European Commission
Ms Ursula Von der Leyen
President of the European Commission

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- sent via e-mail –

Brussels, 12 July 2021

Subject: Draft Communication on the revised Climate, Energy and Environmental Aid Guidelines (CEEAG) - reservations regarding Pct. 4.11 Aid in the form of reductions from electricity levies for energy-intensive users

Dear President Von der Leyen,

We, the undersigned associations, take note of the draft revised Climate, Energy and Environmental Aid Guidelines (CEEAG) published on 7 June 2021, recognize, and support your efforts to helping Member States meet their ambitious EU energy and climate targets, at the least possible cost for taxpayers and without undue distortions of competition in the Single Market.

Nevertheless, we would like to address you today and express our reservations with regards to several good governance aspects, the data basis and methodology based on which the CEEAG assessment was made, as well as to the result - the exclusion of our industries from the list of sectors eligible for the state aid. Whilst our sectors have been excluded for a number of different reasons, we have identified some horizontal issues that threaten to distort fair competition and undermine the competitiveness of a large number of European industries.

Methodology leading to a shorter list of sectors eligible for reductions from electricity levies (Annex 1 of the Guidelines)

Firstly, we want to express our concern about the lack of transparency around the methodology that led to the list of eligible sectors in Annex 1 of the Guidelines. Neither the data basis (e.g. the assessment period and the electricity price), nor the results of the calculations (values for electricity intensity and trade exposure) have been published so far. As a result, it was impossible for affected stakeholders to understand why certain industries were excluded from the list of eligible sectors.

It was only after several associations sent specific requests for information to the unit in charge of the dossier that some details on the data and methodology were provided. This information revealed serious drawbacks in the assessment undertaken by the Commission for the revision of the Guidelines. For example, the period considered for the calculation of electricity and trade intensity dates back as far as 8 years (2013-2015). We are convinced that the use of such outdated data is not in line with the obligations under the Better Regulation Guidelines. For many sectors, today's realities concerning electricity prices, electricity consumption, carbon prices, and trade flows differ significantly from the situation of almost a decade ago. Lack of current data cannot be a justification as such data is readily available via Eurostat. Besides the problem of data obsolescence, there is also an issue of regional scope. To our knowledge, the data considered in the assessment still includes the UK, thus contradicting the evaluation for the EU-27 and leading to misleading considerations.

Recommendation: Use of updated, more recent data reflecting the latest policy, economic, technological, and social development.

Updated criteria used to determine state aid eligibility

We have also noticed several general issues concerning the criteria used to determine state aid eligibility. First, we see no justification for the removal of a whole eligibility category (above 4% trade intensity and above 20% electricity intensity) Due to these changes, the industries we represent will be deprived of the financial flexibility needed to successfully manage the transition to low-carbon technologies.

Second, instead of basing the evaluation of sectors' needs for state aid solely on an evaluation of historical data, the Commission should also take future trends into account. It is obvious that the high decarbonisation ambitions and carbon price will lead to the electrification of many industrial production processes and hence drive-up electricity consumption in the future. Such clear trends cannot be ignored, given that the list will be valid for many years.

Recommendation: Allow for the flexibility needed to successfully manage the transition to low-carbon technologies and also take into account future trends and forecasts.

Trade Intensity, defining its scope, formula and weight in determining state aid eligibility

We believe that the methodology puts too much weight on trade exposure. The levels of imports and exports alone do not determine the exposure of a sector to international competition. Even a low import level combined with an overcapacity on the international market can have a critical effect on a sector's profitability when companies are forced to lower prices. Furthermore, the competition on the EU market between sectors that produce substitutes needs to be carefully considered to avoid distortions of competition.

At the same time, the formula currently used for the calculation of sector specific trade intensity is: export value + import value) / (turnover in the EU + import value. The effect of using this formula is that exports and imports are not treated equally (because imports are both in the numerator and the denominator while exports appear only in the numerator). So, if the value of exports increases by a certain amount, it brings up the trade exposure value more as if the import value went up by the same amount. Or, when exports go down, but imports increase by the same amount, the trade intensity decreases.

Recommendation: Use a formula which would treat export and import values equally. For example, take imports out of the denominator, so that trade intensity is defined as: (export value + import value) / turnover in the EU

Lack of disaggregated PRODCOM level assessment

For several sectors, the assessment at NACE 4 - level is not appropriate. Even though those sectors meet the requirements for state aid when assessed individually at PRODCOM level or via qualitative assessment, they are still not on the list of eligible sectors because the average electricity and trade intensities of their corresponding NACE 4 codes are too low. Often it is due to the wide heterogeneity of the sector found under the NACE code.

Recommendation: Allow for either NACE or disaggregated level assessment, whenever appropriate using an accurate representation of the subsector's data so to avoid a discriminatory distinction between sectors and subsectors: both are in comparable situations regarding the risk of carbon leakage.

Given all of the above, we call for the following actions and changes to the draft CEEAG:

- Adjustments of the methodology:
    - Putting competitiveness in the core of the assessment instead of relying on inconclusive import and export values.
    - Considering future trends such as an increase in electricity consumption
    - Re-thinking the mathematical definition for the calculation of trade intensity
- Urgent publication of the results of sector specific values for trade exposure and electricity intensity, as well as the underlying data.
- Rectification of the data basis, i.e. use of a more recent assessment period and exclusion of data for the UK.
- Reinstalment of the eligibility category above 4% trade intensity combined with above 20% electricity intensity.
- Reduction of the threshold for trade intensity from the current 20% back to 10%.
- Introduce the option of assessment at disaggregated level (PRODCOM) or a qualitative assessment

We remain at your disposal for any further information and would welcome an opportunity to discuss this matter personally, whenever your agenda allows it. Thank you very much for taking our concerns into account.

Yours sincerely,

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