2 August 2021

Climate, Energy and Environmental State Aid Guidelines
Draft Guidelines

Introduction

Overall, BUSINESSEUROPE welcomes the proposed revisions to the Energy and Environmental State Aid Guidelines, in particular regarding the inclusion of activities and technologies that reduce emissions, such as those in the context of the circular economy, battery materials, and the environmental performance of buildings. We support the recognition of electricity and hydrogen-based technologies for CO2 abatement, such as CO2 utilisation in addition to carbon capture, which is vital as a large number of projects are being implemented to re-use the CO2 captured in plants, either to create synthetic fuels or store it permanently through mineralisation.

We also welcome the extensive guidance on market failures and the support for increased transparency. EU State aid policy should fundamentally safeguard a market and company driven European economy. This must be done in a transparent manner to avoid "picking winners" and fill the funding gap whilst correcting significant market failures.

European businesses should be supported in their transformation towards climate neutrality, sustainable growth, job creation and prosperity and the Climate, Energy and Environmental State Aid Guidelines (CEEAG) have an important role to play in achieving this. EU industry, which competes globally with companies that are not facing a similar carbon cost, will not be able to bear all the costs related to the transition in the absence of a global level playing field regarding climate change obligations and subsidy control. The CEEAG need to reflect this global reality and ensure that in principle eligibility to aid is granted to all technologies contributing to climate transition.

If the EU is to be a front runner for climate friendly manufacturing through the deployment of low carbon process technologies and innovations, the key enablers are infrastructures, rapid commercialization of new processes and access to abundant renewable electricity supply at competitive energy prices. This comprises reducing or removing levies/surcharges regarding Renewable Energy Sources (RES), including multimodal CO2 transport besides pipeline (e.g., by truck, rail), and ensuring support for the reduction of both direct and indirect industrial emissions.

Aid in the form of reductions from electricity levies for energy-intensive users, taxes and parafiscal levies

The section regarding aid in the form of reductions from electricity levies for energy-intensive users, rightly refers to the exposure to international trade whilst recognising the risk of relocation of activities outside the EU as a reason for State aid. Annex 1 of the draft Guidelines contains a list of eligible sectors for reductions on electricity levies. Many sectors and companies that were previously eligible for reductions in electricity levies have not been included in the new proposed list, such as cement and industrial gases, which are critical for the EU hydrogen economy.

This because there have been several changes in the so-called NACE-codes of this new annex. According to the data and methodology which the Commission proposes to use, their electro-intensity does not reach minimum thresholds. Values used are averages over the 2013-15 period and a single electricity price is assumed for all sectors, which corresponds to the average EU price for industrial consumers in the second semester of 2015. Trade-intensity is calculated as exports plus imports divided by turnover in the EU, and imports vis-à-vis countries located outside the EU, on average for the 2013-15 period.

We are worried about the proposed reduction of eligible sectors and have concerns about the proposed methodology. Many companies falling outside the scope of the new list, still face the impact of CO2 costs from energy and this weighs heavily on their cost base affecting their competitiveness. We are also concerned that the proposals will discourage further electrification.

Also, increasing the limit ("cap") for additional costs caused by levies on electricity from today's 0.5% to 1.5% of the gross value added is putting a significant burden on businesses, even if they are fully eligible for levy reduction. At a time when CO2 prices are significantly increasing, investments in technologies are necessary whilst RES electricity costs are much higher than those faced by global competitors. The proposed limit would increase the cost burden for industry significantly, impeding other investments which all need to happen at the same time.

It should also be possible to grant reductions from levies that fund capacity mechanisms considering that capacity mechanisms have only become necessary in recent years due to the integration of RES units into the electricity mix as is acknowledged in the section on capacity mechanisms in the existing Guidelines. The purpose of capacity mechanisms is to enable Member States to integrate more renewables into the system, without compromising the security of electricity supply. Therefore, surcharges funding capacity mechanisms cannot be considered as reflecting "part of the cost of providing electricity to the beneficiaries in question" since it is possible to supply this electricity without incurring this cost, assuming an electricity system without renewables, but should instead be viewed as levies "which finance an energy policy objective" (i.e. the integration of renewables). This characterisation would justify targeted reductions from capacity mechanism surcharges, in line with the provisions of para.354 of the draft Guidelines.

The section on aid in the form of reductions in taxes or parafiscal levies proposes to remove the differentiation between harmonised and non-harmonised taxes and the related targeted approach. Certain categories of beneficiaries will thus not be able to receive aid related to harmonised environmental taxes when above the EU minimum tax level set by the relevant applicable Directive. We are concerned that this would lead to a significant increase in burdens for the companies concerned.

EU Taxonomy Regulation

The proposed Guidelines also mention that the Commission will pay particular attention to Art. 3 of the EU Taxonomy Regulation, i.e. substantial contribution criteria and 'do not significant harm' principle, when weighting the positive effects of the aid against the negative effects on competition and trade. In addition, the Commission envisages taking into consideration "other comparable methodologies".

At this stage, the added value of using the EU Taxonomy as a reference for State aid to define positive environmental benefits is highly questionable. The EU Taxonomy has the potential to become a relevant classification tool for projects and technologies that are high performers within the sectors that are covered. However, the taxonomy is still very much under development.

The first set of technical screening criteria has just been adopted and there is no solid experience on their usability yet. Furthermore, these criteria will only become applicable as from 2022 and will be further complemented by technical screening criteria for environmental objectives 3-6 that will only be adopted at the end of next year and become applicable as from 2023. Therefore, restricting the definition of positive environmental benefits to the EU taxonomy for State aid is premature and risks not reaching the intended effects (i.e. supporting the transition of the economy).

The taxonomy can, in principle, play a role in the context of public spending but only once the framework and the criteria are finalised and robust experience on their usability and impact on capital markets has been drawn.

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