years but could also involve a reference price linked to the ETS – i.e. 'carbon' contracts for difference. Contracts for difference may also involve paybacks from beneficiaries to taxpayers or consumers for periods in which the reference price exceeds the strike price.	*electricity generation measures in recent years but could also involve a reference price linked to the ETS* ***or any globally applied carbon price for sectors most exposed to international competition*** *– i.e. 'carbon' contracts for difference. Contracts for difference may also involve paybacks from beneficiaries to taxpayers or consumers for periods in which the reference price exceeds the strike price.*
Justification	
It is necessary that state aid rules – for example via Carbon Contracts for Difference - allow the full abatement costs of the new low-carbon processes to be covered. The lack of a global-level playing field compared to third countries needs to be taken into account, in particular where production is not subject to similar CO_2 costs constraint as production in the EU. For materials - such as steel - where the pass-through of unilateral regulatory costs is not possible due to fierce international competition, the aid level necessitates to cover the full abatement costs in the EU, i.e. the "difference" should be calculated between production costs of low carbon technologies and production costs of conventional ones, without discounting the avoided ETS-related costs. This is the only way to ensure that the actual realisation of respective projects will be guaranteed. Compensation limited to the amount of the difference to the CO_2 price in the European emissions trading system would be insufficient since a significant part of the extra costs would not be compensated and a competitive disadvantage compared with competitors from outside Europe would persist.	

AM 9 – "Aid for dismantling of CO_2 intensive installations"

	4.1.2 Scope and supported activities **75a new** ***This section also covers aid for dismantling CO_2 intensive installations in relation to measures for the reduction or avoidance of emissions resulting from industrial processes***
Justification	
Conversion to low carbon production processes in the EU will often occur in existing facilities (brownfield). Current state aid rules under the EEAG do not envisage aid for dismantling of CO_2 intensive production, while 100% aid intensity is possible for the remediation of contaminated sites. Granting of aid for dismantling CO_2 intensive installations after transformation to low carbon production should be allowed under the revised state aid rules.	

AM 10 "Support to the use of electricity made from renewable energy sources in energy-intensive production processes"

	4.1.2 Scope and supported activities **75a new** ***To create incentives for the conversion of energy-intensive production process in industry to electricity from carbon-free energy sources, aid may be granted for the use of electricity in the context of long-term power purchase agreements pertaining to electricity from renewable energy sources, even if the latter originates from plants that have been fully depreciated. The aid per energy unit shall not exceed the difference between the total production costs of the electricity provided under the long-term power purchase agreement and the relevant market price for electricity.***
Justification The costs associated with the active use of electricity from renewable energy sources, which can be ensured via long-term power purchase agreements, for instance generated by wind farms, are often higher than the costs at which electricity can be purchased on the market. With a view to the necessity of keeping electricity prices low in international competition, incentives to use renewable energy sources, and hence to contribute to the goal of climate neutrality, can be created through compensation of the cost difference via state support measures. It should be thus possible to support the use of electricity made from renewable energy sources in energy-intensive production processes, such as electric arc steelmaking, by compensating the extra costs involved through public aid.	

AM 11 – "Updating the notion of state aid to the latest rulings of the Union Courts"

	Proposed amendment A chapter on the notion of aid could be included in the CEEAG, e.g., before the second chapter (Scope and definitions): ***In some very recent judgments, the Union Courts have clarified the scope of the State aid rules, in particular when it comes to exemptions for energy intensive undertakings. Only such measure and/or schemes are subject to State aid control, which fulfill all criteria as set out in Article 107 (1) TFEU.*** ***According to Article 107 (1) TFEU, any aid granted by a Member State or through State resources in***

	any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market. It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: (a) the measure has to be granted out of State resources and is imputable to the State, (b) it has to confer an economic advantage to undertakings, (c) the advantage has to be selective and (d) distort or threaten to distort competition, (e) the measure has to affect trade between Member States. ***Therefore, these Guidelines only cover measures which fulfill all criteria provided for in Art. 107 (1) TFEU. Particularly, measures which do not involve State resources shall not constitute aid within the meaning of Art. 107 (1) TFEU and therefore shall not be covered by the State aid regime. This applies, inter alia, when the respective funds are not at the disposal of the state but controlled by private parties. The ECJ recently applied these criteria in a case where funds were generated by surcharges paid by private parties in accordance with national schemes.(1) These funds were exclusively earmarked to finance the respective scheme and the role of the State was limited to the monitoring of the private parties involved. In this case the ECJ explicitly held that these funds were not at the disposal of the state and therefore no State resources were involved. Given the lack of State resources, the exemptions for energy intensive undertakings did also not constitute State aid, given that the system was entirely financed by private players.*** ***As a result, such measures do not constitute State aid and do not fall under the scope of these Guidelines. Member States do not face any restrictions under State aid law when setting-up such schemes.*** ***(1) ECJ, C-405/16 P, Judgment of 28 March 2019, ECLI:EU:C:2019:268 - Germany v Commission; see also ECJ, C 556/19, Judgment of 21 October 2020, ECLI:EU:C:2020:844, paras. 25 et seqq. – Eco TLC; GC, T-98/16 and others, Judgment of 19 March***

	2019, ECLI:EU:T:2019:167, paras. 133 et seqq. – Italy v Commission.

Justification

It is common for the Commission to provide guidance in its documents on what it is actually considered as state aid. The proposed amendment suggests to align the definition of state aid with the most relevant case judgments: ECJ, C-405/16 P, Judgment of 28 March 2019, ECLI:EU:C:2019:268 - Germany v Commission; see also ECJ, C 556/19, Judgment of 21 October 2020, ECLI:EU:C:2020:844, paras. 25 et seqq. – Eco TLC; GC, T-98/16 and others, Judgment of 19 March 2019, ECLI:EU:T:2019:167, paras. 133 et seqq. – Italy v Commission.

AM 12 – "Targeted and distinct approach on harmonised and not-harmonised environmental taxes"

4.7.1.2 Scope and supported activity *260. Granting a more favourable treatment to some undertakings may facilitate a higher general level of environmental taxes or parafiscal levies. Accordingly, reductions in environmental taxes or levies can at least indirectly contribute to a higher level of environmental protection. However, the overall objective of the environmental tax or parafiscal levy to discourage environmentally harmful behaviour should not be undermined.* *261. The Commission will consider that tax or levy reductions do not undermine the general objective pursued and contribute at least indirectly to an increased level of environmental protection, if a Member State demonstrates that both of the following conditions are fulfilled:* *(a) the reductions are well targeted at those undertakings most affected by a higher tax;* *(b) a tax rate, which is generally applicable, is higher than would be the case without the reduction.* *262. For this purpose, the Commission will assess the information provided by Member States. That information should include the sectors or categories of beneficiaries covered by the reductions and a description of the situation of*	*4.7.1.2 Scope and supported activity* *260. Granting a more favourable treatment to some undertakings may facilitate a higher general level of environmental taxes or parafiscal levies. Accordingly, reductions in environmental taxes or levies can at least indirectly contribute to a higher level of environmental protection. However, the overall objective of the environmental tax or parafiscal levy to discourage environmentally harmful behaviour should not be undermined.* *261. The Commission will consider that tax or levy reductions do not undermine the general objective pursued and contribute at least indirectly to an increased level of environmental protection, if a Member State demonstrates that both of the following conditions are fulfilled:* *(a) the reductions are well targeted at those undertakings most affected by a higher tax;* *(b) a tax rate, which is generally applicable, is higher than would be the case without the reduction.* *262. For this purpose, the Commission will assess the information provided by Member States. That information should include the sectors or categories of beneficiaries covered by the reductions and a description of the situation of*

the main beneficiaries in each sector concerned and an explanation of how the taxation may contribute to environmental protection. The sectors eligible for the reductions should be properly described and a list of the largest beneficiaries for each sector should be provided (considering, in particular, turnover, market shares and size of the tax base).	*the main beneficiaries in each sector concerned and an explanation of how the taxation may contribute to environmental protection. The sectors eligible for the reductions should be properly described and a list of the largest beneficiaries for each sector should be provided (considering, in particular, turnover, market shares and size of the tax base).*
4.7.1.3 Minimisation of distortions of competition and trade	***262a (new) When environmental taxes are harmonised, the Commission can apply a simplified approach to assess the necessity and proportionality of the aid. In the context of Directive 2003/96/EC ([78]) ('ETD'), the Commission can apply a simplified approach for tax reductions respecting the Union minimum tax level. For all other environmental taxes, an in depth assessment of the necessity and proportionality of the aid is needed.***
4.7.1.3.1 Necessity	***[78] Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003 p. 51) sets such minimum tax levels.***
263. The requirements set out in point 264 apply in addition to the requirements set out in Section 3.2.1.1.	*4.7.1.3 Minimisation of distortions of competition and trade*
264. The Commission will consider the aid to be necessary if the following cumulative conditions are met: *(a) the choice of beneficiaries is based on objective and transparent criteria, and the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation;* *(b) the environmental tax or parafiscal levy without the reduction leads to a substantial increase in production costs calculated as a proportion of the gross value added for each sector or category of individual beneficiaries;* *(c) the substantial increase in production costs could not be passed on to customers without leading to significant sales reductions.*	*4.7.1.3.1 Necessity* ***Situation 1: Harmonised environmental taxes***
4.7.1.3.2 Appropriateness	***262b (new). The Commission will consider aid in the form of tax reductions necessary and proportional provided (i) the beneficiaries pay at least the Union minimum tax level set by the relevant applicable Directive; (ii) the choice of beneficiaries is based on objective and transparent criteria; and (iii) the aid is granted in principle in the same way for all competitors in the same sector, if they are in a similar factual situation.***
265. The requirements set out in points 266 and 267 apply in addition to the requirements set out in Section 3.2.1.2.	
266. The Commission will authorise aid schemes for maximum periods of 10 years, after which a Member State can re-notify the measure if it re-evaluates the appropriateness of the aid measures concerned.	
267. Member States can grant the aid in the form of a reduction of the tax or levy rate or as a fixed annual compensation amount (tax or levy refund), or as a combination of the two. The	***262c (new). Member States can grant the aid in the form of a reduction of the tax rate or as a fixed annual compensation amount (tax refund), or as a combination of the two. The advantage of the tax refund approach is that undertakings remain exposed to the price signal, which the environmental tax gives. Where used, the amount of the tax refund should be calculated on the basis of historical***

advantage of the tax refund approach is that undertakings remain exposed to the price signal, which the environmental tax or levy gives. Where used, the amount of the tax refund should be calculated on the basis of historical data, that is to say the level of production, and the consumption or pollution observed for the undertaking in a given base year. *4.7.1.3.3 Proportionality* *268. Section 3.2.1.3 does not apply to aid in the form of reductions in environmental taxes and parafiscal levies.* *269. The Commission will consider the aid to be proportionate if at least one of the following conditions is met:* *(a) aid beneficiaries pay at least 20 % of the national environmental tax or parafiscal levy;* *(b) the tax or levy reduction does not exceed 100 % of the national environmental tax or parafiscal levy, and is conditional on the conclusion of agreements between the Member State and the beneficiaries or associations of beneficiaries whereby the beneficiaries or associations of beneficiaries commit themselves to achieve environmental protection objectives which have the same effect as if beneficiaries or associations of beneficiaries paid at least 20 % of the national tax or levy. Such agreements or commitments may relate, among other things, to a reduction in energy consumption, a reduction in emissions and other pollutants, or any other environmental measure.* *270. Such agreements must satisfy the following cumulative conditions:* *(a) the substance of the agreements is negotiated by the Member State, specifies the targets and fixes a time schedule for reaching the targets;* *(b) the Member State ensures independent and regular monitoring of the commitments in the agreements;* *(c) the agreements are revised periodically in the light of technological and other developments and provide for effective penalties in the event that the commitments are not met.*	***data, i.e. the level of production, and the consumption or pollution observed for the undertaking in a given base year. The level of the tax refund must not go beyond the Union minimum tax amount that would result for the base year.*** ***262d (new). If the beneficiaries pay less than the Union minimum tax level set by the relevant applicable Directive, the aid will be assessed on the basis of the conditions for non-harmonised environmental taxes as set out in paragraphs (263 to 270).*** ***Situation 2: Non-harmonised environmental taxes and specific situations of of harmonised taxes*** *263. The requirements set out in point 264 apply in addition to the requirements set out in Section 3.2.1.1.* *264. **For all other non-harmonised environmental taxes and in the case of harmonised taxes below the Union minimum levels of the ETD (see paragraph (262a (new))** t~~T~~he Commission will consider the aid to be necessary if the following cumulative conditions are met:* *(a) the choice of beneficiaries is based on objective and transparent criteria, and the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation;* *(b) the environmental tax or parafiscal levy without the reduction leads to a substantial increase in production costs calculated as a proportion of the gross value added for each sector or category of individual beneficiaries;* *(c) the substantial increase in production costs could not be passed on to customers without leading to significant sales reductions.* *~~4.7.1.3.2 Appropriateness~~* *265. The requirements set out in points 266 and 267 apply in addition to the requirements set out in Section 3.2.1.2.* *266. The Commission will authorise aid schemes for maximum periods of 10 years, after which a*

	Member State can re-notify the measure if it re-evaluates the appropriateness of the aid measures concerned. *267. Member States can grant the aid in the form of a reduction of the tax or levy rate or as a fixed annual compensation amount (tax or levy refund), or as a combination of the two. The advantage of the tax refund approach is that undertakings remain exposed to the price signal, which the environmental tax or levy gives. Where used, the amount of the tax refund should be calculated on the basis of historical data, that is to say the level of production, and the consumption or pollution observed for the undertaking in a given base year.* *~~4.7.1.3.3 Proportionality~~* *268. Section 3.2.1.3 does not apply to aid in the form of reductions in environmental taxes and parafiscal levies.* *269. The Commission will consider the aid to be proportionate if at least one of the following conditions is met:* *(a) aid beneficiaries pay at least 20 % of the national environmental tax or parafiscal levy;* *(b) the tax or levy reduction does not exceed 100 % of the national environmental tax or parafiscal levy, and is conditional on the conclusion of agreements between the Member State and the beneficiaries or associations of beneficiaries whereby the beneficiaries or associations of beneficiaries commit themselves to achieve environmental protection objectives which have the same effect as if beneficiaries or associations of beneficiaries paid at least 20 % of the national tax or levy. Such agreements or commitments may relate, among other things, to a reduction in energy consumption, a reduction in emissions and other pollutants, or any other environmental measure.* *270. Such agreements must satisfy the following cumulative conditions:* *(a) the substance of the agreements is negotiated by the Member State, specifies the targets and fixes a time schedule for reaching the targets;*

	(b) the Member State ensures independent and regular monitoring of the commitments in the agreements; *(c) the agreements are revised periodically in the light of technological and other developments and provide for effective penalties in the event that the commitments are not met.*

Justification

The draft CEEAG (section 4.7 Aid in the form of reductions in taxes or parafiscal levies) excludes the targeted and distinct approach on harmonised and not-harmonised environmental taxes, which is in place under the current EAAG 2014-2020. The Commission proposal would entail that certain category of beneficiaries will not be able to receive state aid related to harmonised environmental taxes - when above the Union minimum tax level set by the relevant applicable Directive - via a simplified approach to assess the necessity and proportionality of the aid. As a consequence, the restrictive criteria to assess the proportionality of aid (paragraphs 269 and 270 of the draft CEEAG) would apply to all beneficiaries and to all type of environmental taxes.
This proposal is against the principle of fair taxation, as it would pose a disproportionate burden on the European steel industry, would lead to an increased risk of carbon leakage and could undermine the intra EU level-playing field among EIIs companies and sectors.
We call on the European Commission to reintroduce the differentiation between harmonised and non-harmonised taxes and the related targeted approach (paragraphs 172-175 EEAG 2014-2020).