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Response to DG Competition Consultation on ENVIRONMENTAL AND ENERGY AID GUIDELINES 2014-2020

As part of the modernisation of the EU State aid policy (“SAM – State Aid Modernisation”), DG Competition (DG COMP) considers that the Environmental Aid Guidelines should be reviewed to update them in the light of experience with their application, recent developments in energy markets and in the economy, as well as to align them with the common approach to modernising aid frameworks under SAM.

IFIEC Europe (IE), representing the energy intensive industrial consumers from different European Members States, for whom energy is a major component of operating costs and directly affects competitiveness, already commented on a previous draft on 29 April 2013 and welcomes the opportunity to give its viewpoints to the inclusion of energy and climate related issues to the Environmental and Energy Aid Guidelines (EEAG).

EU industry’s competitiveness is currently threatened due to large energy price differences with major competitors. The negative impacts of such a development are investigated by the European Commission in its current report on energy prices. Any additional cost burden from EU climate and / or energy policy will inevitably lead to further loss of market shares and in some cases, closures of EU production sites in energy intensive sectors. The approach taken in the EEAG, however, does not safeguard or strengthen competitiveness, e.g. based on the following:

- The proposed requirements for future renewable energy sources (RES)-support are quite weak, i.e. costly support regimes will continue to grow and add costs,
- Conversely, the rules for exemptions for industry from related surcharges are very strict,
- Existing energy tax relief regimes based on the Energy Taxation Directive are questioned,
- Support for industrial cogeneration projects based on the Energy Efficiency Directive (EED) is unsure for the future.

These are threatening signals that do not help to align EU climate and industry strategies.

EXECUTIVE SUMMARY

- State Aid Guidelines have to **take into account EU’s global competitiveness** rather than limit themselves to a level playing field within the EU.
- IE welcomes the concept of carbon leakage being mentioned in the context of surcharges of renewable energy support, thus accepting **that production and investment leakage is driven by the effects of the whole climate and energy policy tool box** rather than only by Emission Trading System (ETS).

- **Existing and well functioning legal frameworks must not be undermined or even removed** by EEAG. There must be protection of confidence for existing measures based on valid EU legislation (Energy Taxation Directive, Energy Efficiency Directive). Investments are built upon these expectations.
- **IE welcomes the establishment of rules addressing the aid to RES**, which currently are granted by EU Member States (MS) in an extensive manner in terms of volumes, time periods and technology maturity. IE sees the importance of streamlining these regimes for limiting costs strictly to efficient costs for the consumers and for the purpose of achieving the IEM.
- **IE welcomes the possibility of support for increasing energy efficiency**. It should be made clear that any aid assessment should also be based on the comparison of the CO₂ savings per Euro of aid for RES technologies, including biomass, energy efficiency and CHP, since energy efficiency and CHP aid are often relatively cheap compared to aid for RES technologies. Therefore, **any more restrictive approach to energy efficiency and combined heat and power (CHP) compared to RES is a priori not appropriate. Stable planning conditions for companies investing and having invested in CHP must be given.**
- To **avoid further dis-harmonisation of the European energy and electricity tax framework**, EEAG shall clearly state that any reductions or exemptions granted by Member States based on the ETD rules as being considered justified cases of state aid, even if those are – in accordance with the ETD – granted below minimum tax levels.
- As long as there is no common scheme of renewable support throughout the EU, Europe needs to **allow for national exemption schemes at a level of the total cost trend of RES subsidies.**
- **RES exemptions should be aligned with the total cost trend of RES subsidies.**
- IE supports efficient investments in infrastructure to the extent that the **investment costs are at least compensated by a positive cost benefit effect for the consumers.**
- IE shares the concerns that **public interventions lead to electricity market distortions and a lack of investment in new and flexible capacities. Capacity mechanisms** must themselves be seen as market interventions only to be used as **a last resort.**
- The **cumulative effects of EU climate and energy policy measures must be recognized** for any exemptions granted on taxes and/or surcharges. These Guidelines need to allow Member States to offset 100% of the additional costs the various decarbonisation policies imposed on energy intensive industry which are not born by non-EU competitors.

GENERAL REMARKS ON COMPETIVENESS

In general, IE is in favor of **creating a "level playing field" for business activities inside the EU** and therefore all kinds of state aid should be challenged against their impact on market functioning and competition.

However, we start at a very difficult position for EU industry: Energy price differences to competitors are as high as never. **State aid modernization must help to promote the functioning of the IEM, without hindering the EII competitiveness globally.**

- Currently **millions of manufacturing jobs have been lost** in the EU since the start of the financial and economic crisis. The competitive position of **EU industry is deteriorating rapidly** compared to several major regions in the rest the world. There is an urgent **need to restore EU industry competitiveness** with concrete steps to **implement EU's "industrial renaissance"**.
- IE insists that **EU competition policy needs to look at the global competition** and not just on the distortions within the internal market. EU's economy as a single entity has its major competitors in the outside world (in America and Asia). State aid policy must **allow for adequate hardship regimes, cost limits and specific measures for industrial energy users**, until a level global energy playing field is restored. These hardship regimes do not constitute a problem; they are merely individual MS's attempts to reduce the competitive disadvantage of EU manufacturing compared to the rest of the world.
- **Economic prospects for fossil fuels and their prices have dramatically changed** since the time when the 20/20/20 targets were fixed. The **rapid development of costly RES** thus has a **huge impact on electricity price differentials versus the rest of the world.**
- By 2030, EU's greenhouse gas emissions will only represent some 5% of global emissions. Therefore, more than ever, **global actions are needed in order to obtain tangible results in the field of climate policy and establish a worldwide effective climate change policy.**
- Eligibility criteria for exemption regimes must not be too strict; they should take into account the diversity of industrial branches and their market conditions (complex value chains, ability to cost pass through). A one-size-fits-all approach is not adequate.

GENERAL LEGAL REMARKS

IE understands the motivation of the state aid modernization to make processes quicker and more streamlined. IE however, sees the opposite occurring: **an increasing scope with rather longer and more frequent processes to be expected.**

IE calls upon the Commission to direct that state aid policies make the restoration of EU's industry an "objective of strategic common interest" and therefore **take into account international competitiveness of European EII into their policy and regulatory regimes.**

- What 'state aid' is, has been defined over a long process by **EU Court decisions**. These decisions **have given guidance** to MSs for designing national measures outside such state aid definition. Such guidance and definitions **must not simply be annulled** by EEAG.

- **EEAG should only be remodelled if the industrial context requires so.**

- Article 107 paragraph 3 TFEU gives the EU **a margin of discretion to shield European EII from distortions towards non EU-competitors** rather than only consider distortions within the EU internal market. IE urges DG COMP to use this approach in order to strengthen the EU economy against its major competitors.

- With the EEAG, DG COMP enters the border zone of its competences. On the one hand this relates to the competences of other DGs and on the other hand of Member States' (MSs). DG COMP must **not unduly limit the MSs' freedom of choice** to implement nationally adapted support schemes and related exemptions. The subsidiary principle must have a high priority also in future.

- **EEAG must not infringe any substantive EU law** as e.g. directives or regulations, approved through sensible, comprehensive decision making processes of the other EU institutions. **New EEAG must not retroactively question measures implemented** based on existing EU legislation.

SPECIFIC REMARKS ON

Aid to energy from renewable energy sources (5.2)

IE welcomes the establishment of rules addressing the aid to electricity from RES, which currently are granted by EU MSs in an extensive manner in terms of volumes and time periods.

- These rules must help avoiding over-subsidization and too lengthy subsidy periods for future support regimes in the MS. This is vital to safeguard acceptance for the restructuring of the energy system for the power consumers. State aid provided eternally is not acceptable. **Subsidies for renewables should only be given on a temporary basis and must be phased out gradually.**

- Any RES subsidy granted should **be limited, fully transparent** in terms of costs and objectives, and should **decline over time** in the same way as RES exemptions.

- Until phase out, support that takes into account the electricity price and technological improvement is **preferred** over a **feed in tariff**. Competitive ways of identifying beneficiaries

for RES support like in bidding processes are a good way to achieve a higher cost efficiency, which is lacking currently.

- Aid for RES is often granted to businesses which otherwise would never survive. If aid is the only element which allow these sources stay alive market distortions would be particularly high. Therefore MSs have a particularly high responsibility for the proportionality and appropriateness of these aid measures.
- The guidelines correctly mention the need to **consider the interaction of different policy measures** with the same objective – here especially important EU Emission Trading System (ETS) and RES support - in order to evaluate the environmental effect of the measure. On this background RES has a rather limited effect on carbon abatement, since such abatement in the sector in question (electricity generation) is regulated and safeguarded by EU ETS already. Consequently, the hurdles for environmental state aid for RES-E should be rather high. However, **the guidelines give the opposite impression, namely that RES are deemed to be normal beneficiaries of environmental state aid.**
- RES technologies are a significant share of the electricity market but remain unpredictable beyond a few hours and variable in their output, which is distorting the market and adding to balancing costs. Therefore **RES-E generators (or installations) must have 'balancing and back-up responsibilities'** just as other market participants.

Energy efficiency measures ... (5.3)

- Concerns about market failures (142) should go further than the example about buildings (building owner bears the renovation costs (investments), energy efficiency benefits accrue with the tenant). Cogeneration (CHP), delivering an important contribution to energy efficiency goals is currently under heavy market pressure due to relatively high prices of natural gas in Europe caused by a lack of competition and electricity market distortions as a result of huge RES-subsidies.
- Therefore, IE welcomes the possibility of **operating aid for high-efficient CHP**. A phase out of such aid is adequate, but such aid limited to a period of five years only is much too short..
- IE welcomes in principle that for **new cogeneration** (also named combined heat and power – CHP) the same conditions apply as for RES technologies (in 5.2, therefore also 5.1) and for existing CHP the same conditions apply as for existing biomass (in 5.2).
- However, it should be made clear that **any aid assessment should also be based on the comparison of the CO₂ savings per Euro of aid**, including for biomass, energy efficiency and CHP. Therefore, more reduced investment aid rates for CHP (e.g. 65 % for small enterprises) as compared to other ones rates (80%) are not appropriate.

... including cogeneration ... (5.3)

The existing regulation in the EED must **give stable planning conditions for companies having invested and investing in combined heat and power (CHP)**. The provisions of the draft EEAG is not in line with the target of the EED. We recommend keeping the existing limitations (80%, 70% and 60%) for the investment aids to new CHP.

- For heat production, the timing of auctions being not compatible with industrial time constraints, we recommend to **grant operating aid for new cogeneration through feed-in premium** which are more adapted to industry needs, or at least provide for timely auctioning procedures.
- Making the market price a reference for the support is problematic for heat since there is no market price. The **reference price should be based on the production costs of the counterfactual** which a conventional heating system is using the same fuel with the same capacity in terms of the effective production of heat.
- To avoid confusion and remove for the future all the risks of wrong interpretations, we suggest that the paragraph **(151)** is completed as follows:

Aid for new CHP

For new cogeneration, operating aid for new installations will be considered compatible if all of the following conditions are met:

- (a) Aid is granted by way of a feed-in-premium.
- (b) Beneficiaries are subject to standard balancing responsibilities.
- (c) Aid is only granted until the plant has been fully depreciated according to normal accounting rules.

Any investment aid previously received must be deduced from the operating aid.

In order to limit the effects on the raw material markets, Member States may exclude or limit energy production using biomass from the support scheme. No other operating aid may be granted to new installations using biomass in that case.

- And the paragraph **(152)** is completed as follows:

Aid for existing CHP after plant depreciation

Compared to separate production of heat and power, higher operating costs may prevent a CHP plant from operating even after depreciation of the installation as the variable operating costs can be higher than the marginal revenues. The Commission may find aid to be compatible.

The Commission might consider operating aid for existing CHP after plant depreciation compatible in the framework of the EED and if it leads to a more cost-efficient fulfilment of the energy efficiency target.

Aid to Carbon Capture and Storage (5.5)

IE's starting point is that CCS could become an economically viable solution if alternative lower cost alternatives have been exhausted and technology improved respectively. Ultimately, market conditions alone must determine the preferred technology to reduce carbon emissions most cost effectively.

- IE sees the need to have CCS on the longer term in order to provide cost effective baseload production. However, the development of this technology cannot create an additional burden on EII.

Aid in form of reductions or exemptions from environmental taxes (5.6)

- ***Any rigid position taken by the EEAG on tax reductions will create an obstacle for MSs to set ambitious national levels of energy or electricity taxation:*** Because setting such ambitious national levels of energy or electricity taxation will either face a loss of competitiveness of their domestic EII or they will face severe state aid investigations by the COM.
- Consequently, MSs will require optional taxation rights in the course of the ***on-going revision of the Energy Tax Directive***. However, such optional taxing rights mean a clear path away from harmonization of the European energy and electricity tax framework.
- To avoid further dis-harmonisation of the European energy and electricity tax framework, EEAG shall clearly state that any reductions or exemptions granted by Member States based on the ETD rules as being considered justified cases of state aid, even if those are – in accordance with the ETD – granted below minimum tax levels.
- As a consequence the current wording of point (175) is not appropriate: aid, allowed in accordance with the ETD, even below the minimum tax levels, should be considered as a harmonised environmental tax.

Aid in form of reductions in funding support for electricity from renewable sources (5.7)

Reductions from surcharges have not been considered state aid in the past if they stay outside the definitions and criteria for state aid elaborated by earlier EU legal decisions. Therefore, per se IE can't accept a carte blanche for European Commission to tackle such exemptions as state aid.

- Aid in the form of reductions should be possible for companies which are especially burdened through a high energy intensity and international competition with competitors which do not face an equivalent burden. This must include also companies active in intermediate elements of the manufacturing value chains even though only indirectly exposed to international trade and competition (e.g. industrial gases).

- Renewable energy support results in a large variety of cost elements for consumers across the EU impacting on the competitiveness of the industry by creating costs not borne by competitors. Therefore, the **EEAG should not intervene with exemptions on surcharges to fully offset the cost impact imposed by the RES promotion**. Moreover, since the cost burden of the surcharges is MS specific, **this should also be the case for the exemptions**. Indeed, the height of the exemptions should be in line with the height of the surcharges and thus MS specific in order to be able to create a RES policy which does not deteriorate the competitiveness of the EII and maintains a level playing field both within the EU and globally. In conclusion, **MS should have the option to provide support to EII to shield them from those additional cost burdens in line with their national burden**.

- **Conditions** stipulated in the Guidelines for this aid **do not reflect economic reality** in the following respects:
 - Electricity generation installations and energy intensive manufacturing plants share the characteristic of being highly capital-intensive with long lifetimes of over 20 years. The EEAG draft stipulates that the aid should be degressive and incomplete with a minimum financial burden of 15% (until 31.12.2017) and 20% (as of 1.1.2018) of the normal charge. These percentages are not linked with economic reality, reflecting the competitiveness of EII and are hence arbitrary. Moreover, this runs counter the aim of avoiding competitive disadvantages, and does not create additional environmental advantages. It also undermines the existence of voluntary agreements in certain MS. To be equitable it must be possible to grant relief from the costs of renewables support for the same time period as the support is granted. Only then would manufacturing's cost disadvantage vis-à-vis competitors be erased.

 - When estimating the risk of carbon leakage for branches or companies all direct and indirect costs related to energy and climate policy should be taken into account. Indeed, especially in MSs with multiple decarbonisation measures in place, the cumulative impact of multiple 20% residual costs can of itself seriously damage industries competitiveness.

Secondly, since there is made reference to the carbon leakage status, all criteria for determining the carbon leakage status should be taken into account. Indeed, DG COMP proposes eligibility based on the cost increase incurred as a percentage of GVA and on trade intensity. This criteria stems from the Carbon Leakage List definition as stipulated in Article 10a of the ETS Directive. However, the ETS Directive describes two other situations in which a sector or sub-sector is deemed to be exposed to a significant risk of carbon leakage, namely (i) the sum of direct and indirect additional costs is at least 30% or (ii) the non-EU trade intensity is above 30%. Since aid should be granted to all installations which could suffer from carbon leakage, these two possibilities should also be considered.

- Industry asks for **clarification regarding the payment as a lump sum amount**. This cannot be the only manner of granting exemptions. In any case, a tax credit approach does not ensure full protection against loss of competitiveness, since there is no maximum tax level in the EU.
- Publication of the amount of aid received by individual companies is **acceptable if aggregated**, so that it does not reveal **commercially sensitive information**. For example, publishing the amount of the reduction in RES-E-surcharges reveals the actual electricity consumption of the individual company, which in turn allows for conclusions about its production technology, output or efficiency. However, these data constitute commercially sensitive information, the **publication** of which **will hamper** its **competitiveness situation**.
- Furthermore, the EEAG claims that all energy consumers should bear the costs of financing RES. This is not appropriate. **Individuals or companies self-generating their own power**, at least in an environment-friendly way such as CHP, baseload-RES, or power generation from waste gases **should not** necessarily **bear the costs of additional RES support** since this would endanger such ecologically beneficial generation. Therefore, it should not be seen as state aid if a member state exempts such kinds of self-generation from RES charges.

Aid to energy infrastructure (5.8)

The development of electricity and natural gas grids and other infrastructure is necessary to improve liquidity and competition in the internal energy markets, and to stimulate market integration. IE therefore supports investments in infrastructure to the extent that the **investment costs are at least compensated by the positive impact on the prices of the underlying commodities**.

- In general, **grid costs should be charged through to grid users** with respect of the three basic principles of the electricity and gas directives: tariffs must be non-discriminatory, transparent and cost reflective. Only efficient costs will be reimbursed through tariffs. This means **grid users should contribute to grid costs to the extent they are causing them**.
- IE can accept that new infrastructure projects are financed by alternative means (including state aid) if the societal benefits exceed the costs. In any case, **all new infrastructure must be available for third party access** in accordance with the 3rd Energy Package.
- **Companies providing services for grid stability / optimal grid usage can be compensated** for these services granted. This should never be **considered state aid**. Referring to (193) and (200), IE would like to see the assessment parameters since gas storage – and a LNG-terminal - is both a commercial activity and can contribute to grid stability.

- IE insists that **transmission grid charges imposed to industrial consumers connected to the transmission grid be subject to the same limits as those applicable for generators.** In this context IE underlines the importance of COM Regulation (EU) No 838/2010 of 23 September 2010. In its Annex B, this regulation limits part of the transmission grid charges for electricity producers to 0 to 0,5 €/MWh, except for certain MSs. IE would like to point out that the arguments that were used to justify these limits are also valid for end users (avoid to discourage investments in new production units, assure level playing field inside the EU), and more in particular for industrial consumers, which, moreover, have to face global competition.

Aid for generation adequacy (5.9)

IE shares the concerns that **public interventions**, such as support for renewable energy, **lead to electricity market distortions and a lack of investment in new and flexible capacities.** **Capacity mechanisms** must themselves be seen as market interventions only to be used as a **last resort** when it is clearly demonstrated that the non-disturbed market itself has failed.

- As a consequence EC and MS should first and foremost focus on the **elimination of market distorting elements** such as over-subsidizing renewable energy and the lack of balancing responsibility for intermittent generation such as solar and wind. Political and regulatory uncertainty should also be reduced to **create a stable investment climate.**
- **Capacity mechanisms** should be a **“last resort” solution** for lack of generation adequacy:
 - **Voluntary demand response** should be considered first as an efficient solution to the adequacy equation. With demand **response as a possible lever to restore** EU EILs’ competitiveness, a win-win approach could be implemented.
 - MSs should encourage development of voluntary demand response **with adequate compensation**, by removing regulatory obstacles to the use of demand response and putting in place relevant offers or markets.
 - Capacity mechanisms should **not** be considered **until the EU energy market is fully integrated**, in order to be cost-effective and limit market distortions;
 - Before introducing capacity mechanisms **obstacles to investments in new generation capacity should be removed** by e.g. simplify permitting.
 - Another possibility is to **extend the lifetime of existing (semi-)baseload capacity** as long as it is technically and economically viable.
- **Should capacity mechanisms be used:**
 - It must be accurately demonstrated that this is the best approach to **ensure generation adequacy while minimising the cost to final consumers.**
 - The **costs** of any mechanism **should be limited only to the missing money portion**, which is to be clearly proven, more particularly the total economic impact to final consumers; any kind of **windfall profits must be avoided.**

- **Any scheme must be evaluated** on a regular basis according to its impact on the total electricity cost and the schemes to be chosen must provide the necessary conditions for the most cost effective solutions - like demand side management - to emerge.
 - **Demand response must be part of the mechanism** against adequate payment and treated the same way as generation assets, taking into account the fact that it is a low carbon solution.
 - Since capacity mechanisms are a market intervention they have to be **temporary and their costs should be transparent and traceable**.
- Over all, IE sees as key importance that **security of supply should be ensured with the most economically efficient approach**, so as not to threaten international competitiveness of industrial energy consumers.

FINAL CONCLUSION

EU competitiveness policy including state aid policy must allow adequate exemptions, cost limits and specific regimes for industrial energy users, until competitiveness on a global level is restored, in order to:

- Seriously address the EU reindustrialization policy;
- Soften the consequences of policies unilaterally impacting at EU level;
- Follow the idea on which the EU was founded – building an economic counterweight to economically powerful regions in the world by connecting the patchwork of European economies into one single powerful region – and conduct a state aid policy that has the global competitiveness of the EU in focus rather than simply distortions between MS.

Brussels, 12 February 2014

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