Government Offices of Sweden

Memorandum

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Ministry of Enterprise and Innovation
Department for Business, Division for Market and Competition

Competition Policy supporting the Green Deal

Introduction and General views

The European Commission has published a call for contributions with the purpose to collect ideas and proposals from stakeholders on how competition and environmental and climate policies work together and how they could do that even better. The Swedish Government's submission focuses on State Aid Control. The Swedish Government would, however, first like to emphasize the following with regards to the part of the call for contributions regarding the antitrust and merger control rules.

Antitrust and merger control

Competition policy and sustainability objectives both aim to facilitate an optimal use of resources in society. Among other things, the competition rules seek to create, uphold and improve the conditions for innovation and development on markets, also from an environmental and sustainability point of view. Applying the existing competition rules, based on the consumer welfare standard, can in itself contribute to achieve sustainability goals if combined with appropriate instruments such as regulatory measures and taxes.

The Swedish Government supports the Commission's initiative to explore how antitrust and merger control rules can best contribute to the green deal. In this context, it is particularly welcomed that the Commission call for practical and theoretical examples of situations which were considered to have had the potential to contribute to sustainability objectives but was never completed due to a perceived risk that it would violate the EU's antitrust rules. Finally, the Swedish Government would like to emphasize that it is of great importance that the work is coordinated if the Commission is planning to issue any guidance on these issues, as this ensures uniformity in competition supervision throughout the EU and provides legal certainty to undertakings.

State Aid Control

The Swedish Government welcomes the European Commission's statement in the communication on the European Green Deal that the revision of the state aid rules, including the EEAG, will reflect the policy objectives of the Green Deal, supporting a cost- and resource-effective transition to climate neutrality by 2050, and to facilitate the phasing out of fossil fuels, ensuring a level playing field in the internal market.

The ongoing review of the EU state aid rules should build on the many strengths of the existing framework and amend and develop the rules where necessary, to create a robust but effective state aid regulatory framework, flexible enough to take account of Member States' needs and national objectives but also safeguarding an efficient functioning of the Internal Market. Ultimately, allowing Member States to achieve climate and environmental objectives.

In this regard, the state aid rules need to be simplified as well as clarified in relevant cases to promote private investments and not discourage them. The revised state aid rules should facilitate the development of value chains for new raw materials, innovative technologies, products and processes that enable the necessary green transition. It is of utmost importance that the EU state aid rules contribute to rather than counteract the development towards a fossil-free society and the implementation of the Paris Agreement. This includes providing member states with the best possible tools to combat climate change, including improving the public financing tools at a level necessary for enabling the transition of the fossil fuels-based industry into near zero carbon or climate neutral technologies.

Question 1

The current state aid rules have in general worked well and enabled important and effective state aid schemes. However, the surge in demand for raw materials necessary for green products, the technical development of green products and industrial processes is happening very fast which is reflected in the development of new and emerging markets, as well as the evolution of existing markets.

State aid may help producers overcome market failures and barriers to the deployment of new green products and technologies. It is therefore important to ensure that the EU state aid rules are as flexible and technology neutral as possible to facilitate the development and commercialization of innovative technologies and materials while also ensuring that existing technologies enabling member states to reach the climate goals can continue to be put to good use. Further, it is essential that the EU state aid rules are coordinated with other parts of EU legislation, in order to ensure that they support and do not de facto hinder a transition to a fossil-free society in a cost-effective way. This relates for example to the potential need to support food-based biofuels and bioliquids in order to help reach set climate targets.

The state aid rules therefore need to be adjusted in certain parts and it is also necessary to introduce new rules. The following bullet points is a non-exhaustive summary of the Swedish Government's proposals, which are further outlined in this document:

- *A State Aid tool for climate aid*
  As mentioned, state aid rules must contribute to rather than counteract the development towards a fossil-free society and the implementation of the Paris Agreement. It is therefore necessary to phase-out state aid with a negative environmental and climate impact, for example state aid to fossil fuels. A new State Aid tool or an expansion of the EEAG in which the Commission could elaborate on the relationship between assessment of the compatibility of state aid and requirements to mitigate negative effects on climate and/or environment and the legal bases for this, in the light of the ruling by the Court of Justice in case C 594/18 P, Austria v Commission (Hinkley Point). It is also necessary that the enhanced focus on climate issues is reflected in the name of the relevant document.

- *Clean Energy for all Europeans Package*
  It is important to bring the State aid rules in the energy sector in line with the provisions of the Clean Energy for all Europeans Package. As a part of this state aid for sustainable food-based biofuels and bioliquids should be allowed also post 2021 and a new comprehensive State Aid measure for alternative fuels in line with the Renewable Energy Directive would also be welcomed.

- *Directing more private capital towards climate and environmental investments*
  One of the explicit aims of the revised state aid rules should be to enable green investments and the rules should allow for the investor risk aversions to be taken into account when developing a support scheme. For example, conditions affecting the evaluation of an investment's profitability could in this regard be reassessed.

- *Electrification of transport*
  The introduction of a new comprehensive measure regarding electrification would be welcomed for many reasons. It could for example include a revised and adapted version of Article 36 GBER with an adjusted transition period after the entry into force of Union standards.

- *Environmental taxes*
  Due to the particular characteristics of environmental taxes, they merit special consideration when dealing with state aid implications that may arise from their application. State aid rules need to adequately support environmental tax design which contributes to phasing out fossil fuels, while stimulating the development and deployment of renewable fuels.

A State Aid Tool for Climate Aid

As mentioned above, it is paramount that when aligning State Aid rules to the Green Deal, they must contribute to, and not counteract, the development towards a fossil-free society and the implementation of the Paris Agreement. In line with this the Commission should consider allowing state aid to enable sustainable alternatives such as biofuels and bioliquids to outcompete fossil fuels in the market but also be a tool to create a level playing field for competition between renewable alternatives. Thus, contributing to the development and introduction of renewable fuels and clean electricity as means of achieving climate and environmental objectives. Conversely, state aid schemes to fossil fuels must be phased out and should ex ante be excluded and hence prohibited from receiving new state aid approvals, similar to the rules in the taxonomy regulation.

The Swedish Government agrees with the Commission that regional aid may contribute, through its cohesion objective, to a fair and inclusive green and digital transition as described in the draft Guidelines for Regional Aid

(RAG). This however requires that aid according to the guidelines is in line with the EU targets on climate and environment and the goal of net-zero greenhouse gas emissions by 2050. It is therefore important that the actual environmental requirements in the RAG contribute to and do not counteract the general policy objective of developing a fossil-free and climate-neutral society. For this transition to be inclusive consideration must be taken to the special conditions in the sparsely populated and rural areas of Europe.

Achieving climate neutrality by 2050 (or earlier for those Member States with more ambitious national targets) requires technology neutral state aid rules to truly facilitate a situation where state aid can create the correct incentives at the right moment. The importance of technology neutrality cannot be stressed enough, as it is vital for enabling the new necessary value chains and market structures to evolve. If, for example, too much attention is paid to electrification of transports in the revised state aid rules, there is a risk that too little attention is paid to other alternative technologies. And the surge in demand for raw materials, the technical development of products and industrial processes in this field is happening very fast which is reflected in the development of new and emerging markets, as well as the evolution of existing markets. State aid may help producers overcome market failures and barriers to the deployment of new green products and technology. It is therefore important to ensure that the EU state aid rules are as flexible and technology neutral as possible to ensure necessary flexibility to allow member states to create the correct incentive for a specific product, technology or process at the right time. This facilitates the development of new technologies and materials as well as making sure that existing technologies can continue to be put to good use by member states to reach the climate goals.

It is important that the state aid rules are not used as a tool for harmonisation on the internal market. The application of the state aid rules must not go beyond what is justified in accordance with the principle of subsidiarity and also be flexible enough to take into account the different conditions in the Member States. The Commission is therefore encouraged to introduce a State Aid tool, for instance in the form of a Guideline or Notice based on Article 107(3)(c) TEUF enabling Member States to make the political decisions necessary to pursue the green transition. In such a tool the Commission could elaborate, in the light of the ruling by the Court of Justice in case C-594/18 P, Austria v Commission (Hinkley Point), on the relationship between assessment of the compatibility of state aid and requirements to mitigate negative effects on climate and/or environment and the legal bases for this. It would also be welcomed if the Commission could elaborate on how the type of requirements used in the context of green and socially sustainable procurement could be used to ensure that state aid contributes to the green transition. Alternatively, this tool could be incorporated into an expanded EEAG with the corresponding name CEEAG "Guidelines on State Aid for Climate and Environmental Protection and Energy", in order to fully reflect the integration of the Green Deal objectives into the state aid framework.

Clean Energy for all Europeans Package

The Clean Energy for all Europeans Package is a comprehensive update of the European energy policy framework to facilitate the transition from fossil fuels towards cleaner energy and to deliver on the Paris Agreement commitments for reducing greenhouse gas emissions. It includes, amongst other things, a recast Renewable Energy Directive (EU) 2018/2001 (RED II) and the Regulation on Risk Preparedness in the Electricity Sector (EU) 2019/941. Both contain important rules regarding energy from renewable sources which entail necessary adjustments to the EU state aid rules, particularly Section 3.3 of the EEAG, in order to enabling Member States to reach or exceed the climate targets.

Sweden has set a national goal to decrease the emissions from domestic transport with 70 per cent by 2030 compared to the emission levels in 2010. Electrification, investments in battery minerals, batteries and battery technology, as well as more efficient transports are crucial to attain this goal.

Biofuels and bioliquids, in particular food-based biofuels and bioliquids

Sustainable biofuels will also have an important and significant role to play in contributing to reduced emissions. Given that the production costs for biofuels are higher than their fossil fuel equivalents, state aid should enable sustainable alternatives such as biofuels to outcompete fossil fuels in the market and also be a tool to create a level playing field for competition between renewable alternatives. Tax exemptions for sustainable biofuels, for example, create a higher demand for such fuels, which will also promote the required investments for dedicated vehicles and the infrastructure for sustainable renewable fuels, enabling the transition towards fossil free transport.

While the new RED II does not ban food-based biofuels, bioliquids and biomass fuels – the state aid rules do, e.g. Article 43 GBER and Point 113 EEAG. Food-based biofuels and bioliquids can contribute to reaching the climate targets both within and outside the EU ETS. The EU cannot afford to continue to disqualify a significant portion of the available fuels with a high environmental performance that have been deemed sustainable in accordance with harmonized EU legislation. Such food-based biofuels and bioliquids can and should contribute to achieving the Paris Agreement and ambitious climate goals both in the short- and long term.

The Swedish Government thus sees no reason that the EEAG and GBER should not allow for state aid to food-based biofuels and bioliquids post 2021 as long as such aid measures incorporates a control system that ensures compliance with the sustainability criteria for all biofuels in line with the criteria and requirements of the revised RED II. In fact, it does not seem appropriate that state aid rules should ban aid measures for sustainable food-based biofuels and bioliquids, when such fuels can contribute towards achieving EU or more stringent national climate goals, particularly in the light of the ruling by the Court of Justice in case C 594/18 P, Austria v Commission (Hinkley Point).

RED II limits the amount of food-based biofuels which can count towards the renewable energy targets in transport but does not ban their use nor the granting of state aid. Considering this, the purpose of state aid rules should be to ensure that granted aid leads to well-balanced incentives for renewable fuels that are proportional to the negative effects on the internal market. The state aid rules banning operating aid to food-based biofuels and bioliquids needs to be omitted or adjusted in order not to prevent or counteract reduced emission levels and in turn the development towards a fossil-free society and the implementation of the Paris Agreement and member states' objectives.

The Commission could consider to exclude state aid to biofuels produced from high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock, as determined by the criteria in Commission Delegated Regulation (EU) 2019/807. If such biofuels are excluded from the possibility to receive state aid this would mean no state aid would be contributing to the use of high

ILUC-risk biofuels that are going to be phased out until 31 December 2030 when counting towards the renewable energy targets in transport, according to Article 26 RED II. Biofuels and bioliquids that are certified as low indirect land-use change-risk biofuels in accordance with Regulation 2019/807 should not be excluded. Several food and feed crops, for example wheat and rapeseed oil, have an exceptionally low ILUC-risk according to Regulation 2019/807, and should not be disadvantaged.

Blending and supply obligations

As a general condition, it is not allowed to grant state aid for biofuels which are subject to a supply or blending obligation, as stated in point 63 of the preamble of the GBER. This has been incorporated into different provisions of GBER (Articles 41 to 44). Point 114 EEAG also states a general prohibition against state aid for biofuels that are subject to a supply or blending obligation. However, the EEAG open up for aid measures if the Member State can show that the aid is limited to biofuels that are too expensive on the market exclusively with an obligation to supply or blend. Such opening should also be given under GBER if it can be guaranteed that the sustainable biofuel in question will not be overcompensated (see separate passage about the need to revise conditions for overcompensation).

Small scale installations

In cases where aid is granted to biogas production plants, the rules are more favourable if the biogas is used for transport than it is if the gas is used for heating or electricity production. In some cases, biogas may be upgraded and injected into a gas grid where it is blended with natural gas, and the final use may be both transport, heating or electricity production. The effect of Article 43 (2) GBER is that different thresholds are applicable on what constitutes a small-scale installation depending on the use of the gas. The Commission should therefore consider making the 50 000 tonnes threshold in Article 43(2) applicable to all production of bioenergy, regardless of its intended use.

Aid in form of reductions in or exemptions from environmental taxes for biofuels and bioliquids

The Commission upholds the principle to use Chapter 3.3 Aid to energy from renewable sources of the EEAG also when assessing aid cases regarding aid to biofuels and bioliquids in the form of reductions in environmental taxes under Directive 2003/96/EC (the Energy Taxation

Directive). The Swedish Government fails to see the logic in such an application and believes it would be appropriate to base such state aid assessments on Chapter 3.7 rather than Chapter 3.3 of the EEAG, if the minimum tax level of the Energy Taxation Directive is observed. An overcompensation assessment by the state aid rules would in such a situation not be necessary, as the criteria of necessity and proportionality are already handled by need to fulfil the EU minimum tax levels and the other provisions of Chapter 3.7 of the EEAG.

A comprehensive aid measure for renewable fuels

On a market where production costs for the substitutes to fossil fuels are still much higher than their fossil fuel counterparts a complex mix of measures, including state aid, may often be necessary. The state aid rules should not counteract but instead contribute to a situation where producers can be guaranteed a predictable cash flow at an adequate level to pay lenders and investors in order to facilitate the necessary green transition.

It would be welcomed if the Commission would consider introducing a new comprehensive state aid framework for sustainable fuels which is in line with the RED II, collecting existing rules and also taking into account the issues raised above but also ensuring technological neutrality. The EU State aid rules could for example contain conditions for state aid for investment and operating costs for installations to produce alternative fuels based on electricity from renewable sources and advanced sustainable biomass.

Technology infrastructures (test beds)

The usage of technology infrastructures, such as facilities, equipment, capabilities and support services where industrial actors can commercialise new products, processes and services, is a useful and effective way to speed up the green transition. It would be welcomed if the Commission would consider an introduction of specific rules in GBER for state aid to technology infrastructures, particularly technology infrastructures dedicated to address the challenges of the green transition.

Directing private capital towards climate and environmental investments

As stated in the Commission's communication on the European Green Deal, new technologies, sustainable solutions and disruptive innovation are critical to achieve the objectives of the European Green Deal. It also states that it will require massive public investment and increased efforts to direct private capital towards climate and environmental action, while avoiding lock-in into unsustainable practices.

In its action plan for financing sustainable growth the Commission highlights the need to reorient capital flows towards sustainable investments, in order to achieve sustainable and inclusive growth. Investing in sustainable innovations often entails new and untested processes and techniques, which also involves a higher risk for investments. Investors, however, cannot reorient their capital to investment where there is no viable business case. New innovative technology is often initially at a cost disadvantage compared to conventional technology. For example, fossil fuels often hold a cost advantage to renewable fuels. This is due to a fundamental costs disadvantage (unaccounted externalities) and hence holds true even when the production processes of the renewable fuels have reached maturity.

Therefore, even if a sustainable investment would yield the same return as the corresponding conventional investment or in the long run a better return, the uncertainty may sway investors to choose the conventional investment. Sustainable production is therefore often in need of governmental intervention to be able to successfully compete in the market and hence the state aid rules are key to sustainable investments and sustainable finance markets as well.

The Commission should consider allowing for the investor risk aversions to be taken into account, to a greater extent, in the assessment of the compatibility of a state aid scheme. For example, conditions affecting the evaluation of an investment's profitability could in this regard be reassessed. The definition in GBER of the fair rate of return (FRR) could, for example, expressly offer a possible higher rate of return in cases that are judged to be investments for environmental or climate reasons, due to higher risks as stated above. This would create a greater margin on the return so that investments are not discouraged because the margin is too small (risk of overcompensation). Also, the methods used to calculate the level of profitability of an investment according to EEAG could open for a similar two-level system to create incentives for private investments.

Access to finance is also important in this respect, particularly for start-ups. Article 22 GBER, state aid for start-ups is amongst other conditions limited to 5 years following the registration of the company. New innovative environmental technologies take, in general, longer time for commercialisation compared to other technology sectors. It would therefore be welcomed if the Commission would consider an extended time limit in Article 22 GBER for products and services that has a clear climate or environment relevance. An extended time period during which these start-ups could be granted state aid could facilitate enable more green private investments.

Eligible costs

Member States need to create incentives for undertakings to invest in new technology promoting energy from renewable sources. Articles 38 and 41 GBER has worked fairly well but do not seem to be efficient enough to cover all relevant situations since the eligible costs according to Article 38(3)(b) and Article 41(6)(b) are defined as only the extra investment costs by reference to a similar but less environmentally friendly technique. In practice the alternative cost appears very theoretical and speculative, which makes it more difficult for undertakings to assess their eligibility. In order to promote investments in environmentally friendlier techniques it should be possible to regard the total investment costs as the eligible costs in more cases than today. It is also debatable, whether it is rational to use the investment costs for an alternative less environmentally friendly technique as a cap for aid levels. The rational for undertakings to make these kinds of investments may not always be to replace existing technology with the same kind of technology. Sometimes the rationale for an undertaking to make such an investment may be to increase its environmental commitments.

This reasoning is equally valid for state aid in form of tax reductions, more precisely in monitoring and calculating overcompensation of such schemes. If the technology switch leads to a situation where the undertaking creates permanently lower negative externalities (costs not included in price) may also motivate higher aid levels to create the right and necessary incentives.

Similar remarks can also be made regarding the definition of eligible costs under Article 47 GBER for investment aid for waste recycling and re-utilisation. The state aid rules need to contribute to rather than counteract the development towards a fossil-free society and the implementation of the Paris Agreement, in line with the 2030 Agenda for Sustainable Development.

Electrification of transport

The geographical conditions of different Member States should be possible to take into account when assessing a state aid measure's compatibility with the Internal Market. In some Member States the geographical conditions necessitate a longer period of adaptation for the green transition. It affects how much a specific Member State can focus on for example electrification of transports. Electrification is a very important part of the green transition, but it is important to reiterate the above-mentioned need for technology neutral state aid rules so that no new or existing technology that can help Member States achieve the ambitious climate goals is set aside.

Regarding electrification of transport, it will require highly innovative technologies and critical raw materials on a massive scale along the entire energy chain to attain our ambitious energy, climate and environmental goals. It does not only require state aid for the promotion of research and development for these technologies to enter the market. Large-scale demonstrations and application will be necessary to test functionality and durability. It is necessary to help make investments in these technologies and processes as attractive as possible. Without intervention it may be difficult to attract private investments due to the high risks and low levels of expected return in a short to medium term. A new section in the EEAG with corresponding rules in GBER regarding electrification and/or new emerging markets would be welcome for many reasons. Such rules could for example include a revised and adapted version of Article 36 GBER with an adjusted transition period after the entry into force of Union standards. Also, the requirement that the infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis in Article 56(3) GBER could be eased either on a temporal basis or a more permissive view on when it is made available.

Environmental taxes

In addition to the comments made above on environmental tax aid to biofuels and bioliquids, the Swedish Government would like to elaborate further on the special characteristics of environmental taxes. These taxes merit special consideration when dealing with state aid implications that may arise from their application. One basic aspect in relation to environmental taxes is that the tax base is different by nature. Special tax exemptions and reductions made in order to secure an effective fulfilment of particular climate and environmental objectives, which might seem odd if applied in other tax systems, can be fully logical from an environmental tax point of view. Further, tax measures are often generally open for application by a large number of economic operators, based on specific legislation decided by national parliaments. The tax authorities in general simply administrate the collection of the tax from the taxpayers and ensure, by checking tax declarations and doing regular audits, that the taxpayers are following the legal provisions of tax rate and deductions. There is no room for discretionary measures. This is also something that makes taxes different from other forms of aid, where a more individual assessment upon individual applications from the beneficiaries is a standard procedure.

It is crucial that the special characteristics of environmental taxes are reflected in the future state aid provisions in guidelines and regulations concerning transparency, evaluation, reporting and monitoring requirements. There are requirements and conditions associated with the assessment of compatibility and approval of state aid that are difficult to reconcile with generally applicable environmental taxes. However, in the past, the Commission has often shown flexibility for the specific nature of the tax area. It is important to safeguard this flexibility and in the light of the Green Deal also expand and strengthen it. This is to enable cost-effective solutions to the environmental problems and long-term objectives addressed in the Green Deal.

Maintain the indirect incentive effect

The Swedish Government would like to emphasise the need to maintain the provisions in Points 167 to 175 EEAG and the corresponding provisions in Article 44 GBER in combination with Article 6(5)(e) GBER for aid in the form of tax reductions and exemptions from taxation according to the Energy Taxation Directive.

When designing appropriate measures to ensure a transition to a fossil free and resource efficient society, differentiated tax rates addressing the risk of carbon leakage may be a viable option. In this context the Government would like to emphasise the need to maintain the concept of 'indirect incentive effect' (see point 168 EEAG). The acceptance of this concept is crucial for enabling a good design of environmental taxes. It is a common concept when designing a well-functioning environmental tax policy and needs to be maintained.

For example, Sweden applies a higher energy tax on electricity used by companies in the service sector compared to industrial enterprises. The low tax level for certain enterprises is a prerequisite for applying a significantly higher tax level for other kinds of business. State aid is considered to be given to the low-taxed enterprises resulting in an indirect improvement of the level of environmental protection following from the high level of taxation for the service sector enterprises. The improvement is indirect, as the improvement is achieved by the enterprises being subject to the higher tax rate. A prerequisite for the higher tax rate is the possibility to apply a lower tax level was made possible by the introduction of aid in the form of the lower rate for certain other enterprises. This is a common concept when designing a well-functioning environmental tax policy and needs to be maintained.

Non-harmonised environmental taxes or taxation below EU minimum tax levels

Points 176 to 180 EEAG handle aid in the form of reductions of or exemptions from non-harmonised environmental taxes. They also cover situations where the tax paid, after the deduction of aid, does not respect the minimum tax levels set out in the Energy Taxation Directive. The present design of the provisions was introduced in the 2008 Environmental Aid Guidelines and the provisions were to a large extent transposed into the EEAG in 2014.

It is fair to say that the conditions set out, in order to prove that the aid is necessary and proportional, are difficult –in some cases maybe even close to impossible – to achieve. Proving the conditions in any case result in an excessive administrative burden; this is not reasonable. Further, the provisions primarily seem to be designed with aid granted to manufacturing industry enterprises in the form of tax reductions of energy taxes in mind, not taking proper account of the fact that non-harmonised taxes can be levied on other kinds of tax bases that may require more case-specific conditions. It would therefore be welcomed if the Commission would consider revising the conditions to ensure a neutral and equal applicability.

It is true that it may be a somewhat complicated task to design state aid provisions for non-harmonised taxes. Nevertheless, we need to bear in mind that taxes in yet not harmonised areas may form an important part of Member States’ toolbox to meet set policy objectives. The EEAG should not penalize such taxes but strive for a logical and coherent treatment of aid measures also regarding such taxes. This is particularly important from the point of view that state aid rules should contribute to rather than counteract the development towards a fossil-free society and the implementation of the Paris Agreement, in line with the 2030 Agenda for Sustainable Development. Following this logic, also certain measures resulting in tax levels below the minimum tax levels of the Energy Taxation Directive for certain undertakings may be appropriate and it would be welcomed if the Commission would consider to make this possible.

One of the requirements in the EEAG is in our view effectively hindering a Member State from introducing a high general tax level that would contribute to a significant overall improvement in the level of environmental protection. The requirement laid down in point 178(a) EEAG, requires aid beneficiaries to pay at least 20 % of the national environmental tax. In terms of internalising external effects and level the playing field it could possibly also lead to a higher tax level than the external costs associated with the activity. The 20 % rule may limit the environmental effect of the tax and the Swedish Government fails to see the reason for that.

A way to address this issue could be to introduce a "rule of reason clause" as a complement to the 20 % rule, enabling the Commission to accept a lower level than 20 % of the national tax in certain specific situations. This could for example relate to a Member State applying a high tax level in an area of great importance to an environment strategy and that a well-defined exemption from the tax is deemed necessary to reach an overall considerable improvement in the level of environmental protection.

Other restrictions in combination with general tax measures

Restrictions on which undertakings that are eligible for aid, such as only non-depreciated undertakings, relatively small undertakings and undertakings started before a certain date are all restrictions that are admittedly possible but still difficult to apply to general environmental tax rules. Even though it is possible to apply such rules they tend to be fundamentally counterproductive in fulfilling the goal of a generally applied environmental tax. For instance, the Swedish carbon dioxide tax aims to make the polluter pay for the costs associated with fossil fuels and thus create a level playing field for other more environmentally friendly fuels. Substitution away from fossil fuels is essential in order to reach set environmental goals. The environmental benefit correlated with substitution away from fossil fuels are the same, independent of the age of the undertaking producing the alternative fuel, the level of depreciation in the undertaking and the size of the undertaking. Even if the intentions with the restrictions are good, they reduce the effectiveness of the tax. It is therefore highly debatable if such restrictions should apply to operating aid within general environmental tax schemes.

Requirements and evaluations

It is important that aid schemes are well-balanced and justified, and that harmful aid schemes are not approved. This is a prerequisite for a well-functioning internal market and ensures that small export-dependent countries are not disadvantaged. However, the requirements must be based on reasonable grounds. If the requirements on scientific evidence for the effects of the aid are set too high it may have a limiting influence in the design of national legislation. This may in turn, unintentionally make it more difficult for Member States to carry out effective environmental policies in line with the Green Deal.

Empirical evidence through high-quality research can be difficult to achieve. For example, randomized controlled trials, often called the golden standard of science, would in principle require the introduction of a randomness regarding those who are eligible, in order to be able to compare outcomes for those who have received support with outcomes for those who have not received support. Apart from the fact that this can lead to Member States choosing less effective environmental policies, it is also not legally possible to design tax legislation in this way. Robust and reliable empirical indications can thus in many cases be difficult to achieve, which does not have to be due to the fact that the aid scheme in question has no effect but rather have to do with limited data and other factors making a high-quality scientific evaluation less feasible. If the Commission would consider developing a particular guidance on suitable methods for evaluating state aid measures in the form of tax reductions or exemptions it would be welcomed.

Question 2

The EU state aid rules should contribute to rather than counteract the development towards a fossil-free society and the implementation of the Paris Agreement. It is therefore necessary to phase-out state aid with a negative environmental and climate impact, for example state aid to fossil fuels.

As mentioned above, it is however important that the state aid rules are not used as a tool for harmonisation on the internal market. The application of the state aid rules must not go beyond what is justified based on the principle of subsidiarity and also be flexible enough to take into account the different conditions in different Member States. It would therefore be welcomed if the Commission introduces a new State Aid tool in the form of a Guideline or Notice based on Article 107(3)(c) TEUF, in which the Commission could elaborate, in the light of the ruling by the Court of Justice in case C 594/18 P, Austria v Commission (Hinkley Point), on the relationship between assessment of the compatibility of state aid and requirements to mitigate negative effects on climate and/or environment and the legal bases for this.

Question 3

The ban on overcompensation is a very important principle of the state aid rulebook. However, it is not always obvious that the stipulated methods of calculating and monitoring overcompensation is always the most appropriate ones. In some cases, those rules could benefit from an overhaul as suggested above to enable the state aid rules to allow state aid schemes to create the correct incentives at the right time. The rules should allow for the investor risk aversions to be taken into account when developing an aid scheme. For example, conditions affecting the evaluation of an investment's profitability could in this regard be reassessed. However, it is on the other hand never appropriate to allow more aid than necessary to achieve the objectives of an aid scheme, it could prove detrimental to the internal market if that would be allowed.

Question 4

The Taxonomy Regulation is designed to establish an EU-wide classification framework to enable financial market participants (FMPs) to identify which economic activities and investments can be treated as environmentally sustainable. As of now the taxonomy is too strict and not yet established as definition of all things sustainable. Over time the EU taxonomy might be a yardstick for determining whether a company's activities contribute to the green transition or not and can be used as a tool for identifying environmentally sustainable investments. In this regard taxonomy could be useful if, for example, GBER and EEAG take the taxonomy regulation into account where appropriate and to a suitable extent. However, it is important that the use of the taxonomy really does bring simplification and improvement to the state aid compatibility assessment and that it does not do so at the expense of technology neutrality and flexibility in designing state aid schemes.