**Energy intensive Users (EIUs) – Section B of the EEAG Consultation**

Under the existing EEAG (section 3.7), EIUs exposed to international competition are entitled to aid in the form of reductions in or exemptions from environmental taxes and in the form of reductions in funding support for electricity from renewable sources.

The underlying principle and objective of these provisions is very important and should be retained. Especially the fundamental notion that without such reductions and exemptions EEIs would be placed at such a competitive disadvantage that it would not be feasible to introduce the support for renewables at all. Such reductions and exemptions need to be maintained and strengthened, because they constitute effective measures to ensure the competitiveness of these sectors, including steel, and contribute to the overall environmental objectives as they support environmental ambition in the EU while avoiding carbon, investment, jobs leakage to third countries with less environmental ambition. The aid for EIUs involved under these schemes has proofed to be based on objective, transparent and non-discriminatory criteria. Without these exemptions, EIIs would face the imminent risk of losing market shares to competitors in third countries where no comparable climate protection measures are in place or where such exemptions are provided. This would have disruptive economic, social and environmental effects, undermining the social acceptance of climate policy. At the same time, the overall costs of support for renewables should be reduced over time as more technologies reach maturity and market competitiveness.

While retaining the principles and objectives of existing provisions, the revision of the EEAG should take into account recent court cases when defining the definition and boundaries of state aid. In the very recent judgment[[1]](#footnote-1) concerning the German law for renewable energy from 2012 (EEG 2012), the European Court of Justice (“ECJ”) found that funds generated by surcharges paid in accordance with national schemes do not constitute State resources as long as they are not at the disposal of the State but controlled by private parties. Consequently, under certain conditions, exemptions to energy intensive undertakings do not constitute State aid. The revised EEAG should take into account these developments and clarify such conditions.

Looking ahead, rising shares of renewables will need to be accompanied by additional measures that address their intermittency, including infrastructure, storage, generation adequacy, balancing and distribution. All these measures will impact further the energy bill in the EU without comparable costs in third countries. In analogy to the situation with contributions to renewables, financing such costs could easily undermine the competitiveness of EIIs exposed to international competition, such as steel. Furthermore, EIUs offer solutions in these fields as they contribute to the stability of the grid thanks to their specific consumers’ profiles. Hence, they should be also shielded from an undue extent of such regulatory costs (e.g. capacity mechanisms, system balancing costs, network and distribution costs, etc.), taking into account their overall contributions to taxes and levies.

**Explanatory part to questions 130 - 143**

**Question 130**

While the exact evolution of each component of electricity prices is difficult to forecast across the EU, it is clear that increased climate ambition will imply additional policy interventions both at EU and national level. These may include not only continued support for renewable energy generation but also, and most importantly, related measures to ensure generation adequacy and transmission and distribution services, which are necessary to counterbalance the intermittence of renewable generation. Such policy interventions will increase the impact of regulatory costs on the electricity bill. Therefore, EIUs should be shielded from such costs in order to preserve their competitiveness against third countries’ competition that is not subject to equivalent climate constraints.

**Question 131**

The aid for EIUs in the form of reductions in or exemptions from environmental taxes and funding support for electricity from renewable sources has proven to be effective against the risk of carbon leakage, hence retaining sufficient tax base in Europe while avoiding increase of emissions in third countries without comparable legislation. Yet, in order to remain effective in the future, such aid should be extended to other policy measures that affect the electricity bill, such as regulatory costs for generation adequacy and transmission and distribution services.

**Question 132**

Removing aid for EIUs would have a disruptive effect on the competitiveness of these sectors against competition from third countries without comparable climate and energy legislation. The electricity bill would increase substantially in all EU member states, without an equivalent situation in third countries. This would result in carbon, jobs and investment leakage and deterioration of the EU tax base. With regards the formulation of the question, it shall be clarified that the EU Green Deal Communication states that carbon leakage occurs “*either because production is transferred from the EU to other countries with lower ambition for emission reduction, or because EU products are replaced by more carbon-intensive imports”*. The question refers only to the first situation (relocation of EU production) but does not take into account the risk of the second scenario (EU production replaced by imports).

**Question 133**

Deep CO2 emissions reductions in the steel sector are possible through a combination of technological pathways, including steel recycling, carbon capture utilisation and storage, process integration, and electricity/hydrogen-based metallurgy. Most of these pathways require direct or indirect (via hydrogen) electrification. According to the EUROFER 2050 Roadmap, additional energy requirements will be about 400TWh of electricity by 2050 – about seven times what the sector purchases currently. Therefore, the increase of taxes and levies on the electricity bill would impair significantly the decarbonisation of the steel industry.

**Question 134**

After the quick development of renewable energy in the last decades, it is essential that decarbonisation schemes priorities investments in industry with large abatement potential such as the steel sector. These schemes should not be financed by specific charges or taxes on industry, since it would increase the risk of carbon leakage in short term, hence being counterproductive both for environment and industrial competitiveness. Charges on energy sources (electricity and/or fuels) have a similar effect, since they cause a cost disadvantage against producers in third countries without comparable climate legislation. Funding of decarbonisation schemes should be supported by horizontal financial resources, such as the general budget. Similarly, ETS revenues should be used to finance investment in low carbon technologies in industry.

**Question 138-139**

The eligibility of EIUs for aid in the current EEAG is defined according to the international trade intensity and the electro-intensity. Such criteria have proven to be transparent, robust and effective in identifying the sectors that need to be shielded from the regulatory costs in electricity bill. The recent ETS Guidelines identify a very short list of eligible sectors; such assessment aims only at identifying sectors affected by indirect carbon costs passed through in electricity price, which represent only a specific issue compared to the broader purpose of the EEAG. Therefore, the existing eligibility criteria and thresholds should be maintained, while extending the assessment also to sub sector (at Prodcom 8 level) particularly affected by the financing costs due to taxes and levies with a decarbonisation objective and therefore were put at a significant competitive disadvantage and risk of relocation [e.g. PRODCOM code 25.50.11.34 - Open die forged ferrous parts for transmission shafts, camshafts, crankshafts and cranks etc.], but were not included in the list of eligible sectors for reductions under section 3.7.2. of the EEAG (c.f. Annex 3 and Annex 5 of the EEAG).

**Question 140-141**

Aid for EIUs is not only aimed at avoiding relocation of production within the EU, but also, and most importantly, to third countries without comparable climate and energy legislation and costs. Therefore, the option of granting reductions to EIUs only in those Member States that have reached a certain EU-wide minimum level of decarbonisation levies (in absolute amount) would be counterproductive, since it would increase the risk of carbon, jobs and investment leakage to third countries. This is even more dangerous in the context of increasing regulatory costs dues to strengthening of EU’s 2030 climate & energy targets.

**Questions 142-143**

Aid for EIUs should not be made conditional on additional requirements. In fact, this kind of state aid aims at reimbursing partially EIUs for the regulatory costs in the energy bill. If now state aid is made conditional to additional measures to be taken by the company (i.e. investments in energy efficiency or emission reductions), de facto it is not anymore a (partial) reimbursement of incurred costs since it requires additional expenditure to the company. As the eligible sectors are acknowledged as being at risk of carbon leakage, the missed reimbursement would create the conditions for the materialisation of such risk, leading to an increase in global emissions.

It shall be noted that EIUs are already subject to the EU ETS, which is the cornerstone legislation to reduce emissions in a cost competitive way. In addition, large companies are also subject to compulsory energy audits foreseen by the Energy Efficiency Directive. Further conditionality criteria for aid would create another layer of overlapping legislation. Finally, energy efficiency improvements are a must for industries with high energy costs in order to remain competitive.

1. ECJ, 28.3.2019, C-405/16 P, ECLI:EU:C:2019:268 – Germany / Commission [↑](#footnote-ref-1)