

Competition Policy supporting the Green Deal

Hydro's contribution

About Hydro

Hydro is a leading industrial company committed to a sustainable future. Today, we are present in a broad range of market segments for aluminium, energy, metal recycling, renewables and batteries, offering a unique wealth of knowledge and competence. We are the largest aluminium company in Europe. Present in 22 European countries, we operate primary aluminium smelters, recycling plants, rolling and extrusion activities.

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PART 1: STATE AID CONTROL

As input to the debate on how State aid control and environmental and climate policies work together – and how they could do that even better, please consider the following questions:

- 1. What are the main changes you would like to see in the current State aid rulebook to make sure it fully supports the Green Deal? Where possible, please provide examples where you consider that current State aid rules do not sufficiently support the greening of the economy and/or where current State aid rules enable support that runs counter to environmental objectives.***

State aid rules are crucial to support industry's competitiveness and enable industrial transformation, necessary to achieve a climate neutral economy. Electro intensive industries such as aluminium are dependent on a fully functioning and robust framework which allows to contribute to the objectives of the green transition, while remaining competitive on the global scale.

Aluminium is a key enabler of the transition, but a climate neutral economy requires enormous investments to develop, upscale and implement new technology in existing or new plants. These investment costs cannot be borne solely by the aluminium industry and must be proportionate given the high level of global competition we face. A revised state aid framework is extremely important to provide producers with the much-needed financial support and long-term regulatory certainty.

Hydro welcome the ongoing review of the Environmental and Energy State Aid Guidelines (EEAG), an extremely important tool for the Green Deal objectives. Our experience is that aid granted under the 2014 EEAG has been vital for our sector to remain competitive, while facilitating industry projects to promote energy efficiency, emissions reduction and the development of innovative production and process methods. We refer in particular to the aid granted to reduce costs resulting from the support to renewable energy sources, which is a prerequisite for those industries and companies most heavily exposed to international competition and with no ability to pass on climate or energy related costs to product prices, hence facing a particular risk of carbon and investment leakage (cf. par. 189, EEAG 2014-2020). Furthermore, the renewable support has been important for the technologies to mature and become competitive, has not distorted the power market functioning, and has reduced the carbon footprint of the power source which consequently reduces the carbon footprint of electro intensive industries. It is important that the huge support to renewables is balanced out by exemptions for industries who cannot bear this cost in global competition.

Looking ahead, to ensure the state aid framework is aligned with the Green Deal, we recommend the following changes:

- **Address global competitiveness, not only internal market competition** - A climate ambitious state aid policy and its enforcement should, as a general principle, consider the impact on the global competitiveness of the European industry as a key factor. Global warming is not an EU internal-market problem only, it is an international one. Through its energy and climate policy, Europe is leading on international climate action, but its effort will have limited effect if not corresponded by an equivalent effort by other large nations or regions. European industry is suffering from added costs compared with main international competitors. Until a global level playing field is established, European industrial competitiveness needs to be safeguarded also via competition policy. In today's carbon constrained world, many fully globally competing industries, as aluminium, are exposed to international market distortion due to different non-reciprocal climate policies worldwide. Therefore, State Aid rules need to be revised to reflect this global reality by a) increasing support to "green projects" and b) defining European industries' global competitiveness as an objective of common interests. This can be achieved by i.e. removing or reducing regulatory costs not borne by competing industries world-wide. Such costs would otherwise hamper European industry's ability to invest in green technologies and de facto increase carbon leakage
- **Maintain and strengthen current system of reduction in renewables support in EEAG** to allow electro-intensive industries to remain competitive. For the most electro intensive industries as aluminium, electricity cost is about 40 % of the production cost and represents the main parameter deciding the producer's global competitive position. Therefore, the current EEAG rules on reduction of RES support should be maintained and strengthened in view of the increasing costs stemming from Green Deal implementation. State aid policy must allow for adequate hardship regimes, cost limits and specific measures for industrial users most exposed to the risk of carbon leakage, until a level global energy and climate playing field is established. The provisions in current Section 3.7 paragraphs 188 & 189 of the current EEAG, wherein relief granted is proportionate to the specific exposure of each sector at the level of undertaking/activity, removes any risks of overcompensation or market distortion
- **Shield from future climate related costs**- Furthermore, the new rules should allow for reduction in or exemption from the future extra costs resulting from financing the EU Green Deal and higher climate ambition, which are not faced by international competitors. These costs include direct funding support for additional infrastructure, storage etc that enables the targeted renewable electricity uptake in the power mix. Further, reductions in capacity mechanisms surcharges, system balancing costs and other related costs should also be allowed.
- **Long term certainty** - The new state aid framework should provide long-term certainty on regulatory costs so that green investments are more attractive. Current state aid rules have proved insufficient to support the greening of the economy when it comes to the duration of the guidelines. Current EEAG, for instance, have a time span that is much shorter than a renewable PPA or the payback period of an investment. This limits companies' willingness to enter green projects. Therefore, more long-term guidance in relation to regulated components of electricity costs would increase the effectiveness of the rules.

2. If you consider that lower levels of State aid, or fewer State aid measures, should be approved for activities with a negative environmental impact, what are your ideas for how that should be done?

- a. **For projects that have a negative environmental impact, what ways are there for Member States or the beneficiary to mitigate the negative effects? (For instance: if a broadband/railway investment could impact biodiversity, how could it be ensured that such biodiversity is preserved during the works; or if a hydro power plant would put fish populations at risk, how could fish be protected?)**

Member States are, in principle, in the position to evaluate a project's negative effects in relevant concession approvals, where the project will have to meet requirements for environmental protection/ impact within available methodologies and technology.

3. *If you consider that more State aid to support environmental objectives should be allowed, what are your ideas on how that should be done?*
- a. *Should this take the form of allowing more aid (or aid on easier terms) for environmentally beneficial projects than for comparable projects which do not bring the same benefits ("green bonus")? If so, how should this green bonus be defined?*
 - b. *Which criteria should inform the assessment of a green bonus? Could you give concrete examples where, in your view, a green bonus would be justified, compared to examples where it would not be justified? Please provide reasons explaining your choice.*

To support environmental objectives, more state aid should be allowed in the following areas:

- First, for industry to be able to continue to invest in green technologies, new state aid measures should ensure long-term predictability of support for both investments and operating costs. Introducing new green solutions and technologies in the market often requires continuous support necessary to bridge the so called "valley of death" for new projects. Further, this is important to de-risk investments and make low-carbon solutions competitive with carbon intensive ones.
- **Important Projects of Common European Interest (IPCEI) and breakthrough innovation:** IPCEI criteria should be amended to facilitate full funding of the operating costs incurred by the use of low-carbon production processes. The scope should be extended to support, under a set of defined conditions, innovation for the decarbonisation of existing products, including electricity supply. Public support via IPCEI could for example support the development of relevant breakthrough technologies beyond CCS.
- **Public support schemes for new technologies and scalability** – The success of the Green Deal relies partly on the development of and scaling new technologies such as batteries and green hydrogen into cost competitive components in the climate neutral economy. To ensure such development at sufficient speed is likely to require public support schemes beyond current programs and allowing also for scaling of proven technology. This is limited in current EU state aid rules. As long as European companies compete with international peers, access to similar level and duration of public support will be required. The state aid rules should allow for full compensation of additional costs, but at the same time make sure aid doesn't go beyond the amount that is really needed. IPCEIs allow for higher maximum state aid, but the processes are complicated and lengthy. Measures to simplify should be considered.
- **Recycling infrastructure and circular economy investments** Support for circular value chains and sorting infrastructure: The current Guidelines do not reflect the higher ambition for circularity under the Green Deal and the recently released Circular Economy Action Plan. Aid should go beyond waste management systems and focus higher up the waste hierarchy to support innovative circular solutions, high quality and innovative recycling facilities and resource efficient industrial production processes. Further down the waste hierarchy, flexibility should be allowed for aid targeting innovative collection and sorting infrastructure and investments in high quality recycling facilities. Such measures would generate benefits in terms of resource efficiency, energy consumption and carbon emissions, thus in line with the EU Green Deal Objectives.
- **Explore the possibility of demand-side measures to incentivise low carbon products:** EU State Aid policy should stimulate the demand of low carbon products and incentivise their production. This should be considered through instrument such as green public procurement, or through support for private entities that purchase low-carbon solutions.

4. How should we define positive environmental benefits?

- a. Should it be by reference to the EU taxonomy and, if yes, should it be by reference to all sustainability criteria of the EU taxonomy? Or would any kind of environmental benefit be sufficient?**

The EU Taxonomy is under development, and it can be an important classification tool for projects and technologies that are best performers within the sectors that are covered. However, the EU taxonomy draft delegated act proposal so far on climate thresholds does not cover all sectors, and it only covers some parts the sectors that are within scope. Neither does the taxonomy target R&D and technology development. Projects outside the taxonomy could therefore have high environmental benefits. Therefore, to restrict definition of positive environmental benefits to EU taxonomy alone would be too narrow.

When trying to define positive environmental benefits, different elements should be considered. Mostly, we believe that positive environmental benefits should not be defined by using absolute thresholds, but rather by using a relative measurement of improvement.

Positive environmental benefits could be defined as follows:

For existing production/technology:

- reducing environmental /climate impact compared to existing production technology
- reducing environmental/climate impact to e.g. BAT level, industry standards, best practice

For new technology:

- reducing environmental/climate impact compared to existing solutions

Relevant parameters in assessment of environmental benefits of a project could be:

- Carbon footprint in production
- Carbon footprint according to full life cycle assessment (LCA) including use phase benefits
- Recyclability, re-use and end-of life treatment of products
- Impact on environmental performance in other sectors
- Contribution to increased circular economy
- Energy efficiency

PART 2: ANTI- TRUST RULES

In this section, we provide input to questions 1, 2 and 3 of the antitrust part of the questionnaire; We have not divided our response according to the three questions, as many of our inputs are relevant for all three of them. If requested to be taken into account, our reply primarily refers to question 1.

We believe the following issues are important in the strive to identify and mitigate potential barriers to desirable agreements supporting Green Deal objectives.

- As part of the ambitious plan launched by the Commission with the Green Deal, we believe that horizontal agreements aimed at reducing ecological footprint (e.g. by reducing carbon emissions or energy consumption or by driving recyclability and recycling), as well as minimum standards to reduce environmental impact and projects to increase the commercial viability of environmental projects, should generally be presumed to be pro-competitive. Therefore, we support that sustainability criteria should be included among the key elements

in the assessment of the legal and economic context under Article 101(1) and the cumulative conditions for the application of Article 101 (3)¹.

- Further, Hydro supports the elaboration of additional guidance and clarity to encourage and enable European businesses to work together to achieve sustainability goals which either cannot be achieved unilaterally or can be more effectively pursued through joint efforts.
- For various types of collaborations among competitors, such as joint technology development collaborations, the competition rules are complex and not clear-cut, and often require fact-intensive inquiry into the purpose and effect of the collaboration to assess its compatibility with competition laws. Even if equipped with sufficient resources to make the necessary factual and legal analysis, companies are often faced with legal uncertainty as to what may fall within the safe harbors of the various block exemptions and/or Article 101 (3). Combined with the risk of severe sanctions and other consequences in case of good faith misjudgments, there is a risk that companies may refrain from cooperating out of fear that they could be infringing competition rules, even where a collaboration would be pro-competitive and support the sustainability objectives of the Green Deal.
- To reduce legal uncertainty and a potential underinvestment in sustainable projects, we would therefore welcome further guidance in the horizontal block exemption regulations and the guidelines on horizontal cooperation as to when, and under what conditions, cooperation for sustainability reasons is acceptable. This would for instance be useful in relation to the following types of collaborations;
 - *R&D agreements, including co-operations on joint technology development.* The block exemption regulation on R&D agreements should be reviewed to boost R&D cooperation for sustainability objectives. The complexity of this regulation and legal uncertainty as to what falls within the block exemption and/or Article 101 (3) can discourage collaborations between competitors as companies are afraid to collaborate for fear of falling foul of the regulations. Determining the relevant market(s) and the potential effects on competition is particularly difficult if you are looking for step change innovation. If a step change innovation is the potential outcome of a joint R&D, it may by default create a new market and the partners will immediately have the total market share, excluding the possibility of applying the joint R&D block exemption. This problem should be addressed, as it is a real obstacle to innovation. Hydro therefore welcomes the Commission to simplify and extend the R&D block exemption and, in particular, to provide more clarity on the circumstances of which R&D cooperation for sustainability objectives (e.g. collaborations to carry out joint technology development) would be covered by the R&D block exemption.
 - *Standardization and sustainability agreements.* Hydro believes that standardization and sustainability agreements may be considered as topics for block exemption regulations, e.g. where companies agree on certain standards to meet environment objectives or in other ways collaborate in pursuit of sustainability objectives. As regards sustainability agreements, we refer to the Dutch Competition Authority's (ACM's) draft Guidelines on Sustainability Agreements from July 2020 as an example for consideration also on an EU/EEA level². Pursuant to the draft Guidelines, businesses are allowed a greater scope for collaboration to achieve climate objectives, such as carbon emissions reduction, in

¹ Ref. point 1.2.2 of the Guidelines for the assessment of horizontal cooperation agreements

² <https://www.acm.nl/en/publications/acm-opens-more-opportunities-businesses-collaborate-achieve-climate-goals>, ref. the EU Commissions statement on the draft Guidelines on <https://ec.europa.eu/competition/antitrust/news.html>

cases where the benefits for society as a whole outweigh the disadvantages of any restriction of competition.

- *Joint bidding*; Collaboration between companies in the form of joint bidding may enable them to submit more competitive bids for contracts, also promoting Green Deal objectives. Joint bidding may be pro-competitive in large tenders where companies can increase their economic and financial standing and minimize the risk whilst combining and complementing their technical and professional expertise. However, while practice and guidance on this issue under EU/EEA law is still limited, relatively recent cases from national competition authorities (e.g. in the Nordics) demonstrate a strict enforcement practice in some Member States, classifying joint bids as by object restrictions if the parties could in principle have submitted individual bids (even if less competitive). Legal uncertainty and the risk of infringing competition rules may therefore discourage joint bids even if this would be pro-competitive and promote Green Deal objectives. The Commission's framing of a workable rule of law for joint bidding and more clarity under EU law on this issue would be welcomed.

In all cases, we encourage the Commission to include in its guidance clear explanations on methodology (i.e. what are companies expected to demonstrate and with what methods or standards should companies substantiate sustainability claims). Such methods should be reasonably easy to apply and not impose too heavy burdens on companies. Companies need clarity and legal certainty to pursue sustainable initiatives as such projects often involve significant investments.