MYTILINEOS

To:
European Commission
1049 Bruxelles/Brussel
Belgium

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Mytilineos is one of the largest industrial companies in Greece, with activities in numerous sectors (including Metallurgy, Electricity generation and supply, Gas trading, and EPC works). One of our key lines of business concerns the operation of the largest vertically integrated alumina/aluminium production facility in Europe, where roughly 185,000 tonnes of primary aluminium are produced each year. The company is also making significant strides in the field of aluminium recycling, having recently completed the takeover of 'EPALME', the largest independent producer of secondary (recycled) aluminium in Greece. This enables Mytilineos to produce another 11,000 tonnes of recycled aluminium each year, with plans to further scale up the production capacity so as to reach 50,000 tonnes by 2022.

Europe is entering an unprecedented period of change. We are currently in the process of setting an extremely ambitious EU climate agenda, the achievement of which will require massive investments in climate-friendly technologies. At the same time, the entire EU economy is dealing with the consequences of the ongoing COVID-19 crisis, which is widely expected to lead to the deepest global recession since World War II[1]. According to the Staff Working Document[2] accompanying the Commission's recent proposal for the European Recovery Plan, the investment gap for reaching the EU's existing climate and environment policy goals already stands at €470 billion each year, a figure that is likely to rise exponentially if the EU increases its 2030 climate ambitions (as expected). Meanwhile, according to the Commission's 2050 Long-Term Strategy[3], the average annual investments required for the EU to reach climate neutrality by 2050 amount to €1.48 trillion in the 1.5 TECH scenario and €1.37 trillion in the 1.5 LIFE scenario.

Given these ever-increasing needs for new investments, it is absolutely crucial to ensure that the EU's state aid framework is fit for purpose. In particular, the state aid framework must be capable of both stimulating and facilitating the necessary investments, while preserving a level playing field on both the European and global levels, and without creating unnecessary delays. In this regard, the General

[1] The World Bank, 2020.
[2] European Commission, 2020. Identifying Europe's recovery needs.
[3] European Commission, 2018. In-Depth Analysis in Support of the Commission Communication COM(2018)773; A Clean Plant for all; A European long-term strategic vision for a prosperous, modern, competitive and climate neutral economy.

Block Exemption Regulation (GBER) plays a crucial role, by outlining the categories of aid that can be considered compatible with the internal market without needing to adhere to the (often lengthy) notification and approval procedures laid down in Article 108 of the Treaty.

With this in mind, our company would like to submit the following comments, which initially focus on EU's state aid policy in general, before discussing various more specific issues concerning the GBER review.

The EU's State Aid Framework: The need for a more global approach

As outlined in the relevant provisions of Union law (*Articles 107 and 108 TFEU in particular*), the main purpose of EU state aid policy is to prevent the creation of distortions within the internal market. In this sense, the EU's state aid framework has proved largely successful. A level playing field within the internal market has generally been ensured, while still providing for enough flexibility so as to allow for state aid in certain key areas (*in line with the provisions of Article 107 TFEU*). However, this also means that when assessing the compatibility of aid schemes, the Commission focuses almost exclusively on preserving a level playing field within the internal market, **whereas the issue of global competition is overlooked**. This rationale is at odds with the economic realities of today's increasingly interconnected world, where goods and services are traded across continents and the prices for many commodities (*including aluminium*) are set in global markets, such as the London Metals Exchange. From a competition perspective, it is therefore far more important to ensure a level playing field on the global level, rather than only considering the European market. By not taking the global perspective into account, and by focusing too narrowly on the immediate effects within the EU (*or in narrow geographical markets*), the EU's state aid policy is inadvertently compromising the global competitiveness of European companies. In turn, this is preventing European companies from achieving global leadership in their respective fields, thereby also compromising their ability to contribute towards the achievement of key EU objectives (*e.g. in the fields of technology, energy and climate*)[4].

The aluminium industry constitutes the perfect case study. Aluminium will play a crucial role in the achievement of Europe's climate goals, given its use in several key low-carbon and energy-efficient applications (*e.g. aluminium is used to produce solar panels, wind turbines, lightweight vehicles, energy-efficient buildings, and transmission cables for the transfer of renewable electricity*). Indeed, global aluminium production has almost tripled over the past twenty years, rising from 24,657,000 metric tonnes in 2000 to 64,336,000 metric tonnes in 2018[5]. However, all of this increasing global demand for aluminium is being covered by Chinese companies. China's share of global primary aluminium production has risen rapidly from just over 10% in 2000 (2.8 million metric tonnes) to almost 60% today (36.5 million metric tonnes!)[6]. This has been fuelled by massive industrial subsidies (*indicatively, a recent OECD report concluded that on the global level, aluminium companies received*

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[4] It is not a coincidence that in Forbes' most recent ranking of the world's largest public companies, none of the top 20 are European (Forbes, 2020. Global 2000: The World's Largest Public Companies).
[5] World Aluminium, 2020. Primary Aluminium Production.
[6] Ibid, 2020.

USD 70 billion in different forms of support between 2013-2017; 85% of these documented subsidies went to just five Chinese firms[7]), whereas European aluminium producers are also struggling to compete because they are burdened with various regulatory costs that their global competitors do not face. As a result, Europe has already lost 36% of its primary aluminium smelting capacity since 2008, due to plant closures and curtailments. This means that instead of exploiting the competitive advantage that Europe already has in terms of clean industrial production (*the carbon footprint of producing primary aluminium in Europe is, on average, three times lower than the carbon footprint of producing the same metal in China*[8]), EU policy -including the state aid framework- is instead contributing to the erosion of Europe's industrial base. Domestic production is being replaced by carbon-intensive imports, leading to an increase in global emissions, i.e. Europe is actually exacerbating the problem it's trying to fix!

This becomes even more problematic when we consider that both the recently published Industrial Strategy[9] and the Recovery Plan[10] specifically mention the importance of ensuring security of supply with regard to the crucial products and raw materials that will be required during the climate transition. In the Recovery Plan, the Commission specifically mentions that "*the crisis has also revealed a number of areas where Europe needs to be more resilient to prevent, protect and withstand future shocks. We will always be committed to open and fair trade but must be aware of the need to reduce dependency and strengthen security of supply, notably for things like pharmaceutical ingredients or raw materials*". Put simply, Europe will not be able to achieve its key goals (*most notably in the areas of technology and energy/climate*) unless it can preserve the global competitiveness of its (*domestic*) strategic value chains. Doing so requires a competition policy that is fit for the 21st century, including a reformed state aid framework that places more weight on not only preserving but also enhancing the global competitiveness of European industry. For this reason, **the global competitiveness of Europe's energy-intensive industries should be explicitly acknowledged as an objective of common interest** (*singling out the energy-intensive industry on account of their contribution to global emission reductions; of course, this would be conditional on the documented environmental 'supremacy' of domestic industrial production compared to global competition*[11]).

Furthermore, as mentioned above, the lack of a level playing field on the global level should also be reflected in the EU's competition policy, including the state aid framework. In sectors exposed to international trade, the refusal of one Member State (*or even a few Member States*) to grant state aid **should not rule out the possibility of state aid in other Member States**. In such cases, the state aid should be considered as ensuring a level playing field on the global level, rather than distorting competition within the internal market. The policy framework for state aid in key areas (*e.g. research and innovation*) should also be streamlined in order to ensure that, where possible, aid can be granted without an ex-ante review on the European level. The rules of procedure should recommend a maximum duration of 12 months for the examination of state aid files, whereas the beneficiary should

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[7] OECD, 2019. Measuring Distortions in International Markets: The Aluminium Value Chain.
[8] European Aluminium, 2019. Vision 2050; European Aluminium's Contribution to the EU's Mid-Century Low-Carbon Roadmap.
[9] European Commission, 2020. A New Industrial Strategy for Europe.
[10] European Commission, 2020. Recover Plan for Europe.
[11] More information with regard to this proposal is available in our company's response to the recent Inception Impact Assessment concerning the EU's 2030 Climate Target Plan, which is available here.

be involved in the state aid review process right from the start (*i.e. from the preliminary investigation stage*). Beneficiaries are often best placed to explain issues with regard to the necessity and proportionality of the aid in question, and therefore **including them in this process would massively increase both the efficiency and the accuracy of the entire exercise**.

The state aid recovery process can also be improved; in particular, the beneficiary should be able to request a suspension of the recovery obligation under certain conditions (*e.g. in cases where the recovery concerns a large amount of money*). This is necessary because the fact that a beneficiary has received state aid in the past does not mean that these amounts are readily available in order to comply with a recovery order. This often leads to the beneficiary having to undertake drastic measures in order to comply with the recovery obligation (*e.g. having to sell off assets, potentially leading to irreversible damage*) **in cases where the Commission's decision could still be overturned by the European courts**. Finally, interest rates should also be applied to the amounts that are eventually returned to the beneficiary following the annulment of a Commission decision

Calculation of the 'Adjusted Aid Amount' – Article 2(20) GBER

According to Article 2(20) GBER, the 'adjusted aid amount' is defined as "*the maximum permissible aid amount for a large investment project*" and is calculated according to the formula defined thereunder.

The 'adjusted aid amount' also determines the notification threshold for regional investment aid (*Article 4(1)(a) GBER*). Regional investment aid has the potential to play an absolutely crucial role in both (i) decarbonising the European economy, and (ii) ensuring a just transition. This is specifically acknowledged in recital 31 of the GBER, which notes that "*regional aid promotes the economic, social and territorial cohesion of Member States and the Union as a whole. Regional aid is designed to assist the development of the most disadvantaged areas by supporting investment and job creation in a sustainable context*".

The funding required to support these regions through the transition is truly massive. According to the European Commission's proposal for the Just Transition Fund[12], "*coal infrastructure is present in 108 European regions and close to 237 000 people are employed in coal-related activities, whereas almost 10 000 people are employed in peat extraction activities and around 6 000 are employed in the oil shale industry*". Lignite-fired electricity production currently accounts for around 45% of the Greek region of Western Macedonia's total GDP.

[12] European Commission, 2020. Proposal for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund.

In order to stimulate the necessary investments, the formula outlined in Article 2(20) GBER should be adjusted as follows. This would increase the maximum permissible aid for such projects, while also increasing the notification threshold (*thereby avoiding the lengthy notification/approval procedure in cases where it should not be needed*):

Maximum aid amount = R x (A + 0.50 x B + 0 x C)

Where:
A is the initial €100 million of eligible costs (*instead of the €50 million today*),
B is the part of the eligible costs between €100 million and €200 million (*instead of €50 million – €100 million today*),
And C is the part of the eligible costs above €200 million (*instead of 100 million today*)

Furthermore, given the **urgent need** to stimulate investments in order to re-start the European economy following the COVID crisis, the values of A, B, C and D could also be temporarily increased by a further 25% for the next three years (2020, 2021 and 2022).

In light of the above, the definition of 'large investment project' (*Article 2(52) GBER*) should also be adjusted in order to relate to "an initial investment with eligible costs exceeding €100 million" (*instead of the €50m threshold that is currently foreseen*). The proposed amendment would facilitate much needed sustainable, capital-intensive investments, which are currently being held back by lengthy and uncertain notification procedures.

Scope of regional aid - Article 13 GBER

According to Article 13(a), aid for energy generation, distribution and infrastructure is excluded from the scope of 'regional aid', except for regional investment aid in outermost regions and regional operating aid schemes.

However, as mentioned above, regional investment aid has the potential to play a crucial role in both (i) decarbonising the European economy, and (ii) ensuring a just transition. In both cases, investments related to the energy sector will be required. In particular, the transition to a climate-neutral economy by 2050 will necessitate investments that contribute to the economic diversification of regions that are heavily dependent on coal/lignite, while also ensuring the security of energy supply. As also mentioned in the recital 31 of the GBER: "*regional aid promotes the economic, social and territorial cohesion of Member States and the Union as a whole. Regional aid is designed to assist the development of the most disadvantaged areas by supporting investment and job creation in a sustainable context*".

Considering the vast amount of direct and indirect job losses in the regions affected by the decarbonisation process as well as the need to ensure the security of energy supply for those areas, the economic, social and territorial cohesion of Member States largely depends on facilitating the necessary investments that will secure a fair and just energy transition. For this reason, it is important to avoid undue exclusions of particular sectors and include aid for energy generation, distribution and infrastructure in the scope of 'regional aid'. The exclusion is leading to massive missed opportunities in terms of much-needed regional development, diversification and job creation.

Regional investment aid - Article 14 GBER

According to Article 14(13) GBER, "*any initial investment started by the same beneficiary (at group level) within a period of three years from the date of start of works on another aided investment in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project*".

The Practical Guide on the General Block Exemption Regulation clarifies that the purpose of this rule is "*to avoid **artificial splitting** of an aided project into sub-projects in order to escape the notification obligation and/or to escape the capping of the aid amount in accordance with Article 2(20) of the GBER*". While it is undoubtedly important to avoid any possibility of circumventing the GBER through the artificial splitting of an aided project into sub-projects, the current wording of Article 14(13) does not consider whether there is an actual link between the projects. As a result, this hinders companies from being able to invest in different types of activities within the same region, given that the different investments are automatically considered part of a single investment project (*regardless of whether they are actually connected or not*), thereby massively reducing the available funding. By trying to avoid the artificial splitting of projects, we have effectively started to 'artificially bind' projects instead! This is particularly problematic when one considers that -as mentioned above- the purpose of regional aid is to "*assist the development of the most disadvantaged areas by supporting investment and job creation in a sustainable context*" (*recital 31 GBER*). These regions are in dire need of economic diversification, yet the current wording of Article 14(13) GBER constitutes a serious barrier to such diversification.

Therefore, while continuing to prevent the 'artificial splitting' of a project, Article 14(13) GBER must be amended in order to also prevent the 'artificial binding' of projects. In order to do this, the nature of each investment -and whether an economic link between the various investments can be established- should be considered. This could be achieved by re-introducing the wording from the previous GBER (*Regulation 800/2008*), according to which projects were considered to be a single investment project "*when the investment is undertaken within a period of three years by the same undertaking or undertakings and consists of fixed assets combined in an **economically indivisible way***".

Investment aid for the promotion of energy from renewable sources – Article 41 GBER

According to Article 41(6) GBER, in the case of investment aid for the promotion of energy from renewable sources, the eligible costs are the "*extra investment costs necessary to promote the production of energy from renewable sources*". In cases where the costs of investing in the production of energy from renewable sources can be identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid, the "*difference between the costs of both investments identifies the renewable energy-related cost and constitutes the eligible costs*". The Practical Guide on the General Block Exemption Regulation (p.49) further clarifies this provision by noting that "*the reference investment would normally be a less environmentally friendly energy production facility with the same capacity*".

This provision makes sense from an electricity generator's perspective. When investing in new electricity generation capacity, the generator has to decide which type of electricity generation technology to invest in, and Article 41 GBER provides a useful incentive that pushes the investor towards more environmentally friendly forms of electricity generation. However, Article 41 should also incentivise the **consumption** of renewable electricity by energy-intensive consumers. In such cases, the correct basis for comparison is not the construction of a different, less environmentally friendly energy production facility with the same capacity, but rather a continuation of the existing electricity supply contract. Therefore, in the case of an electro-intensive consumer aiming to build new low-carbon electricity generation capacity in order to self-procure (*either via direct line or via PPA*), the eligible costs should be based on the difference between the cost of building the new generation capacity and the cost of continuing to procure electricity via the existing contract.

This proposal could play a crucial role in facilitating the further uptake of RES sourcing, which remains a massive challenge for electro-intensive consumers in particular. The requirement for massive volumes of controllable baseload electricity makes it very difficult -and very expensive- to cover this demand using variable RES generation. Indeed, the cost of matching variable electricity generation with an industrial consumption profile (*balancing and 'shaping' costs, often referred to as 'firming' or 'sleeving' costs*) has been identified as a major barrier to the further uptake of industrial RES sourcing in a number of recent reports, including the "Masterplan for a Competitive Transformation of EU Energy-intensive Industries"[13] (which was referenced in the Green Deal Communication) and a report that was recently published by DG ENER[14], **which specifically highlights the importance of investment support to foster corporate investments in renewable technologies**. As a result of these challenges, to date, the only cases of RES sourcing by aluminium smelters in Europe are in the Nordics, where the abundant captive hydropower can (also) be used to cover balancing energy needs in a very competitive and low-carbon manner (combined with fully liquid and interconnected markets). Industry accounted for 24.6% of the EU's final energy consumption in 2017[17]; this is a huge chunk of the EU's total energy consumption that will be very difficult to decarbonise unless the problem of industrial RES sourcing can be solved. The GBER can play a crucial role in this regard.

Investment aid for energy infrastructure – Article 48 GBER

Article 48 GBER foresees the possibility of investment aid for the construction or upgrade of energy infrastructure, subject to certain conditions. According to Article 48(3), the energy infrastructure shall be subject to "*full tariff and access regulation according to internal energy market legislation*".

This wording effectively rules out the possibility of aid for the construction of direct lines, as defined in Article 2(41) of the Electricity Market Directive (2019/944)[15], given that direct lines -by definition- cannot allow for full third-party access. Direct lines have the potential to play a crucial role in

[13] High-Level Group on Energy-Intensive Industries, 2019. Masterplan for a Competitive Transformation of EU Energy-Intensive Industries; Enabling a Climate-Neutral, Circular Economy by 2050.
[14] European Commission, 2019. Competitiveness of corporate sourcing of renewable energy.
[15] 'Direct line' means either an electricity line linking an isolated generation site with an isolated customer or an electricity line linking a producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and customers.

facilitating the decarbonisation of the European electricity system, by enabling the self-consumption of renewable electricity on both the industrial level and for smaller consumers. In light of the above, it is unfortunate that the GBER de facto excludes the possibility of funding for direct lines (*in fact, this exclusion seems to run contrary to the EU's stated energy and climate objectives*). In order to remedy this situation, direct lines should be explicitly exempted from the Article 48(3) GBER requirement to ensure full tariff and access regulation according to internal energy market legislation.

Yours sincerely,
For MYTILINEOS S.A.

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