EEB
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To: Margrethe Vestager, Executive Vice-President and Commissioner for Competition
Frans Timmermans, Executive Vice-President for the European Green Deal
Kadri Simmons, Commissioner for Energy
Virginijus Sinkevičius, Commissioner for Environment, Oceans and Fisheries

Brussels, 17.12.2021

RE: State aid Guidelines on climate, environmental protection and energy

Dear Executive Vice-Presidents, dear Commissioners,

The EEB is concerned about the current drafting process of the Guidelines on climate, environmental protection and energy. By confronting the leak that have been circulated and the Opinion of the Regulatory Scrutiny Board (RSB)[1], we have noticed several problematic points that, if adopted, would irremediably weaken the purpose of those Guidelines, notably to make competition policy fit for the EU Green Deal delivery.

In particular, we are referring to chapter 4.11 of the Guidelines about Energy Intensive Undertakings (EIUs), where we spotted the following five main problematic points:

1. In paragraph 385[2], it is claimed that levies reduction can prevent EIUs from relocating outside the EU. This claim is unproven[3], furthermore the Carbon Border Adjustment Mechanism (CBAM) will precisely remediate this risk. The overlapping of CBAM and CEEAG could even result in double protection for some EIUs, which would be a waste of public resources.

2. Moreover, considering that for the moment CBAM and ETS free allocations are overlapping[4], **this might result in an unjustified 'triple protection' for some EIUs,** in total contradiction with the polluter pays principle. This approach amplifies a market failure that creates virtually no incentive for EIUs to reduce emissions at site nor reducing its electricity consumption. As illustrated in the EC's impact assessment accompanying the CBAM Regulation proposal[5], where the CBAM coincides with the removal of free allowances in the target sectors this would not lead to a substantial risk of carbon leakage.

3. In paragraph 390 (ex 357)[6], DG Competition significantly cuts the trade intensity and electro-intensity figures, which results in a higher number of additional 'EIUs' benefitting from levies reduction. **Such a significant weakening is not based on any independent assessment, does not take into account the Opinion of the RSB[7] and is contradicting the Better Regulation Guidelines.**

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[1] Ref. Ares(2021)6350810 – 18/10/2021
[2] Here and in the following points we will refer to the leaked version of the CEEAG
[3] The Commission's 2020 IA on ETS State Aid Guidelines indicates that there is no demonstrated risk of carbon leakage "political considerations seem to remain the main driver for Member States" to grant aid for ETS allowances (see pp. 23-24 and 31).
[4] See joint NGO statement here.
[5] EC's Impact Assessment accompanying the CBAM Regulation proposal (page 49).
[6] The same can be said of paragraphs 393 and 394.
[7] The RSB's Opinion finds that the IA of the CEEAG "*does not clearly explain the preferred policy option for reductions in levies funding support for electricity from renewable energy sources for EIUs*" and "*does not assess and specify the final parameters of the preferred option*".

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International non-profit association ● Association internationale sans but lucratif (AISBL) ● EC register for interest representatives: ID number: 06798511314-27 ● BCE ID number: 0415.814.848 ● RPM Tribunal de l'entreprise francophone de Bruxelles

4. The previous highlighted concerns also relates to the eligible Annex I entries: we do not understand how the support of sectors like "mining of hard coal" or other mining activities which are not electricity intensive, could result in better climate and environmental protection, which is the main objective of these Guidelines. No rationale has been provided.

5. In paragraph 395/403, DG Competition correctly considers the aid to be proportionate only when EIUs are on a path to reduce the carbon footprint of their electricity consumption. Nevertheless, **the conditions listed in the second part of the paragraph are too weak**:
   a. 50% is an arbitrary figure (see point 3 of this letter);
   b. 50% of energy generation could still be very carbon intensive, the remaining "carbon-free" 50% could come from unsustainable sources such as nuclear, yielding other negative impacts linked to nuclear waste matters and water abstraction. The level is incoherent with the stated "30%" level referred to under point 400b;
   c. On site improvement measures are not incentivised, a full choice is offered between power purchase agreements *or* an insignificant 5% share of on-site *or* "near-site generation", a term not further defined. There is no single requirement aligned to "think sustainability thirst[8]", namely obliging the EIUs to reduce energy consumption to meaningful benchmark levels first.

It is astonishing that, according to the feedback received by ClientEarth, the Impact Assessment is "still under development".

The level of exemptions from levies should be proportional to the level of efforts made and the return of investment rate for wider environmental and climate benefits. The Transitional Plans idea should be strengthened so as to provide for a linear increase target of ambition towards full renewable based electricity sourcing and conditional to stronger energy efficiency steps, i.e. the discount rate to be proportional to renewable energy sources share and process efficiency measures taken on site. Such a more dynamic approach would effectively incentive EIUs to bring their operations in line with the environmental and climate targets of the European Union in a more proportionate manner.

Finally, we fully support ClientEarth concerning the need to better inform DG Competition's decisions through meaningful Impact Assessments, the consideration of Opinion of the RSB and, more in general, by taking into consideration the contributions coming from NGOs, which according to the leak have been largely ignored.

We take advantage of this letter to remind the Commission that DG Competition itself launched a public consultation aimed at aligning competition policy to the European Green Deal: regrettably, we have to say that, for the moment, this alignment has not succeeded.

We do hope you will take our points into consideration in the final text of the Guidelines.

Yours Sincerely,

Jeremy Wates
Secretary General

[8] As required by Article 3(1) point (b) of the 8th Environmental Action Programme (8th EAP)