ETUC observations to the Commission Consultation on the draft Guidelines on State aid for climate, environmental protection and energy

The European Trade Union Confederation (ETUC) wishes to express its views on the European Commission's draft *Guidelines on State aid for climate, environmental protection and energy*. The views expressed below reflect the ETUC Resolution for a More Sustainable and Inclusive Competition Policy, adopted at the ETUC Executive Committee of 22-23 March 2021.

Guiding principles and objectives to be reflected in the Guidelines

The ETUC supports the European Green Deal's objectives and welcomes the revision of the dedicated Guidelines on State aid. It is important to ensure that the revised Guidelines will be aligned with the policy goals set out by this EU flagship initiative, which requires €520-575 billion to be invested annually in the EU energy system, as estimated by the Commission. In addition, the revision should contribute to the objectives set out by the Innovation and Modernisation Funds. Likewise, the Guidelines must not be undermined by potential Investor-State Dispute Settlement (ISDS) decisions between EU Member States that could contradict the overall objectives of the Green Deal and just transition. Against the background of the COVID-19 pandemic, it will also be key to ensure that the Next Generation EU and the National Resilience and Recovery Plans pave the way for a sustainable recovery for Europe, including with the support of these new Guidelines.

For the ETUC, it is equally clear that EU climate action, including the Guidelines on State aid, must entail a strong social dimension, promoting just transitions and decent jobs. In this regard, they should be aligned with the Porto Declaration and the European Pillar of Social Rights. It is of utmost importance that the Guidelines link State aid to legally binding commitments for companies to invest in European industrial facilities as well as to the creation or maintenance of sustainable quality jobs. Anticipating industrial change in a socially fair way through participatory planning, social dialogue and industrial relations involving trade unions will be key in this regard. The Guidelines should also be enshrined in a broader reflection to reform the EU economic governance system and its main instruments (notably the Growth and Stability Pact and the European Semester) in a way that allows public authorities to play a more active role in creating the enabling conditions to cope with the green and digital transitions while leaving no one behind.

This also requires the new Guidelines to effectively take due account of social and territorial cohesion, notably the specific regional challenges in decarbonising industry and the roll-out of the essential infrastructure, with particular attention to ensuring investment in physical and digital infrastructure in rural areas and regions at risk of depopulation. The objective should be to avoid deepening regional inequalities and exacerbating fragmentation and increasing competition among regions.

IETUC welcomes that the revised Guidelines allow for more flexibility in terms of new areas covered and higher aid amounts granted (up to 100% of the funding gap). This is an important change to effectively support the transition to a climate neutral and circular economy of all sectors. When it comes to industrial sectors, the Guidelines should also contribute to strengthening the strategic value chains in Europe which are needed to develop a climate neutral industry and to creating a global level playing field, thereby avoiding that the transition towards a zero-carbon industry results in de-industrialisation and job leakage. The guidelines should strengthen Europe's strategic autonomy in global supply chains and result in replacing carbon-intensive imports by domestic low-carbon production.

Detailed remarks to the draft Guidelines

3. COMPATIBILITY ASSESSMENT UNDER ARTICLE 107(3), POINT (C), OF THE TREATY
3.1 Positive condition: the aid must facilitate the development of an economic activity
3.1.3 No breach of any relevant provision of Union law

Point 32 importantly highlights that the financing of measures violating Union law cannot be considered compatible with the internal market. However, this should be broadened to explicitly also include violations of any applicable obligations under social and labour law established by Union law, national law, collective agreements or international law. Undertakings that violate EU social and workers' rights should not be able to benefit from State aid.

3.2 Negative condition: the aid measure must not unduly affect trading conditions to an extent contrary to the common interest
3.2.1.2.2 Appropriateness among different aid instruments
3.2.1.3 Proportionality

Point 47 sets out the general principles for assessing the minimum aid needed for carrying out the aided activity or project. Here, social considerations should be included among the compulsory aspects to be taken into account in all assessments.

Point 49 on competitive bidding processes, however, only refers to social selection criteria in a few exceptional cases and with a limit of 25 % of the weighting of all the selection criteria. As a rule, social criteria should be integrated as compulsory considerations of all competitive bidding procedures, promoting the creation or maintenance of quality work, decent wages and working conditions, social dialogue, collective bargaining and trade union involvement.

4. CATEGORIES OF AID
4.1 Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy
4.1.4 Avoidance of undue negative effects on competition and trade and balancing

Point 103 on aid for decarbonisation importantly refers to carbon contracts for difference. Such measures will be of particular importance to reach the ambitious targets put forward in the Fit for 55 Package. Likewise, the Guidelines should aim to support and encourage cooperation among Member States, e.g. through the establishment of Important Projects of Common European Interest.

Point 109 refers to aid measures which may have negative effects on competition and aggravate market failures, creating inefficiencies to the detriment of consumers and social welfare. Bearing this in mind, the EU cannot only rely on carbon pricing mechanism to make the transition happen. Price signal can lead to the rapid decline of some industries and, without appropriate support to invest in low carbon production processes or to accompany the transition of the workforce, this could lead to industrial desertification and rise in unemployment.

4.4 Aid for resource efficiency and for supporting the transition towards a circular economy
4.4.1 Rationale for the aid

Point 191 makes reference to the promotion of objectives under the Circular Economy Action Plan. Also in this context, due regard must be given to social considerations, including collective agreements. Occupational health and safety conditions, as well as training, upskilling and reskilling of the workforce are crucial for promoting sustainable jobs as part of the shift towards the objectives of circular economy.

4.12 Aid for coal, peat and oil shale closure
4.12.2 Aid for exceptional costs
4.12.2.1 Rationale for the aid

Points 380-385 address situations where Member States may decide to cover exceptional costs to mitigate the social and regional consequences of closure processes. The coverage of such costs is indeed key to facilitate social, environmental and safety transitions. However, aid to cover social costs cannot be limited only to the *closure* of coal, peat and oil shale activities. Likewise, the reference to *uncompetitive* activities raises questions, since all such activities should be phased out to reduce greenhouse gas emissions, be they profitable or not.

In other words, to promote proactive approaches to ensure smooth transitions the scope of eligible social costs should be extended to include not only cases of closure but also other sectors of the economy which will have to undertake significant changes in the coming years (such as energy intensive industries which will have to transform their production processes towards low carbon solutions, transport and mobility sector undertaking massive changes due to electrification, etc.).

4.12.2.4 Incentive effect and proportionality

Point 386 makes reference to **Annex II** on the definition of costs referred in Section 4.12.2. The social costs indicated as eligible are indeed very relevant to secure socially just transitions where no one is left behind. For this reason, as already pointed out, it would nevertheless be important to extend the scope of application of Annex II beyond costs resulting only from the closure of coal, peat and oil shale activities. Likewise, Point 386 should stipulate that costs resulting from non-compliance with not only environmental but also with social regulations are not eligible.

As regards **Annex II**, investing in skills will be essential to support the twin transition across sectors. At the same time, however, increased funding opportunities for undertakings must not disproportionately shift retraining obligations from employers to the State. Commitments made by employers within the framework of social dialogue or collective bargaining at national level must not be undermined or diluted through the granting of State aid. National systems of industrial relations must at all times be respected. Likewise, it might be relevant to take into consideration whether the retraining measures in question target employed or unemployed workers.

Point 389 outlines situations where liable persons cannot be identified or made to bear environmental costs. However, it should be considered whether such situations can also arise with regard to social costs. E.g. in the case of a closure of an economic activity as part of decarbonisation efforts, also subcontractors and suppliers in the chain might be effected and consequently be in need of aid to cover social costs for e.g. retraining measures.

Point 391 importantly confirms that the coverage of social costs must not be considered as having distortive effects on competition and trade. At the same time, EU funds should continue to play a significant role to ensure cohesion between Member States and to avoid the deepening of inequalities between countries and regions as a result of possible differences in national capacity to generate public funding to support a socially just transition.

4.12.2.5 Avoidance of undue negative effects on competition and trade

Point 392 underlines that aid received should be accounted for as a separate item on revenue distinct from turnover. To prevent windfall profits, it is indeed important that there is no possibility of the aid being transferred to other economic activities of the same undertaking. To make use of the scarce public resources in the most cost-effective way, overcompensation must always be avoided.